

## 2007 Legislative Priorities

- **The FY 2008 Budget Request:** Please reject the severe cuts to important multifamily housing programs proposed in the Administration's 2008 Budget Request for the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture-Rural Housing Service (USDA-RHS). At a minimum, provide these important programs with increased funding for inflation.
- **HUD's Final Limited English Proficiency (LEP) Guidance:** HUD's final LEP guidance obligates affordable housing providers to translate unspecified "vital documents" and to provide oral interpreters free-of-charge for individuals who have difficulty communicating in English. HUD has proposed no additional funding to offset the costs of these language services. Therefore, we are asking Congress to:
  - Support an amendment to the Section 8 Voucher Reform Act which is an agreement between the affordable housing industry and civil rights groups that incorporates the solutions proposed by Senator Menendez, Chairman Frank and Representatives Waters and Baca. The amendment corrects HUD's flawed guidance by shifting responsibility from affordable housing operators to HUD itself for identifying "vital documents," translating those documents and providing a centralized hotline service for oral interpretation.
- **Timeliness of HUD's Housing Assistance Payments (HAPs) to Affordable Housing Operators:** Please support congressional oversight--whether through hearings or legislation--to ensure HUD implements GAO's recommendations for breaking the cycle of making late rental subsidy payments to affordable housing providers.
- **Improving Mechanisms to Offset Rising Utility Costs in Affordable Housing:** As part of any effort to preserve HUD-assisted housing, please support legislation to implement a Recognized Increased Cost (RIC) proposal, which will provide real-time financial relief for properties experiencing unforeseen operating cost increases. Also, please consider statutory changes to the LIHTC program which will better position LIHTC properties to address rising utility costs.
- **Full-Time Student Households in Low Income Housing Tax Credit Properties:** Please support legislation (similar to S. 3941 in the last Congress) to update LIHTC occupancy rules so that otherwise qualified single parents and adult GED students to pursue an education without fear of losing their housing.
- Details about these requests are attached. For additional information on NAHMA's legislative positions, please visit [www.nahma.org](http://www.nahma.org).

## 2007 Legislative Priorities

### NAHMA Supports a Strong Budget for Federal Housing Assistance Programs

**Please reject the cuts to affordable multifamily housing programs proposed in the Administration's 2008 Budget Request, and *at a minimum*, increase affordable rental programs' funding for inflation.**

For the past several years, the Administration has proposed cuts to important multifamily housing production programs. Once again, the Section 202 Housing for the Elderly, and the Section 811 Housing for the Disabled programs are slated for severe cuts in the FY 08 budget request. Compared to the FY 07 joint funding resolution (H.J.Res. 20), Section 202 would be cut by \$160 million (22%), and Section 811 would be slashed by \$118 million (50%). As for the Section 515 rural housing program, funding would be zeroed out completely in FY 2008 under the President's budget. NAHMA is pleased that Congress spared these programs from draconian cuts; however, we ask that appropriations this year provide increases at least for inflation. The flat funding levels from year to year are not keeping pace with rising construction costs and inflation. For example, Section 202 Housing for the Elderly has remained at \$725 million in FY 06 and FY 07, and Section 811 Housing for the Disabled has remained at \$237 million.

It is imperative to fund all rental subsidy contract renewals in the project-based and tenant-based Section 8 programs. In FY 07, Congress funded the Section 8 Tenant-Based Program at \$15.9 billion, an increase of \$502 million, to allow HUD to renew 70,000 housing vouchers currently in use by individuals and families. The Section 8 Project-Based Program received \$5.9 billion for FY 07, an increase of \$939 million, allowing HUD to renew 157,000 housing vouchers currently in use by individuals and families. Most of the Section 8 increases will renew existing contracts. However, NAHMA is extremely concerned that the \$5.5 billion for FY 08 request for project-based Section 8 contract renewals represents a \$453 million cut below FY 07 levels, which would jeopardize housing assistance for roughly 70,000 individuals and families.

The Community Development Block Grant (CDBG) and HOME programs also play vital roles in affordable housing. The Administration's proposed FY 08 funding for these programs is basically the same as the FY 07 request. Unfortunately, the FY 07 request for CDBG was \$1.146 billion below the FY 06 appropriation. Compared to the FY 07 appropriations, the \$3 billion request for CDBG in FY 08 is a \$735 million cut. In the FY 07 appropriations, HOME was flat-funded at \$1.757 billion, although due to inflation, this program is arguably losing money. The President's FY 08 request of \$1.97 billion for HOME represents a slight increase above last year.

