

**Legislative Provisions
to
Support the
Preservation of Affordable Housing**

April 2007

**Compiled by the
National Preservation Working Group**

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Preface

Members of the National Preservation Working Group come from varying perspectives. We are tenants, advocates, developers, and owners — all of us driven by a sense of urgency about the need to preserve affordable housing. We also share a sense of hope about the opportunity now before us. We look forward to working with you to help Congress adopt effective measures to preserve federally assisted and insured multifamily housing. Each of us, with our own perspective, will participate in the process, and we reserve the right to differ over particular provisions and how to best implement the recommendations in this document.

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SECTION I: Maintain housing at risk of being converted to market.

From 1965 to the mid-1980s, the government played an essential role in creating affordable rental homes. The federal government partnered with the private sector by providing financial incentives, including interest rate subsidies (Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR)), or rent subsidies (Section 8), in exchange for a commitment from property owners to keep the apartments affordable to low-income households. As a result of these programs, there are millions of federally assisted, privately owned affordable homes in nearly every community in the nation. The largest of these programs, the project-based Section 8 rental assistance program, provides affordable apartment homes for more than 1.3 million households, including more than 700,000 homes for senior citizens.

The apartment homes created with the help of the federal government provide some of the most affordable rental housing in our communities. Many federally assisted homes have rents well below market making them the most affordable housing in the nation, serving a wide range of low- to moderate-income households. But today their future, especially in high cost housing markets, is threatened. Many properties have increased substantially in value, giving owners the incentive to opt out of the federal programs and convert the housing to market rate. Many other properties, constructed more than 30 years ago, are suffering from physical deterioration and are in need of significant capital improvements. From 1995 to 2003, our nation lost 300,000 subsidized affordable apartments through conversion to market-rate housing or physical deterioration. Over the next five years, contracts on more than 900,000 Section 8 units will expire. When a Section 8 contract expires, the owner can choose to opt out of the program, ending the obligation to maintain the housing as affordable.

Preserving federally assisted affordable housing is the essential first step in solving our affordable housing crisis.

New construction alone will not produce enough affordable housing to meet the increasing demand. Any strategy to ensure a sufficient supply of affordable housing must begin with holding on to what we have. According to the Joint Center for Housing Studies, for every new affordable apartment constructed, two affordable apartments are lost. Without preserving existing housing, we are losing ground.

Preserving existing affordable housing provides an opportunity to reinvest and improve our communities and protect the historic investment made by the federal government. If we do not preserve and improve the millions of apartments that have been produced through these successful public-private partnerships, we will permanently lose our nation's most affordable homes. This will represent a squandering of billions of taxpayer dollars. Instead, safeguarding this housing presents an opportunity to reinvest in and improve our communities.

Preserving existing affordable housing saves scarce resources. It is significantly more cost-efficient to preserve existing housing than build new housing. It costs approximately 40 percent less to preserve an existing apartment than to construct a new apartment. It is also far more energy-efficient to preserve existing housing. Renovating an existing building produces less construction waste, uses fewer new materials and requires less energy than demolition and new construction.

Assure adequate appropriations to meet Section 8 renewal needs in FY '08.

The Administration is requesting \$300 million less for contract renewals in 2008 than the amount approved for 2007; a funding level that likely falls short of what will be needed to renew all Section 8 contracts expiring in 2008. The National Housing Trust estimates that the president's request of \$5.523 billion for contract renewals is at least \$400 million short of what will be needed.

Solution

Congress should appropriate adequate funds to assure the renewal of all expiring contracts.

[Click here for legislative language](#)

Enact Mark-to-Market program reforms.

Since its enactment 10 years ago, the Mark-to-Market program has preserved 125,000 affordable apartments through full debt restructurings at an estimated savings to the taxpayer of \$2.1 billion. When it was reauthorized in January 2002, the program was improved modestly, to take into account lessons learned during the initial five years of implementation. In 2006, additional improvements were proposed that would have benefited properties and residents by:

- making a broader range of properties eligible for Mark-to-Market debt restructuring;
- extending HUD's authority to approve rents in excess of 120 percent of FMR when necessary to preserve properties; and
- broadening the base of previously restructured properties that could benefit from not-for-profit purchase incentives and lengthening the period of time after an initial restructuring during which such incentives could be utilized.

The case for each of these improvements is provided below.

Making a broader range of properties eligible for Mark-to-Market debt restructuring. Bills introduced in the 109th and 110th Congresses would make two types of properties eligible for M2M debt restructuring: (1) otherwise-eligible properties with rents at or below market eligible and (2) properties in presidentially declared disaster areas. By extending program eligibility to these types of properties, Congress could preserve additional apartments and save additional taxpayer dollars through avoidance of default. The Congressional Budget Office (CBO) scored a savings on the measure extending eligibility to properties in presidentially declared disaster areas. Using the same "avoidance of default" methodology, a savings would accrue from extending eligibility to otherwise-eligible properties with rents at or below market. In fact, over the life of the M2M program, HUD has renewed Sec. 8 contracts (without mortgage restructuring) on more than 10,000 projects whose rents were at- or below market, and 190 of those properties (representing 18,000 affordable apartments) subsequently defaulted. Within the next five years, contracts on approximately 1,500 properties with rents expected to be at- or below market will expire. Of these properties, 1,016 have troubled physical scores, 476 have troubled financial scores, and 377 properties have both. These low financial and physical scores have been proven to have significant statistical correlation to potential for default.

Extending HUD's authority to approve rents in excess of 120 percent of FMR (exception rents) when necessary to preserve properties. HUD's ability to approve exception rents is capped at 5 percent of the restructured portfolio. This cap will be reached in April 2007. Beyond that date, the restructurings of approximately 1,000 units that are eligible for exception rents will need to be put on hold until more units become available. HUD will have to determine whether to mark the rents down to market during the hold period, which puts properties at risk, or continue to pay the above-market rent subsidies. Further, many properties need Exception Rents over 120% because of extensive physical rehab needs and/or because they are financially not viable, and both situations will likely worsen if the restructure is put on hold. Lastly, low-income housing tax credits are often combined with Exception Rent transactions, allowing extensive rehabilitation of HUD-subsidized properties using non-HUD funds. Hold times will negatively impact properties' ability to utilize state-allocated credits within a tax credit cycle. Properties requiring exception rents are often the most at-risk properties in the portfolio in terms of physical condition, financial health, and local need for affordable housing preservation. By definition, the properties are not financially viable at market rents. Not restructuring them substantially increases default and foreclosure risk to FHA/HUD, and risk of loss of the units

from the affordable stock. According to HUD, the majority of transactions utilizing exception rents over 120 percent of FMR still result in Sec. 8 savings, because the restructured rents, though above market, are lower than the rents prior to restructuring.

Broadening the base of previously restructured properties that could benefit from not-for-profit purchase incentives. The average rehabilitation per unit of properties going through a M2M debt restructuring is just under \$2,000. When tax credits are involved, the average rehab. per unit increases to approximately \$30,000 per unit. Many state housing finance agencies give a preference in their qualified allocation plans to not-for-profit organizations and/or preservation. Access to LIHTCs is one of the many benefits that not-for-profit purchasers bring when they purchase properties that have already gone through a M2M debt restructuring. In recognition of this fact, Congress enacted not-for-profit purchase incentives when it reauthorized the M2M program in 2002. Specifically, the HUD Secretary is authorized to assign secondary M2M debt to a qualified not-for-profit purchaser or to forgive that debt entirely. HUD's Office of General Counsel (OGC) has limited to three years (after the initial restructuring) the period of time during which the HUD Secretary can exercise this authority, undermining the utility of this preservation tool. According to HUD, as of February 1, 2007, 65 percent of the closed portfolio is already beyond OGC's eligibility window, and the number will increase to 75 percent by the end of FY 2007. Recently, HUD has further undermined the not-for-profit purchase incentives created by Congress by requiring a repayment of junior M2M debt in transactions involving the use of the incentives when a nonprofit assembles additional funds to benefit the property. Congress should prohibit HUD from capturing the value added by a nonprofit purchaser. This policy requires a legislative fix.

Solution

The 110th Congress has already extended the Mark-to-Market Program through September 30, 2011, but it has not enacted the program improvements described above. These improvements could become law through the enactment of S. 131 and H.R. 647, companion bills that have already been introduced in the 110th Congress. Section 4 of each bill contains language extending the program through September 30, 2011. As this extension has already been accomplished via Public Law 110-5, Sec. 4 could be dropped from each bill.

Specifically, the bills would improve the Mark-to-Market program by:

- Extending eligibility to otherwise-eligible properties with rents at or below market eligible and properties in presidentially declared disaster areas;
- Lifting from 5 to 9 percent of the restructured portfolio the cap on HUD's ability to approve exception rents; and
- Extending from three to five years the period during which the HUD Secretary can choose to exercise the not-for-profit purchase incentives and prohibiting HUD from requiring repayment of junior M2M debt in deals involving state or locally allocated housing resources.

[Click here for legislative language](#)

Preserve properties with maturing mortgages and protect tenants.

About 200,000 units in properties with HUD-subsidized mortgages and rent restrictions are scheduled to expire by 2013. When mortgages and affordability restrictions expire, under current law neither the housing nor the tenants have access to preservation resources or protections. In 2004, in the 108th Congress, Chairman Frank introduced H.R. 4679, the Displacement Prevention Act, to address this problem. The bill authorized assistance to owners and purchasers, for rehabilitation, acquisition, or rent subsidies, in exchange for extending the term of affordability restrictions. The bill also authorized enhanced voucher protections for tenants where the housing is not preserved. Although hearings were held, the bill was never acted upon, nor revised to reflect the suggestions made at the hearing.

Solution

Before enactment, revise the proposed Displacement Prevention Act to reflect the recommendations previously made by NPWG members, including the following:

- To help preserve properties with maturing mortgages:
 - cover all properties with a HUD-insured or HUD-held mortgage that are subject to budget-based rent restrictions, since many were not deregulated and deserve the same protection as the Section 221(d)(3) BMIRs and 236s
 - permit rehab funds to be made available as either loan or grants, to maximize tax credit equity
 - permit HUD to defer or extinguish prior Flexible Subsidy loans as part of a preservation plan
 - clarify that nonprofit acquisition grants can cover acquisition, rehab, and transaction costs, if not funded otherwise, and that HUD-set, per-unit grant limitations should be flexible in light of variable real estate markets
 - clarify that existing nonprofit owners have access to the same rehabilitation assistance and similar rental assistance as for-profit owners, especially if rehab funds do not cover all costs
 - clarify that “nonprofit entities” include limited partnerships or limited liability corporations controlled by the nonprofit organization or its affiliate
 - in the case of an acquisition by a not-for-profit preservation purchaser who commits to renewed, extended affordability and brings additional resources allocated by a unit of state or local government, award 15-year project-based assistance subject to annual appropriations
 - provide more specific guidance on HUD’s authority to determine which market areas qualify for affordability assistance
- To protect tenants:
 - ensure tenant participation and endorsement of preservation planning
 - establish suitability requirements (track record and responsiveness to tenants) for owners and purchasers
 - clarify that the extended affordability restrictions include the preexisting budget-based rent schedule and the duty to renew any expiring project-based subsidy contracts and to accept vouchers

- establish that tenants may enforce the preservation subsidy requirements and affordability restrictions
- require HUD to make enhanced vouchers available at a specific point prior to maturity, to enable tenants who wish to move time find other housing and move
- strengthen notice requirements by requiring owners to certify that they will accept any vouchers ultimately provided (as per HUD Renewal Guide), and requiring a second notice closer to the maturity date concerning the owner's final decision, and specifying other remedies for noncompliance

The National Housing Law Project is available to assist in drafting legislative language to revise H.R. 4679 (included in Appendix) to implement any of the improvements described above.

[Click here for legislative language](#)

Convert Rent Supp / RAP contracts to project-based Section 8.

There are approximately 35,000 apartments with Rental Supplement (Rent Supp) and Rental Assistance Payment (RAP) contracts. Over the next 10 years, the contracts on 21,433 of these apartments will expire. By 2029, all of the apartments will have been lost to contract expiration. These contracts exist in 35 states, but the majority of them are located in New York, New Jersey, Massachusetts, Michigan, Illinois, Virginia, Washington State, and California, as the table below demonstrates. In addition, owners are not permitted to mark up to market, and as a result needed recapitalization is deterred and some owners have an incentive to prepay underlying mortgages, resulting in loss of the rental subsidy.

State	Rent Supp/RAP Units
New York	17,091
New Jersey	4,775
Massachusetts	2,697
Michigan	2,619
Illinois	1,411
Virginia	916
Washington	851
California	804

Under current law, at the expiration of a contract issued with Rent Supplement (Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s)) or Rental Assistance Payments (Section 236(f)(2) of the National Housing Act (12 U.S.C. 1715z-1)), an owner has no right to renew the contract, and tenants are eligible for enhanced vouchers only under limited circumstances.

