

September 11, 2009

The Honorable David Obey
Chairman
House Committee on Appropriations
H-218 Capitol
Washington, DC 20515

The Honorable Daniel Inouye
Chairman
Senate Committee on Appropriations
S-131 Capitol
Washington, DC 20510

The Honorable Jerry Lewis
Ranking Member
House Committee on Appropriations
1016 Longworth House Office Building
Washington, DC 20515

The Honorable Thad Cochran
Ranking Member
Senate Committee on Appropriations
S-146A Capitol
Washington, DC 20510

Dear Appropriations Committee Leaders:

We, the undersigned, represent affordable housing providers who participate in the Department of Housing and Urban Development's rental assistance programs. As the end of Fiscal Year (FY) 2009 approaches, we are writing to request that you address the following concerns in the FY 2010 appropriations cycle. It is our strong hope that the final Transportation-HUD appropriations bill will be enacted before October 1, 2009; however, if this deadline will not be met, we respectfully request that you address these urgent matters in the first continuing resolution for FY 10.

- **Providing full and timely funding for project-based Section 8 contract renewals.**

Historically, funding for project-based Section 8 contracts has been extremely unstable under continuing resolutions (CRs). The \$400 million HUD received as an advanced appropriation for FY 10 should help maintain stability under a short-term CR.

It is essential to ensure that HUD may continue obligating the full 12 months of funding for project-based Section 8 contracts at the time of renewal if the advanced appropriation is exhausted before HUD's final FY 10 budget is enacted. Therefore, we request that Congress provides HUD all additional funding necessary to renew contracts after the advanced appropriation has been exhausted and until HUD's final FY 10 appropriations are in place. Likewise, it is imperative that HUD receives specific authority to obligate funding for FY 10 at an accelerated rate to enable the government to meet its contractual obligations. Such authority was provided in the Consolidated Security, Disaster Assistance and Continuing Appropriations Act, 2009 (H.R. 2638, P.L. 110-329). P.L. 110-329 allowed HUD to fund project-based Section 8 contracts at a rate the Secretary determined was necessary to renew all terminating or expiring contracts in a timely manner. In renewing such contracts, HUD could obligate payments beyond the period covered by the CR.

- **Waiving reporting requirements for multifamily property owners who received project-based section 8 contract funding from the American Recovery and Reinvestment Act (ARRA).**

Congress used ARRA as a vehicle to cover HUD's \$2 billion budget shortfall on *existing* project-based Section 8 contracts. These appropriations were used to meet the Department's

contractual obligations to provide a full 12-month subsidy for its 12 month HAP contracts with multifamily property owners. We believe the legislative intent and valid policy considerations justify exempting affordable housing providers who received ARRA's project-based Section 8 funding from the Act's Section 1512 and Section 1609 reporting requirements.

- **Providing \$6.6 million for HUD to complete lead-based paint risk assessment reimbursements for multifamily properties which enrolled in the "Big Buy" program.**

We are asking Congress to require that HUD honor its previous commitment to pay for risk assessments in project-based Section 8 housing. An additional \$6.6 million is needed to reimburse owners for the cost of lead-based paint risk assessments in the remaining 200 eligible properties. These resources could be provided in new appropriations or by requiring HUD/ the Office of Healthy Homes and Lead Safe Housing to use existing funds to complete the risk assessment reimbursements.

- **Securing \$500,000 to continue HUD's Limited English Proficiency technical assistance program.**

HUD used previous years' appropriations to translate a number of vital agency documents into multiple languages. We strongly support continued funding for new translations, updates to documents when necessary and additional services to assist persons with LEP, such as a toll-free hotline for oral interpretation. We strongly support the \$500,000 for LEP technical assistance provided in the Senate's version of HR 3288, and ask that it be retained in the final FY 10 Transportation-HUD Appropriations Act.

Background on each of these issues follows. Please feel free to direct questions about these requests to Michelle Kitchen, Director of Government Affairs for the National Affordable Housing Management Association, michelle.kitchen@nahma.org . Thank you for your consideration.

Sincerely,

American Association of Homes and Services for the Aging
Institute of Real Estate Management
Council for Affordable and Rural Housing
National Affordable Housing Management Association
National Apartment Association
National Association of Affordable Housing Lenders
National Association of Home Builders
National Leased Housing Association
National Multi Housing Council

cc: The Honorable John Olver
The Honorable Patty Murray
The Honorable Tom Latham
The Honorable Christopher Bond
All Members of the House Appropriations Committee
All Members of the Senate Appropriations Committee

Providing Full and Timely Funding for Project-Based Section 8 Contract Renewals

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 “incremental” or partial funding of the housing assistance payment (HAP) subsidy contracts. Unreliable funding compromised housing providers’ ability to manage properties effectively, diminished confidence in the federal commitment to the program, and wasted administrative time for the HUD staff who had to reprocess the funding several times for the same contract.