### NAHMA Supports Legislation to Improve HUD's Flawed Final Limited English Proficiency (LEP) Guidance

**Please ask that support be given for an amendment which will be offered to the Section 8 Voucher Reform Act to address concerns about HUD's Final LEP Guidance. These concerns revolve around unfunded costs, vagueness about which "vital documents" must be translated and its legal liabilities for affordable housing providers. Likewise, the amendment will shift responsibility for providing language services from housing providers to HUD.**

Pursuant to Executive Order 13166, HUD published its final LEP guidance, "Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons" on January 22, 2007. The guidance is designed to help those persons who do not

speaking English as their primary language and who have a limited ability to read, write, speak or understand English. With the Guidance being placed into effect on March 7, 2007, strong opposition by a coalition of housing providers continues to stress how the potential damages to affordable housing can be caused by substantial unfunded costs, uncertain legal liabilities for housing operators and duplication of efforts across the industry.

Please let there be no misunderstanding: NAHMA whole-heartedly supports the goal of ensuring that persons with limited English proficiency have access to federal programs. Thousands of persons with limited English proficiency are already living in properties owned or managed by NAHMA members. It is *the methods* HUD has proposed to advance the goal which we find highly problematic. HUD's approach, in which affordable housing operators must provide translated documents and oral interpreters at their project's expense, exposes housing providers to open-ended costs and legal liabilities without improving the quality of housing for low-income persons with LEP.

Despite numerous inquiries from housing providers and members of Congress, HUD has been unable to answer basic questions about costs to affordable housing providers, or even which specific documents it expects owners to translate. HUD's guidance obligates each individual property to translate all of its vital documents (an estimated 30 to 50 documents at each property) into various foreign languages – as well as provide oral interpretation upon demand. Industry estimates suggest that translating only a handful of documents could cost \$10,000 per language per property. While HUD has stated that the translation costs would be an approved project expense, no new funding has been proposed to help offset this huge new financial burden. HUD's guidance is fraught with vagueness and duplication of effort. HUD has not provided a definitive list of "vital documents" to be translated. Owners must guess which documents would be considered "vital" in legal proceedings and then incur substantial costs to translate them at the project's expense. Similarly, responsibility will be placed on owners with no specialized linguistic skills to ensure competency of interpreters and accuracy of translations. **The widespread duplication of translation efforts across housing providers is a tremendous waste of federal resources, since each property will be paying to translate many of the same documents.** The likely result of this approach will be widely varying and inconsistent translations of documents even within the same language groups.

Persons with limited English proficiency would be better served if HUD took a more proactive role in providing the resources necessary to assist this population. The suggested duplicative efforts across the country by small, medium or large housing providers will never reach the efficiency or sensitivity of a service which can be provided by HUD at a much more reasonable cost overall to the federal budget, with an assured level of quality control, and without subjecting housing providers to unnecessary and unduly expensive Fair Housing complaints.

NAHMA is requesting support of a Section 8 Voucher Reform Act amendment to improve the final guidance. We believe a reasonable and effective LEP policy requires legislation redirecting responsibility from affordable housing operators to HUD for:

- Specifying a list of vital documents;
- Producing standard translations of those documents; and
- Providing oral interpretation services (through a central hotline service).

We are pleased that the House Committee on Financial Services Chairman Barney Frank has worked closely with the affordable housing industry, civil rights groups and other members of Congress in bringing about an effective amendment to satisfy the goals of both affordable housing managers and civil rights advocates.

### **NAHMA Supports Congressional Oversight to Improve the Timeliness of HUD's Housing Assistance Payments to Affordable Housing Operators**

**Please support hearings and/or legislation to ensure housing owners receive their rental subsidy (or HAP) payments from HUD on time.**

NAHMA is asking Congress to address a serious problem concerning the failure on the part of HUD to make timely rental subsidy payments to operators of privately-owned subsidized housing. Many affordable housing operators

across the country experience late housing assistance payments (HAPs) from HUD. The size of these late payments is often significant, and may jeopardize the financial viability of the properties.

