

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

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## **Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010**

### **Background**

In February 2010, HUD submitted its FY 2011 budget request to Congress. Within this budget request, HUD proposed the creation of the Transforming Rental Assistance (TRA) initiative and asked Congress to provide \$350 million to fund it. The proposal allows 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 are 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 and Senate Appropriations Committees on the FY 2011 budget request and this proposal. During these hearings, 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 25, the House Financial Services Committee held a hearing on HUD's draft TRA legislation, the Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010 (PETRA). 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 as written for the record of this hearing.

Both Republicans and Democrats on the Committee have 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 option than PETRA to which to convert public housing and the three privately-owned programs identified by HUD. 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. She believed HUD should focus on improving public housing only and leave the privately-owned portfolio alone.

## **Summary**

On May 12, 2010, HUD released its 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. This legislation is called the Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010 (PETRA). According to HUD, PETRA would help owners voluntarily convert public housing and privately owned RAP, Rent Supp, and old Mod Rehab properties to long-term project-based rental assistance, which includes a resident mobility feature. HUD has stated the intentions of the bill include helping public housing sustain operations and leverage private financing to address capital needs and implementing energy-efficiency improvements. They also believe it offers the means to preserve public housing, as well as the RAP, Rent Supp, and Mod Rehab properties. Under the legislation, HUD would have the authority to expand the conversions to other rental assistance programs in the future.

The legislation also 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.

For a copy of the entire legislative language, 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, click here:

<http://www.nahma.org/Leg%20area/PETRA%20-%20Sectional%20Analysis%202010-05-11.pdf>

## **PETRA Draft Legislation**

### *Sections 1 & 2*

Sections 1 and 2 of the bill introduce the contents and layout the reasoning behind the need for HUD to streamline its rental assistance programs.

### *Section 3*

#### *Part 1*

Section 3 of the legislation authorizes TRA under a new Section 8(m) of the United States Housing Act of 1937. The first part of this section gives HUD the authority to streamline policies across the rental assistance programs. As the legislation is drafted, streamlining authority is **NOT** limited to properties that convert to the new long-term project-based contracts authorized in this legislation. Policies for streamlining include: resident choice, 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. Properties eligible for conversion include: public housing, Section 8 (including Mod Rehab), Rent Supp, RAP, and other Federal affordable housing programs as identified by HUD. The legislation also authorizes \$350 million in appropriations for FY 2011 and sums as necessary for FY 2012-2015.

Section 3 describes HUD's plans for resident mobility, which HUD calls the resident choice option. Under this legislation, residents of converted properties, and potentially other properties receiving project-based rental assistance, may move after residing in the property for two years. These residents would continue to receive rental assistance, subject to resources available, through housing choice vouchers (HCV). Under this proposal, PHAs could only give up to 1/3 of housing vouchers available—due to turnover—to families who want to exercise resident mobility. However, PHAs may 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. The current rights of residents of units with project-based voucher assistance to move after one year with the next available voucher would not change. This section would also require education materials to be provided to tenants to explain the resident mobility feature.

The legislation would streamline tenant rights across HUD's programs. All PHAs and private owners receiving funding from a rental assistance program must recognize legitimate tenant organizations and consider the concerns they raise. Furthermore, a portion of rental assistance renewal funding may be given to tenants to help facilitate tenant organization.

Applicants and tenants of converted properties and other programs identified by HUD would also be guaranteed a number of application and procedural rights.

They must be notified when a property finds them ineligible for assistance or admission to a unit, finds they are no longer eligible for a unit, evicts the tenant, or terminates their assistance. Applicants and tenants may request a review of the notified action and may examine documents

that support the action taken. The costs associated with the applicant/tenant review would be considered operating costs of the property under this section.

Section 3 would also streamline nondiscrimination policies and further the owners'/PHAs' obligations to affirmative fair housing policies for all programs and activities related to providing or administering rental housing assistance. Applicants and tenants must not be discriminated against because they are using a Section 8 voucher. Owners and PHAs would be required to conduct their programs in a manner that affirmatively furthers fair housing as required by law.