Solution

Congress should permit owners to convert Rent Supp and RAP subsidies to project-based Section 8 assistance. This action would protect low-income tenants in danger of losing their homes, save valuable rental housing, and in some cases make it possible to mark rents up to market to facilitate rehabilitation. This proposal has been scored by the Congressional Budget Office as creating over \$700 million savings in the first two fiscal years it is in effect. The savings are derived from the cancellation of long term-contracts and their replacement with one-year contracts subject to appropriations.

[Click here for legislative language](#)

Preserve state-HFA financed properties.

Nationwide, there are more than 150,000 affordable apartments at state-financed properties with long-term, project-based Section 8 contracts but without HUD/FHA financing. Between 2007 and 2012 alone, more than 47,000 affordable apartments are at risk as project-based Section 8 contracts begin to expire. At mortgage maturity, owners will have to decide whether to renew their contracts or opt out of the Section 8 program. The potential exists for many property owners to make substantial profits by converting the housing to condominiums or more expensive apartments, either by opting out of the program at contract expiration or by prepaying the state HFA mortgage and terminating the Section 8 contract early.

Solutions

There are three easy, non costly solutions that would go a long way toward saving this housing. Specifically, HUD should clarify that it will continue to provide project-based Section 8 upon prepayment of such a property, and it should permit owners to mark-up-to-market.

1. Provide that, should an owner of one of these properties want to refinance prior to maturity, HUD will continue to provide project-based Section 8.

A controversial 2002 opinion from HUD's Office of General Counsel (OGC) threatens approximately 900 Section 8 projects financed under the set-aside program for state housing finance agencies. The OGC ruled that under Section 8 contract language in effect until 1980, the contracts terminated when the HFA mortgages were prepaid. The opinion is not the only reasonable reading of the HAP contract language and is contrary to the regulations in effect at the time and to decades of HUD practice approving such prepayments. HUD has not actually terminated contracts but has issued no guidance clarifying the effect, if any, of the OGC opinion. The lack of clarity has created a chaotic situation that, combined with the problem described below, actually encourages prepayments. The proposed legislative language cures this problem without federal expenditures.

2. Allow owners of such properties the right to mark up to market prior to a contract expiration in exchange for an extended Sec. 8 commitment.

Owners of non-HUD insured, state-HFA financed properties are unable to mark-up-to-market (MU2M) or mark-up-to-budget, because their long-term contracts have not yet expired. While they will be eligible to MU2M at contract expiration, many owners either cannot or do not wish to wait. As a consequence, some properties are falling into disrepair. In other situations, owners are anxious to prepay and increase the rents to much higher, market levels via prepayment. This policy effectively provides owners an incentive to prepay their mortgages, and they can use the OGC opinion described above to terminate their HAP contracts. By permitting — not requiring — such owners to MU2M prior to contract expiration in exchange for a commitment to renewed, long-term affordability, Congress could preserve thousands of affordable apartments assisted with project-based Section 8.

3. Permit the cancellation of fully funded, long-term Section 8 contracts and their replacement with new, 20-year contracts subject to annual appropriations in the case of refinancings by preservation owners or sales to preservation purchasers.

[Click here for legislative language](#)

Permit Mod. Rehab. properties to mark up to market.

In the Section 8 Mod. Rehab. program, project-based Section 8 Housing Assistance Payment (HAP) contracts were issued for 15 years by public housing authorities at cost-based rents. Nearly 60,000 affordable apartments currently benefit from Section 8 Mod. Rehab. assistance. When these contracts expire, renewing owners are prohibited from entering the mark-up-to market process. As a result, these contracts, many of which are deeply below market level, can be adjusted by only a modest operating cost adjustment factor. On the contrary, if owners were able to renew under mark-up-to-market, they would enjoy a significant increase in net income, with all of the benefits flowing to the property and the residents. Under current law, however, even preservation-oriented owners and purchasers have reluctantly been terminating Mod. Rehab. HAPs, resulting in the loss of much-needed deep affordability. In addition, some public housing authorities administering Mod. Rehab. HAPs have refused owners' requests to renew contracts, arguing that MAHRA does not impose the same renewal duty on a PHA as it does with HUD. (A separate problem, the prohibition against the use of Low Income Housing Tax Credits (LIHTC) with continuing Mod. Rehab. Section 8 contracts, addressed on page 35, also contributes to the loss of Mod. Rehab. apartments, with owners exiting the program in order to access LIHTC equity.)

Solution

Amend Section 524 of MAHRA to enable Mod. Rehab. Section 8 renewals to be treated in the same way as other project-based Section 8 contracts. Properties that have already renewed subject to the existing language should be given a "hold-harmless" opportunity to restore rents to the level that would be in effect if not for the existing restrictions. Our proposed legislative language does not provide retroactive rent hikes for moderate rehab properties that have already been renewed but does require that public agencies renew Section 8 mod rehab contracts when requested by the owner.

[Click here for legislative language](#)

Enact a federal first right of purchase.

For most federally assisted housing, with the exception of Rural Development (RD) properties facing prepayment, federal law establishes no protections for the property when the owner seeks to convert the property to market-rate use. For most converting properties, tenants receive enhanced vouchers or other vouchers, with subsidies set at comparable market rent and supported wholly by federal appropriations, but the housing is lost as an affordable housing resource to the community, despite years of federal investment. For RD properties facing prepayment, Congress established a right for preservation entities to purchase properties at fair market value prior to conversion. (Congress also established similar preservation buyouts at market value for many HUD-subsidized properties facing prepayment in the LIHPRHA program, which remains on the books but has received no funding for almost an entire decade.) Illinois, New York City, and Rhode Island have legislated similar policies.

Solution

Require owners proposing to end participation in federal affordable housing programs (at least HUD and RD programs) to offer the properties for sale at fair market value to preservation purchasers, at least for the notice period. Purchasers would have to assemble the resources to support any purchase, using the existing array of federal, state, and local programs, as well as any made available in the future (e.g., project-based enhanced vouchers).

[Click here for legislative language](#)

Protect state/local preservation laws against preemption.

Existing state and local preservation laws across the country risk nullification unless Congress clarifies that the preemption provisions of the long-dormant Low Income Housing Preservation and Rental Homeownership Act (LIHPRHA) are inapplicable to properties that never participated in that program.

Facing uncertainty concerning the federal government's preservation policies, many state and local governments have enacted notice requirements to enable them to take responsive preservation activities. Federal court decisions since July 2003 now threaten the authority of state and local governments to address the impacts of threatened conversions.

Notwithstanding the fact that LIHPRHA is no longer operational for providing federal incentives to preserve additional properties, as well as clear legislative history that Congress intended to build upon state and local preservation policies, the Eighth and Ninth Circuits have held that owners of properties that never executed a LIHPRHA preservation plan may nevertheless use LIHPRHA's express preemption provision to invalidate state and local protections prior to prepayment. The Eighth Circuit has also held that Minnesota's preservation laws are invalid under the conflict preemption doctrine; using logic that threatens any state and local preservation notice law applicable to various federally assisted properties, it rejected any deference to HUD's position that LIHPRHA did not preempt state laws for non-LIHPRHA properties.

Unless revised or repealed, LIHPRHA's express preemption provision and unfounded use of the conflict preemption doctrine will continue to jeopardize state and local prepayment notice laws in nine states (California, Connecticut, Illinois, Maine, Maryland, Minnesota, Texas, Rhode Island, and Washington) and the District of Columbia, and an additional seven cities (Denver; Los Angeles; New York City; Portland, Oregon; San Francisco; Santa Cruz, CA; and Stamford, CT). Despite their narrow original purpose to ensure that owners receive full federal preservation incentives provided under LIHPRHA, these federal laws have since been judicially interpreted to impede state and local efforts to craft preservation responses and tenant protections suited to local conditions.

Solution

Congress should amend Sec. 232 of the Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA) to clarify that

- the statute does not apply to properties that are not regulated by a LIHPRHA plan of action, and
- state and local preservation initiatives for at-risk, federally subsidized properties are not otherwise preempted.

[Click here for legislative language](#)

Permit owners to retain project-based assistance in lieu of enhanced vouchers.

Enhanced vouchers are provided to protect existing tenants from displacement upon the occurrence of an “eligibility event” in a multifamily housing project — generally prepayment of the subsidized mortgage or termination of a rental assistance contract. Upon turnover, these vouchers move with the tenant, and the housing is lost as a resource for future low-income families. Authorizing project-based voucher assistance in lieu of enhanced vouchers will make it possible both to protect existing tenants in a project and to preserve the affordability of units at the project where an owner/preservation purchaser chooses to do so. Project-basing the assistance will provide a financeable revenue stream for preservation-oriented owners and purchasers, without which many worthwhile projects, especially in strong markets, have been forced to exit the affordable program.

Solution

Permit owners to retain project-based assistance, subject to the approval of the PHA. Preservation project-based voucher assistance would be subject to the general rules for project-based voucher assistance, except that it would be exempt from the 25 percent cap on project-based units, it would be disregarded for the purpose of calculating the 20 percent limitation on attaching PHA funding to structures, and it would cover all existing tenants in the project who would otherwise receive enhanced vouchers. In addition to preserving desperately needed affordable units, this provision may result in reduced Section 8 subsidy costs, because maximum rents for project-based voucher assistance (generally 110 percent of fair market rent) in strong market areas may be less than the market rent levels that would otherwise apply for enhanced voucher assistance. Although not required by our draft language, in those situations where only regular vouchers are provided as replacement subsidies due to the narrow technical requirements of the enhanced voucher statute, Congress should also consider permitting nondefaulting owners or purchasers to retain that assistance as project-based as well, with similar exemptions from project-based voucher program rules.

[Click here for legislative language](#)

Convert project-based certificates to project-based vouchers.

When Congress overhauled the project-based voucher (PBV) program in 2000, it included language intended to allow PHAs to authorize the conversion of developments with expiring project-based certificate contracts to the successor project-based voucher program. Based on a poorly worded transition rule written at that time, however, HUD has prevented renewal of these contracts, placing thousands of units at risk across the nation.

Solution

Amend the project-based voucher statute to resolve any ambiguity and direct that the expiring contracts may be extended as project-based vouchers, with the contract term and rent provisions applicable to newly designated developments. The amendment is needed now, because long-term project-based certificate contracts are beginning to expire (or have already expired), and project-based vouchers offer the only available mechanism for keeping these contracts in place and thus preserving the units as affordable housing. This is a “no-cost” amendment, since the current project-based certificate contracts are funded from the PHA’s formula-based voucher allocation, and the new contracts would simply continue that funding. If the contracts were not renewed, tenants would receive regular vouchers at the same cost, but the security offered by the project-based voucher program would be lost.

[Click here for legislative language](#)

Protect the ability of owners to use Section 8 incremental financing.

Housing agencies across the country have used the project-based voucher program to spur production of new affordable housing in communities where there is an inadequate supply to meet the needs of voucher holders. In particular, innovative agencies have used project-based vouchers to create permanent supportive housing targeted to the chronically homeless. On October 13, 2005, without any notice and contrary to the policy in effect since the statutory provision was added in late 2000, HUD published a Final Rule on the project-based voucher program that eliminated agencies' discretion to set rents at market when units also receive housing tax credits (a practice known as "Section 8 incremental financing"). In addition, by creating the risk that state and local housing agencies will be required to reduce subsidy payments if HUD reduces the fair market rent by 5 percent or more, the Final Rule also undermined the ability of such agencies to leverage project-based Section 8 vouchers and of housing developers to borrow funds based on a long-term project-based voucher contract.

Solution

Restore the ability of state and local housing agencies to enter into project-based voucher contracts at market rents in buildings financed by Low Income Housing Tax Credits.
Establish safe harbor future rents for ongoing project-based voucher contracts.

[Click here for legislative language](#)

Affirm that HUD has a requirement to maximize preservation.

HUD has often failed to preserve at-risk affordable housing in policy areas where it has discretion to do so. For example, after Congress gave HUD “flexible authority” to dispose of troubled housing “regardless of any other provision of law,” more than 100,000 units have been sold with vouchers in the past decade when most could have been sold with project-based Section 8 and preserved as affordable housing.

HUD’s failure to use its discretion to preserve at-risk housing was a focus of Senate hearings in 2000 (for troubled housing) and October 2002 (for HUD’s multifamily stock overall.)

Solution

H.R. 44 would repeal HUD’s “flexible authority” regarding the disposition of foreclosed and HUD owned buildings. Congress should additionally direct the Secretary to exercise HUD’s other discretionary powers in a manner which preserves and improves the at-risk stock for current and future Section 8 eligible tenants. We understand the Senate has prepared proposed legislative language to accomplish this objective, following a hearing on Mark to Market extension in June 2006. We support enactment of this proposal.

[Click here for legislative language](#)

SECTION II: Restore housing at risk of loss due to deterioration.

HUD multifamily properties are at risk of conversion to market rate or demolition when the property is in poor condition or where the owner has other properties in extremely poor condition or has committed serious program violations. For properties with a Section 8 contract, this risk may occur at or about the time of contract expiration or during a contract term. These properties risk (1) owner default on the mortgage and termination of restrictions or subsidy through HUD's foreclosure and "property disposition" process and (2) disqualification or termination from the Section 8 program, usually due to a refusal by HUD to renew the Section 8 contract. The problems of the building and its impact on the community will rarely be solved by termination of Section 8. Instead, a number of non-costly changes should be made to help save these properties, so long as project-based Section 8 is maintained.

