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*Founded in 1974 by
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Via regulations.gov

January 3, 2014

Re: Docket No. FR-5728-N-01,
Small Multifamily Building Risk Share Initiative: Request for Comment

The National Low Income Housing Coalition (NLIHC) is an organization whose members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on what is in the best interests of people who receive and those who are in need of federal housing assistance, especially extremely low income people.

Statement of NLIHC Concern

NLIHC is very concerned about the Administration's requests in the FY13 and FY14 Budget proposals to exempt properties participating in the proposed Small Multifamily Risk Sharing Initiative from the affordability provisions currently required by the Section 542(b) Risk Sharing program. This letter suggests clarifications and additions that should be made to the final Notice in order to ensure that lower income households truly benefit from the Initiative over a reasonable period of time.

Background

Section 542(b)(9) of the Housing and Community Development Act of 1992 [12 USC 1715z-22(b)(9)] requires multifamily housing that secures loans insured or reinsured under the Risk Sharing program to be occupied by households meeting the income limits and paying rents that conform to the provisions of the Low Income Housing Tax Credit (LIHTC) program at 26 USC 42(g).

Section 42(g)(1) requires properties assisted with the LIHTC program to have either:

- 20% or more of the units be rent-restricted for households with incomes below 50% of the area median income (AMI); or,
- 40% or more of the units be rent-restricted for households with incomes below 60% AMI.

Section 42(g)(2) spells out the maximum rents that may be charged to tenants in assisted units, either 30% times 50% AMI or 30% times 60% AMI.

Section 228 of the Administration's FY14 budget request proposed amending Section 542(b)(9) to exempt properties participating in the proposed Small Multifamily Risk Sharing Initiative. Specifically, Section 228 would add:

“This requirement [*i.e.*, following the LIHTC qualification as affordable housing] does not apply to housing securing loans made to increase the availability of capital to small multifamily rental properties by entities approved by the Secretary as having demonstrated experience in making loans for low and moderate income multifamily housing.”

The draft *Federal Register* Notice, 78 FR 66043 (November 4, 2013), at “Supplementary Information: I Introduction; A. Proposed Statutory Changes”, refers to the President's Fiscal Year 2014 Budget request seeking statutory changes to Section 542(b) that would “**remove affordability restrictions currently required under Section 542(b)**” (emphasis added). The draft Notice further acknowledges that Congress must grant the requested statutory change, which has yet to occur.

Lack of Clarity In the Draft Notice

The draft Notice at “VI. Program Details; D. Program Requirements” (page 66048) lacks clarity regarding “Affordable Housing Requirements” under paragraph D.1.

Subparagraph D.1.a. states that, “Affordable housing must meet the standards of the Risk Sharing program (generally consistent with the requirements of the Section 42 Low Income Housing Tax Credit program).”

Comments

In the context of the Administration seeking to “remove affordability restrictions currently required under Section 542(b)”, the parentheses – which are in the original text – suggest that compliance with the LIHTC affordability requirements is minimal, at best.

The word “generally” further dilutes the importance of the LIHTC affordability requirements and contributes to a lack of clarity. In contrast to the use of the word “generally”, Subparagraph D.1.a. concludes by stating, “*Specifically*, projects financed with Risk Share loans must” meet the LIHTC 20/50 or 40/60 unit composition rule (emphasis added).

Subparagraph D.1.b. continues the lack of clarity by stating, “Rent-restricted units will be required to bear rents that are consistent with the above requirement, and must be occupied by households whose income at the time of occupancy makes them eligible for such units.”

Comments

The expression “consistent with the above requirement” contributes to the uncertainty because the only “above requirement” is the one requiring an assisted property to meet the LIHTC 20/50 or 40/60 unit composition rule. As drafted, the Notice could be interpreted to allow owners to charge tenants rents that exceed the LIHTC program’s rent caps. The draft Notice should specifically require the LIHTC rent caps of either 30% of 50% AMI or 30% of 60% AMI.

Income eligibility requirements for turnover tenants is not clearly articulated. Subparagraph D.1.a. only refers to the income eligibility of households initially occupying an assisted property. Subparagraph D.1.b. might address an obligation for turnover residents to also be income eligible, but as drafted, such an intent is not clear.

