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*Comment Received From: Building Energy, Equity & Power Coalition  
Submitted On: 10/17/2023  
Docket Number: 22-DECARB-03*

**Letter from BEEP & partners on the EBD Program Draft Guidelines  
from Oct 5**

*Additional submitted attachment is included below.*

October 17, 2023

California Energy Commission  
1516 9th Street  
Sacramento, CA 95814  
*By Email and Online*

Dear Commissioners and staff:

We are writing as a broad coalition to request changes to the draft guidelines for the Equitable Building Decarbonization (EBD) Program. Specifically, the Commission must seriously consider increasing the average household cost, identifying enforcement mechanisms for tenant protections to ensure equitable implementation of this critical program, and addressing some technical issues detailed below.

This coalition includes frontline community groups, environmental advocates, technical experts and allies. We work across California to identify and address barriers to building decarbonization. We are all very invested in the successful implementation of this program, and want to thank your staff for all of the work they have done to get the draft guidelines to this point.

While we appreciate that the latest draft contains many changes that have been made based on our input, we want to highlight some remaining critical issues: the average funding that can be spent per household, the lack of enforcement mechanisms for tenant protections, and other technical gaps in the draft guidelines.

**We recommend at least a \$10,000 average cap for remediation and electrical upgrades.**

We appreciate that the draft guidelines include a higher cap for mobile home remediation, but this cap should be higher for mobile homes in recognition of the higher expenses for mobile home remediation. Data from the California Public Utilities Commission on the San Joaquin Valley (SVJ) Pilot Project has shown that appliance upgrades, necessary remediation and electrical upgrades to accommodate those appliances, and energy efficiency or weatherization upgrades essential to the successful function of those appliances cost an average of \$22,112 per home. This pre-COVID inflation number includes an average of \$7,263 per home for remediation and necessary electrical upgrades, and is on top of existing programs that provide rebates or other funding for these improvements. While not all communities will face the same infrastructure challenges as the communities in San Joaquin Valley do, and the draft guidelines do not stipulate that appliances are included in the average household cost, it is safe to say that the figures from the SVJ pilot are instructive – the \$6,000 per home and the \$7,200 for manufactured and mobile home averages in the current draft guidelines would be woefully inadequate (especially considering prevailing wages were not used in the SVJ pilot program) to achieve the energy cost savings and resiliency we strive for.

Relatedly, we request that the CEC allow for window replacement, and remove the language about “avoiding” electrical panel upgrades. Specifically, we are concerned that alternatives to

panel upgrades could result in lower quality upgrades and want to ensure that there are safeguards in place so that participants receive the best possible investments. Additionally, we are concerned that households that should receive investments through the EBD program may be disqualified – either intentionally or unintentionally – because they require panel upgrades. We appreciate that the Commission is trying to balance community needs with the overall impact of this program; however, we must point out that failing to provide sufficient funding for necessary improvements to ensure the best functionality of new appliances will leave behind our most disadvantaged households, or leave them with higher energy bills that they cannot afford. Neither of these outcomes can be called "equitable."

In addition, **we firmly believe that there must be both sufficient *and* enforceable tenant protections to ensure tenants are not adversely impacted by the EBD program.** We are thankful to see expanded and more specific tenant protections in the latest draft; however, we are concerned that the lack of enforcement mechanisms will nullify these protections. Recognizing that the program participation agreements are similar to those used in the SJV pilot, we urge the CEC to further model the SJV pilot by barring any violating landlords from future participation in other related CEC programs. Additionally, to ensure that all program participants are aware of their rights, we urge the CEC to modify the guidelines to clarify that project information should be provided to all participants in their native or preferred language, not just "in predominant languages spoken in the community." Finally, we urge the guidelines to clarify that if participants must be temporarily displaced during the upgrades, the program (or in the case of tenancy, the landlord) must pay for their accommodations during displacement. Please see the [Strategic Actions for a Just Economy \(SAJE\) analysis](#) (Appendix 1) for further recommendations on strengthening tenant protections and enforcement.

Finally, we request the Commission direct staff to address the following technical issues before finalizing the guidelines:

- **Modify income eligibility to be based on statewide median household income (MHI) instead of area median income (AMI).** Using AMI will exclude communities in low-income counties, which are predominantly rural disadvantaged communities. Appendix 2 is an analysis of impacts on disadvantaged and severely disadvantaged communities across the state that would not be eligible for upgrades under the EBD program if AMI were used instead of MHI.
- **Ensure that the \$30M set aside for existing programs goes to existing direct install programs, or instead use this money to expand the direct install program.** While we appreciate that the CEC aims to expedite deployment of building decarb strategies, we want to ensure that, given how critical the direct install aspect of the program is, that this \$30M goes to existing direct install programs. If there are no direct install programs that meet the criteria for existing programs, then these funds should instead be redirected to the direct install program so that more households can benefit from direct installation.
- **Clarify community targeting to include households who burn wood as a primary source of heat in eligibility criteria, and ensure that rural areas are not excluded by targeting criteria and the analytic tool.** We are concerned that two of the targeting

criteria, "higher potential for avoided GHG emissions" and "proximity to other targeted low-income households, for economies of scale..." could exclude disadvantaged communities in rural and unincorporated areas, because they are inherently less populated than urban areas. Simultaneously, rural areas frequently face some of the highest energy burden, worst effects of the climate crisis, and highest levels of disinvestment in the state. The analytic tool for household/property targeting should not include these criteria that could disadvantage rural communities from receiving investments from the direct install program.