Despite the financial or physical distress of such properties, it is not uncommon for tenants, nonprofits, and local governments to desire to preserve and improve them. Often, the properties have history of serving very low-income elderly renters or families. Often, local groups believe a change in ownership will help put the project back on the right path.

Foreclosure and property disposition. After default, HUD takes an assignment of the mortgage from the original lender in exchange for an insurance payment and becomes the lender for the project. HUD has broad discretion to assure repairs, take possession and operate the property, terminate or extend the Section 8 contract, and force a change in ownership via foreclosure or the threat of it, where major defaults persist. If HUD is the high bidder at the foreclosure sale, HUD takes title to the property and then tries to sell it through the property disposition program.

In 1988 and 1994, Congress adopted and revised a comprehensive preservation policy for troubled properties facing foreclosure and disposition. However, starting in 1995, Congress granted HUD "flexible authority" (12 U.S.C. §1715z-11a(a)) that HUD has used to ignore those requirements.

For properties acquired by HUD, state and local governments have a right to negotiate the purchase of the property from HUD. HUD is also authorized to make so-called "Up-Front Grants" to purchasers for rehabilitation costs, and until recently funded these grants from the insurance fund. However, as a practical matter, by requiring such grants from the insurance fund to be backed by an appropriation, the Deficit Reduction Act of 2005 effectively eliminated this important preservation tool for troubled properties.

Renewal of the Section 8 contract. Renewal of the Section 8 contract is invariably an important part of a preservation solution for these properties, although HUD may require a transfer to new ownership. Under recently enacted law (Section 311 of the FY 06 Appropriations Act), extended for FY 2007, HUD is required to "maintain any rental assistance payments under section 8...that are attached to any dwelling units in the property," unless the Secretary determines that the property is "not feasible for continued rental assistance payments under such section 8."

Because both the "flexible authority" and the Deficit Reduction Act impede a comprehensive preservation program, a variety of legislative changes are still needed to enable preservation and improvement of these properties. This section highlights those proposals.

Require HUD to maintain project-based Section 8 in HUD dispositions.

An essential ingredient of preserving HUD multifamily properties facing foreclosure or other disposition is retention of the project-based Section 8 contract. Section 311 of the FY 2006 Appropriations bill generally requires HUD to maintain project-based Section 8 contracts when selling properties at foreclosure or from the HUD inventory (Pub. L. No. 109-115, 119 Stat. 2936, §311 (2005)). This provision was apparently carried forward as part of the FY 2007 Joint Funding Resolution, which incorporated FY 2006 terms and conditions unless specifically altered.

Section 311 also suffered from language added by the House in conference that allowed HUD to make exceptions where such action is determined infeasible, “based on consideration of the costs of maintaining such payments ... or other factors.” HUD’s May 31 guidance contains several limitations that improperly impair retention of project-based contracts. Specifically:

- Existing Section 8 contract rents, adjusted only per the OCAF formula and no other available authorities (e.g. Mark Up under MAHRAA Section 524), must be sufficient to carry both the operating costs and any debt service on needed repairs, irrespective of other available funding sources and any adjustments ordinarily available; while HUD may sell a property with Section 8 where contract rents alone are insufficient to support operation and rehab, it need not do so.
- “Deteriorated neighborhood conditions” would justify terminating the contract.
- Section 8 assistance will only flow after substandard conditions are remedied.
- HUD need not bid in its mortgage debt and take title to the property, thus undercutting the ability to create local preservation strategies outside the accelerated foreclosure auction process that is often ill-suited to this purpose.
- Both the statutory mandate and HUD’s policy cover just Section 8, not other similar subsidies.
- Residents are consulted only after HUD has made its decision.
- In some cases, as permitted by HUD’s May 31 memo, HUD has avoided Section 311 by terminating or abating the contract prior to placing the property into foreclosure, so there is no Section 8 contract left to maintain because the contract authority has already been used for vouchers.
- Finally, courts have ruled that the current “flexible authority” even allows HUD to ignore Fair Housing and civil rights laws in making disposition decisions.

Solution

Congress should therefore revise Section 311’s language to address these deficiencies and further the preservation goal.

[Click here for legislative language](#)

Strengthen protections for troubled properties.

Every year, HUD is required to address the problems of numerous properties in its portfolio that have fallen into disrepair and/or financial distress. Nevertheless, if repaired and placed under responsible ownership, these properties are often a viable community resource. HUD needs additional tools and guidance — without substantial additional cost — to help resolve these problems.

Solution

Revising Section 311 as recommended above would require HUD to maintain project-based Sec. 8 contracts when foreclosing on HUD-assisted properties with HUD-held mortgages or disposing of HUD-owned properties, as well as when taking other enforcement actions under the contract prior to foreclosure. In addition, Congress should enact Sections 3, 4 (b), and 6 of H.R. 44, introduced in the 110th Congress, which would:

- Repeal HUD’s “flexible authority,” which HUD has used to relieve itself of obligations to maintain affordability and quality requirements. This, in turn, would require HUD to use all legal tools available, including those established by Congress in 1994 (12 U.S.C. §1701z-11), to ensure future affordability and sufficient renovation of HUD-held and HUD-owned buildings.
- Require HUD to maintain rental assistance to buildings that are undergoing rehabilitation as part of a preservation transfer, while escrowing these funds until the building or units meet housing quality standards, at which time escrowed funds will be made available to the property.
- Amend existing law to grant HUD’s non-judicial foreclosure authority to Units of Local Government that have been designated by HUD as part of the note and mortgage sale process. Authorized Units of Local Government will, in turn, have the ability to determine how to handle physically or financially distressed buildings, including moving to foreclosure. HUD-authorized Units of Local Government must manage and dispose of such projects in a manner that will benefit those originally intended to be assisted under the prior housing program.

[Click here for legislative language](#)

Strengthen cities' right of first refusal.

A key tool for preserving distressed HUD-held and HUD-owned buildings is the ability of Units of Local Government to exercise their statutory right of first refusal to purchase buildings that become HUD-owned. Historically, negotiations regarding sales price for buildings sold by HUD to local government housing agencies were based on number of industry standards, including projected income, operating expenses, and estimated repair and rehabilitation needs. Ostensibly because of the Deficit Reduction Act of 2005, in May 2006, HUD issued guidance stating that it will no longer consider repair or rehabilitation costs in determining an appropriate sales price for HUD-owned buildings and HUD-held loans. These policies directly raise preservation costs for local government purchasers and their private, preservation-motivated designees. Because purchasers must effectively pay twice for these repair costs, such policies make it nearly impossible for any responsible government housing agency and/or any subsequent preservation developer to preserve properties that have HUD-held loans or are HUD-owned.

Solution

Enact Sec. 5 of H.R. 44, which has been introduced in the 110th Congress, which specifies that, in determining the market value of all multifamily real property and multifamily loans, the Department shall use industry standard appraisal practices, including, but not limited to, consideration of the cost of needed repairs to at least minimum code standards and maintaining the affordability restrictions of the original loan or grant.

[Click here for legislative language](#)

Permit owners to transfer project-based Section 8 to another property.

HUD's authority to approve transfer of "Section 8" project-based assistance (PBA) from physically obsolete or economically non-viable projects to new developments — a useful tool for preserving affordable housing resources that otherwise would be lost — was established by a statute enacted in the late 1990s (42 U.S.C. §1437f(bb)) and again recently in Section 318 of the FY06 HUD Appropriations Act. These statutes have differing requirements. Section 318's highly prescriptive language has impeded the ability of assisted property owners and preservation purchasers to complete transactions.

Sec. 318 expires on September 30, 2007. With a few improvements, the effectiveness of this tool in promoting preservation and neighborhood revitalization could be greatly improved.

(We note that H.R. 1227, introduced on February 28, 2007, contains language permitting the transfer of project-based rental assistance from dwelling units damaged during Hurricanes Katrina or Rita. Our recommendation envisions greater flexibility in the use of this important tool than permitted in the bill, with the goal of maximizing its utility as a housing preservation resource.)

Solution

Congress should permanently extend the Secretary's authority to approve transfer of "Section 8" PBA, and make the following changes in the law:

- Expand the definition of eligible projects to include properties assisted with all types of PBA, e.g., Section 8 mod rehab and others not listed.
- Strengthen tenant endorsement and local government support provisions.
- Provide flexibility to transfer PBA to multiple properties, and to make partial transfers of PBA contracts, retaining some units on-site, provided that there is no reduction in the total number of project-based units.
- Allow temporary tenant relocation prior to the availability of new units at the receiving project, consistent with comparable programs.
- Allow flexibility to change unit mix/configuration of units in replacement housing while maintaining the same number of assisted units.
- Authorize prepayment or defeasance of FHA-insured loans in connection with PBA transfer so long as substantive use restrictions are preserved at the receiving project.
- Allow a subordinate lien position on transferred HUD or FHA-insured debt.
- Allow increases in Federal liability and FHA Insurance Fund exposure, to the extent necessary to secure project financing, as determined by the Secretary.
- Allow flexibility for rent increases where the receiving project is covered by the programs established by the Multifamily Assisted Housing Reform and Affordability Act of 1997 (Mark-to-Market, Mark Up to Market, Mark Up to Budget, etc.), and standard contract extensions similar to that extended to other comparable projects.
- Affirm applicability of existing fair housing laws and regulations.

These changes would extend the life and improve the effectiveness of an important assisted housing preservation tool for thousands of units at risk of loss in physically obsolete and economically non-viable projects.

[Click here for legislative language](#)

Restore the Up-Front Grants program.

In 1994, Congress revised the Multifamily Housing Property Disposition Reform Act in order to relax certain property disposition requirements that, in combination with insufficient appropriations, had created a bottleneck at HUD. At the time, there were more than 500 properties in HUD's foreclosed portfolio and hundreds more in the pipeline due to HUD's inability to deal with the problem. As part of the Act, Congress permitted the Secretary to "provide up-front grants for the necessary cost of rehabilitation and other related development costs" from FHA's General and Special Risk Insurance Fund. Congress reiterated HUD's authority to provide such grants several years later, at least when disposing of HUD-owned properties, as part of the "flexible authority" statute (12 U.S.C. §1715z-11a(a)). The Deficit Reduction Act of 2005 ended FHA's mandatory spending authority for rehabilitation grants, effectively eliminating the Up-Front Grants program by requiring any such grant to be backed by an appropriation.

Solution

Enact H.R. 44, which has been introduced in the 110th Congress. Sec. 2 of H.R. 44 will authorize the HUD Secretary once again to provide grants (including up-front grants) and loans from the General and Special Risk Insurance Fund when managing and disposing of HUD-held and HUD-owned multifamily properties.

[Click here for legislative language](#)

Assure that purchasers are in compliance with local/state housing/health codes.

No one — not residents, the local government, or HUD — wants a HUD-assisted property to be acquired by an owner who is in substantial violation of local or state housing or health codes. Section 219 of the 2004 HUD/VA appropriations act (Pub. L. No. 108-199) required that HUD establish rules ensuring that other properties owned by prospective buyers of HUD-owned properties and those with HUD-held mortgages facing foreclosure be in substantial compliance with state and local health and building codes. HUD's rules have still not been finalized, and fail to account for substandard properties located outside of the local jurisdiction where the HUD property is located. Moreover, the existing requirement does not apply to ordinary transfers of non-troubled properties.

Solution

Enact Sec. 7 of H.R. 44, which has been introduced in the 110th Congress, which assures that buyers of any HUD-owned, HUD-assisted, or HUD-insured multifamily housing property must be in compliance with local/state housing/health codes.

[Click here for legislative language](#)

Fund Section 531 rehab grants funded by Interest Reduction Payments.

Every year HUD has access to a substantial amount of already appropriated but unused affordable housing funds that result from prepaid or terminated Section 236 interest subsidy (IRP) contracts. More than eight years ago, in Section 531 of MAHRAA (Pub. L. 105-65), Congress directed that these funds be used for rehabilitation of HUD multifamily properties. However, HUD never implemented the program, and late in FY 2002 Congress rescinded the accumulated \$300 million (Pub. L. No. 107-206, 116 Stat. 820, 892 (Aug. 2, 2002)). The President's FY 2008 Budget indicates that about \$45 million will return to the Treasury as a result of prepayments and foreclosures on Section 236 properties with appropriated IRP. As Congress recognized a decade ago, these funds can provide important new incentives, coupled with new use restrictions, to preserve and improve properties still at risk of conversion to market-rate.

Solution

Congress should require that these resources be used as intended by making an appropriation that redirects these funds, as well as mandating HUD action to implement the rehabilitation program.

[Click here for legislative language](#)

SECTION III: Protect and empower residents facing conversion.

Since the mid-1990s, when conversions of privately-owned federally assisted properties to market-rate were first authorized, Congress has intended that residents facing conversion be protected with replacement vouchers, and that communities not suffer a reduction in the total number of affordable housing units. In addition, when MAHRAA was enacted in 1997, Congress established the Section 514 program to support education and outreach to affected tenants so that they might work with their communities to preserve their homes or take steps to address any conversion, as well as to offset predevelopment expenses for nonprofit preservation purchasers. HUD has taken steps that are inconsistent with these policies (at least until recently when HUD committed to restarting a Section 514 program), necessitating several legislative corrections to ensure that these provisions operate as originally intended.