Comment

In order to sustain the intent of preserving housing for lower income households, the final Notice should explicitly state that turnover residents must also be income eligible over some affordability period (more on affordability period below).

Subparagraph D.1.b. would forego the LIHTC program’s ongoing income recertification requirement. NLIHC has no objection to this exemption.

As noted previously, the draft Notice makes no reference to a reasonable affordability period.

Comment

In return for access to capital afforded through Section 542(b), property owners should be required to sustain affordability obligations for a term commensurate with the value of the assistance. The minimum 15-year period of the LIHTC program is one option. Another model might be the HOME program’s variable affordability periods based on the amount of assistance per unit: 15 years if more than \$40,000 per unit; 10 years if between \$15,000 and \$40,000 per unit; and, 5 years if less than \$15,000 per unit.

Summary of Suggested Clarifications and Additions

In the absence of Congressional approval of the Administration's request to remove affordability restrictions currently required under Section 542(b), the final Notice should:

1. Specifically state that tenants in the 20/50 or 40/60 units must not pay rents greater than 30% x 50% AMI or 30% x 60% AMI.
2. Specifically state that turnover tenants must meet the LIHTC income eligibility requirements, and must not pay more than the LIHTC rent caps.
3. Specifically require a modest affordability period.

Additional Observations and Comments

Some proponents of the proposed Initiative claim that affordability provisions will dissuade owners of small multifamily properties from participating because they are "Mom and Pop" owners unaccustomed to affordability obligations who would view them as paperwork burdens.

Comments

Mom and Pop owners are accustomed to undertaking credit checks before renting to a household; therefore, determining whether an applicant household meets the LIHTC income eligibility threshold should not be a burden.

In addition, the one "specific" requirement in the draft Notice requires an applicant property to meet the LIHTC unit composition rule of 20/50 or 40/60. Hence, an owner of a small multifamily property applying to the Risk Sharing Initiative must have a reasonable notion of resident incomes at the outset.

For some small multifamily owners that are already participating in the Section 202 or LIHTC programs, the final Notice could "deem" such properties eligible.

Mom and Pop owners chose to invest in their small multifamily properties. The ostensible purpose of the 542(b) program is to enable these investors to preserve their investments through refinancing and/or rehabilitation by obtaining capital that the market is unwilling to make available but for the federal risk sharing. In return for federal assistance that preserves their investment, the small multifamily owner should welcome the public purpose of modest affordability requirements.

As a pilot project, HUD should first determine the extent to which affordability restrictions are truly a barrier to participation by a significant number of owners before completely jettisoning affordability requirements.

Some proponents of the proposed Initiative also assert that most of the buildings that could benefit from the Initiative are probably occupied by lower income tenants who have lived there for some time who will be reluctant to provide income verification (unlike perhaps someone newly moving in).

Comments

While this is a genuine concern, owners and the mission-driven organizations that the draft Notice envisions implementing the Initiative should be able to diminish opposition by convincing long-time residents that the program will improve the condition and quality of their homes and buildings for the long-term without a significant (if any) rent increase.

Also, as noted previously, the one “specific” requirement in the draft Notice is that an applicant property must meet the LIHTC unit composition rule of 20/50 or 40/60. Hence, the owner of a small multifamily property applying to the Risk Sharing Initiative must have a reasonable notion of resident incomes at the outset.

Some proponents of the draft Notice assert that the properties anticipated using the Initiative are in low income areas and therefore not in need of affordability provisions. However, there could be “low income areas” on the cusp of gentrification that warrant affordability protections.

Comment

NLIHC urges the final Notice to provide for some HUD review of the specific location of an application to ensure that there is little or no apparent threat of a recipient property fostering or accelerating gentrification.

NLIHC has long advocated for policies and programs designed to preserve housing affordable to low income households. The proposed Small Multifamily Risk Sharing Initiative appropriately focuses on an often overlooked component of the affordable housing stock that should be preserved. However, removing affordability protections sets a dangerous precedent. HUD should first proceed with the Section 542(b)(9) affordability provisions in place, with a final Notice that contains the clarifying language and a specific affordability period suggested in this letter.

Sincerely



Sheila Crowley
President and CEO

