

AFFORDABLE HOUSING POLICY LEGISLATIVE PRIORITIES 2010

NAHMA has compiled a list of affordable multifamily housing policy priorities which we believe are necessary to restore owners' confidence in federal housing programs, streamline administration of the programs, and increase the choices of affordable communities of quality for low-income Americans. These priorities include:

1. Ensuring a strong budget for federal affordable housing programs administered by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture –Rural Housing Service (RHS). Accounts of particular interest include:
 - a. Full funding and timely payment of housing assistance payment (HAP) contracts for the project-based Section 8 and Housing Choice Voucher programs;
 - b. Full funding of capital advances for the Section 202 and Section 811 programs to construct new apartments for the elderly and disabled.
2. Stabilizing and restarting the residential housing tax credit marketplace by:
 - a. Extending the Section 1602 Tax Credit Exchange Program for an additional year;
 - b. Increasing the housing credit carry-back period from 1 to 5 years; and
 - c. Broadening the investor base beyond widely-held C Corporations.
3. Advancing legislation to preserve the affordable multifamily portfolio.
4. Advancing the Section 8 Voucher Reform Act (H.R. 3045).
5. Advancing legislation allowing the Department of Housing and Urban Development to better serve persons with limited proficiency in the English language by providing technical assistance to recipients of Federal funds.

Please find more detailed descriptions of each NAHMA priority attached.

1. Ensuring a strong budget for federal affordable housing programs administered by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture – Rural Housing Service (RHS).

It is imperative to fund all rental subsidy contract renewals in HUD's project-based and tenant-based Section 8 programs. In the project-based Section 8 program, a rental subsidy is attached to the apartment. By subsidizing the difference between 30 percent of a tenant's income and the rent for the apartment, the project-based Section 8 program ensures the availability of affordable housing for low-income families. In the tenant-based Section 8 program, also known as the Housing Choice Voucher program, low-income families receive a voucher which pays the difference between 30 percent of their income and the rent for the apartment of their choice. In each case, property owners depend on the timeliness of the subsidy promised in the Housing Assistance Payment (HAP) contract. It is essential that Congress provides sufficient appropriations to fully fund the 12-month terms of these contracts. NAHMA also recommends continued congressional oversight to ensure the timeliness of the payments. The Fiscal Year (FY) 2011 budget request for these programs were:

- \$9.04 billion for Project-Based Section 8 contract renewals, \$740 million above the FY 2010 enacted funding; and
- \$17.3 billion for Housing Choice Voucher contract renewals, \$1 billion above the FY 2010 enacted funding.

The Section 202 Housing for the Elderly and the Section 811 Housing for the Disabled programs were targeted for severe cuts in HUD's FY 2011 budget request. These programs offer competitive capital grants to construct apartments for very low-income elderly and disabled families. This year, the Administration is requesting no funding for new construction. NAHMA strongly opposes these unnecessary cuts. There is no reason these programs should be funded at less than the FY 10 enacted levels of \$825 million for Section 202 and \$300 million for Section 811. In fact, NAHMA believes Congress should provide increases *at least* to match inflation. The Fiscal Year (FY) 2011 budget request for these programs were:

- \$274 million for Section 202, \$551 million below the FY 2010 appropriations, a 67% reduction; and
- \$90 million for Section 811, \$210 million below the FY 2010 appropriations, a 70% reduction.

Two of HUD's formula grants, the Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME), also play vital roles in financing affordable housing. State and local governments use CDBG funds to provide decent affordable housing for low and moderate income families, to provide community services, and to create jobs. CDBG awards are often used as gap financing in affordable housing development. HOME is a federal block grant to state and local governments to create affordable housing for low-income households. HOME funds may be used to assist homeowners and homebuyers with purchase or rehabilitation financing assistance, to build or rehabilitate housing for rent or ownership, site acquisition or improvement, demolition of dilapidated housing to make way for HOME-assisted development, payment of relocation expenses for displaced families, or to provide tenant-based rental assistance contracts of up to 2 years. For FY 2011, HUD proposed level CDBG funding and cutting HOME:

- \$ 4 billion for CDBG, the same level as FY 2010 appropriations; and
- \$1.65 billion for HOME, a \$174 million cut below FY 2010.

