

New England Housing Network Federal Legislative Priorities for 2008

May 2008

Foreclosure Mitigation and Anti-Predatory Mortgage Lending Legislation

The rising rate of mortgage delinquencies and foreclosures and their spillover into national credit markets has led to multiple bills to assist troubled borrowers and their displaced tenants, to help states and localities with large numbers of foreclosed properties, and to reform Government Sponsored Enterprises (Fannie Mae and Freddie Mac), the Federal Housing Administration (FHA), and private lending practices. The New England Network strongly supports legislation which will address all of these concerns. Key elements should include the following:

1. *Help At-Risk Owners to Refinance into Affordable Loans* Create a temporary FHA program to insure \$300 billion in refinance loans for homeowners at risk of foreclosure in cases where current holders of the mortgages agree to reduce the outstanding principal as needed and waive prepayment/delinquency fees.

H.R. 5830, *the FHA Housing Stabilization and Homeownership Retention Act of 2008*, introduced by Representative Frank on April 18, 2008 would authorize a two year program for refinancing mortgages originated before December 31, 2007 whose borrowers currently have mortgage debt to income ratios above 35%. It would require that the refinanced loans be fixed rate with a loan to value ratio no higher than 90% of current appraised value, including mortgage insurance premiums, origination fee and closing costs. It uses risk-based insurance premiums and imposes exit fees and profit-sharing requirements that borrowers would pay upon resale to keep the insurance fund sound. The program would be designed and monitored by an Oversight Board with representatives from HUD, Treasury and the Federal Reserve Board. The Federal Reserve would also be required to complete a study within 60 days on advisability of creating an auction or other bulk refinancing mechanism so that the FHA to process the new loans more quickly and efficiently.

2. *Fund Neighborhood Stabilization* Provide funding to states and localities with high numbers of delinquent and foreclosed properties so they can manage and dispose of foreclosed residential properties in a way that both provides affordable housing and strengthens neighborhoods.

We support the funding framework outlined in H.R. 5818, recently approved by the House Financial Services Committee, which provides \$15 billion for this purpose, half in the form of grants. This funding is critically needed so that states, cities and counties can purchase, rehab and sell foreclosed properties to homeowners or responsible rental managers. We are concerned, however, about proposed requirements that at least half of the funding assist very low income households (including one half of that for extremely low income households). We support those goals, but believe they can't be achieved unless Congress provides new Section 8 assistance to bring rents to the levels extremely low income households can afford.

3. *Increase Funding for Foreclosure Counseling* Foreclosure counseling agencies are critical to foreclosure prevention and mitigation efforts, providing critical outreach to at-risk borrowers and the expertise needed to help borrowers understand their options and negotiate solutions.

Congress approved a special appropriation of \$180 million for housing counseling agencies as part of the FY2008 HUD budget approved in December 2007 but additional funding is needed now. A number of bills include language to appropriate another \$180 to \$200 million this year. H. 3221 provides a \$180 million increase and H.R. 5830 proposes a \$200 million increase; both bills include set asides specifically to enable counseling agencies to pay for legal assistance related to foreclosure mitigation. The Network would like to ensure that some counseling money is available in every state.

4. *Support GSE Reform and Establishment of a National Housing Trust* We support GSE reform legislation to assist in the foreclosure crisis by raising current caps on loan purchases by the GSEs and by providing new funding for affordable housing programs. H.R. 1427, passed by the House in May 2007, would establish new regulatory guidelines for Fannie Mae, Freddie Mac and the Federal Home Loan Bank system and also raise an estimated \$500 million a year for the proposed National Housing Trust Fund by requiring the GSEs to annually contribute funds equal to 1.2 basis points of their prior year average mortgage portfolio. Companion legislation on the Senate side has not moved forward yet.

5. *Protect Tenants in Foreclosed Properties from Displacement* When a multi-unit property is foreclosed, lenders generally require tenants to leave. The current foreclosure crisis has led to significant displacement of low income renters, especially in New England, where 2-4 family properties are more common. (The National Low Income Housing Coalition estimates renters make up about 40% of all households displaced by foreclosures, but 50% or more in Massachusetts, Connecticut and Rhode Island.) Several bills have been introduced, including H.R. 5818 and H.R. 3952 (passed by House), with language to protect bona fide tenants in foreclosed properties from displacement by requiring that they be given a minimum notice period (90 days) before being required to vacate and by allowing those with leases to remain until the end of their lease (or six months if earlier). H.5818 would apply only to properties assisted under the proposed Neighborhood Stabilization Act, however.

