

Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

National Affordable Housing Management Association – 400 N. Columbus Street, Suite 203 - Alexandria, VA 22314
Phone 703-683-8630 - Fax 703-683-8634 - www.nahma.org



December 20, 2010

NAHMAanalysis-2010-1220

H.R. 6468: Rental Housing Revitalization Act of 2010

Background

In February 2010, HUD submitted its FY 2011 budget request to Congress. Within this budget request, HUD proposed a \$350 million Transforming Rental Assistance (TRA) initiative. The proposal would have allowed HUD to begin voluntarily consolidating its 13 separate rental assistance programs. The first stage of TRA would offer public housing and private owners of RAP, Rent Supp, and old Mod Rehab properties the option of voluntarily converting to long-term project-based rental assistance that includes a resident mobility feature. However, statutory changes were required in order to implement this proposal.

A few weeks after the release of the FY 2011 budget request, NAHMA signed on to an industry letter addressing the industry's concerns over moving from a well-established project-based rental assistance program to an undefined hybrid of housing choice vouchers and project-based assistance.

HUD Secretary Shaun Donovan testified before the House Appropriation Committees on the FY 2011 budget request and this proposal on February 23, 2010. During this hearing, he explained that TRA is intended to simplify and streamline the delivery of rental assistance to tenants to reduce the costs of operating the programs, make the programs easier to use, encourage leveraging of private capital, and encourage resident choice and mobility. Both Democrats and Republicans voiced their concerns during these hearings about the feasibility of tenant mobility and beginning new programs through the appropriations process that have not been authorized through the normal means.

On May 12, 2010, HUD released its initial draft legislation to implement its Transforming Rental Assistance (TRA) Initiative proposed in HUD's FY 2011 budget request and its FY 2010-2015 Strategic Plan. It was called the Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010 (PETRA). HUD stated the bill would help public housing sustain operations and leverage private financing to address capital needs and to implement energy-efficiency improvements. The Department also believed it would provide a means to preserve public housing, as well as the RAP, Rent Supp, and Mod Rehab properties.

On May 25, the House Financial Services Committee held a hearing on HUD's draft PETRA bill. Testimony was given by HUD Secretary Shaun Donovan and a number of industry stakeholders. NAHMA drafted and submitted an industry letter stating our concerns with PETRA for the record of this hearing.

Both Republicans and Democrats on the Committee expressed serious concerns with the draft legislation, specifically regarding treatment of public housing in the case of foreclosure, the overall cost of the conversions, and the resident mobility feature. Reps. Barney Frank (D-MA) and Maxine Waters (D-CA) expressed apprehension over the legislative language regarding the treatment of public housing in cases of bankruptcy and foreclosure. They felt that this provision could result in the privatization of existing public housing. Rep. Nydia Velasquez (D-NY) also raised her concerns over the possibility HUD could expand the conversions to Section 8 and other federally-assisted programs. She also discussed her worries that the resident mobility feature would negatively affect current housing waiting lists. Finally, Rep. Carolyn McCarthy (D-NY) wanted to ensure that consolidation would not interrupt services to the disabled and the elderly.

All of the industry stakeholders—which included PHAs, privately-owned affordable housing, and tenants groups—also expressed their concerns with the legislation as written. Thomas Gleason, the Executive Director of MassHousing, testifying on behalf of the National Council of State Housing Agencies, and Betsey Martens, the Senior Vice President of the National Association of Housing and Redevelopment Officials, testified that the Project-Based Section 8 program was a better conversion option than PETRA for public housing and RAP, Rent Supp, and Mod Rehab. National Leased Housing Association (NLHA) President Terri Preston Koenig, speaking for the multifamily housing industry, called the legislation too broad, ill-conceived, and unrealistic in its scope.

Since May, NAHMA has met extensively with Multifamily DAS Carol Galante, other HUD officials, and Congressional members' staff to discuss our reservations about HUD's draft PETRA legislation.

Summary

In late October 2010, HUD began circulating a revised draft of PETRA, which Representative Keith Ellison (D-MN) introduced as H.R. 6468, the Rental Housing Revitalization Act (RHRA), on December 1, 2010. The Ellison bill makes some significant changes to HUD's initial proposal released last May.