Another important account in the HUD budget is funding for technical assistance to assist persons with limited proficiency in the English language (LEP). These appropriations have been used to assist affordable housing operators, public housing agencies, state agencies and other recipients of HUD funds in serving persons with LEP. HUD has translated a number of important agency documents into multiple languages and published the translations on its website. NAHMA strongly opposes HUD's request to eliminate this funding in FY 2011:

- \$ 0 funding for LEP technical assistance, \$500,000 below the FY 2010 appropriations.

NAHMA is extremely concerned by a policy change proposed in HUD's budget. The Transforming Rental Assistance (TRA) Initiative requests \$350 million to begin consolidating its 13 rental assistance programs. Phase one of TRA will offer PHAs and private owners of certain assisted properties (subsidized through the RAP, Rent Supplement, and moderate-rehabilitation programs) the option of converting to long-term property-based assistance which includes a resident mobility feature. NAHMA does not support the TRA initiative as outlined in the FY2011 budget proposal. The current project-based rental assistance programs (PBRA) provide quality rental housing to over 1.3 million households. PBRA is understood and respected by the lending and investor communities, resulting in the preservation and recapitalization of thousands of aging affordable rental units. Rather than convert PBRA to an undefined hybrid of the project-based voucher program, we encourage HUD to focus on the very urgent needs of public housing, rather than create instability and uncertainty for the successful PBRA programs.

NAHMA also supports multifamily housing and rental assistance programs administered by the USDA Rural Housing Service (RHS). Section 515 Rural Rental Housing Loans are direct, competitive mortgage loans which finance affordable multifamily rental housing for low-income families, the elderly and persons with disabilities in rural America. Similar to the U.S. Department of Housing and Urban Development's project-based Section 8 program, the Section 521 Rural Rental Assistance (RA) program is project-based rental assistance which is often used in conjunction with Section 515 housing or farm labor housing. The RA program pays apartment owners the difference between tenants' contributions (30 percent of their income) and the monthly rental rate. Section 538 Multifamily Loan Guarantee program guarantees up to 90 percent of the amount of the loan from a private lender to a housing developer for construction, acquisition, or rehabilitation of rural multifamily housing for low-income residents. Until recently, an interest subsidy had been included in the Section 538 program, which made additional funding available for the property owner to improve the physical condition of the property and/or improve the quality of life for residents. The Multifamily Housing Revitalization Program funds tenant protection vouchers, property rehabilitation and preservation demonstration programs. For FY 2011, USDA has proposed a \$25 million increase to the Section 515 account to help offset cuts to the Multifamily Housing Revitalization Program, flat funding for the Section 538 Guaranteed Loans at FY 2010 levels and a decrease in Section 521 Rental Assistance:

- \$95 million for Section 515, a \$25.5 million increase over the FY 2010 appropriations;
- \$129 million for Section 538 with no interest subsidy, no change from FY 2010;
- \$966 million for Section 521 Rental Assistance, \$14 million below the FY 2010 funding; and
- \$18 million to fund vouchers only under the Multifamily Housing Revitalization Program with no funding requested for the program's rehabilitation and demonstration programs, total funding in FY 2010 was \$43.2 million with \$16.4 million for vouchers.

