

April 10, 2019

Anna P. Guido, Reports Management Officer
QDAM
Department of Housing and Urban Development
451 7th Street SW
Room 4176,
Washington, DC 20410–5000

RE: 60-Day Notice of Proposed Information Collection: Statutorily-Mandated Collection of Information for Tenants in LIHTC Properties

Docket No. FR–7007–N–08

Via regulations.gov

Ms. Guido,

This comment letter is submitted on behalf of the National Low Income Housing Coalition, the Public and Affordable Housing Research Corporation, the National Housing Law Project, and Regional Housing Legal Services.

The National Low Income Housing Coalition (NLIHC) is an organization whose members include state and local affordable housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, faith-based organizations, public housing agencies, private developers and property owners, local and state government agencies, 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 and people who are homeless.

The Public and Affordable Housing Research Corporation (PAHRC) at HAI Group is a nonprofit research center dedicated to conducting research that promotes the national conversation about the importance of affordable housing. PAHRC spotlights the impact, outcomes, and value affordable housing brings to the families it serves and to the communities it supports, delivering data and tools that assist researchers, practitioners, and advocates to build an evidence-based case for why affordable housing matters. Our audience includes affordable housing providers, advocates and service providers for low-income individuals, researchers, and policymakers.

The National Housing Law Project's (NHLP's) mission is to advance housing justice for poor people and communities. NHLP achieves this by strengthening and enforcing the rights of tenants, increasing housing opportunities for underserved communities, and preserving and expanding the nation's supply of safe and affordable homes. Our organization provides technical assistance and policy support on a range of housing issues to legal services attorneys and other advocates nationwide. In addition, NHLP hosts the national Housing Justice Network (HJN), a vast field network of over 1,500 community-level housing advocates and tenant leaders, many of whom practice in jurisdictions that have converted

properties under RAD. HJN member organizations are committed to protecting affordable housing and housing rights for low-income families and individuals nationwide.

Regional Housing Legal Services (RHLS) is a nonprofit law firm with unique expertise in affordable, sustainable housing and its related components — community and economic development, utility matters and preservation of home ownership. RHLS provides innovative project and policy solutions that help create sustainable communities offering decent, safe, and affordable housing for lower-income Pennsylvanians.

Introduction

NLIHC, PAHRC, NHLP, and RHLS strongly support the proposed revisions to HUD’s Low-Income Housing Tax Credit (LIHTC) Database Data Collection Form and the LIHTC Tenant Data Form. Complete and accurate tenant and property data for LIHTC properties is critical to understanding the impact of the nation’s largest affordable housing production program, preserving existing tax credit housing, and ensuring accountability to both its tenants and U.S. taxpayers.

The United States has an affordable rental housing shortage of approximately 7 million rental homes affordable and available to the lowest income households.ⁱ Resolving this crisis requires an empirical understanding of our nation’s largest affordable housing production program and the preservation needs of tax credit properties at risk of loss from the affordable housing stock. HUD’s LIHTC property and tenant data are indispensable to these efforts. Every effort should be made to improve and expand upon these data.

Since 2012, NLIHC and PAHRC have managed the National Housing Preservation Database (NHPD), the only de-duplicated address-level inventory of federally assisted rental housing in the U.S. Over 7,000 advocacy groups, local governments, government agencies, researchers, tenants, and affordable housing providers use the NHPD to identify, study, and preserve federally assisted rental housing. The NHPD relies on data collected from HUD’s LIHTC Database Data Collection Form to accurately identify LIHTC properties, estimate subsidy end dates, and collect other key property-level characteristics such as ownership type and unit counts to monitor preservation risks. HUD’s LIHTC database also provides locational data that NHPD users rely on to study the neighborhood characteristics of the tax credit stock, including neighborhood opportunity and neighborhood-level preservation risk factors.

