

NAHMA LEGISLATIVE PRIORITIES 2011

1. Ensuring full funding and timely payment of Section 8, PRAC and Rural Rental Assistance contracts.
 - a. Sufficient appropriations
 - b. Continuing resolutions

2. Preserving affordable rental housing through practical, voluntary policies which ensure long-term viability for the properties and equal opportunity for all capable housing providers to participate.
 - a. Approaches to preservation—draft legislation and introduced bills
 - b. Interagency Rental Policy Harmonization
 - c. HUD policies
 - d. Areas of conceptual agreement
 - e. Proposals that NAHMA strongly opposes

3. Increasing opportunities for families to receive rental housing assistance by simplifying the Housing Choice Voucher (HCV) program.
 - a. Key provisions of the Section 8 Voucher Reform Act (SEVRA)
 - b. Full funding of the HCV program in the appropriations bills

4. Ensuring efficient, effective programs to provide supportive housing for the elderly and disabled under HUD's Section 202 and Section 811 programs.
 - a. Proposed reforms for Section 202 & 811 housing
 - b. Appropriations for new construction

5. Stabilizing the Low Income Housing Tax Credit (LIHTC) program.
 - a. Continue the LIHTC program under any tax reform legislation

Please find more detailed descriptions of each NAHMA priority attached.

1. Full Funding And Timely Payment Of Section 8, PRAC & Rural Rental Assistance Contracts.

NAHMA is extremely concerned about the impact budget cuts would have on residents and affordable properties assisted through Section 8 Housing Assistance Payment (HAP) contracts, Project Rental Assistance Contracts (PRACs) and Rural Rental Assistance contracts (RA).

All three of these types of subsidy contracts play a critical role in meeting the housing needs of low-income families. In the project-based Section 8 program, HUD enters into Housing Assistance Payment (HAP) contracts with private apartment owners to pay the difference between the rent and 30 percent of a qualified tenant's income. Under PRAC contracts, HUD pays the difference between the rent and 30 percent of a tenant's income to an owner of Section 202 apartments for the elderly housing or Section 811 apartments for the disabled. The Section 521 Rural Rental Assistance (RA) program is project-based rental assistance administered by the U.S. Department of Agriculture-Rural Housing Service. It is often used in conjunction with Section 515 housing or farm labor housing to pay apartment owners the difference between tenants' contributions (30 percent of their income) and the monthly rental rate.

Funding shortfalls in the project-based Section 8 program have had two immediate impacts on the day-to-day operations of affordable properties: late subsidy payments to owners and partial funding of the housing assistance payment (HAP) subsidy contracts. Although late HAPs had been a problem for years before, a crisis developed in the summer of 2007 when payments on thousands of contracts were delayed for months at a time. To cover the revenue shortfalls when HAP payments were late, owners had to divert money from other important accounts, resulting in late payments on mortgages or other bills, and compromising their ability to manage properties effectively. Insufficient funding also led HUD to offer incremental "stub" contracts that obligated owners to provide housing for 12-month terms, but only guaranteed funding for a couple months, or even weeks, on that contract. This process damaged HUD's credibility with owners and lenders, wasted administrative time for the HUD staff who had to re-process the funding, and jeopardized the housing of thousands of low-income residents.

HUD officials, members of Congress and housing providers have invested a considerable amount of effort to stabilize funding for project-based Section 8 HAPs. Most of the late payment problems have been resolved since the appropriations for the Section 8 HAP renewals have allowed HUD to fully fund the 12-month contract terms at the time of renewal. Advanced appropriations have also helped reduce the frequency of late HAPs when HUD's budget has not been enacted at the start of the new fiscal year, because it can take several weeks after a bill is signed before the owner receives the HAP payment.

Although not as widespread as previous episodes involving late Section 8 HAPs, late PRAC payments for Section 202 and Section 811 properties have raised concerns. As with Section 8 HAPS, NAHMA believes the solutions to provide timely PRAC payments are sufficient appropriations to cover the contract terms and advanced appropriations to avoid payment disruptions under CRs.