RHRA offers the PETRA's voluntary conversion option for public housing and privately owned RAP, Rent Supp, and old Mod Rehab properties to long-term project-based rental assistance. RHRA, like PETRA, includes a resident mobility feature. Under the legislation, Congress would be required to give statutory approval to expand RHRA to other programs. Section 8 owners could voluntarily convert their contracts to RHRA, unless they request to renew under MAHRA.

The legislation includes a first right of purchase by HUD for converted properties, a more detailed explanation on the resident mobility feature, and an expansion/streamlining of tenants

rights in federally-assisted housing programs. The streamlining efforts include the release of building and management information to tenants' organizations, similar to Section 304 from H.R. 4868, the Housing Preservation and Tenant Protection Act.

The 111th Congress will not consider this legislation. Ellison plans to introduce RHRA again in the 112th Congress. However, while the Republicans control the House, H.R. 6468's consideration and passage is uncertain.

For a copy of RHRA as introduced by Rep. Ellison, click here:
<http://www.nahma.org/Leg%20area/Ellison%20HR%206468%20RHRA.pdf>

For a copy of the original PETRA legislative language released by HUD in May 2010, click here: <http://www.nahma.org/Leg%20area/PETRA%20-%20Bill%20Text%202010-05-11.pdf>

For a copy of the Section by Section summary of the original PETRA proposal released by HUD in May 2010, click here: <http://www.nahma.org/Leg%20area/PETRA%20-%20Sectional%20Analysis%202010-05-11.pdf>

H.R. 6468: Rental Housing Revitalization Act (RHRA)

	PETRA	RHRA
Eligible Properties for Converted Rental Assistance	PETRA allows HUD to convert rental assistance to a new property-based contract or project-based voucher contract for the following approved programs: Section 8 (including Mod-Rehab), public housing, RAP, Rent Supp, and other federally subsidized housing programs as identified by HUD notice.	RHRA allows HUD to convert rental assistance to a new property-based contract or project-based voucher contract for the following approved programs: Section 8 (not including Mod-Rehab) except when an owner requests to renew under MAHRA, public housing, RAP, Rent Supp, and other federally subsidized housing programs as approved by statute. This would be titled Section 8(l) in the statute.
Mortgage Default	n/a	HUD may suspended a portion or all of a converted property's rental assistance and use that money to help cure the default.
Foreclosure or Bankruptcy	New owners of converted properties or properties with contracts/agreements funded by HUD after the enactment of this legislation would be subject to the requirements of any rental assistance contracts and their extensions, leases, and use agreements, unless the owner plans to use the property as a primary residence.	This sections would only apply to converted properties, not to additional properties with contracts/agreements funded by HUD.

<p>HUD’s First Right of Purchase</p>	<p>HUD and tenants must be notified at least one year in advance if the property owner decides not to renew or extend the rental assistance at the property converted by RHRA.</p> <p>Properties (public housing, Rent Supp, and RAP) that convert their contracts under this legislation would be required to offer their building for purchase to HUD or its assignee at the end of the contract if the owner decides not to renew its contract with HUD or decides to sell the property.</p> <p>Converted properties [outside of public housing, Rent Supp, and RAP] may voluntarily agree with HUD to a first right of purchase.</p> <p>HUD’s right of purchase does not apply to a property if the government is taking it under eminent domain or a negotiated purchase in lieu of eminent domain, the new owner will preserve the affordability of the property, or the assistance is transferred to another property.</p>	<p>There is no language in this section that would require owners to sell their converted property to HUD when they do not plan to renew their rental assistance contract. The language, otherwise, is the same as in PETRA.</p>
<p>Section 8(m) Streamlining</p>	<p>PETRA authorizes HUD to provide the resident choice option and streamline/transform HUD policies across HUD’s entire affordable housing portfolio.</p> <p>Policies for streamlining include: resident choice/mobility, tenant organization rights, applicant and tenant procedural rights, furthering fair housing, administering rental assistance, physical condition standards, properties in foreclosure or bankruptcy, and enforcement procedures.</p>	<p>RHRA states the resident choice and streamlining authority is limited to converted properties and project-based voucher contracts only.</p> <p>In addition to policies PETRA would streamline, RHRA also includes resident access to building information; and additional regulations for small and partially assisted properties.</p>
<p>Section 8(m) — Resident Mobility</p>	<p>Residents of HUD assisted project-based properties and converted properties receiving project-based rental assistance may move after</p>	<p>Only tenants residing in converted properties would be eligible for the resident mobility option. The rest of this section is similar to PETRA.</p>