To fill the gap pending the adoption of legislative protections, we support the National Low Income Housing Coalition's call for a special new appropriation of \$300 million for FEMA's Emergency Food and Shelter Program specifically to help displaced tenants, as well as owners, at risk of homelessness because they lack the funds to pay moving costs, security deposits, etc. It would also be advisable to include language to help homeowners at risk of foreclosure in certain circumstances.

6. *Temporarily Increase the National Cap on Tax-exempt Bond Authority* by \$10 billion a year and also temporarily allow mortgage revenue bond authority to be used to refinance at-risk borrowers into affordable loans.

Increasing the cap and making refinancings an eligible activity would expand borrower options. The Senate approved this as part of H.R. 3221 (the Dodd/Shelby bill) on April 10th, providing a

one year increase of just over \$10 billion in the cap and making refinancings of subprime loans issued between 2002-2007 an eligible mortgage revenue bond activity. Authorizing an FHA insurance program, as described above, would make the bond increase even more effective, as several HFAs have noted that their ability to help at-risk borrowers has been limited to date because many have negative equity in their homes and lenders have been unwilling to write down loans.

7. Approve Legislation to Modernize FHA Lending Practices so it can better meet the borrowing needs of households who turned to subprime lenders in recent years.

Both the House (H.R. 1852) and the Senate (S.2338) have approved bills in the past 12 months to modernize FHA lending practices in a financially sound way. The House version would also put some of the profits likely to be generated by increased lending activity into a national housing trust fund as discussed above. Both bills would raise the value of homes the FHA could insure so that it could serve borrowers in higher cost market and allow it to use risk-based insurance premiums so it could serve higher risk but creditworthy borrowers and provide them with lower cost financing. H.R. 3221, as passed by the Senate, also includes many of these provisions but prohibits adoption of the risk based insurance premiums that are key to the goal of serving more borrowers in a financial sound way.

8. Support Anti-Predatory Lending and Foreclosure Prevention Legislation The current foreclosure crisis has made the need for mortgage reform legislation abundantly clear. We support legislation to outlaw predatory lending practices, to improve disclosures to borrowers, and to require mortgage originators and servicers to act affirmatively to prevent foreclosures.

H. 3915, passed by the House in November 2007 provides a good starting point by banning loans which borrowers are not reasonably likely to be able to repay and limiting steering to higher price loans. We urge the Senate to pass companion legislation and recommend revisions to the House model to strengthen consumer protections and penalties for violators. We also support legislation such as H.R. 5679, recently introduced, which would amend the Real Estate Settlement Procedures Act, to require mortgage holders to engage in reasonable loss mitigation efforts before initiating any foreclosure and to contact borrowers at least 60 days before any payment reset dates.

9. Temporarily Authorize Bankruptcy Judges in Chapter 13 Proceedings to Modify Home Mortgages. A major barrier to solving the foreclosure crisis has been the unwillingness of mortgage holders or servicers to modify loan terms. Several bills have been filed that would permit judges to modify terms in the case of subprime loans to bring them to manageable levels. Supporters estimate such legislation could help 600,000 households.

Section 8 Voucher Reforms

The Section 8 Voucher Reform Act (SEVRA) proposes major legislative changes to the voucher program – the first since 1998 when Congress enacted "QHWRA," the Quality Housing and

Work Responsibility Act. Many organizations in the Network have been working with this program since before QHWRA, and have seen the program grow and evolve into a successful and critically important resource for 138,000 New England low-income households receiving tenant-based assistance, including families, elders, and people with disabilities. SEVRA would build on that record of success by improving and streamlining program rules while retaining core program characteristics.

H.R. 1851 passed the House of Representatives on July 12, 2007 by a strong, bipartisan vote of 333-83. Companion legislation, S. 2684, was introduced in the Senate on March 3, 2008 and currently awaits action by the Banking Committee.