To date, NAHMA has not received reports of widespread payment disruptions for the USDA-RHS Rural Rental Assistance program. We urge Congress to continue providing the necessary appropriations to ensure full funding and timely payment of the RA contracts.

NAHMA understands that Congress is facing serious budget challenges. Although across-the-board budget cuts or proposals to roll-back appropriations to FY 2008 levels may seem appealing, these policies would devastate the project-based Section 8, elderly, disabled, and rural rental assistance programs. For example, cutting appropriations for Section 8 contract renewals would recreate the very chaos which caused the nation-wide late payments and "stub" contract funding in the first place. Underfunding the HUD and USDA-RHS contractual obligations to apartment owners will damage the federal government's credibility with housing providers and lenders. It will jeopardize rental assistance for the most vulnerable families. Finally, it may also place the properties with mortgages insured by HUD or USDA-RHS at risk of default.

For these reasons, NAHMA is requesting that Congress:

- **Provide full funding for the Section 8 HAP, Section 202 & Section 811 PRAC and USDA-RHS' RA contracts at the time of renewal in all future budget and appropriations bills;**
- **Continue providing advanced appropriations for project-based Section 8 in order to minimize contract payment disruptions between federal fiscal years; and**
- **Provide advanced appropriations for Section 202 and Section 811 PRAC renewals to mitigate late payments to properties serving the elderly and disabled between federal fiscal years.**

2. Preserving 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 voluntary public-private partnership.

NAHMA urges Congress to support a comprehensive multifamily preservation strategy which:

- **Ensures long-term financial and physical sustainability of preserved affordable properties by:**
 - Extending the Mark-to-Market (M2M) program through 2015. M2M allows HUD to restructure FHA mortgages on multifamily projects with above-market rents, reducing such rents in exchange for an extended affordability term of 30 years. M2M also allows project owners to rehabilitate the project. HUD’s authority to restructure the mortgages expires on September 30, 2011;
 - Addressing obsolete operating and utility cost underwriting assumptions for the early (pre-October 1, 2001) M2M properties and allowing a voluntary second mortgage restructuring to help the early restructured properties with rehabilitation needs;
 - Permitting flexible use of residual receipts and replacement reserves for preservation or rehabilitation;
 - Ensuring 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;
 - Offering long-term project-based Section 8 contracts to help secure better underwriting terms;
 - Allowing the orphan multifamily programs (RAP, Rent Supplement) to convert into the *existing* Project-Based Section 8 program through the Multifamily Assisted Housing Reform and Affordability Act (MARHA); and
 - Providing voluntary incentives and funding for green initiatives.
- **Incentivizes voluntary transfer and preservation of affordable properties by:**
 - Authorizing exit tax relief for owners who sell their properties to buyers who will continue operating the projects as affordable housing; and
 - Creating a gap financing program available to qualified for-profit or nonprofit preservation entities.
- **Protects tenants when mortgages mature.** Certain properties were financed through HUD mortgages that included affordability restrictions for the term of the mortgage. As the mortgage maturity dates approach, residents could face substantial rent increases or displacement when the affordability restrictions expire. NAHMA supports tenant protection options such as:
 - Extending tenant protection vouchers to residents of properties with maturing HUD mortgages;
 - Allowing apartment owners to convert enhanced vouchers to project-based assistance; and
 - Allowing apartment owners to choose project-based assistance in lieu of enhanced vouchers.

Besides statutory changes, regulatory solutions which would facilitate preservation include:

- **Removing incompatible program requirements that inhibit the development and/or effective management of mixed-financed affordable housing.** NAHMA participates as a stakeholder in the interagency Rental Policy Harmonization Working Group. NAHMA is interested in:
 - Streamlining the multiple physical inspections on mixed-subsidy properties;
 - Bringing more consistency to income definitions and compliance reporting across programs; and
 - Simplifying processes for subsidy layering and underwriting.
- **Changing HUD policies to:**
 - Encourage owners to seek long-term project-based Section 8 HAP contracts;
 - Allow nonprofit owners greater access to distributions, which could build or preserve more units; and
 - Take meaningful steps to alleviate substantial LIHTC compliance costs on mixed-financed properties.