	<p>residing in the property for two years.</p> <p>Residents would continue to receive rental assistance under PETRA, subject to resources available, through housing choice vouchers (HCV). Under this proposal, PHAs could give up to 1/3 of housing vouchers available—due to turnover—to families in converted units who want to exercise resident mobility. New vouchers could also be made available for the resident choice option depending on resources available, such as appropriations.</p> <p>PHAs are permitted to create a waiting list for families who want to exercise this option. Properties would continue receiving project-based assistance when a resident moves with a HCV.</p>	
<p>Section 8(m)— Enforcement</p>	<p>HUD would have new authority to enforce rental assistance contracts, statutory obligations, regulations, and use agreements. For example, HUD would be allowed to take legal action in U.S. District Courts to obtain a monetary judgment or other relief against parties to rental assistance contracts. HUD would also be allowed to terminate and transfer assistance from properties that violate their applicable requirements or default on conditions within the use agreement or rental assistance contract. HUD may impose civil monetary penalties on parties that fail to comply with their use agreements and contracts. Liable parties include owners as well as management agents.</p>	<p>This section applies across most HUD assisted programs, including project-based Section 8, regardless of conversion.</p> <p>The language defining liable parties as owners and management agents has been removed.</p> <p>Additional non-monetary penalties have been added for public housing authorities that require enforcement mechanisms.</p>
<p>Section 8(m) — Resident Access to Building Information</p>	<p>n/a</p>	<p>This section applies across most HUD assisted programs, including project-based Section 8, regardless of conversion.</p> <p>Tenant’s associations would be allowed to request building information, including:</p>

		<ul style="list-style-type: none"> • Information identifying the legal entities that own and manage the property, including identification of general partners and other principals; • An annual operating statement of profit and loss of the ownership and management entities; • Any subsidy contracts and regulatory agreements, use agreements, or other contracts between the ownership entities and HUD, including related non-privileged correspondence between such ownership entities and HUD; • Any management reviews conducted by HUD or its contractor; and • An annual statement on the properties' balances, expenditures, replacement reserves, and escrow funds prepared by the property's contract administrator. <p>The release of the above information would “be subject to the applicability of all laws and regulations governing proprietary information, privacy rights, privileges, and other established legal protections for individuals and entities” (<i>Section (2)(G)(ii) under Section 8(m)</i>). The language specifically states that this would not require the “disclosure of social security numbers, personal tax returns, or any other personal financial information of or concerning individuals who have an interest in the ownership or management entities” (<i>Section (2)(G)(ii) under Section 8(m)</i>).</p>
Section 8(m) — Streamlining of Regulations	n/a	<p>This section applies across most HUD assisted programs, including project-based Section 8, regardless of conversion.</p> <p>HUD may establish streamlined review and compliance requirements for small or partially assisted properties regardless of the form of assistance provided.</p>

Section 8(m) — Appropriations Authorization	PETRA authorizes \$350 million in appropriations for FY 2011 and sums as necessary for FY 2012-2015.	Similar to PETRA.
Property-Based Contracts	PETRA authorizes HUD to enter into long-term property-based contracts for rental assistance for properties converted the legislation, subject to annual appropriations.	Similar to PETRA. This would be titled Section 8(n) in the statute.
Contract Renewals	<p>Privately-owned housing that converts to the new project-based contracts must accept an affordability extension, which must be the greater of the remaining term of the existing use restriction at the time of conversion or the term of the new contract, whichever is longer. The initial HAP contract for converted properties, which are not public housing, would be at least equal to the remaining term of the legacy contract or it may have a term up to 20 years. Renewal of the contracts for PHAs or private owners are subject to the availability of appropriations.</p> <p>HUD would have the authority to write language into the project-based contracts that could require owners and successors to accept contract extensions for the life of the property.</p>	Similar to PETRA. However, HUD would NOT have the authority to write language into the project-based contracts that could require owners and successors to accept contract extensions for the life of the property. Owners would need to request HUD to approve contract extensions or renewals beyond the initial HAP contract.
Rent Setting	<p>Rents could not exceed comparable market rents above 110 percent of FMR without HUD approval. However, HUD may approve or determine lower rents for a unit below the fair market rent “if such rent is sufficient to meet the financial and physical sustainability needs of the property.”</p> <p>HUD may also set exception rents for the units above 110 percent of FMR in order to “meet the financial and physical sustainability needs of the property” and if the property meets HUD’s preservation criteria. Exception rents could not exceed the greater of 110 percent of FMR or 120 percent of</p>	<p>Similar to PETRA; however, HUD would no longer be allowed to approve or determine rents below the FMR for the unit.</p> <p>Now, the owners must request rents below the FMR from HUD. HUD could approve the rent “if such rent is sufficient to meet the financial and physical sustainability needs of the property.”</p> <p>This section would also allow rent setting to be done under MAHRA.</p>