The New England Network strongly supports SEVRA, and hopes that it will be passed and signed into law this year. Some of SEVRA's most important provisions include:

Funding Formula: Provides for a stable funding formula, which will encourage agencies to serve the maximum number of families with available funds because it bases funding on cost data for the most recent calendar year. This would ensure that every agency would have the security of knowing it had enough funding to renew all its vouchers each year.

Authorization of Incremental Vouchers: Authorization for 20,000 incremental vouchers in each of the next five years. New vouchers would provide desperately needed housing for the thousands of households currently on Section 8 waiting lists nationwide.

Administrative Fees: Ties each agency's administrative fee payments to its voucher utilization, thereby creating an incentive for agencies to lease the maximum number of vouchers that can be funded within the agency's budget.

Tenant Protection Vouchers: Directs HUD to issue tenant protection vouchers to replace all lost federal housing subsidies, whether or not they are occupied at the time the subsidy was eliminated.

Rent Burdens: Requires annual reports on rent burdens and encourage public housing authorities (PHAs) to increase payment standards to reduce undue rent burdens, with required HUD approval for payment standards up to 120% of FMR when rent burdens exceed reasonable limits.

Tenant Rent Payments: Streamlines the rules that determine the amount voucher holders and public and assisted housing tenants are required to contribute toward their rent each month, while maintaining income-based rents and the key principle that tenants should not pay more than 30 percent of income for rent.

Income Targeting: Revises the targeting requirement to the higher of (a) 30 percent of the local area median income or (b) the federal poverty line. This change would give agencies in the lowest-income areas added flexibility to serve low-wage working families.

Housing Quality Inspections: Requires inspections every two years rather than annually; allows PHAs to rely on inspections performed for other housing assistance programs; and permits a household to move into a unit that fails initial inspection for a non-life-threatening reason with the first month paid.

Portability: Requires the agency in the jurisdiction where the voucher holder wants to move to absorb the voucher and provides them with the funding to do so.

Project-Based Voucher program: Provides some much needed changes to allow greater use of this production tool, including provisions to clarify allowable rents in Low Income Housing Tax Credit (LIHTC) units and permit a guaranteed rent floor despite a reduction in fair market rent. Also allows project-basing of 25% (rather than 20%) of funds, plus 5% for households who are homeless.

Deconcentration of Poverty: Establishes deconcentration as a performance goal.

Earned Income Disregard: Promotes work by disregarding a percentage of the earned income of all employed individuals.

Preservation of Existing Affordable Housing

The preservation of the existing affordable housing stock continues to be of utmost concern to the Network. Hundreds of thousands of American households live in rental units that were developed with mortgages and/or project based rental assistance contracts from either HUD or Rural Housing Services.

Many of those units were developed in the late 1970's or early 1980's, and their mortgages are beginning to mature or are subject to prepayment. In addition, Section 8 contracts continue to expire and are renewable at the owner's discretion. A recent GAO report noted that there are 23,000 HUD subsidized properties nationwide, of which 11,267 have HUD mortgages. Twenty-one percent of those properties, comprising 101,000 units, will mature in less than ten years. HUD-subsidized properties with state Housing Finance Agency mortgages are in a similar situation.

The recent difficulties with insufficient project-based Section 8 funding have only added to a growing "HUD fatigue," in the GAO's own words. Fortunately, Congress is responding to this problem, and the Network wishes to express its thanks for the work of the appropriations and authorizing committees for an extremely productive year, and for their responsiveness to our previous requests for action.

Last year, the Network endorsed the comprehensive proposal recently made by the National Preservation Working Group, an association of national, regional and local stakeholders committed to the vitality of our affordable housing stock. The principal provisions of those recommendations addressed the need to: Maintain Housing at Risk of Being Converted to Market; Restore Housing at Risk of Loss Through Deterioration; and Protect and Empower Residents Facing Conversion. In addition, certain tax measures were recommended, to enable the Low Income Housing Tax Credit to serve preservation needs better.

We are pleased that Chairman Frank has drafted a comprehensive preservation bill that addresses virtually all of our recommendations. The Network generally endorses this bill and supports the constructive comments made by the National Preservation Working Group on April 10, a copy

of which can be provided upon request. We urge the introduction of a similar bill in the Senate.