NAHMA is requesting that Congress:

- **Provide sufficient FY 2011 appropriations to fully fund the 12-month project-based Section 8 contracts at the time of renewal;**
- **Fully fund the Housing Choice Voucher program;**
- **Continue oversight to ensure the project-based Section 8 and Housing Choice Voucher subsidy payments are timely and that HUD addresses any regulatory issues affecting their timeliness;**
- **Oppose cuts to affordable multifamily housing and rental assistance programs administered by HUD and USDA-RHS such as:**
 - HUD's Section 202 and Section 811 capital advances, which fund new construction;
 - HOME;
 - LEP technical assistance;
 - Section 521 Rental Assistance; and
 - Multifamily Housing Revitalization Program program's rehabilitation and demonstration programs, which preserve affordable rural housing;
 - We ask Congress to spare these programs from budget cuts and, *at a minimum*, increase their funding to match inflation;
- **Restore the interest subsidy for RHS' Section 538 Loan Guarantees; and**
- **Direct HUD to focus on the very urgent needs of public housing, rather than pursue its TRA initiative and create uncertainty in project-based rental assistance programs.**

2. Stabilizing and restarting the residential housing tax credit marketplace.

The Housing Credit program, which is targeted to serve lower income workforce and rural households, is the largest remaining federal housing program for constructing and preserving affordable apartment communities. As a direct investment that provides immediate job creation, keeping the Low Income Housing Tax Credit (LIHTC) program viable is essential to the job growth that will bring the economy back with good long-term investments.

As the financial markets deteriorated in the second half of 2008, the marketplace for Low Income Housing Tax Credits (LIHTC) also destabilized. The largest purchasers of Tax Credits prior to 2008 were Fannie Mae, Freddie Mac, and large banks. Those firms represented more than half of the marketplace, and all have withdrawn from the market for the foreseeable future. A frozen investor market, less demand for the LIHTCs and substantial declines in credit prices are presenting major challenges to the LIHTC program across the nation, but especially in rural communities. These events have had significant impacts on construction and bridge financing lenders, forcing further reductions in available financing.

In the American Recovery and Reinvestment Act (PL 111-5, HR 1), Congress answered NAHMA's call for gap financing to cover the shortfalls caused by the lack of equity investment in LIHTC properties. Two new options state housing agencies can use to help shovel-ready projects move forward included exchanging a portion of their 2009 LIHTC allocations for cash grants from the Treasury Department and a \$2.25 billion program through HOME for gap financing to restart low-income housing construction stalled during the credit crisis. These measures were necessary to provide immediate stabilization to the program and move deals in the pipeline forward. Nevertheless, we firmly believe additional legislation is necessary to attract investors back to the LIHTC market and to expand the base of investors.

The LIHTC program has not fully recovered from the financial crisis. NAHMA is committed to stabilizing and restarting the LIHTC market in order to keep the infrastructure of affordable housing in place and provide a base for the expansion of the program. We have recommended a number of short-term and long-term solutions to address the current challenges.

As a member of the Rental Housing A.C.T.I.O.N. (A Call to Invest in Our Neighborhoods) campaign, NAHMA respectfully requests that members of Congress support the following proposals and urge House and Senate leaders to include them on the first available legislative vehicle:

- **Extending the Treasury's Section 1602 cash-exchange program for an additional year.** This proposal will provide additional time for the LIHTC market to recover and expand the stock of affordable multifamily rental housing available to Americans. It would allow states to exchange a portion of their 2010 LIHTC credits for cash grants, which would then be used for acquisition, construction or rehabilitation of affordable housing projects.
 - This provision has been included in H.R. 4213, the Tax Extenders Act.
- **Allowing states to exchange 4% Housing Credits generated by tax-exempt bond-financed housing.**
 - This proposal has been introduced as the Low Income Housing Tax Credit Exchange Expansion and Job Creation Act of 2010 (H.R. 4687).
- **Increasing the housing credit carry-back period from one to five years.** This proposal contains two parts which are intended to make the Housing Credit more attractive to investors.
 - For existing housing: Permit unused LIHTCs from tax returns filed in 2009, 2010, and 2011 to be carried back for up to five years. The entire amount of the unused LIHTCs carried back must be immediately reinvested in new LIHTCs.
 - For new housing: Future credits could be carried back up to 5 years throughout the 10-year credit period, allowing LIHTC to become more competitive with other tax credits.
 - This latter proposal was introduced as the Low-Income Housing Tax Credit Act of 2009 (H.R. 4109).

