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Improving The Implementation Of The Weatherization Assistance Program

Weatherization Background:

The American Recovery and Reinvestment Act (ARRA) provided a massive extra \$5 billion for the Weatherization Assistance Program (WAP) run by the U.S. Department of Energy (DOE). In addition, a new agreement between DOE and the U.S. Department of Housing and Urban Development (HUD) has laid the groundwork for greater access to WAP funds for affordable multifamily rental projects.

Under the program, federal appropriations are allocated annually by formula to states for distribution through local agencies and governments to fund energy-efficiency improvements to homes owned or occupied by low-income households. States craft annual plans on how the monies are to be spent, including eligibility standards for recipients and priorities in the use of funds. The local weatherizing agencies – over 900 nationwide – verify the eligibility of applicant residents, and fund and facilitate installation of the energy improvements.

These can include improved insulation, energy-efficient windows, and heating/cooling system upgrades. ARRA raised the general income limit to 200% of the poverty level, and the maximum average expenditure to \$6,500 per unit.

The Issue:

There is great need and demand to weatherize the multifamily affordable housing portfolio (Public Housing, HUD Assisted, and Low-Income Housing Tax Credit). The funds allocated in ARRA could have an immediate impact in reducing the energy expenditures of low-income individuals and owners of these properties—unfortunately, time constraints and structural program impediments are making it very challenging to get the funds out the door.

Most weatherization agencies do not have the capacity to quickly and effectively allocate these funds to their traditional client base (single family homes) in the short amount of time allotted by ARRA . To their credit, HUD and the DOE concluded that multifamily affordable housing brought an important degree of scalability to the Weatherization program’s ultimate goal reducing the utility burden on low-income individuals and developed their memorandum of understanding making these projects eligible. A significant number of states have responded positively to this memorandum of understanding by adopting policies to prioritize WAP funds for multifamily weatherization. These states include: Kansas, Florida, Massachusetts, New York, Oregon, Wisconsin, New Jersey, Pennsylvania, Rhode Island, Vermont, Colorado, Ohio and Washington.

Unfortunately, DOE’s has informed parties that have asked for approval to loan WAP funds into multifamily projects that the regulations and legislation do not permit this use; however, we do not see

the legal basis for this conclusion. There is no expressed prohibition in the enabling legislation or regulations against allowing WAP funds to be used as loans and sufficient precedent in similar programs that are also designed to decrease the housing cost burden on low-income individuals.

We have observed that both Congress and DOE's own regulations emphasize the need for this type of flexibility. The WAP regulations note that "to the maximum extent practicable, the use of weatherization assistance shall be coordinated with other Federal State, local, or privately funded programs in order to improve energy efficiency and to conserve energy..." Structuring WAP funds as loans are essential for owners that want leverage other sources financing in conjunction with WAP funds, most notably the Low-Income Housing Tax Credit (LIHTC).

Additionally, DOE's own Financial Assistance Rules actually already contemplate the use of loans. DOE has implemented regulations that govern the disbursements of "repayments to and interest earned on a revolving fund", which would only be germane to the program if WAP funds were to be loaned, as opposed to granted, to eligible projects. These same rules further state: "Grantees are encouraged to earn income to defray program costs. Program income includes incomes from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interests on loans made with grant funds..."

DOE's interpretation is very problematic for affordable housing providers because grants must be treated as taxable income to the partnership that is providing the income restricted housing. This is a major economic disincentive to the partnership and will prevent a large number of owners from participating in the program. As noted above, the inability to loan money into projects hampers its ability to be used with LIHTCs, which is the primary tool available to rehabilitate existing affordable housing. Without this flexibility we lose the ability to leverage WAP with other funding sources, dramatically reducing their effectiveness. While this issue is being debated there is a real risk that they will have to be returned to the Treasury unused because of the time constraints built into the ARRA legislation. The inability to effectively deploy these funds because of regulatory impediments may also prevent future allocations, when there is in fact very high demand.

The Solution:

Congress can resolve this issue easily by amending the WAP statute to permit WAP funds to be loaned into eligible multifamily projects. This solution is revenue neutral and there is previous precedent in other housing related programs (e.g. HOME Funds are often granted to non-profits, which then loan the project funds into affordable housing projects owned by private entities). There is an added benefit that loans that have been repaid can be recycled for future weatherization projects.

About NH&RA:

NH&RA is a national trade association comprised of professionals involved in the development and management of affordable housing. Our members have developed, own and/or manage the majority of HUD-Assisted and low-income housing tax credit units around the country.

Our Council for Energy Friendly Affordable Housing (CEFAH) is a working group that is focused on improving the energy and utility performance of the nation's multifamily affordable housing portfolio. If you have any questions about NH&RA or CEFAH please feel free to contact Thom Amdur at 202-939-1753 or tamdur@housingonline.com or visit our website www.housingonline.com.