In November 2005, the U.S. Government Accountability Office (GAO) released a report entitled, “Project-Based Rental Assistance: HUD Should Streamline Its Processes to Ensure Timely Housing Assistance Payments.” This report was requested by the bipartisan leadership of the House Financial Services Committee, in order to determine the extent to which HUD makes monthly housing assistance payments in a timely manner, the factors that affect the timeliness of the payments and the effects that payment delays have on project owners’ willingness to continue providing affordable housing. GAO made three recommendations to address the late payment problem, and HUD concurred. Specifically, GAO urged that HUD:

- Streamline and automate the contract renewal process;
- Develop systematic means to better estimate the amounts that should be allocated to project-based assistance contracts, monitor ongoing funding needs of each contract, and ensure that additional funds are promptly obligated to contracts when necessary to prevent payment delays;
- Notify owners promptly if payments will be made late and the date by which HUD expects to make the monthly payment to the owner.

Many of NAHMA’s members believe if HUD cannot or does not fix this problem, they should pay interest on the late HAP payments—just as the owners must pay a penalty for late mortgage payments.

We are grateful that the House Committee on Financial Services has placed this item on their oversight plan for the 110<sup>th</sup> Congress, and that the Committee plans to work with HUD to find a permanent solution to what has been a chronic problem. We are asking that members support Congressional hearings to examine HUD’s progress in implementing GAO’s recommendations to solve this problem. Additionally, if additional statutory or regulatory authority is needed to ensure HUD makes timely HAP payments – either in the short term to address funding shortfalls, or in the long term to address the chronic nature of the issue – please support legislation toward that end.

### **NAHMA Supports Improving Mechanisms to Offset Rising Utility Costs in Affordable Housing**

**As part of any effort to preserve HUD-assisted housing, please support legislation to implement a Recognized Increased Cost (RIC) proposal, which will provide real-time financial relief for properties experiencing unforeseen operating cost increases. Also, please consider statutory changes to the LIHTC program which will better position LIHTC properties to address rising utility costs.**

NAHMA is deeply concerned that skyrocketing increases in electricity, oil and natural gas costs are straining the operating budgets of affordable multifamily properties. While this problem occurs in both HUD-assisted and LIHTC properties, statutory and regulatory differences between the HUD and LIHTC programs require different solutions.

NAHMA led an industry coalition in requesting that HUD consider some type of “real-time” mechanism to adjust for unforeseen increases in operating costs (especially utility costs), so that properties are not pushed toward financial insolvency as they try to cover this basic need for residents. A sudden cost increase—such as a spike in utility costs, cleanup from a natural disaster, or an upward adjustment in insurance premiums—can occur many months before a property is eligible for a rent increase. Although in many cases HUD’s normal rent increase process could address the problem, the cash flow gap in the interim before the rent increase flows to the property could be disastrous. Even if a property has enough working capital to weather the short-term challenges until a rent increase is approved, similar risks apply over the longer term. The rent increase only recognizes costs going forward, so whatever resources the property consumed to stay afloat (such as replacement reserves, residual receipts, postponed capital improvements, or owner contributions) are gone forever, leaving the property more vulnerable going forward.

There are two parts to the overall problem of the rent increase lag:

- *Short-term* lack of cash to meet immediate needs; and
- *Long-term*, impairment in property health from accumulating lag effects.

To solve the short-term cash flow gap, NAHMA and industry partners proposed that HUD implement a Recognized Increased Cost (RIC) mechanism for addressing a defined set of emergency cost increases. The RIC is intended as an intra-year action that does not disrupt normal rent increase cycles. It is a solution HUD can use to provide timely, mid-cycle relief for operating cost increases, which if they had been known earlier, would have been included in the previous rent increase. RIC could be used to provide relief for costs covered by all of the OCAF factors. *Please ask HUD Secretary Alphonso Jackson about the status of RIC proposal, and encourage HUD to implement it quickly.*

For the Low Income Housing Tax Credit Program, a number of approaches could be used to ensure the properties remain financially viable, despite escalating utility costs. In the LIHTC program, the tenants' utility allowance (UA) is part of the gross rent formula. Also, maximum tax credit rents can not exceed 30 percent of 60 percent of area median income. When the UA increases, the rent to the owner decreases.

NAHMA looks forward to Department of Treasury – Internal Revenue Service's publication of a proposed rule for determining a more accurate utility allowance. This rule change was requested by a coalition of trade associations (including NAHMA) which represent owners and management agents involved with the LIHTC program. We agree that having a more accurate UA will often result in a lower UA for newer, energy efficient properties. We believe this change will improve the financial outlook for many struggling properties, and we look forward to the opportunity to submit comments.