In addition, we endorse the provisions in the House and Senate bills to modernize the Low Income Housing Tax Credit program, including permitting the use of tax credits for Section 8 Moderate Rehab properties, and the Senate's provision repealing the 10 year placed-in-service rule for acquisition credits.

The preservation provisions in H.R. 2930 & S. 2736, reforming the Section 202 program, will provide important new tools, including authorization of a new Senior Preservation Contract made available to nonprofits owner as project-based rental assistance for units not already covered, and expansion of authority to provide enhanced vouchers. These bills also broaden the eligible uses of refinancing proceeds and refinancing methods, clarify rent increase protection for unassisted tenants and authorize subordination, sale and restructuring of existing debt.

The Network also supports the Mark-To-Market Extension and Enhancement Act of 2007 (HR 3965), which will provide important authority to extend the M2M program to October 1, 2012; extend the period of eligibility for nonprofit debt relief from three to five years; extend HUD's authority to approve rents in excess of 120% of FMR; and make a broader range of properties eligible for M2M, subject to owner consent.

Low Income Housing Tax Credits

The Low Income Housing Tax Credit (LIHTC) program is the most important resource for creating affordable rental housing. Created in 1986, the LIHTC program has produced approximately 1.9 million apartments with rents affordable to low income families, seniors, homeless individuals, and those with special needs by providing investors with federal tax credits in exchange for equity. The LIHTC program, which leverages about \$6 billion of private investment annually, accounts for most new affordable rental housing production and drives about 40% of all multifamily housing development.

This federal program is administered by the states which received a 2008 allocation of credits equal to \$2.00 per capita with a small state minimum of \$2,325,000. State agencies allocate tax credits according to their own policies and procedures. These same agencies monitor compliance during the development stage and for at least 15 years thereafter.

A December 2005 independent study by Ernst and Young demonstrated that the LIHTC program is highly successful in producing quality affordable housing in an efficient manner. Nonetheless, there are several important improvements to this IRS-administered program which would increase its effectiveness.

The New England Network supports H.R. 5720, the Housing Assistance Tax Act of 2008. This bill, which was reported by the House Ways and Means Committee on April 9, makes the tax credit more effective in raising private equity and more efficient to use. For 2008 and 2009 the bill would increase the per capita allocation cap by \$0.20 in each state. The legislation would also temporarily increase mortgage revenue bond authority to allow for the issuance of an

additional \$10 billion of tax-exempt bonds to refinance subprime loans, provide loans to first-time homebuyers and to finance the construction of low-income rental housing. All housing bonds would be removed from the AMT, as would Low Income Housing Tax Credits and historic rehabilitation credits, which expands the market for the bonds.

Importantly, the bill would also extend the 130% high-cost area credit increase to state-designated buildings, provide 12 months to satisfy the 10 percent requirement for carryover allocations, increase the allowable basis for community service facilities, and suspend the recapture bond requirement for five years. For the allocated credit, rural income would be measured by the higher of local median income as under current law, or national non-metro median income. This will increase the number of eligible tenants.

Other tax credit changes include extending the allocated credit to the acquisition cost of existing buildings that are substantially rehabilitated, as long as they aren't federally subsidized, and putting a floor under the credit rate; limiting the definition of federal subsidy to tax-exempt bond financing; raising the rehab threshold to the greater of 20 percent of the building's basis or \$6,000 per unit; and repealing the ban on tax credits for buildings with Section 8 moderate rehabilitation assistance.

On the Senate side, the Network urges you to support the Affordable Housing Investment Act of 2008 (S. 2666), which was introduced by Senators Cantwell and Smith. This bill contains many of the same provisions in H.R. 5720. New England co-sponsors include Senators Kerry, Snowe and Sununu.

National Housing Trust Fund

The New England Housing Network supports legislation to establish a National Housing Trust Fund. Such legislation would provide a permanent mechanism to boost affordable housing production through funds outside the annual budget appropriations process.

One such mechanism is H. 1427 which passed the House in May 2007. That Act would establish an Affordable Housing Fund, which would be operated by the new GSE regulator with funds contributed by Fannie Mae and Freddie Mac. The money could be used to produce, preserve and rehabilitate rental housing and create homeownership opportunities for extremely low and very low income families. It could also be combined with other funds to address strategic affordable housing and community and economic development needs in economically underserved areas.