PETRA allows HUD to streamline the administration of vouchers and other rental assistance. HUD would have the authority to facilitate the implementation of regional portability agreements or other methods to promote greater efficiency in the use of resources and increase information disbursement for resident choice and mobility. HUD would also be able to allocate funds to administer contracts for converted properties.

Section 3 would authorize HUD to establish uniform physical inspection condition standards across rental assistance programs.

In the event of foreclosures 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.

Finally, 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.

## *Part 2*

The second part of Section 3 provides the conditions and procedures under which public housing and privately owned RAP, Rent Supp, and old Mod Rehab properties may convert to long-term project-based rental housing assistance contracts (Section 8(n) contracts) or to project-based voucher rental assistance contracts. HUD estimates that this conversion to property-based assistance will allow PHAs to leverage up to \$7 billion in private capital to cover the costs of property rehabilitation and other needs. Contract rents would cover operating costs, deposits to the capital replacement reserve, debt service, and cash flow.

Properties undergoing conversion must consult with tenants prior to and during conversion. All converted properties would be subject to one-for-one unit and bedroom replacement requirements. Replacements can be made off-site but may not occur in minority concentrated areas or decrease the number of units available to disabled individuals. Tenant-Based vouchers

may be used to replace some converted units in areas with a large supply of affordable rental housing in areas of poverty.

Converted public housing would be subject to 30-year affordable use agreements and converted privately owned housing would be subject to use restrictions for the remaining term of any prior restrictions or the term of the new rental assistance contracts, whichever is greater. Assistance could be transferred to another property during the term of the use agreement with HUD's approval but owners must pay tenant relocation costs.

Tenants residing in units at the time of property conversion would not be subject to re-screening or termination. They would also typically pay 30 percent of adjusted income for rent and utilities, with the remainder of the contract rent met by rental subsidy. Tenants may only be evicted for good cause and the legislation protects victims of domestic violence. Leases must be for an initial term of one year and be automatically renewable unless there are serious, repeated lease violations or for a violation of applicable law.

This section also includes a first right of purchase for HUD. HUD and tenants must also be notified at least one year in advance if the property owner decides not to renew or extend the rental assistance at the property. Properties (public housing, Rent Supp, RAP, and Mod Rehab) 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. It is important to note that page 34, lines 22-23 of the bill state an exception: "For other converted properties [outside of public housing and Rent Supp, RAP, and Mod Rehab], the Secretary and owner may agree to be bound by this subparagraph [the right of first purchase]." 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.

#### ***Section 4***

Section 4 of the bill would establish a new Section 8 (n) of the United States Housing Act of 1937 and authorize HUD to enter into long-term property-based contracts for rental assistance, subject to annual appropriations.

With the converted project-based contracts, public housing would continue to be under public control and would be subject to a 20 year HAP. PHAs would also need to extend their property affordability for at least 30 years through a use agreement. In addition, public housing owners must accept HAP extensions offered by HUD.

Privately-owned housing that converts to the new project-based contracts must also accept an affordability extension, which must be greater than 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. It is important to note that the draft legislation states, "In the initial contract or any contract

extension, the Secretary may obligate the owner to have such extensions of the PB [property-based] contract accepted by the owner and by the successors in interest of the owner.” This language gives HUD 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.

Section 4 of the legislation would also allow the converted properties’ HAP rents to be set at a level that would address the capital needs and sustain the operations of the converted property. These rents could not exceed comparable market rents above 110 percent of FMR without HUD approval. However, there is language in the legislation that would allow HUD to 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.” Nevertheless, HUD may 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 comparable market rents. 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.

Section 4 also provides rules for the selection of tenants for the Section 8(n) assistance. Households living in the units at the time of conversion and low-income families with incomes not greater than 80 percent of 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.

Finally, converted properties would be required to meet physical conditions standards at periodic inspections and submit annual financial reports.

### ***Section 5***

Section 5 makes changes to existing Section 8 project-based voucher authority. It allows up to 25 percent of the units assisted by the agency to receive project-based vouchers (PBV), if at least 5 percent of those units are used for supportive housing or in locations where vouchers are difficult to use. 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. The bill would allow for assistance at the greater of 25 dwelling units or 25 percent of the dwelling units in a project allowing PBV in up to 40 percent of units for converted properties, elderly properties, and in areas where vouchers are difficult to use, with certain exemptions.