In the long-term, NAHMA believes Congress should seriously examine statutory changes to the LIHTC program to help properties deal with increasing utility costs. Ideally, our members would like Congress to consider removing the UA from the rent equation. Other ideas for relief could include decoupling the maximum LIHTC rents from income limits (which are often stagnant), setting the UA at a fixed percentage at the time of underwriting for the property, or providing a rent increase tied to an objective indicator—such as the price of oil, or other means.

### **NAHMA Supports Updating the LIHTC Program to Allow Single-Parent Families to Pursue an Education**

**Please support S. 1241, a bill to correct unintended negative consequences that prohibits certain adults who are pursuing an education from receiving low income housing assistance.**

Households consisting entirely of full-time students are generally not permitted to live in LIHTC apartments. Only four narrow exemptions exist to this policy for families who are:

- Receiving Temporary Assistance to Needy Families (TANF);
- Enrolled in a federal, state or local job training program;
- Single parents and their children, *provided that such parents and children are not claimed as dependents of another individual*; or
- Married full time students who file a joint return.

While well-intentioned, these occupancy prohibitions for full-time student households have become an obstacle for low-income families trying to make a better life for themselves. Often, child support agreements allow non-custodial parents to claim their children as dependents on tax returns. Because the IRS counts children in grades K-12 toward the determination of whether family is a full-time student household, many custodial single parents who returned to school full-time become ineligible for LIHTC housing. Working adults trying to complete the requirements for a high school education have also been adversely affected.

Education enables low-income families to expand economic opportunities which will allow them to own a home or rent a market-rate apartment. Last Congress, S. 3941 was introduced to correct several unintended consequences of the LIHTC student occupancy rules. This year, S. 1241 seeks similar changes to ensure that single parents who have returned to school full-time with school-aged children are no longer disqualified from LIHTC eligibility just because the non-custodial parent claimed the children as dependents for tax purposes, or just because all of the children are in school. The three changes to the LIHTC program made by this bill would:

Specify that minor children in grades K-12 should not count toward the determination of who is a full time student household;

Strike the requirement that a single parent and their children must not have been claimed as dependents of another individual to qualify for the single parent with children exemption; and

Add a new exemption for working adults who are full-time students pursuing a high school diploma or GED

Therefore, we are respectfully requesting that you ask Financial Services Committee Chairman Barney Frank and Ways and Means Committee Chairman Charlie Rangel to include the language from S. 3941 or amended language from S. 1241 in the joint housing bill they intend to write.

#### **NAHMA Supports a Low Income House Tax Credit Utility Allowance:**

For the Low Income Housing Tax Credit Program, a number of approaches could be used to ensure the properties remain financially viable, as they struggle to deal with escalating utility costs. In the LIHTC program, the tenants' utility allowance (UA) is part of the gross rent formula. Also, maximum tax credit rents can not exceed 30 percent of 60 percent of area median income. When the UA increases, the rent to the owner decreases.

In the long-term, NAHMA believes Congress should seriously examine statutory changes to the LIHTC program to help properties deal with increasing utility costs. Ideally, our members would like Congress to consider removing the UA from the rent equation. Other ideas for relief could include decoupling the maximum LIHTC rents from income limits (which are often stagnant), setting the UA at a fixed percentage at the time of underwriting for the property, or providing a rent increase tied to an objective indicator—such as the price of oil, or other means.

#### **NAHMA Supports the Exit Tax Relief Proposals: H.R. 1491 and S. 1318**

In recent years, the affordable housing community has become increasingly concerned about the “exit tax” problem that exists as a result of the financing structures under which capital was raised many years ago to build federally assisted affordable housing. Today, owners face large tax bills if they sell the property, while at the same time are unable to boost returns by contributing more capital to the property. There is no incentive to make any further investment in the property, causing investors to hold their investment until death, and avoid recapture taxes by leaving the property to our heirs at a stepped up basis. This course of action results either in the age-related deterioration of the housing units, or in the conversion of such properties from affordable to market rate housing at a sufficient price to cover the exit taxes.

The legislation would waive the payment of depreciation recapture taxes if the affordable housing property is transferred to a qualified housing preservation entity that agrees to maintain the rent affordability restrictions for 30 years. In essence the bill would accelerate the stepped up basis that the property would receive upon the death of the investor for an agreement to keep the property affordable for another thirty years.

Please cosponsor H.R. 1491 (S. 1318), the Affordable Housing Preservation Tax Relief Act of 2007.