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Kathy Cooper

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2016 DEC 20 PM 3: 25

From: Schwartz, Mark <mark.schwartz@rhls.org>
Sent: Tuesday, December 20, 2016 3:18 PM
To: IRRC
Cc: 'Hudson, Brian'; Wiessmann, Robin; 'Laudermilch, Ben'
Subject: Proposed final Rule on Home and Community Based Services
Attachments: shelterForce Article-TC.pdf

Hello

My name is Mark Schwartz, I am the executive director of Regional Housing Legal Services.
In 2005 and 2006 I worked with Steve Gold, Ford Thompson at DPW, Secretary Richman, and Brian Hudson the Executive Director of PHFA to revise the manner in which PHFA allocates Low Income Housing Tax Credits ("LIHTC") to make more of the LIHTC units affordable and accessible to people who need such affordable accessible units. See Attached.

Developers are now required to make either 5% or 10% of their units both affordable and accessible, depending upon location. The LIHTC funding mechanism allows for the creation of an internal rent subsidy to make certain the units are affordable.
These changes have resulted in a significant increase in the number of LIHTC units designed for persons who need accessibility features to actually be occupied by such persons. Many of the persons occupying the affordable and accessible units require Home and Community Based Services to enable them to live independently.

Thus it seems to me that your proposed Final Rule on Home and Community Based Services, Section 6100.447(b)

"(b) No more than 10% of the units in an apartment, condominium or townhouse development may be funded in accordance with this chapter."

will make it impossible for many LIHTC developments to make any additional units available as a source of affordable housing for people who need Home and Community Based Services .Since there is no other source of financing for the development of affordable multi-family housing, eliminating LIHTC units as a place for consumers to use Home and Community Based Services, seems to **unnecessarily** limit housing choices for those who need to use Home and Community Based Services to live independently.

In a perfect world where there was an unlimited supply of affordable housing your proposed rule might be good public policy, however given the sever shortage of affordable housing in PA, further limiting housing choices for those who require Home and Community Based Services does not seem to be good public policy. I suggest that DHS reconsider this proposed Final Rule and work with PHFA to increase housing options, not decrease such options, for persons who need Home and Community Based Services.

I am a member of the Board of PHFA, and these comments are mine alone, and do not represent the polices of either PHFA management or staff.

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Shelterforce Reprint

Making Tax Credits Work for the Disabled

By Steve Gold, Kristina Klugar and Mark Schwartz

Throughout the country, low-income people with mobility disabilities face an unprecedented and growing housing crisis. Accessibility and housing costs rank high among the problems they face. Some live in places where they must crawl up and down stairs to enter or exit their homes. Many pay nearly 70 percent of their monthly incomes to rent even these inaccessible housing units. Often they are relegated to segregated housing with only other disabled persons and/or elderly individuals as neighbors, or they remain inappropriately housed in special facilities solely because they cannot find affordable, accessible and integrated housing.

There are some developers who are building housing for people with disabilities, thanks to the 1990 Americans With Disabilities Act (ADA), which mandated that all developers who receive public funding make 5 percent of the housing units they build accessible. But that doesn't mean that people who actually need the units are the ones living in them. In many instances, if a disabled person is not quickly found, units are rented to individuals who are income eligible but not disabled.

While working with the disabled community in Pennsylvania, Regional Housing Legal Services (RHLS) noticed this disconnect. (RHLS provides legal guidance and representation primarily to CDCs engaged in affordable housing and economic development projects.)

Resources

PHFA 2007 Multifamily Housing Application Package and Guidelines (see p.24)
www.phfa.org/forms/multifamily_application_guidelines/mf_program_guidelines.pdf

North Carolina's Key Program
www.nchfa.com/Forms/Forms/Rental/KPBackgroundInfo.pdf

RHLS staff and disability activists sought to encourage developers to build more accessible units for individuals earning below 60 percent of area median income (AMI). As a result of their efforts, the Pennsylvania Housing Finance Administration (PHFA), which administers the state's Low Income Housing Tax Credit program, added incentives to the program in 2005 to ensure that a number of tax credit units be designated for the lowest-income persons with disabilities. PHFA also worked with the Pennsylvania Department of Public Welfare to bring awareness of this opportunity to its clients with disabilities.

