

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5382-N-11]

Study of the Low Income Housing Tax Credit (LIHTC) Tenant Data Collection Program After 15 Years: Responses To Solicitation of Comments on Proposed Information Collection

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This notice follows the publication in the Federal Register (75 FR 26271, May 11, 2010), of a notice of proposed information collection for the Study of the Low Income Housing Tax Credit (LIHTC) Program After 15 Years. HUD received public comments on that notice and is presenting responses to the comments received. These responses to comments on the proposed information collection are published pursuant to HUD's procedures for obtaining Office of Management and Budget (OMB) approval for information collections.

DATES: Effective Date: **[TBD]**.

FOR FURTHER INFORMATION CONTACT: Regina Gray, PhD, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 402-2876 (this is not a toll-free number), or send an e-mail to Regina.C.Gray@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Low Income Housing Tax Credit (LIHTC), enacted in 1987, supports the production of rental housing to be occupied by low income renters, usually those with incomes less than 60 percent of area median income. LIHTC has become the federal government's largest program that subsidizes the development of affordable rental housing and has produced more than 1.8 million units.

HUD has overall responsibility for housing policy for low income renters within the federal government and recognizes the significance of the LIHTC program. HUD's Office of Policy Development and Research has commissioned this study about what happened to LIHTC properties after the first 15 years, when the original use restrictions for properties that received tax credit allocations before 1990 expired, and when some tax credit properties funded after that date also were able to leave the program. The study represents an important opportunity for HUD to learn about the decisions owners and investors made with regard to LIHTC properties that reached the 15 year mark, whether properties no longer subject to LIHTC income and rent restrictions nonetheless continue

to provide affordable housing for low income renters, and whether properties still in the program are performing well financially. The answers to these questions are important for the million LIHTC units that will pass their 15 year mark over the next 10 years. The answers also will illuminate how use restrictions for subsidized rental housing work and how policy makers should think about them in the design of future programs.

A survey of LIHTC property owners is planned and is the subject of this notice. Owners play a key role in the maintenance and disposition of tax credit properties, making the final decisions on next steps with a property once it reaches the 15 year mark. The survey will collect data on LIHTC property owners' experience with the LIHTC program, gathering information that factored into property disposition decisions. Data will also be collected on whether projects were sold and whether projects continued as affordable rental housing.

On May 11, 2010, HUD published a notice at 75 FR 26271 seeking public comment on the proposed information collection, a survey of LIHTC property owners. HUD received two sets of comments on this notice by the comment due date of July 12, 2010, from organizations and entities interested in the LIHTC program. The following summary of public comments addresses the issues raised and the HUD response.

II. Public Comments

Comment: Sample Size for Survey of Property Owners. A commenter expressed concern that interviews with only 40 owners will not make possible estimation of percentages of properties that fall into the categories described in the study design, defined by whether the property is still monitored by an HFA, whether the property has the same owner or a new owner, whether the property was subject to a 15- or 30-year use restriction, and whether the property remains affordable. The commenter also was concerned that the responses to many of the survey questions will be open-ended and will not lend themselves to quantitative analysis.

Response: HUD understands the limitations of a survey that is based on only 40 respondents and that includes open-ended questions. The analysis of the responses to the 40 surveys will be qualitative and will help understand patterns and the reasons for those patterns, rather than supporting estimates of the numbers of properties and units that fall into outcome categories. The survey results will be combined with interviews with other key informants about patterns and reasons, including syndicators of early-year LIHTC developments, brokers of sales of early-year properties, and other industry experts. The study team will also conduct quantitative analysis of an updated version of HUD's LIHTC database, which will enable sorting properties into some but not all of the categories of interest.

Comment: Measuring Affordable Rental Status. A commenter objected to using a data match between the Housing Choice Voucher program and early-year LIHTC properties as an indicator of whether LIHTC properties no longer under HFA monitoring remain affordable. The commenter pointed out that a LIHTC property without any voucher users could nonetheless be affordable. For example, there could be a small

number of vouchers in use in the area compared with the number of affordable rental units, resulting in no voucher users in an affordable property.

Response: HUD considers the presence of voucher users to be one indication of whether a property is affordable. If the study finds that many properties no longer under HFA monitoring have voucher users, that will provide a reasonable minimum estimate of the number of properties and units for which use restrictions have expired but that nonetheless have remained affordable.

Comment: Policy Relevance of Early-year LIHTC Properties. A commenter argued that the entire early period of the LIHTC program on which the study focuses is not typical of the LIHTC program as it has operated since 1994, after properties that received allocations under a permanent LIHTC program began to be placed in service.

Response: HUD understands the limitations of studying the “start-up” period of a program. However, some of the program features in effect during the earliest years of the program have on-going policy relevance for rental housing policy. An example is the relatively short, 15-year duration of the use restrictions for properties with LIHTC allocations before 1990.

Comment: Properties with both LIHTC and Property-based Section 8 Subsidies. A commenter pointed out that the LIHTC and property-based Section 8 programs are very different, including operating under very different regulatory environments.

Response: HUD agrees with the comment. That is one of the reasons that the study will concentrate of those LIHTC properties that do not also have property-based Section 8 subsidies.

Comment: Data Collection on the LIHTC Program. A commenter recommended that HUD collect data on the race and family structure of occupants of LIHTC properties and on how many units are occupied by Section 8 voucher holders. The commenter also suggested that HUD collect affirmative marketing plans from LIHTC owners and that HUD ask how Qualified Allocation Plans influenced property owners’ decisions about site selection.

Response: HUD considers the issues raised by the commenter very important for the obligation of the LIHTC program to affirmatively further fair housing. However, the data collection suggested by the comment is outside the scope of this research project. In another and more far-reaching effort, HUD has begun a congressionally-mandated effort to collect data on the race, ethnicity, family composition, age, income, and use of voucher rental assistance of households residing in LIHTC properties.

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