

LAW ALERT

A NON-EXCLUSIVE CLUB: HCD FINDS MOST CALIFORNIA JURISDICTIONS SUBJECT TO SB 35 STREAMLINING

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On February 1, 2018, the California Department of Housing and Community Development (HCD) released the final list of jurisdictions that will be subject to SB 35's streamlined housing development process. As a result, all but 13 California cities and counties are now required to review qualifying housing applications under the procedures defined in Government Code section 65913.4.

BACKGROUND

SB 35 became effective on January 1, 2018. It requires cities and counties to use a streamlined ministerial review process for multifamily housing developments that comply with the jurisdiction's "objective" planning standards and that meet other specific requirements. One of the prerequisites for an applicant to request streamlining is that HCD must have determined that the jurisdiction is subject to SB 35, either because the jurisdiction has not issued enough building permits by income category to satisfy its regional housing need or because it has failed to submit two consecutive annual reports required under Government Code section 65400.

CURRENT DETERMINATIONS AND AFFORDABILITY REQUIREMENTS

HCD has made a determination regarding SB 35 eligibility for each city and county in California, and the summary of its determinations is now available [here](#). HCD has also published a detailed memorandum regarding its methodology and a FAQ summarizing SB 35's requirements, which are available [here](#) and [here](#).

As a result, more than 375 jurisdictions in California are subject to SB 35 for housing

development applications that include at least 10% of their total units as affordable to households making below 80% of the area median income, and nearly 150 jurisdictions are subject to SB 35 for projects that include at least 50% of their total units as affordable at that level.

HCD indicates it will be looking at housing production on an annual pro-rated basis for the first half of each jurisdiction's planning cycle. For example, a city in the third year of its eight-year planning cycle must have issued building permits for three-eighths of its housing need allocation by income category, or it is subject to SB 35. HCD says it will recalculate eligibility each year until the halfway point—typically, the fourth year—of each jurisdiction's current planning period. Then, HCD's determination for that year will remain in place until the next reporting period begins.

NEXT STEPS

Cities and counties should review HCD's materials to see what affordability requirements apply in their jurisdiction and alert HCD if there are any errors in the data. In addition, all cities and counties—including charter cities—should prepare to submit their 2017 annual report no later than **April 1, 2018** and continue collecting data to meet the revised reporting requirements for the 2018 annual report due April 1, 2019.

Goldfarb & Lipman's analysis of SB 35 and other 2017 housing bills is available [here](#). For more information, please contact [Karen Tiedemann](#), [Barbara Kautz](#), [Eric Phillips](#), or any other attorney at Goldfarb & Lipman LLP.

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