In addition to the property characteristics provided by HUD’s LIHTC database, the LIHTC tenant data collected by HUD helps inform public understanding of who is served by the program. For example, the tenant data has revealed the significant extent to which the LIHTC program relies on HUD rental assistance programs, such as Housing Choice Vouchers, to serve households with the greatest housing needs. More generally, tenant data allows us to understand who is impacted by preserving or failing to preserve tax credit housing. Tenant data, if made available at a sufficiently granular level, can also inform public understanding of fair housing issues within the LIHTC program.

Support for HUD’s Proposed Revisions

NLIHC, PAHRC, NHLP, and RHLS strongly support HUD’s proposed changes to the LIHTC Tenant Data Collection Form and the LIHTC Database Data Collection Form. The proposed changes to HUD’s LIHTC Database Data Collection Form will improve oversight and preservation of tax credit assisted properties. The proposed item “Why is this property no longer monitored for LIHTC compliance?” will provide

greater understanding of the risk factors that are threatening the long-term affordability of tax credit properties. This item will tell us how many properties and units are being lost due to the end of their extended use period, sales under Qualified Contracts, or other reasons. Qualified Contract (QC) sales are a significant concern for preservation. A recent survey of 35 housing finance agencies (HFAs) found that the overall number of LIHTC property owners requesting a QC has increased since 2014, though this varies widely by state.ⁱⁱ Results from the survey indicate that QC sales led to an average loss of approximately 10,000 units per year from 2014 to 2016. National data on QC sales will allow us to track the growing risk that QC sales pose to the preservation of the affordable housing stock and inform appropriate policy interventions. More generally, the proposed item will also provide further insight into the extent to which HFAs are proactively monitoring program compliance through the conclusion of the extended use period.

The proposed resyndication field will allow researchers to better understand how many tax credits are used for preservation efforts and obtain a more accurate de-duplicated count of properties actively assisted by tax credits. The proposed scattered site indicator will enable researchers to more easily match scattered site properties receiving multiple forms of federal assistance together and update the addresses of tax credit properties. The addresses provided by the HUD LIHTC Database Data Collection Form allow researchers to match tax credit properties to other federal and state subsidies to know whether a property is at risk of leaving the subsidized housing stock. The addresses also allow for the geocoding of properties to study the neighborhood characteristics of tax credit housing, as well as related fair housing issues.

Further Suggestions

We urge HUD to consider the following items in addition to the proposed changes.

Compliance Monitoring

While we strongly support the proposed item “Why is this property no longer monitored for LIHTC compliance?”, we believe “Non-Compliance” should not be included as a potential response. The non-compliance of a property does not legally release it from the program and associated requirements. According to 26 U.S. Code § 42 (h)(6)(E), a property should only be released due to foreclosure or a qualified contract sale. Non-compliance, therefore, is not a justification to cease monitoring compliance with program requirements. HUD risks establishing a legal precedent to the contrary by including this response as an option. Instead, “Non-compliance” should be replaced with the option to indicate “Foreclosure” as a reason why an allocating agency no longer monitors compliance for a property.

Total Length of Affordability Period

HUD’s LIHTC Database does not currently denote which properties have agreed to extend the affordability restrictions and for how long. We suggest that the proposed item “Does this property have an affordability period longer than the LIHTC minimum of 30 years?” be supplemented with a further question asking for the total length of the property’s affordability restrictions. Knowing the true affordability end date is needed to effectively monitor the compliance of these properties, accurately identify properties at risk of loss, and anticipate future preservation resource needs. Recent estimates indicate that 22 to 26 allocating agencies offer point incentives in their Qualified Action Plans (QAPs) to encourage applicants to extend property affordability beyond the 30-year minimum.ⁱⁱⁱ As of 2017, at

least 8 states require that a portion of properties that receive newly awarded tax credits remain affordable beyond the 30-year minimum.^{iv} Because the length of extended affordability periods can vary by property or state, it is not possible to accurately estimate future preservation needs without knowing the total length of affordability restrictions at the property level.

Qualified Contract Waiver

We suggest a new question asking whether a property has waived its right to a Qualified Contract and, if so, for how long it has waived this right. As of 2016, approximately 12 state HFAs offered incentives for owners to waive their right to a Qualified Contract. Including this field will allow researchers, advocates, and preservationists to more effectively monitor preservation risks for tax credit properties.