Assure that tenant protections are guaranteed as Congress intended.

To protect tenants facing displacement, in 1999 Congress passed unified authority requiring HUD to provide “enhanced vouchers” for all tenants facing specified housing conversion actions, including owner opt-outs and prepayments ((42 U.S.C. §1437f(t)). In 2000, Congress acted again to clarify the tenant’s right to remain in their home (Pub. L. No. 106-246, §2801 (July 13, 2000)). Unfortunately, the law as written and implemented by HUD fails to clearly protect tenants, as Congress intended, in several important respects: some owners still refuse to accept the voucher and, even if the owner accepts it, the lease fails to set forth the good cause for eviction requirement; PHAs use screening to deny assistance to some tenants previously assisted at the property prior to subsidy conversion; and tenants, usually elderly empty nesters, can be displaced by family/unit size mismatches that would not have threatened their home absent the subsidy conversion.

Solution

Legislative revisions should address these shortcomings by:

- Clarifying the owners’ obligation to accept the enhanced voucher and evict only for good cause, and requiring this protection to be set forth in the lease;
- Guaranteeing that all affected tenants receive vouchers by clarifying the prohibition on PHA re-screening; and
- Protecting both “empty nesters” and large families facing displacement due to family/unit size mismatches. Congress should allow tenants to remain in their homes with enhanced vouchers until a unit of appropriate size becomes available at the property.

[Click here for legislative language](#)

Provide vouchers for residents of all converted units.

In 2006, against all previous practice, HUD adopted a policy that has caused — and will continue to cause — great harm to our nation’s affordable housing stock. Congress must make clear its desire to have all lost affordable units replaced so that we don’t backslide on our nation’s commitment to affordable housing.

Affordable housing is lost to communities when public housing is demolished or owners of private apartments choose to end their participation in federal subsidy programs. Under previous policy, HUD was required to issue housing vouchers to replace every unit of federally-assisted housing that is lost through demolition or conversion to market rate. These “tenant-protection” vouchers enable some tenants to remain in privately-owned apartments at market rents or help displaced families to relocate to housing that is affordable. Replacement vouchers ensure that communities will not suffer an overall reduction in affordable housing resources.

In PIH 2006-5, on p. 4, buried in an item headed “Tenant Protection Fees,” the notice states “HAP and administrative fee funding will only be provided for occupied units in the affected project at the time of the PHA’s application for such voucher funding.” It is not clear whether this “policy” applies only to replacement of public housing or also to private housing conversion actions. In either case, it contravenes the language of the 2006 appropriations act (which clearly provides funds for “replacement” and not only for “relocation”), prior HUD notices (which it does not refer to), and sections 18(h) and 24(d)(1) of the U.S. Housing Act, 42 U.S.C. §§1437p(h) and v(d)(1). HUD’s policy to award vouchers for the full number of subsidized units lost is contained in Notices PIH 2005-15 (April 26, 2005) and 2004-4 (March 29, 2004) (for public housing) and PIH 2001-41 (for conversion of privately-owned units). In the latter notice at pages 9 - 10, HUD states: “When HUD provides vouchers to a PHA as the result of a housing conversion action, HUD will offer housing choice voucher funding on a one-for-one replacement basis to make up for the loss of the affordable housing units in the community, subject to the availability of appropriations.”

Thus, in adopting PIH2006-5, HUD unilaterally decided to terminate the one-for-one replacement policy, without congressional authorization. Henceforth HUD proclaimed that funding for tenant protection vouchers would only be provided for units occupied at the time of the Public Housing Authority’s application for voucher funding. As a result, in FY2006 HUD issued 3,441 fewer tenant protection vouchers than in FY2005. Indeed, conceding that they are proceeding without Congressional authorization, the Administration’s 2008 budget proposals would modify current law to permit HUD to replace only those subsidized units that were occupied just prior to demolition or conversion to market rate. The change in policy would lead to a substantial loss of affordable housing resources in communities that have great need for affordable housing.

Across the nation, there are tens of thousands of people on subsidized housing waiting lists. The demand is overwhelming. We simply cannot afford to lose access to any affordable housing units. Units can be vacant for many reasons — normal turnover, tenants who relocate because their buildings are being converted to market rate or are about to be demolished, etc. While the apartments may be empty at a given moment, they are certainly not empty from lack of people who are in need of affordable housing.

Finally, not having one-for-one replacement will be particularly painful for those on the Gulf Coast, where thousands of units are not currently occupied because of the terrible natural disasters in that area. We urge you to reject the Administration’s proposed changes to this by including an affirmative prohibition on HUD’s attempts to change federal policy through administrative action.

Indeed, the Gulf Coast, which now faces critical shortages of affordable rental housing, would likely be hit particularly hard by the proposed policy change. Thousands of federally-assisted apartments were damaged by the storm, and some of these are likely to be demolished or sold. Under the policy proposed by the Administration, few of these units would be eligible for “tenant-protection” vouchers, however, because most were evacuated by tenants displaced by the hurricane damage.

Solution

The former policy of providing “tenant-protection” vouchers to replace lost subsidized housing units on a one-to-one basis helps communities to sustain affordable housing resources at a time of growing need. The Administration’s proposed changes to this policy should be rejected.

[Click here for legislative language](#)

Ensure a vibrant resident capacity building and predevelopment program in expiring Section 8 and other HUD-subsidized properties.

For many years, HUD has declined to provide the funding authorized by Congress for predevelopment costs and technical assistance to tenants facing threats to their housing, despite the results of extensive audits that found relatively few violations of congressional restrictions. In addition, the Department has on several occasions provided funding to unqualified groups to work with tenants, and refused to permit grantees to work with tenants facing threats to their homes in a wide variety of programs, both falling within and outside the current statutory authorization.

Solution

Revise the statute to clarify that HUD must spend the funds authorized each year, ensure that groups working with tenants are qualified and independent from ownership and management, authorize HUD to provide administrative training to grantees to minimize compliance problems, and clarify that funding can be used to assist tenants residing in a wide variety of privately owned subsidized and assisted housing developments.

[Click here for legislative language](#)

Provide residents with access to building information.

Residents of HUD housing are HUD's best allies in monitoring and overseeing the public's multi-billion investment in multifamily housing. But residents and their organizations are often hindered by an inability to obtain basic information about their properties, ranging from who owns their buildings, what the property's budget is (except when owners seek a rent increase), available balances and expenditures in Reserve for Replacement accounts, and HUD's subsidy and insurance contracts with the owner.

Although REAC scores and Section 8 Opt Out or Renewal Notices are required by law to be made available to tenants, owners and local HUD offices often fail to make these available, even when requested under the FOIA. (For several years, for example, HUD has declined to make available REAC scores for properties referred to the Enforcement Center — precisely the buildings where residents and communities have the most at stake in knowing what is happening to these homes.)

In addition, HUD's long-standing policy has been to release project operating statements to residents only when owners request rent increases, for a 30 day window only. In January 2006, HUD Assistant Secretary Bernardi compounded this problem by issuing an internal directive discouraging the release of any information under the FOIA which could be embarrassing to current or former HUD officials or policies. As a result, many local offices have withheld even documents, such as approved Mark-to-Market plans, which are plainly releasable to residents under HUD regulations. Some HUD offices have treated any request for subsidy contracts between HUD and private companies as "trade secrets" not subject to public review.

Congressional intervention is needed to reverse this disturbing trend toward increased government secrecy and provide residents the information they need to help monitor the public's extensive investment in subsidized housing. Tenants should be allowed access to basic information affecting their homes.

Solution

Section 8 of H.R. 44, the Velasquez Troubled Housing bill, would provide for "transparency regarding building information" by requiring HUD to post on the worldwide web REAC scores, Section 8 Opt Out or Renewal Notices, and Wellstone "prepayment" Notices. This is part of the Early Warning System discussed below. We support the adoption of these provisions.

In addition, adopting the "Tenant Access to Information" language would empower residents with the information they need to improve their conditions and to more fully assist HUD in its monitoring and oversight mission.

[Click here for legislative language](#)

List tenants as third-party beneficiaries on HUD contracts.

When owners violate HUD contracts, tenants often suffer. HUD is sometimes slow to implement effective enforcement measures. Tenants are listed as third-party beneficiaries on Mark-to-Market Use Agreements, but not on other contracts.

Solution

List tenants as third-party beneficiaries on Section 8 Housing Assistance Payments Contracts, Mark-to-Market Restructuring Commitments, and Rehab Escrow Deposit Agreements.

[Click here for legislative language](#)

Enlist tenants as partners with HUD in enforcement.

HUD's enforcement of housing quality standards in project-based Section 8 housing is often slow and inflexible, and extremely rare in cases of substandard management and especially for violations of residents rights to organize.

Solution

Congress should clarify HUD's ability to utilize flexible enforcement tools to address violations of housing and program standards, including residents rights. In addition, residents should be empowered to pay their portion of the rent into an escrow fund controlled by HUD, and/or make repairs and deduct the cost from their rent, and to trigger HUD withholding of its portion when they do so, as an incentive to owners to comply with repair and management standards. In addition, communities and residents should be empowered to trigger a special inspection or management review by HUD, in addition to inspections regularly conducted by the Department. (Language allowing a tenant/community trigger for HUD inspections and/or a tenant rent withholding into a tenant/HUD escrow was included in HR 3838, adopted by the House in 1994, and SB 1281, as reported by the Senate Banking Subcommittee, but the two versions were not reconciled or adopted. In addition, an amendment to HR 3838 by Rep. Velasquez allowed Section 8 voucher holders to pay for repairs and be reimbursed by HUD.)

[Click here for legislative language](#)

SECTION IV: Provide better data to facilitate preservation transactions.

From 1965 to the mid-1980s, the government played an essential role in creating affordable rental housing. The federal government partnered with the private sector by providing interest rate subsidies (Section 236 or Section 221(d)(3) Below Market Interest Rate (BMIR)), or rent subsidies (Section 8), in exchange for a commitment from property owners to keep their apartments affordable to low-income households. As a result of these programs, there are more than 1.5 million federally assisted, privately owned affordable homes in communities across the nation. These apartment homes provide some of the most affordable rental housing in our communities.

These programs established a date where the regulatory relationship or subsidy would end and the owner could convert the property to market rate. Most of these properties have reached that date. Thousands of affordable apartments are lost each year as owners opt out of their Section 8 contract or prepay the subsidized mortgage. In the eight years between 1996 and 2003, the National Housing Trust found that 300,000 units of HUD assisted and/or insured, multifamily housing had been “lost” due to prepayment of the mortgage or loss of the Section 8 subsidy through owner or HUD choice. Appropriate analysis of preservation options for a particular property, including both new ownership capacity and resources, requires property-level data. Fortunately, HUD has property data available for the 1.5 million federally assisted and/or insured, multifamily, affordable rental units.

Establish an “Early Warning System” based on existing HUD data.

Current law requires that owners notify tenants and the federal government of a decision to opt out of a Section 8 contract or prepay a subsidized mortgage. However, there is currently no effort to timely inform the public or preservation minded owners of this event. If HUD timely notified the public of opt out and prepayment notices, or other cases where subsidized housing was at risk, mission minded organizations could offer to purchase the property and preserve the apartments as affordable.

Solution

With a minimal investment, HUD could create an “Early Warning System” to help save properties where owners intend to prepay the mortgage, opt out of the HUD subsidy or where HUD enforcement actions may lead to loss of the property’s affordability restrictions. Providing this information in a timely fashion to tenants and the public alike will permit development of appropriate local solutions before the preservation opportunity is lost.

The essence of this proposal is a national database of federally assisted properties where the owner has given notice to prepay the mortgage or opt out of the Section 8 contract. The data would be distributed via the web and other means to the public. Mission minded organizations could then assemble the resources necessary to save the housing. Coupling this early warning system with the right to purchase we recommend elsewhere could safeguard many buildings that would otherwise exit the federally supported affordable housing stock, saving resources and avoiding displacement of tenants.

[Click here for legislative language](#)

SECTION V: Enact tax legislation.

Enact exit tax relief.

Between 1965 and the mid-1980s, nearly 1.5 million rural and urban affordable housing units were built with some sort of federally subsidized financing — a meaningful but by no means comprehensive response to our nation’s lack of affordable housing. Changes in tax laws in 1986 and the aging of both the properties and their investors leaves the properties at risk of loss to the affordable housing stock either through deterioration or conversion to market-rate housing. In many instances, owners of these properties are reluctant to transfer them because capital gains taxes due on essentially the entire sales price (due to prior depreciation deductions) exceed the cash sales proceeds, certainly an unfavorable result when compared to the stepped-up basis available for heirs after the taxpayer’s death. These owners are thus often providing no recapitalization and are holding on to the properties until their death, at which point no taxes will be collected on the gain resulting from prior depreciation, not to mention any capital gain above that amount, due to the step up in basis.