- **Ensure the diversity of regional administrators include incorporated and unincorporated communities, as well as housing tenure (renters and owner-occupied).**
- **Work with community groups to define “climate-ready and climate-friendly homes” as well as “energy equity.”**
- **Commit to long-term interagency coordination for streamlining and “stacking” EBD-related programs, including income eligibility is the same across all income-eligible programs and automatic eligibility for participants in other programs.** CEC staff should also maintain an updated list of programs with which administrators can coordinate.
- **Further expand on “Workforce Standards and Requirements” to require contractors to offer healthcare and retirement benefits, to create sister policies and programs facilitating workforce transitions, and to include dedicated funding for training programs.**

Many of us have advocated for the California Climate Investments to shift its funding guidelines from prioritizing how many tons of greenhouse gas emissions are reduced to a more holistic vision of how to make communities more resilient. We were pleased to see CARB adjust their criteria to include improvements to public health and other co-benefits that target disadvantaged communities. This new program could follow a similar path, and thereby be positioned to create meaningful change by truly demonstrating what equitable building decarbonization should look like.

If you have any questions about our position, please do not hesitate to contact us.

Sincerely:

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## Appendix 1.

### Proposed changes to the Equitable Building Decarbonization Guidelines Tenant Protections section

Analysis by Strategic Actions for a Just Economy

*\*The language in red indicates where changes to the original language have been made.*

“This program includes tenant protections, which include the following elements: rent increase limitations, eviction protections, information for tenants and property owners on rights and responsibilities under the program, and requirements related to project work and temporary displacement.

The CEC plans to prepare documents (program participation agreements) for Program Administrators to use when contracting with program participants. Program participants will include tenants, property owners, and potentially other relevant participants. Program participation agreements will identify the rights and responsibilities of program participants and will include terms addressing rent increase limitations and eviction protections. Additional details are listed below.

Program participation agreements will **take the form of deed restrictions and take one or more of the following forms: lease addendum, deed recording, or other documents. ~~The form of the program participation agreements may depend on whether the property is already deed restricted, the number of units, or other factors.~~** For market-rate rental housing, the deed restriction will include a requirement that the property owner sign a lease addendum with all tenants at the property. That addendum shall include the tenant protections and information required by section 1-4 below,

Property owners shall also be subject to all applicable state and local laws regarding rent increases, eviction, tenant displacement, and other tenant protections. Where state or local laws require more tenant protections than described in this section, the more stringent requirements shall apply. These tenant protections may be revisited by the CEC based on feedback from program administrators and participants and revised in a future edition of these Guidelines.

**Requiring deed restrictions and lease addenda, as described above, is intended to make the program requirements enforceable by both program administrators and tenants. Enforcement for the program participation agreement shall be primarily the responsibility of the program administrator, however. Program administrators are required to include a strategy for enforcing program participation agreements in their application [and are encouraged to include legal services providers capable of providing support in enforcing these provisions on their applicant team]. and, by recording restrictions in the property deed, through the civil legal system.**

These tenant protections may be revisited by the CEC based on feedback from program administrators and participants and revised in a future edition of these Guidelines.

## 1. Rent Increases

For eligible deed-restricted affordable housing, the deed recording must be in place for at least 10 years post-project under this program (or be extended if it would otherwise expire before this time).

For market-rate rental housing, the program participation agreements will include provisions that require a property owner choosing to participate in this program not to increase rent for units improved by the program by more than 3 percent per year. **To be sure, this is a maximum 3% increase, not an additional increase of 3% on top of the allowable rent increases according to statute.** Rent increases up to 3 percent per year must be due to a documented increase in property taxes, operations and maintenance costs, or amortization of improvements unrelated to a project funded by this program. This rent increase limitation will apply:

- 10 years after project completion for **all buildings with 5 or more units.**  
~~● 5 years after project completion for buildings with 1-4 units~~

*[Comment: There is an assumption being made that small buildings are owned by small landlord experiencing financial hardship. A mom-and-pop landlord is defined as owning less than 4 units. The difference in length of rent caps should be based on ownership type not building type.]*

## 2. Eviction

Program participation agreements will prohibit property owners from terminating a tenancy and/or evicting a tenant from an improved unit before, during, or after the project **for 15 years for reasons other than nonpayment (cannot be evicted for owing less than one month of Fair Market Rent for unit size), an illegal activity, or severe nuisance.** This includes situations where there is “no-fault just cause” for eviction, including reasons like an owner wanting to move in ~~without just cause as defined in Civil Code Section 1946.2.~~

The property owner must also commit in writing that the building retrofits conducted pursuant to the Equitable Building Decarbonization Program, or any other activity related to the program, shall not be the basis for just cause for eviction. **These requirements will be included in the lease addendum as a restriction on the landlord’s ability to terminate the tenancy.**