	<p>comparable market rents.</p> <p>Converted properties’ rents would be adjusted annually based on an index to reflect the changes in multifamily rents and would be re-benchmarked to market at least every five years.</p>	
Tenant Selection	<p>Households living in the units at the time of conversion and low-income families with incomes not greater than 80 percent of the area median income are eligible for the converted properties. At least 40 percent of new admissions to the converted properties each year must be extremely low-income, i.e. incomes not greater than 30 percent of area median income. Owners must honor pre-conversion waiting lists and could maintain site based waiting lists or a single waiting list for multiple properties. Owners would screen and select families.</p>	<p>Similar to PETRA; however, HUD may establish policies to “permit applicants on the tenant-based voucher waiting list whose receipt of assistance is delayed due to the resident choice option... to be placed on a waiting list for applicants for housing assistance” for converted and Mod Rehab properties in Section (6)(A)(ii) in the new Section 8(n).</p>
Amendments to Project-Based Voucher Contracts	<p>PETRA allows up to 20 percent of the units assisted by the agency to receive project-based vouchers (PBV). This may be increased to 25 percent if at least 5 percent of those units are used for supportive housing or in locations where vouchers are difficult to use.</p> <p>Agencies may attached project-based vouchers on up to 40 percent of the dwelling units that have been converted under the proposals in this legislation or provide housing exclusively to elderly or disabled populations.</p> <p>Property waiting lists for PBV holders that exist prior to the property conversion may be used after the conversion. PETRA also streamlines the contract terms and rents for PBVs in line with the new Section 8(n) contracts’ HAP rents.</p>	<p>Similar to PETRA. This would be titled Section 8(o) in the statute.</p>

Positive Aspects

H.R. 6468 has made several language improvements over PETRA, as introduced in May 2010. First, RHRA focuses on improving the voluntary participation aspect of the property conversions by ensuring that Section 8 owners may request to renew under MAHRA and are not required to accept the new 8(n) contracts. The renewal guarantee under MAHRA was not included in PETRA.

Second, RHRA requires a statutory change to allow conversion of contracts of other federal housing programs to the new Section 8(n) contracts. PETRA allowed HUD to include new programs by notice.

Next, RHRA seems to preserve some control for the owner, where PETRA leaned in favor of HUD. PETRA would have allowed HUD to obligate owners and their successors in interest to contract extensions and renewals. Under RHRA, owners of converted properties must request HUD to extend or renew the contracts. HUD may not do it on their own.

In PETRA, HUD was allowed to approve those rents below the FMR without consulting the owner. However, RHRA includes language to allow HUD to approve or determine lower rents for a unit below the fair market rent **upon the owner's request** "if such rent is sufficient to meet the financial and physical sustainability needs of the property."

HUD still believes H.R. 6468, although altered somewhat from their initial TRA proposal under PETRA, will allow PHAs an opportunity to leverage much needed capital. HUD estimated the conversion will bring about \$7 billion in additional capital and \$27 billion in total capital to PHAs to help cover the costs of rehabilitation and other property needs. About half to three-quarters of PHAs will be able to leverage \$25,000-\$40,000 in private capital per public housing unit to cover the costs of rehabilitation and other needs. The rest of the PHAs will be able to leverage about \$10,000 per unit on average in private capital. Nevertheless, HUD has explained that some PHAs would not be able to leverage additional capital at all under the conversion program. HUD also believes the legislation offers a way to preserve the "orphan" multifamily housing programs: RAP and Rent Supp.