Unfortunately, NAHMA could not support the major preservation proposals from the 111th Congress. In 2010, HUD aggressively pushed draft legislation, the Preserving, Enhancing, and Transforming Rental Assistance

Act (PETRA), as a way to begin voluntary consolidation of HUD's 13 rental assistance programs and to recapitalize public housing. Phase one of PETRA targeted public housing, certain "orphan" multifamily housing programs and project-based Section 8 properties for conversion to a new rental assistance program. PETRA, and its successor bill, the Rental Housing Revitalization Act (HR 6468), would have created an unnecessary new hybrid project-based rental assistance program with a resident mobility feature. Similarly, PETRA and HR 6468 would have permitted HUD to apply controversial new policies (such as resident mobility, sweeping new enforcement authority against owners and management agents, etc.) to projects that did not convert to the hybrid rental assistance contracts. Also, these bills would have created a federal first right of purchase for converted properties. This means HUD or HUD's designee would have the right to buy an affordable property before an owner could sell it to a third party. NAHMA members strongly believed there were no incentives for project-based Section 8 properties to convert to the new assistance, and no efficiencies to be achieved through the conversion. Likewise, we were extremely disappointed that these bills were the only options HUD was willing to consider for preserving properties with expiring rental assistance contracts under the defunct Rent Supplement, RAP and Section 8 moderate rehabilitation programs.

Although the Housing Preservation and Tenant Protection Act of 2010 (H.R. 4868) proposed a number of helpful changes, it included five troublesome sections which would have worked against successful preservation. These sections interfered with owners' rights to sell their properties, to protect non-public confidential information and exposed owners to lawsuits from tenants.

As new housing legislation is proposed in the 112th Congress, NAHMA respectfully requests that Senators and Representatives strongly oppose measures which:

- **Include a federal first right to purchase affordable properties or any variation of it.**
 - Variations include, but are not limited to, federal or state agency first right of purchase, etc.
 - Such proposals will drive away equity investment, infringe on owners' property rights, and discourage preservation of privately-owned multifamily housing.
- **Morph the Project-Based Section 8 Program into a hybrid rental assistance program with burdensome new rules.**
 - The current Project-Based Section 8 Program functions well and it is understood by lenders.
 - HUD could consolidate programs more efficiently by converting contracts to the existing Project-Based Section 8 rather than creating a new 14th type of rental assistance.
- **Authorize HUD to provide less than market rents.**
 - PETRA allowed HUD to approve less than fair market rents for a unit "if such rent is sufficient to meet the financial and physical sustainability needs of the property."
 - This contrasts with the Mark-Up-To-Market program, which has a record of success for preservation.
- **Restrict or 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. Examples include:
 - Proposing burdensome regulatory "streamlining" which would apply objectionable policies to existing programs and could inappropriately alter owners' existing contracts with HUD;
 - Allowing tenants to withhold rent payments in escrow to enforce housing quality standards;
 - Allowing tenants to enforce owners' housing agreements with HUD through lawsuits; and
 - Requiring HUD to release housing providers' non-public, confidential and proprietary information.

3. Simplifying And Improving The Housing Choice Voucher (HCV) Program.

The Section 8 Tenant-Based Rental Assistance or Housing Choice Voucher (HCV) program is widely recognized as a cost-effective means for delivering rental assistance to low-income families in the private market. The rental assistance is provided on behalf of the family so that participants are able to find and lease privately owned housing. Voucher holders may choose any housing that satisfies the program requirements, including single-family homes, townhouses and apartments. Rental units must meet health and safety standards, as determined by the local public housing agency (PHA) which administers the voucher program. After the voucher holder finds housing, the PHA pays a housing subsidy to the landlord on behalf of the participating family. The family must pay 30% of its monthly adjusted gross income for rent and utilities, and if the unit rent is greater than the PHA's payment standard, the family is required to pay the additional amount. Under certain circumstances, if authorized by the PHA, a family may use its voucher to purchase a modest home. Over 2 million families receive assistance through the HCV program.