*[Comment: After a landlord has received a public subsidy to improve their private property, consequently raising its value, they should not have the right to evict a tenant except for in very specific situations. The provision as currently written in these guidelines lack strength in protecting tenants because even if landlords cannot evict solely due to renovation work, they can still use other reasons to carry out an eviction and this is what we aim to prevent. If the CEC is compelled to allow landlords to have a mechanism to evict it should ONLY be for serious circumstances such as threat of harm to other residents or criminal use of the premises.]*



### 3. Information for Tenants and Property Owners

Administrators will be responsible for ensuring that project information is available in the predominant languages spoken in the community and is communicated clearly to both property owners and tenants. Such information should include:

- Measures to be installed
- Benefits expected from installed measure
- Expected duration of construction and construction hours
- Whether temporary displacement is required
- Tenant and property owner rights and responsibilities related to participation in this program, including those related to rent increases, evictions, and displacement
- Information and resources for tenants on what to do if their rights are violated
- Expected timing of post-project follow-up surveys
- Number to call regarding any concerns related to a project funded by this program

In addition, the CEC will provide information on program benefits and potential impacts that will be required to be provided to tenants prior to execution of any program participation agreements by tenants and commencement of the project.

### 4. Construction Rules and Temporary Displacement

Project construction shall be limited to 30 days. ~~whenever possible.~~

Projects should be designed to minimize disruption to tenants and avoid the need for temporary displacement ~~if possible, and reduce the duration of displacement if it is necessary.~~ If a project will require tenant relocation, it will not be able to participate. If after construction begins on an approved project and participants learn it will require the tenant to temporarily relocate, the program must pay for the relocation in a hotel within 2 miles of the home and grant tenant fundings according to General Services Administration rates. Tenants shall have the right to return to the same unit once construction is complete ~~and state and local laws governing tenant displacement shall apply.~~

### 5. Institute Enforcement Mechanisms

For market-rate rental housing, there shall be two contracts: one between landlord and program administrator and a second one between landlord and tenant. The second agreement shall take the form of a lease addendum for enforceability purposes.

The program administrator shall be responsible for enforcement and monitoring the program. They should:

- Check in with the property owner and the tenant every six months to ensure that the agreement is being adhered to. The CBO case manager should require the property owner to certify they have followed the agreement.
- Have the authority to investigate complaints made by the tenant and conclude whether the property owner violated the agreement.
- Require the property owner to certify that the same tenant resides in the building, and that the rental rate has not changed. This document should be attached to the annual registration of the rental unit with the city, if that is a local requirement.

**The second agreement between the landlord and the tenant shall outline penalties for violating the agreement.**

If a property owner breaches the EBD project agreement, they should:

- Reimburse the agency in the amount equal to the amount spent on retrofits and program participation, including parts, labor, overhead costs, attorney's fees, court costs, and interest at the statutory rate for judgments from the time of the breach. If the property owner cannot repay these costs, a lien should be placed against their property.
- Be liable for damages to a tenant or applicant for tenancy in the amount of \$100 per day.
- Be prohibited from utilizing public subsidy programs for buildings they own.
- The tenant shall be able to recover attorneys fees that are incurred from enforcing the agreement

## Appendix 2.

### Analysis of Statewide Median Household Income (MHI) vs. Area Median Income (AMI)

	Median	80% of Median	60% of Median	
Statewide	\$84,097	\$67,277.60	\$50,458.20	Statewide Median
Riverside	\$76,066	\$60,852.80	\$45,639.60	Area Median
Madera	\$66,709	\$53,367.20	\$40,025.40	
Fresno	\$61,276	\$49,020.80	\$36,765.60	
Kern	\$58,824	\$47,059.20	\$35,294.40	
Tulare	\$57,394	\$45,915.20	\$34,436.40	
Merced	\$56,330	\$45,064.00	\$33,798.00	
Trinity	\$42,206	\$33,764.80	\$25,323.60	
<b>Survey of Impact of Moving to Area MHI</b>				
Allensworth (Tulare)	\$48,908	SDAC using statewide MHI, Not a DAC using area MHI.		
Indio (Riverside)	\$66,841	DAC using statewide MHI, Not a DAC using area MHI.		
Matheny (Tulare)	\$56,369	DAC using statewide MHI, Not a DAC using area MHI.		
City of Tulare (Tulare)	\$63,668	DAC using statewide MHI, Not a DAC using area MHI.		
Planada (Merced)	\$44,324	SDAC using statewide MHI, DAC using area MHI.		
Fairmead (Madera)	\$40,729	SDAC using statewide MHI, DAC using area MHI.		
City of Madera (Madera)	\$49,358	SDAC using statewide MHI, DAC using area MHI.		
Lanare (Fresno)	\$41,724	SDAC using statewide MHI, DAC using area MHI.		
Lamont (Kern)	\$40,341	SDAC using statewide MHI, DAC using area MHI.		
Pixley (Tulare)	\$42,827	SDAC using statewide MHI, DAC using area MHI.		