Solution

Provide a tax incentive to preserve affordable housing in multifamily housing units that are sold or exchanged to purchasers who agree to keep the properties affordable. The incentive would take the form of an exemption from recapture taxes (noncash gain from depreciation) for sellers of federally assisted housing if they sell to a buyer committed to preserving the property as affordable housing for 30 years after the property transfer. Eligible properties include those assisted under the Section 236, Section 221(d)(3), Section 8, or Section 515 programs.

The current House version, introduced in March 2007, H.R. 1491 is a substantial first step in the legislation needed to resolve this important preservation issue.

[Click here for legislative language](#)

Permit the use of LIHTCs with Mod. Rehab. properties.

The Section 8 Moderate Rehabilitation (“Mod Rehab”) program was developed years ago to provide financial assistance to owners of deteriorating low income rental properties so they could make needed restorations. HUD guaranteed rental subsidies through 15-year contracts to property owners if they agreed to rehabilitate their property. More and more of these contracts will be expiring in the coming years, and most of these properties have not been renovated since the Mod Rehab contract began. An outmoded prohibition on the use of Low Income Housing Tax Credits (LIHTCs) in properties with Mod Rehab contracts jeopardizes the preservation of nearly 60,000 affordable apartments that are home to very low–income seniors and working families. Housing organizations seeking to preserve these apartments have a strong incentive to opt out of the Mod Rehab contract in order to pursue tax credit equity that is badly needed to finance essential physical improvements. Without the deep subsidy provided by the project-based rental assistance contract, it becomes nearly impossible to ensure that these apartments will remain affordable to very low–income families.

Solution

Congress could easily solve this problem by repealing the prohibition. Bipartisan legislation introduced in the 109th Congress would do just that. H.R. 4873, introduced by Rep. Jim Ramstad (R-MN) and co-sponsored by 39 members of Congress, would eliminate the ban as well as make other improvements to the LIHTC program. This technical fix would come at no cost to the federal government, since equivalent budget authority for vouchers must be provided when Mod Rehab contracts are not renewed.

[Click here for legislative language](#)

APPENDIX: Legislative language

The legislative language provided in the Appendix consists either of proposed legislative language or language from actual bills.

Assure adequate appropriations to meet Section 8 renewal needs in FY '08.

In the standard appropriations language appropriating funds for "Project-Based Assistance," which covers several line items including renewals and contract administrators, insert the following figure for contract renewals: at least \$5.923 billion.

Enact Mark-to-Market program reforms.

(from S. 131/H.R. 647 (companion bills), 110th Congress)

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'Mark-to-Market Extension Act of 2007'.

(b) Table of Contents- The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Extension of Mark-to-Market program.
- Sec. 5. Exception rents.
- Sec. 6. Otherwise eligible projects.
- Sec. 7. Disaster-damaged eligible projects.
- Sec. 8. Period of eligibility for nonprofit debt relief.
- Sec. 9. Effective date.

SEC. 2. PURPOSES.

The purpose of this Act is to--

- (1) continue the progress of the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended by the Mark-To-Market Extension Act of 2001;
- (2) expand eligibility for Mark-to-Market restructuring so as to further the preservation of affordable housing in a cost-effective manner; and
- (3) provide for the preservation and rehabilitation of projects damaged by Hurricanes Katrina, Rita, and Wilma, or by other natural disasters.

SEC. 3. DEFINITIONS.

Section 512 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1473f note) is amended by adding at the end the following:

“(20) DISASTER-DAMAGED ELIGIBLE PROJECT-

“(A) IN GENERAL- The term ‘disaster-damaged eligible project’ means an otherwise eligible multifamily housing project--

“(i) that is located in a county that was designated a major disaster area on or after January 1, 2005, by

the President pursuant to title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

` (ii) whose owner carried casualty and liability insurance covering such project in an amount required by the Secretary;

` (iii) that suffered damages not covered by such insurance that the Secretary determines is likely to exceed \$5,000 per unit in connection with the natural disaster that was the subject of the designation described in subparagraph (A); and

` (iv) whose owner requests restructuring of the project not later than 2 years after the date that such damage occurred.

` (B) RULE OF CONSTRUCTION- A disaster-damaged eligible project shall be eligible for amounts under this Act without regard to the relationship between rent levels for the assisted units in such project and comparable rents for the relevant market area.'

SEC. 4. EXTENSION OF MARK-TO-MARKET PROGRAM.

Section 579 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1473f note) is amended by striking `October 1, 2006' each place that term appears and inserting `October 1, 2011'.

SEC. 5. EXCEPTION RENTS.

Section 514(g)(2) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1473f note) is amended--

(1) by inserting `disaster-damaged eligible projects and' after `waive this limit'; and

(2) by striking `five percent' and inserting `9 percent'.

SEC. 6. OTHERWISE ELIGIBLE PROJECTS.

Section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1473f note) is amended by adding at the end the following:

` (i) Other Eligible Projects-

` (1) IN GENERAL- Notwithstanding any other provision of this subtitle, a project that meets the requirements of subparagraphs (B) and (C) of section 512(2) but does not meet the requirements of subparagraph (A) of section 512(2), may be treated as an eligible multifamily housing project on an exception basis if the Secretary determines, subject to paragraph (2), that such

treatment is necessary to preserve the project in the most cost-effective manner in relation to other alternative preservation options.

˘ (2) OWNER REQUEST-

˘ (A) REQUEST REQUIRED- The Secretary shall not treat an otherwise eligible project described under paragraph (1) as an eligible multifamily housing project unless the owner of the project requests such treatment.

˘ (B) NO ADVERSE TREATMENT IF NO REQUEST MADE- If the owner of a project does not make a request under subparagraph (A), the Secretary shall not withhold from such project any other available preservation option.

˘ (3) CANCELLATION-

˘ (A) TIMING- At any time prior to the completion of a mortgage restructuring under this subtitle, the owner of a project may--

˘ (i) withdraw any request made under paragraph (2)(A); and

˘ (ii) pursue any other option with respect to the renewal of such owner's section 8 contract pursuant to any applicable statute or regulation.

˘ (B) DOCUMENTATION- If an owner of a project withdraws such owner's request and pursues other renewal options under this paragraph, such owner shall be entitled to submit documentation or other information to replace the documentation or other information used during processing for mortgage restructuring under this subtitle.

˘ (4) LIMITATION- The Secretary may exercise the authority to treat projects as eligible multifamily housing projects pursuant to this subsection only to the extent that the number of units in such projects do not exceed 10 percent of all units for which mortgage restructuring pursuant to section 517 is completed.'.

SEC. 7. DISASTER-DAMAGED ELIGIBLE PROJECTS.

(a) Market Rent Determinations- Section 514(g)(1)(B) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1473f note) is amended by striking 'determined, are equal' and inserting the following: 'determined--

˘ (i) with respect to a disaster-damaged eligible property, are equal to 100 percent of the fair market rents for the relevant market area (as such rents were in effect at the time of such disaster; and

^ (ii) with respect to other eligible multifamily housing projects, are equal'.

(b) Owner Investment- Section 517(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1473f note) is amended by adding at the end the following:

^ (3) PROPERTIES DAMAGED BY NATURAL DISASTERS- With respect to a disaster-damaged eligible property, the owner contribution toward rehabilitation needs shall be determined in accordance with paragraph (2)(C).'

SEC. 8. PERIOD OF ELIGIBILITY FOR NONPROFIT DEBT RELIEF.

Section 517(a)(5) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1473f note) is amended by adding at the end the following: ^ If such purchaser acquires such project subsequent to the date of recordation of the affordability agreement described in section 514(e)(6)--

^ (1) such purchaser shall acquire such project on or before the later of--

^ (A) 5 years after the date of recordation of the affordability agreement; or

^ (B) 2 years after the date of enactment of the Mark-to-Market Extension Act of 2007; and

^ (2) the Secretary shall have received, and determined acceptable, such purchaser's application for modification, assignment or forgiveness prior to the acquisition of the project by such purchaser, and provided further that in the event any low income housing tax credits, state or local funds, tax-exemption, or other affordable housing resources are being utilized by the purchaser in connection with the transfer of the property the Secretary shall not require any repayment in connection with the assignment or forgiveness of the mortgages to the purchaser'.

SEC. 9. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the earlier of--

(1) the date of enactment of this Act; or

(2) September 30, 2007.

Preserve properties with maturing mortgages and protect tenants.

The National Housing Law Project is available to assist in drafting legislative language to revise H.R. 4679 to implement any of the improvements described earlier.

Convert Rent Supp / RAP contracts to project-based Section 8.

Notwithstanding any other provision of law, the Secretary shall at the request of the owner of any property with a contract under Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s) or a contract under Section 236(f)(2) of the National Housing Act (12 U.S.C. 1715z-1), during the period of one year following enactment of this provision, convert such contract to project-based assistance under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Section 1437f). The resulting project-based Section 8 Housing Assistance Payments contract shall be subject to annual appropriations, and shall be (1) for a term that is equal to the remaining contract term of the converted contract plus an additional 5 years, (2) for a term that is equal to the remaining contract term of the converted contract plus an additional 10 years, in the case of a resulting Section 8 contract that provides for rent levels established, at request of the owner of the project at the time of conversion, pursuant to Section 524(a)(4) of MAHRAA or at comparable market rents for the market area by other authority applicable to Section 8 Housing Assistance Payments contracts, or (3) at the request of the property owner, for a term of 20 years. During the first year following any such conversion, the amount of annual assistance shall not exceed the maximum annual amount payable under the terms of the converted contract. In all subsequent years, the resulting project-based Section 8 Housing Assistance Payments contract shall be subject to the provisions of Section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA), and treated for all purposes as a contract previously renewed pursuant to Section 524(a) of MAHRAA. Such conversion shall not diminish the affordability restrictions applicable to the property that had been subject to the converted contract.

(RESCISSION)

Any authority which is recaptured as a result of conversion of any contract for rent supplements under Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s) or rental assistance under Section 236(f)(2) of the National Housing Act (12 U.S.C. 1715z-1(f)(2)) to project-based assistance under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Section 1437f) shall (1) be utilized by the Secretary for the purpose of making assistance payments with respect to the initial twelve month term of that project-based Section 8 Housing Assistance Payments contract resulting from such conversion, and (2) be rescinded to the extent such authority exceeds the amount of said assistance payments.

Preserve state-HFA financed properties.

1. “In a case where a Housing Finance Agency had entered a Housing Assistance Payments Contract with an Owner, on form HUD 52645A, dated November 1975, under the Section 8 Housing Assistance Payment Program for State Housing Finance and Development Agencies, and where such contract provides that the maximum total contract term for any unit shall not exceed a period terminating on the date of the last payment of principal due on the permanent financing, such language shall be interpreted as providing for a maximum term extending to the originally scheduled maturity date of the permanent financing, without regard to any prepayment of such permanent financing.”

2. Add a Section 524(h) to MAHRA:

“(h) In the case of a contract for project-based Section 8 assistance pursuant to the State Housing Agency program governed by 24 C.F.R. Part 883, the provisions of this Section permitting Mark-up-to-market shall apply at the expiration of any contract term, regardless of the renewal provisions set forth in the contract. Further, at any time within five years of the final expiration date of such contracts, the annual rent adjustment may be to the levels permitted under Subsection (a)(4)(A) of this Section, in return for a binding commitment from the owner to renew the contract at such levels for an additional five year term upon final expiration of the contract.”

3. Add a section 524(i) to MAHRA:

“(i) In the case of a contract for project-based assistance to a project with debt financing provided by a state housing agency or local authority, with the approval of the state housing agency or local authority, the owner, at its option, may terminate the contract and enter into a new project-based contract under this section for a term of 20 years, subject to annual appropriations, provided that the owner enters into an enforceable commitment to preserve the affordability of the project for 55 years from the date of such contract, assuming continued rental assistance under section 8 or a comparable program.”

Permit Mod. Rehab. properties to mark up to market.

(a) **RENEWAL OF EXPIRING PROJECT-BASED SECTION 8 MODERATE REHABILITATION CONTRACTS**—Section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended—

(1) in subsection (a)(4)(A)(iv)—

(A) in subclause (I), by inserting ‘or’ after the semicolon;

(B) by striking subclause (II); and

(C) by redesignating subclause (III) as subclause (II); and

(2) by striking paragraph (3) of subsection (b).

(b) **ADJUSTMENTS FOR COVERED PROJECTS**—

(1) **RENT DETERMINATION AT INITIAL RENEWAL AFTER ENACTMENT**—

Upon the first request for renewal of project-based assistance pursuant to section 524 after the date of enactment of this Act by an owner of a covered housing project—

(A) the rent levels at which assistance will be provided pursuant to such renewal will be determined as if such renewal were the initial renewal of a contract for assistance under section 524, as amended by subsection (a) of this section; and

(B) solely for purposes of determining the rent levels at which assistance will be provided pursuant to such first renewal after the date of enactment of this Act, in the case of a project for which contract rents were reduced on a prior renewal of an expiring contract pursuant to subsection (b)(3) of section 524, as in effect on the day before the date of enactment of this Act, the contract rent levels in effect immediately prior to such first renewal after the date of enactment of this Act shall be considered to be the deemed rent levels described in paragraph (3)(C).

