



July 2, 2009

Mr. Gil Sperling
U.S. Department of Energy
Weatherization Assistance Program
Room 6050, 1000 Independence Avenue, SW.
Washington, DC 20585-0121

Docket No. EEWAP0515
RIN 1904-AB-97
“Weatherization Assistance Program for Low-Income Persons”

Dear Mr. Sperling:

The National Housing Trust is a national nonprofit dedicated exclusively to the preservation and improvement of affordable multifamily housing. We are the only national organization engaged in affordable housing preservation through public policy advocacy, real estate development, and lending. We have helped preserve and improve more than 22,000 affordable apartments throughout the country.

The National Housing Trust supports the steps taken by the Department of Energy (DOE) and the Department of Housing and Urban Development (HUD) to streamline access to the Weatherization Assistance Program (WAP) for low-income families residing in HUD Qualified Assisted Housing and certain Low-income Housing Tax Credit (LIHTC) properties. If states follow their lead and deploy funding for the weatherization of these properties, DOE and HUD will have helped pave the way for hundreds of thousands of low-income families and seniors to benefit from lower utility expenses, better and more secure housing, and healthier living environments.

The American Recovery and Reinvestment Act (ARRA) provided funding for weatherization at a level that is approximately 20 times existing appropriations. This provides an unprecedented opportunity to greatly expand the number of low-income homes weatherized by including multifamily rental housing properties that are already eligible for WAP assistance but have not been proportionately served by existing allocation channels. Clearly this action reflects a renewed commitment to assist low-income households coupled with a strong new commitment to reduce energy consumption and carbon emissions.

A number of states have determined that targeting multifamily properties is a sound policy objective. States such as Kansas, Massachusetts, Oregon, Ohio and New York, are encouraging the use of weatherization funds in HUD assisted and LIHTC properties. Some have been doing so for years. Streamlining access to weatherization funds for families residing in these properties is important for supporting the policy goals of these states. We believe these efforts should serve

as best practices for other states to consider as they look to expand weatherization assistance to assist low-income renters.

Low-income households are disproportionately renters. As noted in the Notice, HUD's Qualified Assisted Housing programs generally serve the population for which the Weatherization Assistance Program was established to serve. More than 70% of households living in multifamily buildings earn less than \$40,000 a year. According to HUD, the median income of residents in HUD assisted housing is under \$11,000 annually.¹ A 2003 analysis concluded that 60% of project-based Section 8 apartments were headed by elderly residents.² Obviously, low-income households should not be excluded from the deployment of WAP funding simply because they live in multifamily HUD assisted housing, public housing, or LIHTC properties.

Weatherizing HUD assisted and LIHTC properties will help states accomplish their required production goals. ARRA prioritizes activities that will create jobs quickly. President Obama has set a goal of weatherizing 1,000,000 homes annually, up from approximately 100,000 homes weatherized in a typical year. Because of economies of scale, weatherizing multifamily housing is efficient and can achieve energy conservation at scale.

The National Housing Trust is pleased to comment on the following proposals put forward by the Department of Energy in its Notice of Proposed Rulemaking of May 21, 2009:

A. DOE proposes that buildings identified by HUD as having not less than 66 percent (50 percent for duplexes and four-unit buildings) of dwelling units occupied by family units whose income is at or below 200 percent of the poverty level would meet the minimum income eligibility requirements for multi-unit buildings under the Weatherization Assistance Program.

We support DOE's proposal to determine eligibility for certain HUD-assisted ("Qualified Assisted Housing") and LIHTC buildings based on available HUD income data. Finalizing the proposed rule will result in a significant reduction in administrative costs and wasted time of tenants, sub-grantees, and owners, enabling more funds to be used for actual energy conservation work.

The definition of "qualified assisted housing" in footnote 1 should be revised to clarify (as was done at DOE's public meeting on June 18) that 221(d)(3) BMIR and 236 buildings are ONLY excluded from consideration as qualified assisted housing if fewer than two-thirds of the units have project-based section 8 assistance.

¹ Characteristics of HUD-Assisted Renters and Their Units in 2003.

² Lubell, Jeff, Mark Shroder and Barry Steffen. "Work Participation and Length of Stay in HUD-Assisted Housing." *Cityscape: A Journal of Policy Development and Research* 6.2 (2003): 207-223.

We support HUD's proposal to make the list of eligible properties publicly available. We recommend that the list include the property's REMS ID so the dataset can be easily integrated with other HUD property datasets (e.g. HUD's Multifamily Assistance and Section 8 Contracts Database).

B. DOE proposes that the restrictions on rent for units in buildings participating in the Qualified Assisted Housing Programs would provide the assurance required under the Weatherization Assistance Program that for a reasonable period of time after weatherization work is completed on a dwelling occupied by a low-income family unit, rent will not increase.

We agree that rent restrictions on HUD Qualified Assisted Housing and LIHTC properties represent significant protections against rent increases and should eliminate the need for any further administrative action to prevent rent increases, except where these restrictions are set to expire within 3 years. Currently, landlords participating in WAP are prohibited from raising rents for up to three years after weatherization occurs in most states (the actual time frame during which owners are prohibited from raising rents varies by state but generally is from one to three years). Under the statute, responsibility for balancing the need to reach eligible households with the need to prevent undue landlord benefit lies clearly with the states.

