FSC'S LAW & ECONOMICS INSIGHTS

Issue 22-05 **Fisher, Sheehan & Colton, Public Finance and General Economics** **Sep / Oct 2022**

IN THIS ISSUE

Multi-family efficiency can be targeted to geographic areas, using multiple federal programs to identify areas in need.

NOTE TO READERS

ON-LINE DELIVERY

This document presents the bi-monthly electronic newsletter of Fisher, Sheehan & Colton: *FSC's Law and Economics Insights*. Previous issues of the newsletter can be obtained at FSC's World Wide Web site:

http://www.fsconline.com/new/news.htm

Fisher, Sheehan & Colton
Public Finance and General Economics
34 Warwick Road, Belmont, MA 02478
(voice) 617-484-0597 *** (fax) 617-484-0594
(e-mail) roger@fsconline.com

A Variety of Federal Programs Identify Geographic Areas in Need of Multi-Family Efficiency Investments, with Not All Programs Identifying the Same Areas.

An increasing number of energy utilities are offering energy efficiency programs directed specifically to multi-family housing. When programs are also focused toward low-income housing, a programmatic issue presented is how to characterize a multi-family development as "low-income."

One decision-rule for such programs is to focus on the geographic area in which the property is located rather than on the physical building itself. For example, this is the approach proposed by Evergy (Kansas).

Evergy's proposed Hard-to-Reach Homes program has a component that targets "income eligible multi-family properties." For these multi-family properties, there would be targeted ("concierge style") outreach to educate property owners and managers on the benefits of EE to them. According to Evergy, these benefits include: (1) lower tenant turnover, (2) tenant rental satisfaction increases and (3) lower rent default since less money is being spent on energy use, which frees up money to apply toward rent.

The multi-family component of the Hard-to-Reach Homes program would seek to achieve energy savings "through increasing the awareness and educational outreach to customers, property managers and owners about their energy usage, installing energy savings measures and providing financial incentives." In particular, Evergy states that "Component 3" of its Hard-to-Reach Homes program is directed toward income-qualified multi-family buildings. Component 3 is described as "Energy efficient measures provided and/or installed in tenant units of multi-family building by the Company to include energy assessments.

Evergy provides five alternatives by which the Company will designate a building as an income-qualified building:

1. Participation in an affordable housing program. Documented participation in a federal, state, or local affordable housing program, including LIHTC, HUD, USDA, State HFA, and local tax abatement for low-income properties.

2. Location in a census tract Evergy identified as low-income, using HUD's annually published "Qualified Census Tracts" as a starting point.

3. Rent roll documentation. Where at least 50 percent of units have rents affordable to households at or below 80% of area median income, as published annually by HUD.

4. Tenant income information. Documented tenant income information demonstrating at least 50 percent of units are rented to households meeting one of these criteria: at or below 200 percent of the Federal poverty level or at or below 80% of area median income.

5. Participation in the Weatherization Assistance Program. Documented information demonstrating the property is on the waiting list for, currently participating in, or has in the last five years participated in the Weatherization Assistance Program.

Expanding the Definition of "Multi-Family."

FSC first responded to Evergy's proposed multi-family targeting by proposing that limitations on the definition of "multi-family" should be eliminated.

First, FSC recommended that, in defining an "affordable housing" development for Criterion #1, such a development should not be excluded because it may be part of a mixed-use development. In a multi-family development that may be part of a mixed-use development, the Hard-to-Reach Homes dollars should be limited to the residential portion of the development.

Moreover, FSC recommended, Evergy should make clear that just because a development is participating in an affordable housing program does not mean that 100% of the units in that development are directed toward low-income households. In providing funds to such developments, the allocation of funding between Evergy residential programs generally—and income-qualified programs in particular—should be proportionate to the number of income-qualified units to the total units. If only 30% of a Low-Income Housing Tax Credit ("LIHTC") development involves affordable units, only 30% of the Evergy spending on that development should be allocated to the income-qualified energy efficiency program.

In defining an affordable multi-family development pursuant to Criterion #3, Evergy should be consistent with the affordable housing programs that it references in Criterion #1. Nearly all affordable housing programs have dual income qualifications. The LIHTC program, for example, provides federal tax credits when all units receiving tax credit assistance must have 20% or more households earning no more than 50% of area median income or 40% or more households earning no more than 60% of the area median income. Affordable housing programs, in other words, recognize that it is often beneficial to provide fewer units of affordable housing if those units are affordable at lower incomes.

FSC recommended that Evergy should modify its Criterion #3 so that it accepts rent roll documentation of either 50% of units having rents affordable to households at or below 80% of area median income, or 30% of units having rents affordable to households at or below 50% of area median income.