(2) **RENT ADJUSTMENTS AFTER INITIAL RENEWAL AFTER ENACTMENT**—

After the first renewal of a contract for assistance of a covered project after the date of enactment of this Act in accordance with paragraph (1) of this subsection, the Secretary shall adjust rents in accordance with section 524(c).

(3) **DEFINITIONS**—In this subsection—

(A) references to ‘section 524’ or any subdivision thereof are references to section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note);

(B) the term ‘covered housing project’ means a project that receives project-based assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) which was renewed prior to the date of enactment of this Act pursuant to subsection (b)(3) of section 524, as in effect on the day before the date of enactment of this Act;

(C) the term ‘deemed rent levels’ means the contract rent levels in effect immediately prior to the first renewal of assistance pursuant to subsection (b)(3) of section 524, as in effect on the day before the date of enactment of this Act, upon which contract rent levels were reduced, as adjusted by

the applicable operating cost adjustment factor established by the Secretary at the date of such renewal and at the date of any subsequent renewal pursuant to subsection (b)(3) of section 524 occurring before the date of enactment of this Act; and

(D) the term 'Secretary' means the Secretary of Housing and Urban Development or any public housing agency approved by the Secretary to serve as the contracting party in lieu of the Secretary.

Enact a federal first right of purchase.

() Sale Restrictions, Right of Purchase.

(A) During the period that begins upon the owner providing notice to the Secretary of a proposed prepayment or termination of a mortgage, or of a proposed nonrenewal of a project-based Section 8 or other project-based rental assistance contract under applicable law, and that ends upon the expiration of the applicable notice period, the owner must offer to sell the property to a preservation purchaser, as defined in subsection (B). The offer of sale must include a purchase price set at a fair market value as determined by two independent qualified appraisers, one of whom shall be selected by the Secretary and one of whom shall be selected by the owner. If the two appraisers fail to agree on the fair market value, the Secretary and the owner shall jointly select a third appraiser, whose appraisal shall be binding on the Secretary and the owner.

(B) A non-profit organization, public agency, or for-profit entity (the “preservation purchaser”) shall be entitled to purchase the property if the preservation purchaser:

(i) during the notice period, makes a written bona fide offer to purchase at the fair market value as established above;

(ii) is determined by the Secretary to be capable of managing the housing and related facilities (either directly or through a contract) for the remaining useful life of the property;

(iii) has entered into an agreement with the Secretary or a designee that obligates it (and successors in interest) to maintain the housing and related facilities as affordable for very low income families or persons for the remaining useful life of property, utilizing all available assistance.

The owner may only accept an offer to purchase from a for-profit entity if no non-profit organization or public agency has made an offer meeting the requirements of subsection (B). The Secretary shall promulgate regulations that establish priorities for acceptance of offers in the event that more than one offer meeting the requirements of subsection (B) is submitted.

In the event that no preservation purchaser makes a bona fide offer meeting the requirements of subsection (B), the Secretary may accept the owner’s proposal to prepay the mortgage, terminate the expiring regulatory agreement accompanying the expiring mortgage, or terminate the assistance contract, as permitted by law, and tenants shall be entitled to receive enhanced vouchers or other tenant protection vouchers, as provided by law.

To assist in financing the transfer, the Secretary shall-

- to the extent provided in appropriations Acts, make an advance to a qualifying non-profit organization or public agency whose offer to purchase is accepted to cover direct costs, other than the purchase price, incurred by the organization or agency in purchasing and assuming responsibility for the property;
- approve the assumption, by the qualifying purchaser, of the loan made or insured under the applicable federal program;
- to the extent provided in appropriations Acts, transfer any contract for rental assistance payments received by the owner to the purchaser.

In addition, to the extent provided in appropriations Acts, the Secretary may provide a loan as otherwise authorized by federal law to the qualifying purchaser to enable the purchase of

the property. In the event the Secretary declines to offer a loan, the qualifying purchaser may obtain financing from other sources to complete the transfer, and the Secretary shall administer this program so as to facilitate the financing of the purchase from other funds.

Exception. The owner's obligation to offer the property for sale under this provision shall not apply where:

(1) the Secretary determines that because of an adequate supply of safe, decent, and affordable rental housing within the market area, the property is no longer needed for low income housing, and that sufficient actions have been taken to ensure that rental housing will actually be made available to each tenant upon displacement; and

(2) Pursuant to guidelines issued by the Secretary, the proposed prepayment, termination, or nonrenewal is part of a transaction under which the affordability and use restrictions, including the rents paid by tenants, will be preserved under substantially the same terms and conditions.

For purposes of this section, the term "Secretary" shall include the Secretary of the Department of Housing and Urban Development and the Secretary of the Department of Agriculture.

Rulemaking. Within 180 days of enactment, the Secretary shall issue proposed regulations to implement this section, and issue final regulations within an additional 180 days.

Protect state/local preservation laws against preemption.

“Sec. ___

(A) Section 232 of the Low-Income Housing Preservation and Resident Homeownership Act (12 U.S.C. Section 4122) is amended by adding at the end thereof the following: ‘Preemption shall not apply to “eligible low-income housing” for which an owner has not executed a plan of action for incentives under this subtitle.’

(B) Clarification of effect. State and local laws mandating prior notice or other requirements applicable to properties whose owners propose to terminate their participation in federal affordable housing programs are not preempted, expressly or impliedly, by federal law.”

Accompanying legislative history should emphasize that “In the absence of a mandatory federal preservation programs, Congress does not intend for state and local preservation initiatives to be preempted, either expressly or impliedly.”

Permit owners to retain project-based assistance in lieu of enhanced vouchers.

Insert in a new subparagraph after Section 8(t)(4) of the U.S. Housing Act (42 USC 1437f(t)(4)), the following:

“(5) Authorization of Preservation Project-Based Voucher Assistance in Lieu of Enhanced Voucher Assistance

Notwithstanding any other provision of law, preservation project-based voucher assistance may be provided pursuant to subparagraph (o)(13)(L) in lieu of enhanced voucher assistance at the request of the owner of the multifamily housing project, subject to the determinations of the public housing agency pursuant to clause (ii) of subparagraph (o)(13)(L). Preservation project-based voucher assistance provided pursuant to subparagraph (o)(13)(L) in lieu of enhanced voucher assistance shall be subject to the provisions of subparagraph (o)(13)(L) and shall not be subject to the provisions of this subsection.”

Insert a new subparagraph after Section 8(o)(13)(K) (42 USC 1437f(o)(13)(K)):

“(L) Preservation Project-Based Voucher Assistance

(i) In general - The Secretary is authorized to provide assistance under this paragraph in lieu of enhanced voucher assistance under subsection (t) to a public housing agency that enters into a contract with an owner of a multifamily housing project upon the occurrence of an eligibility event with respect to the project as defined in paragraph (t)(2). All owners of projects for which enhanced voucher assistance would otherwise be provided may request and receive a contract for preservation project-based voucher assistance at the project in lieu of enhanced voucher assistance upon the occurrence of an eligibility event with respect to the project, subject to the determinations of the public housing agency in clause (ii). The contract shall cover all of the units in the project for which enhanced voucher assistance would otherwise be provided under subsection (t).

(ii) Public Housing Agency Determinations – Prior to entering into a contract pursuant to this subparagraph, the public housing agency shall have determined that (a) the housing to be assisted hereunder is economically viable; and that (b) there is significant demand for the housing, or the housing will contribute to a concerted community revitalization plan or to the goal of deconcentrating poverty and expanding housing and economic opportunities, or the continued affordability of the housing otherwise is an important asset to the community. The determinations of the public housing agency required in the previous sentence shall be in lieu of meeting the requirements of subparagraph C.

(iii) Special Rules - Funding provided for preservation project-based voucher assistance pursuant to this subparagraph shall be disregarded for the purpose of calculating the limitation on attaching funding to structures otherwise applicable to PHA project-based assistance pursuant to subparagraph (B). Assistance under this subparagraph shall not be subject to the requirements of subparagraph (D).

(iv) Notwithstanding any law to the contrary, all families residing in the project on the date of the eligibility event that would otherwise be eligible for

enhanced voucher assistance under subsection (t) shall be eligible for preservation project-based voucher assistance under this subparagraph.”

Convert project-based certificates to project-based vouchers.

Section 232(b) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001 (Public Law 106-377) is amended to read as follows:

“(b) APPLICABILITY.—In the case of any dwelling unit that, upon the date of the enactment of this Act, is assisted under a housing assistance payment contract under section 8(o)(13) as in effect before such enactment, or under section 8(d)(2) of the United States Housing Act of 1937 (42 USC 1437f(d)(2)) as in effect before the enactment of the Quality Housing and Work Responsibility Act of 1998 (Title V of P.L. 105-276), assistance may be renewed or extended under such section 8(o)(13), as amended by subsection (a), provided that the initial contract term and rent of such renewed or extended assistance shall be determined pursuant to subparagraphs (F) and(H), and subparagraphs (C) and (D) of such section shall not apply to such extensions or renewals.”

Protect the ability of owners to use Section 8 incremental financing.

Section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(13)) is amended—

(1) in subparagraph (H), by inserting before the period at the end of the first sentence the following: “, except that in the case of a contract unit that has been allocated low-income housing tax credits and for which the rent limitation pursuant to such section 42 is less than the amount that would otherwise be permitted under this subparagraph, the rent for such unit may, in the sole discretion of a public housing agency, be established at the higher section 8 rent, subject only to paragraph (10)(A)”;

and

(2) in subparagraph (I)(i), by inserting before the semicolon the following: “, except that the contract may provide that the maximum rent permitted for a dwelling unit shall not be less than the initial rent for the dwelling unit under the initial housing assistance payments contract covering the unit”.

Affirm that HUD has a requirement to maximize preservation.

Sec._____. The Secretary shall exercise his or her discretionary powers and duties conferred by this subtitle consistently with the goal of preserving and improving properties with project-based assistance so that they may continue to remain available and affordable to current and future Section 8 eligible tenants.

Require HUD to maintain project-based Section 8 in HUD dispositions.

SEC. _____. In fiscal year 2007 and following, in managing and disposing of any multifamily property that is owned or has a mortgage held by the Secretary of Housing and Urban Development, the Secretary shall maintain any rental assistance payments under section 8 of the United States Housing Act of 1937 and other programs that are attached to any dwelling units in the property. To the extent the Secretary determines, in consultation with the tenants and the local government, that such a multifamily property owned or held by the Secretary is not feasible for continued rental assistance payments under such section 8 or other programs, based on consideration of (1) the costs of rehabilitating and operating the property and all available federal, state and local resources, including rent adjustments under Section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 ("MAHRAA") and (2) environmental conditions that cannot be remedied in a cost-effective fashion, the Secretary may, in consultation with the tenants of that property, contract for project-based rental assistance payments with an owner or owners of other existing housing properties, or provide other rental assistance. The Secretary shall also take appropriate steps to ensure that project-based contracts remain in effect prior to foreclosure, subject to the exercise of contractual abatement remedies to assist relocation of tenants for imminent major threats to health and safety. After disposition, the contract and allowable rent levels will be subject to Section 524 of MAHRAA.

The remaining problems (no Section 8 until all substandard conditions are remedied, even for preservation purchasers, and HUD's bidding practices) could be addressed by report language, such as the following:

"The Committee is concerned that the Department's recent guidance concerning property disposition is inconsistent with our intent in enacting Section 311 of FY 2006 Appropriations Act. We expect the Department to reevaluate its guidance and practices to ensure that all reasonable efforts are taken to preserve and improve existing troubled properties facing enforcement action prior to making an infeasibility determination, and that HUD exercise its powers and duties under existing authorities (including bid practices and mortgagee-in-possession rights) consistently with the goal of preserving and improving these properties. The Secretary should issue such revised guidance within 90 days of enactment. We also clarify our prior intent that fair housing and civil rights laws have always applied to HUD's decisions."

Strengthen protections for troubled properties.

(from Sections 3, 4(b) and 6 of H.R. 44, introduced in the 110th Congress)

SEC. __. PRESERVATION OF HUD-HELD AND HUD-OWNED BUILDINGS.

Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z-11a(a)) is amended--

(1) by striking `During' and all that follows through `and thereafter, the provision of' and inserting `In managing and disposing of multifamily properties that are HUD-owned or that have HUD-held mortgages during any fiscal year, the Secretary may provide';

(2) by striking `and multifamily mortgages held by the Secretary'; and

(3) by striking `notwithstanding any other provision' and inserting `consistent with other provisions'.

SEC. __. MAINTAINING AFFORDABILITY THROUGH ESCROWING OF RENTAL ASSISTANCE.

In the case of any transfer of a distressed multifamily property that does not comply with housing quality standards applicable to the property, the Secretary may not recapture any rental assistance that is attached to any dwelling units in the property and provided under a contract for the property under section 8 of the United States Housing Act of 1937 or under any other program administered by the Secretary, but shall hold any such assistance in escrow for the property during the period of noncompliance and, upon determining that the property complies with such standards make such assistance available for the property.

SEC. 6. MULTIFAMILY HOUSING MORTGAGE FORECLOSURE.