Congress has taken decisive action to fully fund the 12-month terms of project-based Section 8 contract renewals. The American Recovery and Reinvestment Act (HR 1, PL 111-5) directed \$2 billion specifically to help fund the 12-month terms of project-based Section 8 contracts. Likewise, the FY 09 Omnibus Appropriations Act (HR 1105, PL 111-8) provided \$6.87 billion for contract renewals, plus \$400 million in advanced appropriations for FY 2010. Finally, each of the FY 10 Transportation-HUD appropriations bills proposes full funding for the 12-month HAP contracts.

Historically, funding for project-based Section 8 contracts has been extremely unstable under continuing resolutions (CRs). During the term of the CR, Congress typically provides funds for the current fiscal year at the previous year’s level divided into 12-month increments. The problem with this pay out rate was that it did not correlate to the number of contracts that needed to be funded during the term of the CR, and it did not account for the processing time between enactment of the CR and receipt of the money by the property owner. As a result, affordable housing providers experienced late subsidy payments, or only partial payments on their contracts.

It is imperative to continue stable, uninterrupted and timely funding for project-based Section 8 contracts. We understand that HUD is currently examining how to best utilize the \$400 million advanced appropriation under a continuing resolution. We respectfully request that the Appropriations Committees work closely with HUD to ensure project-based Section 8 contracts in FY 10 are fully-funded at the time of renewal. We strongly urge the Committees to provide the necessary legislative flexibility and funding to achieve this goal on the first continuing resolution. We also ask the Committees to consider that it takes several weeks for the appropriations to move through the Administration before they reach the properties.

It is essential to ensure that HUD may continue obligating the full 12 months of funding for project-based Section 8 contracts at the time of renewal if the advanced appropriation is exhausted before HUD’s final FY 10 budget is enacted. Therefore, we request that Congress provides HUD all additional funding necessary to renew contracts after the advanced appropriation has been exhausted and until HUD’s final FY 10 appropriations are in place. Likewise, it is imperative that HUD receives specific authority to obligate funding for FY 10 at an accelerated rate to enable the government to meet its contractual obligations. Such authority was provided in the Consolidated Security, Disaster Assistance and Continuing Appropriations Act, 2009 (H.R. 2638, P.L. 110-329). P.L. 110-329 allowed HUD to fund project-based Section 8 contracts at a rate the Secretary determined was necessary to renew all terminating or expiring contracts in a timely manner. In renewing such contracts, HUD could obligate payments beyond the period covered by the CR.

Waiving Reporting Requirements for Multifamily Property Owners who Received Project-Based Section 8 Contract Funding from the American Recovery and Reinvestment Act

The American Recovery and Reinvestment Act (ARRA, PL 111-5) appropriated \$2 billion to fund the 12-month terms of project-based Section 8 contracts. Congress directed that HUD use these funds to alleviate the chronic budget shortfalls that resulted in late or partial subsidy payments to owners. This funding was absolutely necessary to restore owners' confidence in the program, and to allow sound operation of the affected properties.

ARRA included substantial reporting requirements for all agencies and "recipients" of the stimulus money. Section 1512 of the Act requires recipients to report about their project plan, the number of jobs created, salaries of their highest paid employees, and other data. Recipients must fill out the Section 1512 reports between October 1 and 10, 2009. Also, recipients must submit data on a quarterly basis. A separate mandate under Section 1609 requires recipients to report on environmental impact studies done for ARRA-funded projects.

At issue is who should be considered the "recipient" of ARRA's project-based Section 8 appropriations. We understand that HUD headquarters is still working through the specifics of how to apply the reporting requirements. However, a number of our members have been informed by HUD field staff that 6300 HUD properties will be required to comply with ARRA reporting requirements because HUD used a portion of the \$2 billion to fund their contract shortfalls. We strongly believe that HUD, rather than multifamily property owners, should be considered the "recipient" of the project-based Section 8 stimulus funds for purposes of the ARRA reporting requirements.

We are requesting legislative clarification that owners who received project-based Section 8 HAP funding from the ARRA appropriations are not subject to the Section 1512 and Section 1609 reporting requirements. There are a number of policy distinctions between ARRA's project-based Section 8 appropriations and other funding opportunities under the bill. First, owners did not apply to receive these Section 8 funds. These funds were never intended to be competitively awarded through an application process. Likewise, the Section 8 appropriations were not used to fund a new program. HUD was instructed to use these appropriations to cover budget shortfalls in an existing program which had been chronically underfunded. These funds were used to meet the Department's *existing contractual obligations* to provide a full 12 months of subsidy for its 12-month HAP contracts with multifamily property owners. We believe the legislative intent and valid policy considerations argue against subjecting affordable housing providers who received ARRA's project-based Section 8 funding to the Section 1512 and Section 1609 reporting requirements.