NAHMA Concerns

While we support the goals of streamlining HUD's rental assistance programs, we are extremely concerned by the potential impact H.R. 6468 would have on the privately owned multifamily housing stock. Although the language in the first paragraph of Section 4 says streamlining would only apply to converted properties, certain individual streamlining provisions—such as the release of information to tenants, sweeping new enforcement powers for HUD, and allowing HUD to establish streamlined review and compliance requirements for small or partially assisted properties, regardless of the form of assistance provided—themselves apply to properties beyond those converted. We believe that this authority will result in new administrative burdens and further complicate the management of affordable housing.

Although NAHMA understands HUD's first round of program conversions is limited under RHRA, we are concerned by findings in the bill that indicate HUD's intention to eventually

streamline all 13 rental assistance programs. From a purely philosophical standpoint, NAHMA believes that it makes no sense to convert the established project-based Section 8 program to a new one with new rules; the current project-based Section 8 program is effective and functions well. We believe merging the program with HUD's new hybrid rental assistance-program will destabilize the known project-based Section 8 program in the financial markets. Furthermore, we still do not believe that RHRA, as written, offers enough incentives for property owners to participate in the conversion process considering the large number of new rules and regulations attached to the conversion contracts, including the first right of purchase by HUD.

NAHMA is also concerned with the problems posed by the voluntary conversion to Section 8(n) property-based assistance contained in the TRA initiative, detailed in RHRA. Voluntary conversion will not help streamline the rental assistance programs if properties decided not to participate. True streamlining can only be achieved through mandatory contract conversions.

Within the legislation itself, we are extremely troubled by the inclusion of resident access to building information for converted properties and a number of multifamily programs. NAHMA strongly opposed this provision in Section 304 in H.R. 4868, the Housing Preservation and Tenant Protection Act, and we strongly oppose this provision here. While the RHRA language seeks to achieve a balance between tenant access to information and preserving individuals' organizations' rights to private and proprietary information, the bill contradicts itself. The legislation instructs HUD to release what has been considered confidential and proprietary information in a manner consistent with unspecified laws governing proprietary and private information. The language creates confusion and uncertainty with what can and cannot be released. Furthermore, we continue to strongly oppose the release of the owner and agents' statement of profit and loss; we consider this confidential business information. NAHMA also continues to oppose the requirement for HUD to release contracts and sensitive property information such as management review reports. Releasing such information in the absence of a bona fide purchase offer is contrary to standard real estate practice. NAHMA would recommend this section be struck from the bill in its entirety.

NAHMA is still concerned over the inclusion of a first right of purchase for converted properties. We feel including this as a requirement of converting a contract will discourage property owners from participating in the program, which is contrary to HUD's goals of rehabilitation and preservation of the existing portfolio. In addition, the legislative language states, "For other covered properties [outside of public housing, RAP, and Rent Supp that choose to convert their contracts], the Secretary and owner may agree to be bound by this subparagraph [on what properties are subject to the first right of purchase]." Although the legislation appears to allow for an exemption from the first right of purchase for privately-owned properties that convert their contracts, we continue to oppose the first right of purchase on principal. In addition, we understand this section will score significantly high on CBO cost estimates, which is a non-starter for the Republicans who will control the House in the 112th Congress. A similar section in H.R. 4868 was changed allowing state agencies to have the first right of refusal because this section was cost prohibitive.

NAHMA is still unsure how HUD will fulfill the resident mobility provision in a way that is fair to all persons waiting for a voucher, despite the changes RHRA has made to the initial PETRA proposal.

NAHMA Position

NAHMA is committed to working with HUD and Congress to ensure affordable housing units are preserved; however, we do not support the approach proposed in H.R. 6468. Like PETRA, the RHRA language still gives HUD the authority to make broad and far-reaching decisions that could destabilize existing programs that work well, like project-based Section 8. Furthermore, we believe there are not enough incentives for project-based Section 8 properties to convert to the new assistance and no efficiencies to be achieved through the conversion.

Nevertheless, NAHMA strongly urges HUD to continue engaging the public housing community to develop workable recapitalization and preservation strategies. Public housing, Rent Supp, and RAP units are important resources that should be preserved as affordable housing. On the other hand, we also feel that the RAP and Rent Supp units could be easily and efficiently preserved by allowing owners to convert the units to the current project-based Section 8 program as proposed in Section 101 of H.R. 4868—The Housing Preservation and Tenant Protection Act.