The Multifamily Mortgage Foreclosure Act of 1981 is amended--

(1) in section 362 (12 U.S.C. 3701)--

(A) in paragraph (5), by striking `and' at the end;

(B) in paragraph (6), by striking the period at the end and inserting `; and'; and

(C) by adding at the end the following new paragraph:

`(7) mortgages transferred by the Secretary to State and local governments should be foreclosed in the same manner as mortgages held by the Secretary.';

(2) in section 363 (12 U.S.C. 3702)--

(A) in paragraph (9), by striking `and' at the end;

(B) in paragraph (10), by striking the period at the end and inserting ` ; and'; and

(C) by adding at the end the following new paragraph:

` (11) ` State or local government transferee' means any state or unit of general local government, any public housing authority, or any State or local housing finance agency that has acquired mortgages pursuant to section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11), section 204 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z-11a), or any other provision of law, that were previously held by the Secretary.';

(3) in section 364 (12 U.S.C. 3703)--

(A) by inserting ` , or any State or local government transferee,' after ` Secretary' the first and fourth places such term appears; and

(B) by inserting ` , or the State or local government transferee,' after ` Secretary' the second, third, and fifth places such term appears;

(4) in section 365 (12 U.S.C. 3704)--

(A) by inserting ` , or any State or local government transferee,' after ` Secretary' the first place such term appears;

(B) by inserting ` , or the State or local government transferee,' after ` Secretary' each other place such term appears; and

(C) by striking the last 3 sentences and inserting the following: ` The entity designating the foreclosure commissioner, whether the Secretary or any State or local government transferee, shall be a guarantor of payment of any judgment against the foreclosure commissioner for damages based upon the commissioner's failure properly to perform the commissioner's duties. As between the entity designating the foreclosure commissioner, whether the Secretary or any State or local government transferee, and the mortgagor, the entity designating the foreclosure commissioner shall bear the risk of any financial default by the foreclosure commissioner. In the event that the Secretary or any State or local government transferee makes any payment pursuant to the preceding two sentences, the Secretary or any State or local government transferee shall be fully subrogated to the rights satisfied by such payment.';

(5) in section 366 (12 U.S.C. 3705)--

(A) by inserting ` , or any State or local government transferee,' after ` Secretary' the first, third, fourth, and fifth place such term appears; and

(B) by inserting ` , or the State or local government transferee,' after ` Secretary' the second and sixth places such term appears;

(6) in section 367 (12 U.S.C. 3706)--

(A) in subsection (a)--

(i) in paragraph (1), by inserting ` or the State or local government transferee,' after ` Secretary, ' ; and

(ii) in paragraph (8), by inserting ` , or the State or local government transferee' after ` Secretary' ;

(B) in subsection (b)--

(i) by inserting ` , or any State or local government transferee,' after ` Secretary' the first and second places such term appears; and

(ii) by inserting ` , or the State or local government transferee,' after ` Secretary' the third place such term appears; and

(C) by adding at the end the following new subsection:

` (c) In any case in which a State or local government transferee is the purchaser of a multifamily project, the State or local government transferee shall manage and dispose of such project to benefit those originally intended to be assisted under the prior program unless continued operation and disposition of the property under such program is not feasible based on consideration of the costs of rehabilitating and operating the property after considering all available Federal, State, and local resources, including rent adjustments under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) . ' .

(7) in section 368 (12 U.S.C. 3707)--

(A) by inserting ` , or any State or local government transferee,' after ` Secretary' the first and third places such term appears; and

(B) by inserting ` , or the State of local government transferee,' after ` Secretary' the second place such term appears;

(8) in section 369A (12 U.S.C. 3709)--

(A) by inserting ` , or any State or local government transferee,' after ` Secretary' the second place such term appears; and

(B) by inserting ` , or the State or local government transferee,' after `Secretary' the first, third, and fourth places such term appears;

(9) in section 369B (12 U.S.C. 3710)--

(A) by inserting ` , or the State of local government transferee,' after `Secretary' the first and second places such term appears; and

(B) by inserting ` , or any State or local government transferee,' after `Secretary' each other place such term appears;

(10) in section 369E (12 U.S.C. 3713), by inserting ` , or any State or local government transferee,' after `Secretary' each place such term appears; and

(11) in section 369F(a)(1) (12 U.S.C. 3714(a)(1)), by inserting ` , or any State or local government transferee,' before the semicolon at the end.

Strengthen cities' right of first refusal.

(from H.R. 44, introduced in the 110th Congress)

SEC. 5. BUILDING ACQUISITION: VALUATION OF PHYSICALLY DISTRESSED PROPERTIES SOLD BY HUD IN DISCOUNT SALES.

Section 2001 of the Deficit Reduction Act of 2005 (12 U.S.C. 1701z-11 note) is amended--

(1) in paragraph (4), by striking `without taking into account any affordability requirements' and inserting the following: `as determined using industry standard appraisal practices, including consideration of the cost of repairs needed for the property subject to the loan to comply with minimum safety and building standards and the cost of maintaining the affordability restrictions applicable under the original loan or grant for the property' ; and

(2) in paragraph (7), by striking `without taking into account any affordability requirements' and inserting the following: `as determined using industry standard appraisal practices, including consideration of the cost of repairs needed for the property to comply with minimum safety and building standards and the cost of maintaining the affordability restrictions applicable under the original loan or grant for the property'.

Permit owners to transfer project-based Section 8 to another property.

SEC. xxx.

- (a) Notwithstanding any other provision of law, subject to the conditions listed in subsection (b), the Secretary may authorize the transfer of project-based assistance, debt and statutorily required low-income and very low-income use restrictions, associated with one or more multifamily housing projects within the same metropolitan area.
- (b) The transfer authorized in subsection (a) is subject to the following conditions:
 - (1) the total number of low-income and very low-income units shall remain the same in the receiving project;
 - (2) the net dollar amount of Federal assistance provided by the transferring project shall remain the same in the receiving project, unless an increase in Federal assistance is deemed necessary to secure project financing, or to allow rent increases permitted under the Multifamily Affordable Housing Reform and Affordability Act of 1997, as amended, or to allow standard contract extensions similar to that extended to comparable projects, as determined by the Secretary;
 - (3) the transferring project shall, as determined by the Secretary, be either physically obsolete or economically non-viable;
 - (4) the receiving project shall meet or exceed applicable physical standards established by the Secretary within a reasonable period of time, as determined by the Secretary;
 - (5) the owner or mortgagor of the transferring project shall notify and consult with the tenants residing in the transferring project concerning all significant elements of the transfer plan, including the identification of receiving projects and any proposed additional ownership entities, and provide a certification of approval by all appropriate local governmental officials;
 - (6) the tenants of the transferring project who remain eligible for assistance to be provided by the receiving project shall not be required to vacate their units in the transferring project until new units in the receiving project or other appropriate temporary housing projects are available for occupancy;
 - (7) the Secretary determines that the transfer has received the support of tenants and local government, pursuant to procedures and criteria established by the Secretary, and that the transfer is in the best interest of the tenants and complies with applicable Fair Housing statutes and regulations;
 - (8) if either the transferring project or the receiving project meets the condition specified in subsection (c)(2)(A), any lien on the receiving project resulting from additional financing obtained by the owner shall be subordinate to any FHA-insured mortgage lien transferred to, or placed on, such project by the Secretary, provided, however, that the Secretary may waive this requirement upon determination that such waiver is necessary to facilitate the financing of acquisition, construction or rehabilitation of the receiving project;
 - (9) if the transferring project meets the requirements of subsection (c)(2)(E), the owner or mortgagor of the receiving project shall execute and record either a continuation of the existing use agreement or a new use agreement for the

project containing use restrictions of no lesser duration than the existing restrictions;

- (10) any financial risk to the FHA General and Special Risk Insurance Fund, as determined by the Secretary, would be reduced as a result of a transfer completed under this section, provided, however, that the Secretary may waive this requirement upon determination that such waiver is necessary to facilitate the financing of acquisition, construction or rehabilitation of the receiving project; and
 - (11) the Secretary determines that Federal liability with regard to this project will not be increased, except as provided in subsection (b)(2).
- (c) For purposes of this section--
- (1) the terms 'low-income' and 'very low-income' shall have the meanings provided by the statute and/or regulations governing the program under which the project is insured or assisted;
 - (2) the term 'multifamily housing project' means housing that meets one of the following conditions--
 - (A) housing that is subject to a mortgage insured under the National Housing Act;
 - (B) housing that has project-based assistance attached to the structure;
 - (C) housing that is assisted under section 202 of the Housing Act of 1959 as amended by section 801 of the Cranston-Gonzales National Affordable Housing Act;
 - (D) housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the Cranston-Gonzales National Affordable Housing Act; or
 - (E) housing or vacant land that is subject to a use agreement;
 - (3) the term 'project-based assistance' means--
 - (A) assistance provided under section 8(b) of the United States Housing Act of 1937, including the additional assistance program;
 - (B) assistance for housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of such Act (as such section existed immediately before October 1, 1983);
 - (C) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965;
 - (D) additional assistance payments under section 236(f)(2) of the National Housing Act; and,
 - (E) assistance payments made under section 202(c)(2) of the Housing Act of 1959;
 - (F) payments made under any other federal program where rental assistance is attached to the structure.
 - (4) the term 'receiving project' means the multifamily housing project or projects to which the project-based assistance, debt, and statutorily required low-income and very low-income use restrictions are to be transferred

- (5) the term 'transferring project' means the multifamily housing project or projects which is transferring the project-based assistance, debt and the statutorily required low-income and very low-income use restrictions to the receiving project; and,
- (6) the term 'Secretary' means the Secretary of Housing and Urban Development.
- (d) In authorizing transfer of project-based assistance, subject to the conditions listed in subsection (b), the Secretary may:
 - (1) allow transfer of a portion of a project-based assistance contract to a receiving project, with the balance of the assisted units in the transferring project retaining project-based assistance at the transferring project;
 - (2) allow transfer of portions of a project-based assistance contract to multiple receiving projects as necessary to duplicate the existing number of units assisted with project-based assistance.
- (e) If a transferring project meets the condition specified in subsection (c)(2)(A), and the Secretary authorizes transfer of project-based assistance, debt and/or statutorily required use restrictions under this section, the Secretary shall be authorized to approve prepayment or defeasance of debt obligations secured by the transferring project and insured by the Secretary, provided that such prepayment does not substantially prejudice the rights of the holders of such debt, as determined by the Secretary.

Restore the Up-Front Grants program.

(from H.R. 44, introduced in the 110th Congress; note that repeal or revision of the “flexible authority” section, 12 U.S.C. §1715z-11a, as recommended under the section titled strengthening protections for troubled properties, might require revision of the specified sentence targeted below.)

SEC. 2. INVESTMENT THROUGH UP-FRONT GRANTS FROM GENERAL INSURANCE FUND.

(a) 1997 Act- Subsection (a) of section 204 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z-11a(a)) is amended by striking the last sentence.

(b) 1978 Act- Paragraph (4) of section 203(f) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(f)(4)) is amended by striking the last sentence.

Assure that purchasers are in compliance with local/state housing/health codes.

(adapted from H.R. 44, introduced in the 110th Congress)

SEC. __. BUILDING TRANSFERS: REQUIREMENTS FOR PURCHASERS OF FHA-INSURED PROJECTS AND SECTION 8 PROJECTS.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Housing and Urban Development shall issue a proposed rulemaking, in accordance with title 5, United States Code, that applies the participation and certification requirements for potential purchasers required under section 219 of Division G of the Consolidated Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 397) to the sale or transfer of any multifamily housing having a mortgage that is insured or receives assistance under the National Housing Act or for which project-based assistance is provided under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). The Department shall provide notice of an owner’s application for approval of the transfer to the unit of local government where the property is located, and to the residents of the property, using procedures required under the Housing and Community Development Amendments of 1978, as amended (12 U.S.C. sec. 1715z-1b(b)). A purchaser’s record of noncompliance under housing, health and safety codes with respect to other housing owned or managed by the purchaser, regardless of location, shall be grounds for disapproval of the transfer.

Fund Section 531 rehab grants funded by Interest Reduction Payments.

In the “Other Assisted Housing Account,” state the following:

“\$45 million of funds recaptured from the termination of Section 236 Interest Reduction Payment contracts is appropriated for the purposes authorized in Section 531 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended; provided, however, that the Secretary shall take immediate action to issue appropriate guidelines to make these funds available by November 30, 2007, which shall include the availability of both loans and grants.”

Assure that tenant protections are guaranteed as Congress intended.

Sec. ____.

(A) In Section 8(t)(1)(B), after the phrase “eligibility event for the project,” insert the following “regardless of unit and family size standards normally used by the administering agency, and the owner must accept the voucher and terminate the tenancy only for good cause,”

(B) In Section 8(t)(1), after the phrase “except that,” insert the following “a family need not requalify under an agency’s selection standards for participation, and”

(C) The Secretary shall promptly issue regulations to implement these provisions within six months from the date of enactment, which shall include a requirement that such protections be contained in the lease.

Provide vouchers for residents of all converted units.