Geographic Targeting of Areas in Need

An even “more substantive” modification to the proposed Kansas programs, FSC said, is that Evergy should not exclusively use “Qualified Census Tracts” (“QCT”) (as defined by the Internal Revenue Service for purposes of allocating LIHTC tax benefit) as the basis for defining a “low-income” Census Tract. The purpose of QCTs is to identify Census Tracts for the purpose of Low-Income Housing Credits under IRC Section 42 with the purpose of increasing the availability of low-income rental housing. This is achieved by providing an income tax credit to certain owners of newly constructed or substantially rehabilitated low-income rental housing projects.

The problem with using QCTs is that they are not well-targeted to identify low-income areas for other purposes. To document this, FSC examined the list of all QCTs in the State of Kansas as identified for 2021. This list was compared to the list of Census Tracts in Evergy counties, as identified by the Federal Financial Institutions Examination Council (“FFIEC”). The FFIEC categorizes each Census Tract by whether that tract is low-income, moderate-income, middle-income, or upper-income.

The comparison shows that many of the QCTs in Kansas are either “middle” or “moderate” income Census Tracts. Of the 119 QCTs for which data is available (there is one QCT in Riley County the income status for which is “unknown”), fewer than half are classified as “low-income” Census Tracts. Of the 119 QCTs, 46 are classified as “low-income,” while 56 are classified as “moderate” income, and another 16 are classified as “middle” income. Only one of the QCTs in the Evergy counties is classified as “upper” income (in Crawford County).

FSC made clear that it did not object to the use of QCTs as a means to identify Census Tracts in need. It said using QCTs as an indicator need for targeted multi-family energy efficiency assistance seems to be well-founded. The objection is to use QCTs as the exclusive basis for targeting energy efficiency assistance defined to be “income-qualified assistance” based on an identification of QCTs. In addition to being in a QCT, a Census Tract should be identified as low-income by the FFIEC.

Moreover, irrespective of where the building might be, multi-family investments in buildings in buildings solely because they are in QCTs should not be funded entirely out of the low-income program. In addition, energy savings, or emissions reductions, attributable to investments in QCTs should not be attributed to the low-income program. Instead, funding, savings and reductions should be apportioned to the buildings in accord with the percentage of units that are actually low-income.

Evergy Counties by Number of QCTs and Census Tracts By Income Status (2021)
(Evergy Counties not listed have no 2021 QCTs)

		Number of Census Tracts						Number of Census Tracts			
	QCTs	Low	Middle	Moderate	Upper	County	QCTs	Low	Middle	Moderate	Upper
Allen	1			1		Lyon	2		1	1	
Atchison	1		1			Mntgmry	5		1	4	
Butler	2			2		Reno	2		1	1	
Crawford	4		2	1	1	Riley	4			3	(unknown)
Douglas	4	1		3		Saline	3			3	
Geary	2			2		Sedgwick	35	13	3	19	
Johnson	3	2		1		Shawnee	11	4	2	5	
Labette	2			2		Woodson	1		1		
Lvnwrth	2	1		1		Wyandotte	36	25	1	10	

A Proposed Alternative.

Instead of exclusively using QCTs, FSC recommended that Evergy also use Census Tracts that have been qualified as a "low-income community" for purposes of the federal New Market Tax Credit ("NMTC") program. Rather than being exclusively directed toward housing, with designations that take into consideration the cost of housing development, the NMTC is a federal program that directs investment into a wide range of housing, commercial development and other economic development initiatives (*e.g.*, supermarkets) serving "low-income communities."

Under the NMTC, "low-income communities" are Census Tracts that: (1) where the poverty rate is at least 20%; or (2) where the median family income does not exceed 80% of the area median family income; or (3) where the median family income does not exceed 85% of the area median family income provided the Census Tract is located in a high migration rural county; or (4) where the Census Tract has a population of less than 2,000 and is contained within a Federally-designated Empowerment Zone and is contiguous to at least one other low-income community. Other programs also use the NMTC in their income-eligibility guidelines (*e.g.*, the USDA Low-Income, Low-Access [LILA]) program). In Kansas, the NMTC program has been used by LILA to identify 211 low-income Census Tracts.

Summary

While it is appropriate to target multi-family housing with energy efficiency investments, and to identify geographic areas in particular economic need as a means of further targeting, care must be taken to avoid the use of HUD's Qualified Census Tracts (QCTs) as the exclusive means to identify what those geographic areas in need are. Low-income advocates should make themselves award of the FFIEC and NMTC programs.

For a complete copy of the FSC assessment of Evergy's (KS) proposed multi-family low-income energy efficiency programs, please write:

roger [at] fsconline.com

Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) provides economic, financial and regulatory consulting. The areas in which *FSC* has worked include energy law and economics, fair housing, affordable housing development, local planning and zoning, energy efficiency planning, community economic development, poverty and telecommunications policy, regulatory economics, and public welfare policy.