- **Broadening and diversifying the investor base beyond widely-held C Corporations.** To make up for the loss of major LIHTC investors, it is absolutely essential to attract new investors.
 - Tax laws should be revised to make LIHTC investment feasible for certain S Corporations, limited liability companies, and closely-held C Corporations.
 - This proposal has not yet been introduced as legislation.

These changes will jumpstart and maintain ongoing development to keep the infrastructure of affordable housing in place. They would also help address the severe shortage of workforce and rural housing. More detailed information on each of these proposals is available on the ACTION campaign webpage, <http://www.rentalhousingaction.org/>.

- **In addition, NAHMA urges members of Congress to cosponsor legislation allowing state agencies with unused LIHTCs designated for disaster areas to include them in the cash exchange grant program.**
 - Under ARRA, disaster credits were not eligible for the Sec. 1602 LIHTC cash-exchange program.
 - The Disaster State Housing Recovery Act of 2009 (H.R. 2995 and S. 1326) would make GO Zone and Midwestern Disaster Credits eligible for Treasury's Section 1602 Tax Credit Exchange Program (cash for credits).

Other issues NAHMA believes Congress should address to ensure the ongoing financial viability of existing tax credit properties include:

- **Municipally Imposed Services.** Consideration should be given to allowing owners to recover the costs of additional services not generally provided in rental apartments that are being imposed by some municipalities. These costs should be allowed to be passed through in the rents without limitation in the rent caps. In other words, if a municipality determines it will impose a service or fee that is not generally considered as a property expense, the associated cost should be passed through without reference to the maximum tax credit rents.
- **Tax Credit Fees and Charges.** HUD should be directed to treat Tax Credit Fees, Asset Monitoring Fees and related charges as normal project operating expenses. Currently, HUD is taking the position that these fees are unrelated to the operation of the property and therefore not project expenses.

3. Advancing legislation to preserve the affordable multifamily portfolio.

Preservation is a cost-effective way to prevent a net loss of affordable rental housing. To NAHMA, “preservation” means maintaining the current portfolio of privately-owned, federally-assisted apartments as affordable to low-income families through a public-private partnership which offers **voluntary** incentives to owners and ensures long-term sustainability of the properties, including the ability to recapitalize.

The Government Accountability Office (GAO) identified major challenges to preservation efforts. In testimony before the House Financial Services Subcommittee on Housing and Community Opportunity, David G. Wood, GAO’s Director of Financial Markets and Community Investment (see report GAO-04-992T, July 20, 2004), discussed the impact maturing mortgages will have on the affordable portfolio and tenants. Mr. Wood noted, “Of the 11,267 subsidized properties (containing 914,441 units) with HUD mortgages, 21 percent (2,328 properties containing 236,650 units) have mortgages that are scheduled to mature from 2003 through 2013.” The majority of these mortgages will mature between 2011 and 2013. On the maturity date, affordability commitments which were promised as a condition of the mortgage will be satisfied. GAO cautioned,

“...Low-income tenants in over 101,000 units may have to pay higher rents or move when HUD-subsidized mortgages reach maturity...There is no statutory authority that requires HUD to offer tenants special protections, such as enhanced vouchers, when a HUD mortgage matures. However, tenants who receive rental assistance in properties with maturing mortgages would be eligible for enhanced vouchers under rental assistance programs, such as project-based Section 8.”

NAHMA supports legislative efforts to preserve affordable multifamily housing. We respectfully recommend that any multifamily preservation bill be guided by the following principles.