Tenants would be eligible for the resident mobility option after one year instead of two with a PBV. Property waiting lists for PBV holders that exist prior to the property conversion may be used after the conversion. This section also streamlines the contract terms and rents for PBVs in line with the new Section 8(n) contracts’ HAP rents.

## **Section 6**

Section 6 provides language that would conform existing law to the programs enacted by this legislation.

### **Positive Aspects**

HUD believes the legislation will allow PHAs an opportunity to leverage much needed capital. HUD has 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 did explain that some PHAs would not be able to leverage additional capital at all. HUD also believes that PETRA offers a way to preserve the “orphan” multifamily housing programs: RAP, Rent Supp, and Mod Rehab.

### **NAHMA Concerns**

While we support the goals of streamlining HUD’s rental assistance programs, we are extremely concerned by the potential impact this draft legislation will have on the privately owned multifamily housing stock. The vague language in Section 3 that would allow HUD to streamline its policies across all of its rental assistance programs, not just its initial proposal of public housing, RAP, Rent Supp, and Mod Rehab, could cause a number of problems. Furthermore, we believe that this authority will result in new administrative burdens that have the potential to inappropriately alter the existing contacts non-converting owners have with HUD.

During the House Financial Services Committee hearing on PETRA on May 25<sup>th</sup>, NLHA President Terri Preston Koenig testified that HUD had proposed consolidating programs that serve distinct populations, like Section 202 and 811, into the new general rental assistance stream. NAHMA agrees with Koenig’s assessment that if these programs are consolidated, it could have adverse affects on HUD’s ability to effectively serve these special needs groups. NAHMA also agrees with Koenig’s observation 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.

Despite the fact that HUD said it was only planning to offer conversions to public housing, RAP, Rent-Supp, and Mod-Rehab programs at this time, during the hearing Rep. Nydia Velasquez pointed out to HUD Secretary Shaun Donovan that PETRA did contain language that would allow HUD to expand the streamlining of its policies and the conversion program to other Section 8 programs and any other programs HUD identified by notice. Donovan replied HUD believed that if the initial PETRA conversions were successful, other programs would want to participate. However, NAHMA does not believe that PETRA, as written, offers enough incentives to PHAs and 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.

During Koenig's testimony to the Committee, she also discussed the problems of voluntary versus mandatory conversion. She said voluntary conversion would not achieve HUD's goals of streamlining the rental assistance programs if properties decided not to participate. True streamlining, she said, could only be achieved through induced property conversions to long-term project-based contracts. She also noted that lenders would be unlikely to provide long-term loans to properties with current project-based HAP contracts if there was a chance that they would be converted to another program with more restrictive rent structures and undesirable rules, which in turn would financially destabilize a program that has worked well for so long. NAHMA agrees with Koenig's point that owners of project-based Section 8 properties have no incentives to participate in the TRA program, let alone renew existing contracts if investors and lenders have lost confidence in the program.

NAHMA is particularly 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 PHAs and 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, Mod-Rehab, 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]." While the legislation appears to allow for an exemption from the first right of purchase for privately-owned properties that convert their contracts, it does not guarantee it. We are concerned that privately-owned properties which convert could still be subject to a first right of purchase in future contract renewals.

While there is a possibility for privately-owned properties to receive an exemption from the first right of purchase, the provision could be nullified by Section 4. Language in this section would allow HUD to obligate owners and their successors to accept rental assistance contract renewals for the life of the property after the property is converted to Section 8(n) assistance contracts. We are concerned that there may be no option to allow private housing owners to opt out of contracts in the future while still maintaining ownership of their buildings.

NAHMA is also unsure how HUD will fulfill the resident mobility provision in a way that is fair to all persons waiting for a voucher.

### **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 PETRA. The language is too broad and it gives HUD the authority to make far-reaching decisions that could destabilize existing programs that work well, like project-based Section 8. Furthermore, we believe there are no 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, Mod Rehab, 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 the current preservation legislation, H.R. 4868—The Housing Preservation and Tenant Protection Act.