Providing \$6.6 Million for HUD to Complete Lead-Based Paint Risk Assessment Reimbursements for Multifamily Properties which Enrolled in the "Big Buy" Program

On September 15, 1999, HUD published a new regulation to streamline, modernize and consolidate all lead-based paint requirements in federally-assisted housing and housing being sold by the federal government to ensure that children are adequately protected from lead poisoning. The rules apply to housing built before 1978, the year lead-based paint was banned nationwide for consumer use. Specific requirements depend on whether the housing is being disposed of or assisted by the federal government, and also on the type and amount of financial assistance, the age of the structure, and whether the dwelling is rental or owner-occupied. The effective date of the regulation, "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance," was September 15, 2000.

On September 11, 2000, HUD published a Transition Assistance Policy to aid in the implementation of the new regulation. The Department's Transition Assistance Policy included a commitment by HUD to pay for lead-based paint inspections and risk assessments in project-based Section 8 housing. HUD developed this program to enable owners of housing receiving project-based Section 8 assistance to determine whether or not their units are free of lead paint and where any lead-based paint hazards exist, if any. HUD's Real Estate Assessment Center (REAC) contracted for these inspections and assessments, and HUD invited project-based housing owners to participate in this free inspection service. HUD issued several extensions for interested owners to apply for this first "Big Buy" program. The last opportunity for owners to enroll under the initial program was September, 2003.

Although HUD received funding to conduct these activities, the Department did not fulfill its commitment to complete the lead paint inspections and risk assessments. Many housing providers who enrolled their properties in the Big Buy waited for years without receiving the promised assistance. The program languished because HUD claimed all available funds for the Big Buy were expended.

Then, Congress appropriated \$2 million for the Big Buy program in the FY 08. These funds were to be administered by the Office of Healthy Homes & Lead Hazard Control (OHHLHC). In March 2009, OHHLHC announced substantial changes to the program. First, HUD would no longer directly pay for the properties' risk assessments. Owners would be invited to apply for reimbursement of the risk assessment costs, up to a maximum of \$525 per unit. Secondly, HUD made a policy decision to narrow down the list of eligible properties which would qualify for the Big Buy program. To be considered for financial assistance, an owner must receive a letter from HUD *inviting* the enrollment of a specific property in the Big Buy Reimbursement Program. Priority is determined by the property's age and REAC score. Owners of selected properties have until September 30, 2009 to have a certified lead risk assessor perform the risk assessment and submit the report for reimbursement. *In other words, HUD's "new" Big Buy program would reimburse owners of a limited number of properties for some or all the cost associated with obtaining the required lead hazard risk assessment.*

HUD has narrowed the list of properties it considers eligible for the Big Buy to 309. The Department removed properties from the list which have been designated as elderly, receive under \$5,000 in federal subsidies per unit per year, or are post-1978 properties. However, the \$2 million appropriation will not be sufficient to complete reimbursements for the risk assessments on all 309 properties. At the current level of funding, 200 of the eligible properties would not be reimbursed. An additional \$6.6 million would be necessary to complete the risk assessment reimbursements for these properties.

Unless Congress acts swiftly, owners who enrolled in the initial Big Buy program and acted in good faith will be required to complete these risk assessments at their own expense with no reimbursement. We consider this a breach of faith on HUD's part. Therefore, we are asking Congress to require HUD to honor its previous commitment through the Big Buy program for the remaining 200 eligible properties. This could be achieved by either providing an additional \$6.6 million appropriation or by requiring HUD/ the Office of Healthy Homes and Lead Safe Housing to reprogram existing funds to complete the risk assessments.

Securing \$500,000 to continue HUD's Limited English Proficiency (LEP) technical assistance program.

Beginning in FY 08, Congress appropriated funds "for the creation and promotion of translated materials and other programs that support the assistance of persons with limited English proficiency in utilizing the services provided by the Department of Housing and Urban Development." Congress insisted that HUD take the lead on producing standardized translations to ensure that residents/applicants with LEP had a reasonable assurance of quality translations, regardless of whether they were interested in a large, small, city, suburban or rural HUD property, and without regard to the property's financial resources. We strongly believe HUD should continue to provide technical LEP assistance to multifamily owners/agents/ public housing agencies, etc. as a way to continue the Department's leadership role in affirmatively furthering fair housing.

HUD used previous years' appropriations to translate a number of vital agency documents into multiple languages. We strongly support continued funding for new translations, updates to documents when necessary and additional services to assist persons with LEP, such as a toll-free hotline for oral interpretation. Therefore, we respectfully request including the \$500,000 for LEP technical assistance provided in the Senate's version of HR 3288 in the final FY 10 Transportation-HUD Appropriations Act.