A. Ensure long-term financial and physical sustainability of preserved affordable properties. The keys to achieving this goal include legislative changes which will:

- Extend the Mark-to-Market (M2M) program through 2013. M2M allows HUD to restructure FHA mortgages on projects with above-market rents, reducing such rents in exchange for an extended affordability term of 30 years. M2M also allows project owners to perform needed rehabilitation on the project and to ensure efficient and knowledgeable management of the project.
- Address obsolete operating and utility cost underwriting assumptions for the early (pre-October 1, 2001) mark-to-market properties and allow a voluntary second mortgage restructuring to help the early restructured properties with rehabilitation needs;
- Create a desperately needed mechanism (such as a budget-based rent increase) to provide relief for unforeseen operating costs;
- Direct GAO to examine the accuracy of Operating Cost Adjustment Factors (OCAFs) as an inflation factor used to determine annual rent adjustments;
- Ensure timely completion of the Mark-Up-To-Market process. Properties most at risk of opting-out are those with below market rents in desirable neighborhoods.
- Provide incentives and funding for green initiatives, which is increasingly important as energy costs rise. We would simply caution that such incentives should be voluntary on the owner’s part, should not constitute unfunded mandates and should not impose new reporting requirements that will drain staff time and money from the property owner / manager’s day-to-day operations.

B. Create incentives to encourage voluntary transfer and preservation of affordable properties.

- NAHMA will strongly oppose legislation which would restrict or otherwise abrogate current housing assistance contracts, mortgage agreements or owners’ property rights. Such overreaching provisions are contrary to preservation, and undermine the public-private partnership that is essential to successful preservation efforts.

- NAHMA strongly supports the Affordable Housing Preservation Tax Relief Act of 2009 (H.R. 2887). This bill provides exit tax relief for owners who sell their properties to buyers who will continue operating the projects as affordable housing.
- We also believe a grant program which provides gap financing to qualified preservation entities (whether for-profit or non-profit) would facilitate more successful preservation transactions.

C. Extend tenant protections when mortgages mature. NAHMA supports extending tenant protection vouchers to unassisted tenants (who are otherwise eligible for assistance) in properties when the HUD mortgage matures.

D. Recognize the essential role of the Section 42 Low Income Housing Tax Credit Program to preservation. The equity provided through the LIHTC program has been essential for preserving and rehabilitating older HUD-assisted properties. Without the equity from the tax credits, many of the preserved HUD properties may have opted-out, defaulted on their mortgages, or fallen into physical disrepair.

- An interagency group with stakeholder input should be established to resolve conflicting regulatory requirements in the major federal rental assistance programs.

E. Adopt a partnership approach with the multifamily owner and management agent communities.

As agencies seek regulatory compliance from housing providers, HUD and RHS and the Internal Revenue Service should be empowered to use common sense and transparent policy making procedures. Simple gestures such as:

- Allowing reasonable implementation time for housing operators to incorporate policy changes;
- Breaking the cycle of regulatory micromanagement;
- Placing an emphasis on the “reduction” component of the paperwork reduction act as it applies to multifamily forms and information collections;
- Standardizing the rules and regulations for federal programs; and
- Following transparent administrative procedures, which we believe would not only improve compliance, but also free staff time and resources to improve the property.

4. Advance the Section Eight Voucher Reform Act of 2009 (HR 3045).

The SEVRA legislation will make important improvements to the Section 8 Housing Choice Voucher program. H.R. 3045 will stabilize funding for the voucher program, increase housing opportunities for low-income families, and improve administration of the program. These improvements can be achieved through provisions which will:

- A. Stabilize voucher funding by basing it on the previous year's leasing and cost data;
- B. Simplify the rules for determining rent and income;
- C. Authorize appropriations for 150,000 new vouchers;
- D. Streamline inspection of housing units;
 - Minor repairs can be made within 30 days;
 - Public Housing Agencies may allow occupancy prior to the inspection in buildings which passed an alternative inspection method within the last 12 months;
 - Alternative inspection methods include HOME, LIHTC or other inspections that meet HQS standards at least as stringent;
 - These provisions will be especially helpful to voucher-holders in tight rental markets with low vacancy;
- E. Authorize project-based preservation vouchers in lieu of enhanced vouchers; and
- F. Authorize enhanced vouchers for tenants of a project with a HUD-subsidized mortgage when the mortgage matures.