Although the voucher program is highly effective, there is widespread support for legislation to make it more efficient, easier to administer, and more user-friendly for tenants and housing providers. Previously, many of these reforms were included in H.R. 3045, the Section 8 Voucher Reform Act (SEVRA). HR 3045 was not enacted before the 111th Congress adjourned; however, NAHMA expects a new SEVRA bill to be introduced this year.

The new SEVRA bill will make a number of important improvements to the Section 8 voucher program by:

- Streamlining inspections of housing units, which will be especially helpful to voucher-holders in tight rental markets with low vacancy;
 - Minor repairs can be made within 30 days;
 - PHAs may allow occupancy prior to the inspection in buildings which passed an alternative inspection (HOME, LIHTC or other inspections with equally stringent HQS standards) within the last 12 months;
- Stabilizing voucher funding by basing it on the previous year's leasing and cost data;
- Simplifying the rules for determining a family's rent and income;
- Authorizing HUD to provide Limited English Proficiency (LEP) technical assistance which:
 - Creates a stakeholder working group to identify vital documents for translations;
 - Requires HUD to translate identified documents within six months; and
 - Creates a HUD-administered 1-800 hotline to assist with oral interpretation needs;
- Authorizing enhanced vouchers to protect tenants living in projects with expiring HUD-subsidized mortgages (current law only provides enhanced vouchers to such properties for mortgage prepayments).
- Allowing PHAs greater flexibility to project-base some of their vouchers to serve families in areas where vouchers are difficult to use, to serve homeless or to serve the disabled.

In this tight fiscal climate, it is worth noting that the new SEVRA bill is expected to save up to \$731 million over five years. It will also allow more working families to qualify for vouchers, particularly in rural areas.

NAHMA respectfully requests that members of Congress:

- **Support the Section 8 Voucher Reform Act when it is re-introduced in the 112th Congress; and**
- **Provide full funding for the Housing Choice Voucher program through the appropriations process.**

4. Supportive Housing Programs For The Elderly And Disabled.

Two of HUD's only remaining multifamily housing new production programs, the Section 202 Housing for the Elderly and the Section 811 Housing for the Disabled programs, fill a critical housing need for very-low income vulnerable households.

In late 2010, HUD circulated discussion draft bills, the Section 202 Reform Act and the Section 811 Reform Act. These bills proposed major statutory changes applicable to new projects for financing properties and providing rental assistance under these programs. HUD argued these changes were necessary to spend less HUD money per unit, align rental assistance with HUD's controversial plan to streamline its 13 rental assistance programs, the Preservation, Enhancement, and Transforming Rental Assistance (PETRA) Act, make new units available more quickly, and serve more frail elderly.

While NAHMA appreciates the need to stretch limited federal dollars as far as possible, we are concerned that the proposed bills would fundamentally change the nature and purposes of the Section 202 and Section 811 programs. We urge HUD to reconsider pursuing major statutory changes before testing the impact under small demonstration programs. We are particularly concerned about the following HUD proposals:

- Replacing Section 202 and Section 811 capital advances with gap financing:
 - Currently, project sponsors use the capital advances from HUD to leverage outside financing. HUD's proposals reverse the current practice by requiring project sponsors to line up outside financing first and then awarding HUD funds as gap financing to cover the shortfall needed to finance the project.
 - HUD's draft bills over-rely on low-income housing tax credits (LIHTCs) as a primary funding mechanism for elderly and disabled housing. NAHMA supports the *option* for sponsors to combine Section 202 and 811 funds with LIHTCs, but we do not believe the LIHTC should become the de facto replacement for capital advances. Also, combining LIHTCs with these programs requires a greater degree of development and management expertise from sponsors to avoid regulatory conflicts.
- Replacing PRACs with a new hybrid rental assistance program such as PETRA or successor legislation:
 - NAHMA is unconvinced that HUD needs a new rental assistance program for senior and disabled housing. Applying a controversial, untested idea to these programs is unnecessary and premature.