In cases where existing rent structures expire within three years, we would urge that building owners not be allowed to increase residents' rents in any way where that rent hike is related to the repairs made with weatherization funding (see King County, Washington WAP rental agreement or NYC agreement used by AEANYC).

C. DOE proposes that the existing limits on permissible work under the Weatherization Assistance Program and the HUD control of improvements under the Qualified Assisted Housing programs would provide the necessary assurances that no undue or excessive enhancement will occur as a result of the weatherization of the buildings identified by HUD.

We support DOE's preliminary determination that use of WAP funds for Qualified Assisted Housing would not result in undue or excessive enhancement. Existing limits on permissible work under WAP permits only those improvements that are most cost effective at reducing energy consumption. These improvements must be supported by a comprehensive energy audit. These same procedures should apply to HUD Qualified Assisted Housing and LIHTC properties. Multifamily and publicly assisted housing should not be subject to greater scrutiny or regulation than owners of other properties participating in the program.

In a conventional property, the owner can resell the property at any time for market rate use. If such an owner resells in the months or years soon after weatherization, the owner might reap a windfall and defeat the purpose of the weatherization program to serve low-income people. In contrast, the long-term use restrictions on HUD or LIHTC properties mean that any transfer of the property would be for continued use as affordable housing and at a price consistent with that use.

D. DOE has also tentatively determined that buildings subject to the LIHTC Program and that are identified by HUD would meet the income eligibility requirement of the Weatherization Assistance Program for determining eligibility of multi-unit buildings.

LIHTC properties in which HUD can establish income eligibility for at least two-thirds of the residents based on HUD income data should also be included, since the same issues described above apply similarly to LIHTC properties. LIHTC owners should not be subject to greater scrutiny or regulation than owners of other (conventional rental) properties participating in the program.

1. Weatherization provides direct benefits to low-income households regardless of their housing tenure or status as recipients of housing assistance.

Although the weatherization statute clearly states that the benefits of weatherization must accrue primarily to the low-income tenants residing in the units, it does not state that this benefit has to be in the form of lower utility bills paid directly by the tenant. The word “financial” or “monetary” does not appear in either the legislation or the pertinent regulation governing WAP.

In cases where tenants of HUD Qualified Assisted Housing and LIHTC properties do not directly pay utility costs, the presence of long-term affordability covenants demonstrates that the benefits of weatherization accrue primarily to the tenants. In cases where an affordability covenant is expiring, the National Housing Trust supports requiring owners to commit to an additional period of affordability to further ensure that benefits of weatherization accrue primarily to tenants.

Residents also directly benefit from weatherization through improved health and safety and an improved living environment resulting from more reliable and even heating and cooling of residences. For example, air sealing the building envelope is a critical feature of an energy efficient rehab. Air leakages result in a draftier environment and can allow in potentially hazardous dust and airborne pollutants.

Finally, residents directly benefit from weatherization through improved health and safety and an improved living environment. For example, air sealing the building envelope is a critical feature of an energy efficient rehab. Air leakages result in a draftier environment and can allow in potentially hazardous dust and airborne pollutants. Enterprise Green Communities reports that residents of High Point development, green affordable housing in Seattle, are experiencing an increase in asthma-free days and are spending less time in the emergency room.

States have discretion as to how to implement the program and have primary responsibility for ensuring that sub-grantees comply with program restrictions and requirements. DOE should not impose special program restrictions, enforcement, or documentation requirements that could have the effect of discouraging use of the program for renters of multifamily buildings.

2. DOE and HUD should streamline income eligibility in properties that are not identified as HUD Qualified Assisted Housing

HUD and LIHTC programs rely on robust procedures to verify participants' income and should accept existing income documentation for determining eligibility for individual households. DOE and HUD should ensure that other LIHTC properties and partially subsidized properties, including properties with tenant-based voucher assistance, can use existing income certification documentation toward determining that two-thirds of the units are income-eligible for WAP. If properties already income-certified tenants at or below 200% of poverty within the last 12-24 months, those properties should not have to duplicate certifications for WAP. Owners should be able to produce existing income certifications to qualify eligible tenants.

Allow for streamlined tenant application process. Especially if properties already income qualify because they have government assistance, DOE should encourage local administering agencies to allow one large application for the property that is signed by eligible tenants, as opposed to requiring an entire application from each tenant.

Encourage states to target multifamily. Currently, Weatherization CAP agencies predominantly serve the owner-occupied market. Agencies now have expanded goals and must understand multifamily financing at the same time state offices and the CAP agencies are under increased scrutiny. This creates a difficult context for innovation and risk-taking. DOE should encourage state energy offices to demonstrate innovation and flexibility for multifamily buildings.

Thank you for your consideration of these recommendations. If you have any questions, please contact Toby Halliday at the National Housing Trust at 202-333-8931, extension 130 or thalliday@nhtinc.org.

Sincerely,



Toby Halliday
Vice President, Public Policy