The legislation has passed the House Financial Services Committee, and could be brought to the House floor for a vote. When H.R. 3045 is considered by the House, we anticipate that an amendment will be offered which authorizes HUD to provide technical assistance to help recipients of its funding (including apartment owners and public housing agencies) to better serve persons with limited proficiency in the English language (LEP).

NAHMA respectfully requests that members of Congress:

- **Urge House leaders to bring HR 3045 to a vote;**
- **Support the anticipated amendment to authorize LEP technical assistance; and**
- **Support passage of the SEVRA bill.**

5. Advancing legislation allowing the Department of Housing and Urban Development to better serve persons with limited proficiency in the English language by providing technical assistance to recipients of Federal funds.

President Clinton's Executive Order 13166 directed each federal agency to publish guidance for recipients of federal funds to inform them of obligations under Title VI of the Civil Rights Act of 1964 to provide persons with limited English proficiency (LEP) meaningful access to federal programs and activities.

HUD's final LEP guidance took effect in March 2007. The guidance stated that recipients of HUD funding, including affordable rental housing providers, were obligated to provide translated documents and oral interpretation services to persons with limited English proficiency. At the time, HUD had not provided additional funding to offset the costs associated with providing language services, nor had the Department identified a specific list of documents housing providers were expected to translate. While NAHMA supported the goals of LEP guidance, our members were concerned about the unfunded costs to properties associated with providing language services.

In order to address the concerns of industry stakeholders, civil rights advocates, and tenants with limited English proficiency, Congress has taken important actions to improve implementation of the Department's Limited English Proficiency (LEP) guidance. First, Rep. Maxine Waters included LEP authorization language in the Section 8 Voucher Reform Act (SEVRA) of 2007 (H.R. 1851). This legislation was supported by a coalition of multifamily housing industry and civil rights advocacy organizations. Affordable housing providers were particularly interested in provisions which:

- Created a task force of industry and civil rights stakeholders to identify vital documents (to include both official HUD forms and unofficial property documents);
- Required HUD to translate the vital documents within six months;
- Created a HUD-administered 1-800 hotline to assist with oral interpretation needs; and
- Authorized appropriations.

In September 2007, Senator Robert Menendez introduced this LEP authorization language as a free-standing bill (S. 2018). It was also included in the Senate's SEVRA of 2008 (S. 2684).

Although the LEP authorization language did not become law before the 110th Congress adjourned, \$380,000 in FY 2008 appropriations was provided for HUD to produce translated documents. HUD used these funds to begin translating vital agency documents, such as the multifamily model leases, into multiple languages. Congress also provided appropriations of \$500,000 in each of FY 2009 and FY 2010. Links to HUD's translations are available on the Fair Housing and Equal Opportunity webpage at: <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>.

In the current 111th Congress, we anticipate that LEP authorization language will be added as a manager's amendment to the House SEVRA bill (H.R. 3045). We strongly support continued funding for new translations, updates to current documents and additional services to assist persons with LEP, such as a toll-free hotline for oral interpretation. We adamantly oppose HUD's call to zero-out funding for the LEP line item account. HUD should continue providing technical LEP assistance to multifamily and public housing providers as a way to continue the Department's leadership role in affirmatively furthering fair housing.

NAHMA is asking members of Congress to:

- **Reject the proposed cut for the LEP line item account in the FY 2011 HUD budget;**
- **Support at least \$500,000 designated for LEP translations / services in the FY 11 Transportation-HUD appropriations bills; and**
- **Support authorization language as part of a SEVRA bill and/or free standing legislation which will:**
 - **Create an LEP stakeholder taskforce;**
 - **Require HUD to translate the vital documents within six months; and**
 - **Create a HUD-administered 1-800 hotline to assist with oral interpretation needs.**