Nevertheless, we do support certain HUD proposals which would improve the efficiency of HUD's elderly and disabled housing programs, such as:

- Converting existing Section 202 predevelopment grants to planning grants, so that sponsors without access to capital to increase their capacity for the initial project planning, design and financing.
- Allocating funds over larger geographical areas based on housing needs of elderly populations, so that projects of adequate size are built where they're most needed.

The Section 202 and Section 811 programs are critically important. We strongly urge Congress to:

- **Continue appropriating funds for new construction of Section 202 and Section 811 housing;**
- **Closely scrutinize proposed changes to the programs' financing structures, rental assistance programs, or selection preferences; and**
- **Support only those changes that allow sponsors to achieve economies of scale, ensure properties' long-term physical & financial sustainability, encourage supportive services to residents, and simplify the regulatory framework to focus on results rather than processes.**

5. Stabilizing the Low Income Housing Tax Credit (LIHTC) program.

Created by the Tax Reform Act of 1986, the LIHTC program is the primary source of federal funding to construct new affordable apartments. A recent HUD report explained the history of the program as follows:

“The act [Tax Reform Act of 1986] eliminated a variety of tax provisions that had favored rental housing and replaced them with a program of credits for the production of rental housing targeted to lower income households. Under the LIHTC program, the states were authorized to issue federal tax credits for the acquisition, rehabilitation, or new construction of affordable rental housing. The credits can be used by property owners to offset taxes on other income, and are generally sold to outside investors to raise initial development funds for a project. To qualify for credits, a project must have a specific proportion of its units set aside for lower income households with the rents on these units limited to 30 percent of qualifying income [50 percent or 60 percent of area median income]. LIHTC investors claim credits to offset taxes otherwise owed for each year of a 10-year period....”¹

LIHTC apartments are rent-restricted and income-restricted for a minimum of 30 years. State agencies oversee the allocation of the Credits, and they monitor the properties' compliance with the program requirements. Investors who buy the Credits add private sector oversight during the initial 15-year federal compliance period during which the IRS can recapture the credits for non-compliance.

The LIHTC program is an example of a successful public-private partnership. HUD estimates an average of almost 1,450 projects and 108,000 units were placed in service in each year of the 1995 to 2007 period. According to the National Council of State Housing Agencies, the Credit's incentive for private sector investment has helped finance more than 2.4 million apartments for low-income families since 1986. The program has generally functioned well as a vehicle to provide new workforce housing and to preserve older HUD assisted and rural properties. Moreover, the National Association of Home Builders estimates the program has added approximately 90,000 full time jobs per year across all U.S. industries, as well as generating tax and other revenue to local economies.

NAHMA is aware that comprehensive tax reform will receive serious consideration in this Congress. One proposal that is already receiving attention in the House is the Report of the National Commission on Fiscal Responsibility and Reform, released in December 2010. The Commission's report proposed eliminating all tax expenditures for businesses, which included the LIHTC, in order to lower the corporate tax rate.

NAHMA will strongly oppose legislation that would eliminate the LIHTC program. NAHMA believes the LIHTC deserves the continued bipartisan support it has received for nearly 25 years. It has a proven record of success as a new production and preservation program. At a time when federal appropriations for housing programs face budget cuts, and the LIHTC program is finally rebounding from the crisis in the financial markets, Congress should not entertain ideas to eliminate the LIHTC. This tax credit program is working. It produces jobs, raises revenue for local economies, provides quality rental housing for working families, and creates a voluntary tax incentive for businesses to invest in affordable housing communities.

As Congress considers comprehensive tax reform plans, NAHMA requests that Senators and Representatives:

- **Strongly oppose any proposal to eliminate the Low Income Housing Tax Credit program.**

¹ *Assessment of the Economic and Social Characteristics of LIHTC Residents and Neighborhoods, Final Report.* Prepared by Abt Associates Inc. for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research; February 28, 2000.