The Problem With LIHTC

Unfortunately, all across the country low-income persons with disabilities have not benefited from the LIHTC program. For several years federal Supplemental Security Income (SSI) has been the sole source of income for 40 percent of Americans with disabilities. Individuals are eligible for $603 per month; couples, $904, well below any area's median income. Despite the income being so low, the federal government does not have LIHTC unit requirements for people at that level. Though the Internal Revenue Service caps the rents of tax credit units for those whose incomes are less than 60 percent of AMI, this does not usually help very low-income persons, as most LIHTC units are targeted to households with incomes at or above 41 percent.

While the tax credit program presents barriers to very low-income earners in general, the obstacles to low-income people with physical disabilities can be far greater. The federal government distributes the roughly $3 billion set aside for LIHTC through housing finance agencies like PHFA. There is always more demand for credits than are available, so agencies award the credits according to a Qualified Allocation Plan (QAP) that stipulates the criteria developers must meet. Allocating agencies like PHFA use their QAPs to promote workforce housing, green building, public housing restructurings, senior housing and more. Typically, developers with differing agendas (from using the credits for neighborhood revitalization or to creating affordable housing options in wealthier areas) seek to influence what the QAP priorities will be (see *SF* #137). Since the disabled community does not participate in the QAP development process, it's unlikely the allocating agencies will prioritize their needs.

Partly in response to the ADA mandate, many states have required a specific, though relatively low, percentage of their tax credit units to be accessible to the low-income disabled population. Other states have given extra points in the QAP process to developers who will make a percentage of their units accessible, but the units do not have to be affordable to very low-income people. And most states have no system in place to ensure that the accessible units are rented to persons with disabilities.

Low-income persons with disabilities have not fully benefited from the LIHTC program because housing agencies have not recognized the importance of linking accessibility and affordability. And disability advocates do not understand how the tax credit program functions. Nor do they know how a QAP can be used to target resources for the housing needs of low-income people with disabilities. As a result, few of these advocates have participated in the process of setting criteria for allocating tax credits in their states.

Providing the Incentives

The change in Pennsylvania's LIHTC program was the result of several years of work. RHLS staff and disability advocates recognized the critical importance of developing working relationships with PHFA and the state welfare department. We learned how the program was structured and operated, attended PHFA's board meetings and met on numerous occa-

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How to Make Tax Credit Units Affordable *and* Accessible

In this example from Pennsylvania, a housing unit in a development built with financing through Low Income Housing Tax Credits is affordable to a household earning 50 percent of the area median income (AMI). But by raising the developer's fee, an internal rent subsidy is created to make the unit affordable to a household earning 18 percent of AMI. In parts of Pennsylvania, that makes the unit affordable to a very low-income person with a disability. Different numbers can be used in this formula in other regions of the country.

I. The Project – Before

20 units x $150,000 (development cost per unit)	$3,000,000
15 percent developer's fee	$450,000

II. The Subsidy

Maximum rent for household at 50 percent of AMI	$639
Maximum rent for household at 18 percent of AMI	-$230
Monthly rent subsidy	**$409**
Total subsidy per unit	
$409 x 12 months x 15 years	$73,620

$73,620 *is required to make one unit in a 20-unit project affordable to a very low-income household.*

III. The Additional Developer's Fee

$73,620 ÷ .08 ÷ .9 ÷ 10 — $102,250

The total subsidy is divided by the percentage of annual development costs on which investors can take tax credit, here 8 percent, which is then divided by $.90, the value of the tax credit to investors, and then divided by 10 years, the period that investors can use the credit.

The Additional Developer's Fee is added to the portion of the development's costs that are eligible for the tax credit. This is the source of the $73,620 in equity to fund the rent subsidy.

Subtracting this amount from the $102,250 leaves a ***Deferred Developer's Fee*** of $28,630, which must be paid to keep it in the project cost and avoid recapture of tax credits. It can be paid from cash flow, any remaining rent subsidy reserve or additional equity paid by the investor at the end of the 15 years of affordability.

IV. The Project – After

Original developer's fee	$450,000
Additional developer's fee	+ $102,250
Total Developer's Fee with subsidized unit	**$552,250**

The newly added subsidy results in an increased developer's fee of 18 percent, calculated by dividing the total developer's fee by the development cost of $3 million.

PCL XL error

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Error: IllegalOperatorSequence

Operator: ReadImage

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