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COMMENTARY

77 Percent of Counties Face "Catch-42"

By Timothy R. Kenny, Nebraska Investment Finance Authority

Many readers are familiar with Yossarian's "illusion of opportunity" described as Catch-22 in Joseph Heller's classic novel of the same name. There is a parallel illusion of opportunity in the Section 42 low-income housing tax credit (LIHTC) program. I call it "Catch-42." While the LIHTC program is the nation's longest serving affordable rental housing production program, its archaic income-limit assumptions prevent the program from serving the working poor and the communities in which they live — it creates an illusion of opportunity.

Practitioners understand Section 42 does not provide rent subsidies. Renters must have a source of income or they must have a rent subsidy of some sort to pay the rent. For the working poor, who should be served by the program, the jobs held to pay rent on apartments generally pay at rates near the federal minimum wage.

Herein is the Catch-42.

Because the 23-year-old income assumptions for the Section 42 program have not been recalibrated, a two-person household (each person earning minimum wage) in the vast majority of the nation's counties will not qualify to rent a Section 42 unit because they are "over income."

So, it's not so grand to be a minimum wage worker in Grand Island, Neb. if you are trying to locate an affordable apartment. It is a tight squeeze to find an affordable unit near Tight Squeeze, Va., and you'd better be praying to St. Anthony if you are a minimum wage household looking for affordable housing in San Antonio, Texas. These are just a few examples of urban and rural communities from among the thousands of excluded communities across the nation where the working poor experience Catch-42.

The issue recently became more problematic when on July 24, 2009, the minimum wage increased to $7.25 per hour. While a raise can generally be considered good news, that two-person household that I mentioned previously may find it is now excluded from the very units designed to provide it with decent, safe and affordable housing.

On July 24, 2009, in 80 percent of the nation's states more than 75 percent of the nation's counties found they have LIHTC income limits for a two-person family that is lower than the combined wages of two minimum wage earners.

This archaic income-limit rule also seriously impedes the development of new affordable units in vast geographic areas. More often than I care to admit, I find myself in the painful position of explaining to community leaders that the LIHTC program, the nation's flagship housing program, won't help their towns build or preserve housing, won't provide a tool to assist in the growth of their businesses, and won't help keep their graduates in town. They sit in stunned disbelief and ask, "What can we do?"

To begin, we need to understand the mechanics of the bias against minimum-wage households. In the mid-1980s, the program's authors tied the Section 42 income-limits to the limits of a subsidized-rent housing program, the U.S. Department of Housing and Urban Development's (HUD's) Section 8 program. Buried within the mathematics of the Section 8 income schedules is a calculation that imposes on a two-person family an income limit of 80 percent of the estimated income of a four-person family.

Perhaps a quarter century ago this calculation was based on a good assumption; typically, households had one breadwinner rather than two because the cost of the basics (food, shelter and clothing) was much lower as a percentage of total income. Today, after 23 years in which living expenses grew faster than incomes, we know a two-person

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low–income household generally includes two wage earners, just as a four-person household does. The impact of this limitation is significant. Across a broad swath of the country, communities in 77 percent of the nation's counties cannot provide affordable housing for their entry-level workers or provide affordable housing units to grow jobs. In these areas the program is generally used to house the elderly or the subsidized renter – important but "negative" uses in economic terms. Community concerns about an imbalance of affordable housing projects creating higher costs, and therefore higher taxes, are validated when Section 42 projects create negative economic events. This imbalance, where the low-income working class is systematically excluded, is not economic nor is it the original design or intention of the Section 42 program.

Today, when job creation and worker retention are critical issues, the outdated Section 42 regulations work against those goals. In Nebraska and in the non-metro and suburban locales of other states, we suspect the LIHTC program plays a significant part in the devastating exodus of productive jobs and workers away from vibrant communities that can easily support an increase of children in their schools and users of their existing infrastructure.

Even more subtly, our preliminary review of LIHTC income-limits by county shows the bias seems to fall disproportionately on those counties with large minority populations. Two-person, minimum wage households are excluded from affordable LIHTC developments across a huge expanse of South Texas and the entire states of states of Arkansas, Louisiana, Mississippi and Oklahoma. In Alabama, South Carolina, New Mexico, South Dakota and West Virginia minimum-wage households are excluded from LIHTC units in 90 percent of the states' counties. Even in the higher income states of New York and California, the LIHTC program rules exclude the two-person minimum-wage earning household from affordable housing in nearly 50 percent of the counties.

In the 10 high income states, where the access threshold is above the minimum wage, there are problems as well. One higher income Western state recently reported that the vast majority of its LIHTC units are occupied by single-parent families. While this population demographic is certainly a housing priority, further review suggests the LIHTC income

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limit structure may indirectly discourage the formation of dual-parent families. Recognizing the important relationship between a community's family structures and community safety, the program's unintentional bias against dual-parent low-income households is worrisome.

While the problem is national in scope, it falls under the radar of most housing advocates because the socio-economic impacts of the LIHTC program's rules have not been carefully evaluated in the light of today's economic realities. But now, while the country's workforce is re-aligning to these new economic realities, the need for adjustment of the income-limit rules is pressing.

How can they be adjusted quickly? There are at least two readily available solutions. One path would be to establish a "national floor" that is indexed to an agreed upon standard. I suggest pegging the national "income-eligibility" floor to the national minimum wage equivalent for two full-time employees. Today that index results in a two-person LIHTC household income limit of $30,160. Under this proposal, all minimum-wage households in every state's county would be treated equally.

Another approach, recently adopted by the U.S. Department of Agriculture (USDA) for its single-family loan program (with the approval of the Obama Administration), would be to consider one- to three-person households the same as a four-person household for income limit purposes. In either approach, it appears that legislative action will be required so we must ask Congress to act on this matter.

The practical process of changing the applicable limit amount is not difficult. In August 2008, the Housing and Economic Recovery Act set the LIHTC income-limit guidelines apart from the income-limit guidelines applicable for the HUD Section 8 program. Accordingly, a change to the LIHTC income limitations would not impact the income limitations of other longstanding programs.

Finally, Congress should find the cost of this administrative fix insignificant. The recalibration of the program's income-limits would simply realign the supply of affordable housing with the community's housing needs. If required, each state's program administrator could further tweak these restrictions to optimize the supply of units to meet the requirements of each state's targeting goals.

There is no question, in my opinion, that if a housing program fails to perform in 77 percent of the nation's counties, it is a dull tool in the nation's affordable housing tool box. Without action, we risk losing the widespread support of leaders who need and want effective affordable housing production and preservation programs. With action, we maintain vibrant communities and encourage economic growth. More importantly, we would be operating a program that again serves the people and communities it was originally designed to benefit.

I urge every practitioner to test the assumptions of the LIHTC program against the basic economic needs of his or her community. If you observe diminished utility of a significant scale, ask your congressional delegation to support recalibration of the Section 42 LIHTC income limit rules.

To help you accomplish your review, see the county by county information for your state, and compare your state's situation to other states, at our national awareness web site: http://tiny.cc/LIHTCHousingEquality.

Instead of using an affordable housing program that is an "illusion of opportunity," let's work to revise archaic income-limit rules to make the Section 42 LIHTC program a viable affordable housing tool for all communities across the nation.

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