Insert the following language into the FY'08 HUD Appropriations bill:

“Provided, That the Secretary shall provide replacement vouchers for all units that cease to be available as assisted housing due to demolition, disposition, or conversion, subject only to the availability of funds.”

Ensure a vibrant resident capacity building and predevelopment program in expiring Section 8 and other HUD-subsidized properties.

Revise MAHRAA Section 514(f)(3)(A) to read as follows:

“(3) Funding. -

“(A) In general. - The Secretary shall make available \$10,000,000 annually in funding, which amount shall be in addition to any amounts made available under this subparagraph and carried over from previous years, from which the Secretary shall make obligations to tenant groups, nonprofit organizations, and public entities, for building the capacity of tenant organizations, for technical assistance in furthering any of the purposes of this subtitle (including transfer of developments to new owners), for technical assistance for preservation and improvement of low-income housing for which project-based rental assistance, subsidized loans, or enhanced vouchers under section 8(t) are provided (including transfer of developments to tenant groups, nonprofit organizations, and public entities), for tenant services, and for tenant groups, nonprofit organizations, and public entities described in section 517(a)(5), from those amounts made available under appropriations Acts for implementing this subtitle or previously made available for technical assistance in connection with the preservation of affordable rental housing for low-income persons. Recipients providing capacity building or technical assistance services to tenant groups shall have demonstrated experience in working with tenants and independence from the owner, a prospective purchaser or their managing agents. The Secretary may provide assistance and training to grantees in administrative and fiscal management to ensure compliance with applicable federal requirements.”

Provide residents with access to building information.

[In addition to Sec. 8 of H.R. 44, which is recommended to address the need for an Early Warning System, we recommend the following statutory language.]

Section _____. Resident Access to Building Information. Upon the written request by a legitimate residents association established in accordance with 24 CFR Part 245, its designee or representative, the Secretary shall make available, for the property represented by the association:

- (1) information regarding property ownership and management, including identification of General Partners and other principals, and their other HUD-related properties, including but not limited to Previous Participation certifications, HUD Form 2530;
- (2) annual operating statement of profit and loss, HUD Form 92410;
- (3) subsidy contracts between owners and HUD, including correspondence between HUD and the owners;
- (4) HUD Management Reviews;
- (5) Balances and expenditures from Reserve for Replacement and other escrow funds administered by HUD or its contract administrator;
- (6) management contracts between the ownership and management agent

List tenants as third-party beneficiaries on HUD contracts.

Section _____. Third Party Beneficiary Status for Residents. In any contract for Housing Assistance Payments, Mark to Market Restructuring Commitments, Rehab Escrow Deposit Agreements for Mark to Market, or mortgage insurance executed by the Secretary and any owner or purchaser of a multifamily housing project, the Secretary shall include provisions establishing the residents of the affected project and their associations as third party beneficiaries of the contract.

Enlist tenants as partners with HUD in enforcement.

Section _____. Ongoing Enforcement of HUD Standards

The owner or purchaser of a multifamily housing project receiving a Housing Assistance Payment contract from HUD agrees that if the Secretary determines, upon any inspection or management review, that there are serious Housing Quality Standard violations in the project that are not corrected after reasonable notice, or any other substantial or repeated violations of other program requirements, including residents right to organize, the Secretary may:

- (A) withhold all or part of the Housing Assistance Payments due under the contract;
- (B) withhold any otherwise due rent increases;
- (C) use such withheld payments to effectuate repairs or to reimburse others who have made repairs; or
- (D) assume possession and management of the project and cure the violations.

Upon the finding of any serious violation of Housing Quality Standards or other program requirements by the Secretary, the tenant may withhold the tenant contribution and pay it when due into an escrow fund established and controlled by the Secretary, or use such withheld payments to effectuate repairs, in accordance with procedures established by the Secretary. If the tenant withholds the tenant contribution, the Secretary shall withhold all or part of the Housing Assistance Payments due under the contract until the violation is remedied. Owners shall not evict tenants for nonpayment of rent for exercising rights under this subsection. In addition to periodic inspections by the Secretary, the Secretary shall also conduct an inspection or management review of the project when requested by the local government or by a petition signed by no less than 10 percent of the tenants of the occupied units in the project.

Establish an “Early Warning System” based on existing HUD data.

The National Housing Trust is available to assist in refining the language below to make it a full and complete “Early Warning System.”

(from H.R. 44, introduced in the 110th Congress)

SEC. 8. TRANSPARENCY REGARDING BUILDING INFORMATION.

(a) Required Posting on Website- The Secretary of Housing and Urban Development shall make publicly available, by posting on a World Wide Web site of the Department, information regarding multifamily housing properties for which rental assistance is provided under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), for which other rental assistance or a subsidy is provided under a program administered by the Secretary, or for which a mortgage is insured under the National Housing Act (12 U.S.C. 1701 et seq.).

(b) Required Information- The information described in subsection (a) regarding a property shall include--

(1) information regarding the results of physical inspections of the property, including any real estate assessment center (REAC) scores for the property;

(2) any notices, plans, and information relating to the property required under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, including a notice of intent to prepay a mortgage under section 212, information under section 216, a second notice of intent under section 216(d), a plan of action under section 217, and notice of approval of a plan of action under section 225;

(3) any notice of request to terminate an insurance contract under title II of the National Housing Act (12 U.S.C. 1707 et seq.) for a loan or mortgage on the property;

(4) any notice of request to prepay a loan or mortgage on the property insured under title II of the National Housing Act (12 U.S.C. 1707 et seq.); and

(5) any notice under section 8(c)(8) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(8)) of proposed termination of an assistance contract under such section for the property.

(c) Updating- The Secretary of Housing and Urban Development shall update the information made available pursuant to this section not less than quarterly.

Enact exit tax relief.

(from H.R. 1491, introduced in the 110th Congress)

SECTION 1. SHORT TITLE.

This Act may be cited as the ` Affordable Housing Preservation Tax Relief Act of 2007.

SEC. 2. EXCLUSION OF GAIN FROM SALES OF AFFORDABLE HOUSING WHICH IS ATTRIBUTABLE TO DEPRECIATION.

(a) In General- Part I of subchapter P of chapter 1 of the Internal Revenue Code of 1986 (relating to treatment of capital gains) is amended by inserting after section 1202 the following new section:

` SEC. 1203. EXCLUSION OF GAIN FROM QUALIFIED SALES OF MULTIFAMILY HOUSING.

` (a) In General- Gross income shall not include gain from the qualified sale or exchange of eligible multifamily housing property.

` (b) Exclusion Limited to Depreciation- The amount of gain excluded from gross income under subsection (a) with respect to any property shall not exceed the depreciation adjustments (as defined in section 1250(b)(3)) in respect of such property.

` (c) Qualified Sale or Exchange- For purposes of this section--

` (1) IN GENERAL- The term ` qualified sale or exchange' means a sale of eligible multifamily housing property to or an exchange of such property with a preservation entity which agrees to maintain affordability and use restrictions regarding the property that are--

` (A) for a term of not less than the extended use period,

` (B) legally enforceable, and

` (C) consistent with the requirements of paragraph (2).

Such restrictions shall be binding on all successors of the preservation entity and shall be recorded as a restrictive covenant on the property pursuant to State law.

` (2) AFFORDABILITY AND USE RESTRICTIONS-

` (A) IN GENERAL- Affordability and use restrictions regarding a property are consistent with this paragraph if--

` (i) in the case of property with respect to which assistance described in subsection (d) is still in effect (as determined by the Secretary), such property satisfies the affordability and use restrictions in connection with such assistance, or

^ (ii) in the case of any other property, such property is maintained as affordable housing.

^ (B) AFFORDABLE HOUSING- The term 'affordable housing' means housing which would be a qualified low-income housing project (as defined in section 42(g)) if subparagraph (A) of section 42(g)(1) did not apply and subparagraph (B) of such section were applied by substituting '51 percent' for '40 percent'. Eligible multifamily housing property shall not fail to be treated as affordable housing solely because residents of such property (while such property was described in subparagraph (A)(i)) continue to reside in such property.

^ (3) CERTIFICATION BY PROGRAM ADMINISTRATOR- The term 'qualified sale or exchange' shall not include any sale or exchange of property unless the housing credit agency certifies--

^ (A) that the transferee with respect to such property is a qualified preservation entity,

^ (B) that affordability and use restrictions will be maintained with respect to such property during the extended use period, and

^ (C) the amount of gain which the transferor will be allowed to exclude from gross income under subsection (a) (determined at the entity level in the case of a partnership or S corporation).

^ (4) EXTENDED USE PERIOD- The term 'extended use period' means the period beginning on the date of sale and ending on the earlier of--

^ (A) 30 years after the close of the sale, or

^ (B) the date that the property is acquired by foreclosure (or instrument in lieu of foreclosure).

Subparagraph (B) shall not apply if the Secretary determines that the acquisition described therein is part of an arrangement with the owner a purpose of which is to terminate the extended use period.

^ (d) Eligible Multifamily Housing Property- For purposes of this section, the term 'eligible multifamily housing property' means any section 1250 property (as defined in section 1250(c))--

^ (1) which is assisted under section 221(d)(3) or section 236 of the National Housing Act (or financed or assisted by direct loan or tax abatement under similar provisions of State or local laws) and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990),

- ˘ (2) which is described in section 512(2)(B) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note),
 - ˘ (3) with respect to which a loan is made or insured under title V of the Housing Act of 1949, or
 - ˘ (4) which either received an allocation of low-income housing tax credit pursuant to paragraph (1) of section 42(h) or was exempted from such paragraph by paragraph (4) of such section.
- ˘ (e) Preservation Entity- For purposes of this section, the term 'preservation entity' means a housing credit agency or an organization approved by a housing credit agency that has the capacity and commitment to successfully acquire and preserve eligible multifamily housing property. An organization shall not be treated as a preservation entity with respect to any taxpayer if such organization is related (as defined in section 267) to such taxpayer.
- ˘ (f) Responsibilities of Housing Credit Agency- The housing credit agency (or an agent or other private contractor of such agency) shall--
- ˘ (1) determine whether the preservation entity's plan for rehabilitation (if any) and operation of the eligible multifamily housing property is viable for no less than 30 years,
 - ˘ (2) monitor the affordability and use restrictions for the eligible multifamily housing property, and
 - ˘ (3) notify the Internal Revenue Service as to any portion of such property which is out of compliance.
- ˘ (g) Recapture for Noncompliance- If the Secretary determines that all or a portion of the multifamily housing property acquired by a preservation entity in a transfer to which subsection (a) applied is out of compliance with the requirements of this section, the preservation entity's tax imposed under this chapter for the taxable year shall be increased by (or if such entity is not otherwise subject to tax under this chapter, there shall be imposed on such entity a tax equal to) 12.5 percent of the amount which bears the same ratio to the amount certified under subsection (c)(3)(C) with respect to such property as such entity's share of the portion of such property which is out of compliance bears to the entire property. The amount otherwise determined under this subsection (without regard to this sentence) shall be reduced by the product of 3.33% of such amount, multiplied by the number of years after the qualified sale or exchange that the property was in compliance with the requirements of this section.
- ˘ (h) Coordination With Section 1250- In the case of a qualified sale or exchange of eligible multifamily housing property a portion of the gain from which is treated as ordinary income under section 1250, such portion of the gain shall be excluded from gross income under subsection (a) before any remaining portion of such gain.'

(b) Application of 25 Percent Capital Gains Rate- Clause (i) of section 1(h)(6)(A) of the Internal Revenue Code of 1986 is amended to read as follows:

 ` (i) the sum of--

 ` (I) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, and

 ` (II) the amount of long-term capital gain (not otherwise excluded from gross income) which would be excluded from gross income under section 1203 if subsection (b) thereof did not apply, over'.

(c) Conforming Amendments-

(1) Subparagraph (B) of section 172(d)(2) of the Internal Revenue Code of 1986 is amended by striking `section 1202' and inserting `section 1202 and 1203'.

(2) Paragraph (4) of section 642(c) of such Code is amended by striking the first sentence and inserting the following: `To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section 1202(a) or 1203(a)), proper adjustment shall be made for any exclusion allowable to the estate or trust under section 1202 or section 1203, as the case may be.'

(3) Paragraph (3) of section 643(a) of such Code is amended by striking `section 1202' and inserting `sections 1202 and 1203'.

(4) Paragraph (4) of section 691(c) of such Code is amended by inserting `1203,' after `1202,'.

(5) Paragraph (2) of section 871(a) of such Code is amended by inserting `and 1203' after `section 1202'.

(6) The table of sections for part I of subchapter P of chapter 1 of such Code is amended by inserting after the item relating to section 1202 the following new item:

 ` Sec. 1203. Exclusion of gain from qualified sales of multifamily housing.'

(d) Effective Date- The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

Permit the use of LIHTCs with Mod. Rehab. properties.

(from H.R. 4873, introduced in the 109th Congress)

SECTION 1. LOW-INCOME HOUSING CREDIT IMPROVEMENTS.

(e) Affordable Housing Credits Allowed for Section 8 Moderate Rehabilitation Developments- Paragraph (2) of section 42(c) of the Internal Revenue Code of 1986 (relating to qualified low-income building) is amended by striking the last sentence.