General Partner Name

Collecting the general partner name will allow interested parties to better understand the ownership structure of tax credit properties. Many NHPD users have requested more detailed owner information to be made available to better understand who is responsible for the day-to-day management of the property. It is also important that ownership data in the LIHTC database, including nonprofit or for-profit status, reflects actual changes in ownership when they occur. Ownership changes commonly occur between Years 10 and 15 and are material to the long-term status of tax credit properties as affordable housing.^v A change in ownership can result in new owners with a different interest in continuing to operate a LIHTC property as affordable housing. A new owner might be a nonprofit or mission-driven for-profit entity, or a for-profit entity solely interested in maximizing the return on their investment. Being able to accurately monitor ownership changes over time is critical to the identification and assessment of preservation risks.

Units Set Aside Below Elected Rent/Income Ceiling

In addition to the item “Are any units set aside to have rents below the elected rent/income ceiling?” already on the LIHTC Database Data Collection Form, a further item should be included to specify the rent levels of the set-aside units. This information would help improve public understanding of the extent to which the LIHTC program is able to serve the lowest income households.

Rental Assistance Demonstration (RAD) Property

HUD should collect data indicating whether LIHTC properties are a part of the RAD program. This will allow researchers and policymakers to track which portion of tax credits are awarded to preserve public housing and study other property and neighborhood-level characteristics of properties in the RAD program receiving tax credit financing.

Housing Trust Fund (HTF) Financing

HUD already collects data indicating whether LIHTC properties receive financing from other federal housing assistance programs such as HOME and CDBG. HUD should add a similar item to the LIHTC Database Data Collection Form regarding Housing Trust Fund financing. This would allow database users to better understand the extent to which LIHTC properties also utilize HTF financing and other important property and neighborhood-level characteristics of HTF-assisted LIHTC properties.

Conclusion

NLIHC, PAHRC, NHLP, and RHLS strongly support HUD's proposed revisions to the HUD LIHTC Database Data Collection Form and the LIHTC Tenant Data Form. We urge HUD to add additional fields regarding total length of affordability restrictions, waived right to a Qualified Contract, general partner name, units set aside below the elected rent/income ceiling, participation in the RAD program, and Housing Trust Fund financing. Data collection on housing and tenant characteristics should be a basic function of every federal housing program. Without adequate data on properties and tenants, it is difficult to justify continued government expenditures on housing and impossible to ensure compliance with statutorily-mandated program requirements.

If there are any questions about these comments, please contact Andrew Aurand at aurand@nlihc.org or 202.662.1530 x245, Keely Stater at kstater@housingcenter.com or 800.873.0242 X222, or Kara Brodfuehrer at kbrodfuehrer@nhlp.org or 415-432-5705.

Sincerely,



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ⁱ National Low Income Housing Coalition. (2019). [The Gap: A Shortage of Affordable Homes](#). Washington, DC: Author.

ⁱⁱ Kincer, B. & Shelburne, M. (2017). Qualified Contracts Volume: Policies Vary Widely by State. National Housing & Rehabilitation Association.

ⁱⁱⁱ Nelson, M. & Sorce, E. (2013). [Supporting Permanently Affordable Housing in the Low-Income Housing Tax Credit Program: An Analysis of State Qualified Allocation Plans](#). Portland, OR: National CLT Network.

^{iv} Emmanuel, D., McElwain, K., Aurand, A., Stater, K. (2018). [Balancing Priorities: Preservation and Neighborhood Opportunity in the Low-Income Housing Tax Credit Program Beyond Year 30](#). National Low Income Housing Coalition and the Public and Affordable Housing Research Corporation.

^v Meléndez, E., Schwartz, A. F., & Montrichard, A. D. (2008). Year 15 and preservation of tax-credit housing for low-income households: An assessment of risk. *Housing Studies*, 23(1), 67–87.