

July 6, 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 Community Builders, Inc., is a large nonprofit developer and property manager of affordable multifamily housing operating in 13 states and the District of Columbia across New England, the Mid-Atlantic and the Midwest. To date, we have completed over 22,000 units of HUD and/or Low-Income Housing Tax Credit (LIHTC) assisted housing and directly manage approximately 8,000 of these units.

Given our experience in developing and managing such properties, including undertaking extensive weatherization and energy-saving improvements in our rehabilitation and new construction projects, Community Builders supports efforts 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 LIHTC properties. In general, we believe these efforts will both encourage and simplify the effective application of WAP funds in larger-scale multifamily developments. Doing so will enhance the long-term energy efficiency of this inventory and offer significant energy cost-related savings to hundreds of thousands of low-income families and seniors who will also benefit from improved and healthier living environments.

Many factors point to the both the need for and benefits of streamlining eligibility and other processes for multifamily properties as proposed by DoE and HUD:



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- In provided funding for weatherization at a level that is approximately 20 times existing appropriations, the American Recovery and Reinvestment Act is both a mandate and an opportunity to extend energy-saving benefits to residents of multifamily housing who have not been proportionately served by current weatherization efforts.
- A number of states in which we work, including Massachusetts, New York and Ohio, have demonstrated the viability of extending weatherization activities to affordable multifamily developments.
- Weatherizing HUD assisted and LIHTC properties will help states accomplish their required production goals. Because of economies of scale, weatherizing multifamily housing is efficient and can achieve energy conservation at scale.
- As low-income households are disproportionately renters, increased efforts are needed to extend energy-saving benefits to them. 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

Community Builders 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, as framed in “Section V. Eligibility of Multi-Unit Buildings Identified by HUD”:

A. DoE requests comments on its proposal that income data collected by HUD under the Qualified Assisted Housing and LIHTC programs would be sufficient for the purpose of demonstrating the income requirements of multi-unit buildings under WAP.

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 overlapping yet conflicting demands on owners, managers, tenants, and sub-grantees, leading to savings in administrative costs that could be applied to weatherization program activities.

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.

In addition, 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 requests comments on whether the Qualified Assisted Housing Programs sufficiently protect low-income tenants from rent increases so as to satisfy the requirements that grantees under WAP establish procedures to protect low-income tenants against rent increases resulting from the weatherization.

We believe that rent restrictions on HUD Qualified Assisted Housing properties represent accepted and sufficient protections against rent increases and should preclude the need for any further WAP-initiated action to prevent rent increases. Even in cases where assisted housing restrictions are set to expire within three years, current practices in states prohibit landlords from raising rents from one to three years. By statute the responsibility for balancing the need to reach eligible households with weatherization benefits and the need to prevent undue landlord benefit lies with the states.

Additionally, DoE requests comments on its understanding that the LIHTC program does not offer sufficiently uniform protections regarding rent increases so as to permit DoE to determine that buildings under the LIHTC Program would meet the rent control requirement of WAP.

Although the method for setting rents under the LIHTC program is different than that used by HUD in its assisted programs, we contend that the method and standards for setting rents in the LIHTC program are now well-established, transparent, able to be understood by tenants occupying or seeking to occupy affordable housing, and offer sufficient and reasonable protections regarding rent increases. Under the LIHTC program, in no case can rents be set or increased beyond a standard of 30% of 60% of Area Median Income. In most markets, rents under the LIHTC program are set at or near this cap from the outset, only modest rent increases can be accommodated, which effectively guards against unreasonable rent increases in any event. When LIHTC rents are set significantly below the 30% of 60% standard in a particular market, owners/managers will be disciplined by forces in that market in determining appropriate rent increases.

C. DoE requests comment on whether HUD control of improvements to buildings under the Qualified Assisted Housing programs would ensure that no undue or excessive enhancement would occur as a result of weatherization.

DoE also requests information on whether similar controls may be present under the LIHTC Program to a degree sufficient to allow DoE to make a similar finding for the LIHTC Program.

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 in 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.

D. DoE requests comment on how to ensure compliance with the requirement that benefits of weatherization accrue primarily to low-income tenants, including information on procedures that may be used by States and subgrantees to determine that the accrual provision is satisfied in the context of building in the Qualified Assisted Housing programs and LIHTC Program.

There are a number of ways to demonstrate that the benefits of weatherization accrue primarily to low-income tenants in both assisted housing and LIHTC housing when tenants do not directly pay their utility bills. First, long-term affordability covenants required under both programs encourage owners/managers of such properties to prudently manage operating expenses—including utilities costs—on a consistent and continuing basis, which benefits existing tenants.

Second, as rent levels in properties not featuring individually-metered units include a utilities allowance in the rent structure, HUD could devise a means for periodically reviewing and re-setting allowed utility allowances. The most direct and equitable means for doing this would be to require an owner/manager to document actual utility costs (via certification of actual costs or a 3rd-party audit) on an annual basis and pass on to tenants a portion of the savings in the form of reduced utility allowances. Although this process effects a 12-month lag in re-setting utility allowances, permitting the accrued savings in this period to be retained by the owner/manager would function as important incentive to it to undertake WAP improvements in the first place. Alternatively, a portion of the accrued savings could be rebated to tenants each year, while owners/managers could retain the non-rebated portion to cover administrative costs of this approach and to serve as a participation incentive.

Third, there are significant additional benefits beyond reduced utilities costs of weatherizing a multifamily building that accrue directly to tenants. These benefits include 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. Research conducted by Enterprise Green Communities reports that residents of the High Point green, affordable housing development in Seattle are experiencing an increase in asthma-free days and require fewer trips to hospital emergency rooms for asthma-related complications.

Other Comments

Accommodate multifamily practices. In addition to better aligning income levels, rent restrictions and benefit targeting as above, DoE could considerably enhance WAP implementation in multifamily properties by encouraging grantees, which are now primarily oriented to owner-occupied housing, to accommodate multifamily construction realities and practices. For example, the requirement that a typically small, local Community Action

Program-approved energy auditor with mostly single-family audit experience conduct the audit, prepare a weatherization plan and monitor weatherization-related improvements in a large multifamily rehabilitation or new construction project is impractical. Alternatively, DoE could encourage WAP grantees to permit the general contractor engaged in the rehabilitation or new construction of a multifamily project to undertake the required energy audit and plan, then undertake weatherization improvements as part of the overall development plan subject to review and approval of the WAP-approved agency or contractor. WAP funds could then be disbursed on a reimbursement basis only for work correctly performed against the approved scope of weatherization-related improvements.

Allowed scope, processes and materials. Most states now prescribe an allowed scope of weatherization activities, processes and/or materials that are oriented to single-family or small multifamily properties. Such prescriptions often work against maximizing energy-efficiency in larger multifamily buildings, especially when used in conjunction with other energy-retrofit programs for multifamily housing such as HUD's Green Retrofit program operated through its Office of Assisted Housing Preservation. Instead, we recommend that DoE encourage WAP grantees to allow owners/managers of multifamily properties to propose the most effective scope of services, construction process and use of materials under WAP unit cost limits, subject to review and approval of the WAP agency or contractor.

Thank you for your consideration of these recommendations. If you have any questions, please feel free to contact Patrick Costigan at Community Builders, Inc., at 202-955-1310 or pcostigan@tcbinc.org.

Sincerely,

Patrick E. Clancy

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President & CEO