There is also a possibility that these proposals will be incorporated in the pending foreclosure mitigation bills in the House and Senate.

HOPE VI

The HOPE VI Public Housing Revitalization Program was enacted in 1993 with high hopes that it would be the driving force in the revitalization of severely distressed public housing and its surrounding neighborhoods. The results in New England have been mixed. The program has

been used successfully in Massachusetts by transforming some deteriorating public housing communities into successful affordable housing developments. However, in many other states the program has resulted in the demolition of many more units of low income housing than it has replaced. With the cost of rents rising rapidly, every affordable housing unit in New England serves a critical purpose; preservation is essential to the health of our communities. Therefore, the Network supports the continuation of the HOPE VI program, but with the following changes that are included in H.R. 3524, the HOPE VI Improvement and Reauthorization Act of 2007:

--All units demolished under future HOPE VI awards must be replaced (with narrow exceptions);

--Replacement units must be comparable regarding resident eligibility and long-term affordability;

--Language regarding the rights of displaced residents must be strengthened, including the elimination of rescreening and readmission processes;

--Program improvements designed to deconcentrate poverty must be included; and

--The redevelopment planning process must include strong resident participation requirements.

Housing for the Elderly

HUD's Section 202 program was created through the Housing Act of 1959. It is in need of some important reforms that will improve the efficiency of the program, facilitate refinancing that is often necessary for capital improvements, preserve existing facilities, use the assisted living conversion program more effectively to renovate projects, and more easily marry the 202 program with other funding sources to create more apartments. These important changes are reflected in H.R.2930, which passed the House of Representatives in December 2007. A companion bill, S.2736, is now in the Senate. The New England Housing Network strongly supports passage of S.2736 and urges passage prior to the May recess so that the bill can be enacted before Congress adjourns for the year.

There is one important difference between the House and Senate bills. The Senate bill added Section 201(4), which makes refinancing possible for older 202 developments (those built before 1974). As the law currently stands, a 202 development cannot be refinanced if the new interest rate would be higher than the original rate. The older developments tend to have low interest rates, and, therefore, cannot raise the capital needed for improvements through refinancing. The Network asks that our congressional delegation works to make sure that this provision stays in the bill, both as it makes its way through the Senate and in Conference.

Homelessness Assistance Programs

Homelessness remains a critical issue throughout New England. Too many people end up in emergency shelters or on the street, drawing on expensive emergency services, or precariously

doubled up with family or friends, simply because they cannot find a home they can afford, or because needs around mental illness and substance abuse are not being met within the community. Most disturbingly, a growing proportion of the homeless population consists of working families.

In some New England states, almost a quarter of the homeless are children. Those who have experienced repeated or long-term episodes of homelessness are unable to connect to the services and supports they need to maintain stable housing. Homelessness exacts significant costs on public systems, children's well-being and educational outcomes, and the ability of individuals to contribute to society. Studies in New England and nationally have been consistent in demonstrating that providing permanent supportive housing for individuals who are homeless costs less money than allowing them to ricochet through emergency systems.

Both the House and Senate are considering legislation to improve the homelessness assistance programs:

House: The House legislation, HR 840, the HEARTH Act was introduced by the late Representative Julia Carson (D-IN) with lead Republican Representative Geoff Davis (R-KY) in February 2007.

Senate: S 1518, the Community Partnership to End Homelessness Act, was introduced by Senator Jack Reed (D-RI) with lead Republican Senator Wayne Allard (R-CO) in May 2007 and passed the Senate Committee on Banking, Housing and Urban Affairs and awaits action on the floor of the U.S. Senate.

The New England Housing Network wants to ensure these two pieces of legislation are similar to enable quicker enactment and a permanent solutions focus.

Some of the issues that need to be addressed in legislation dealing with homelessness programs are:

--Funding permanent housing renewals from the account that funds Section 8 vouchers which would provide stability for renewals as well as free up funding for other new projects.

--Legally requiring the practice of establishing a 30 percent set aside for permanent housing for people with disabilities, including both individuals and families.

--Requiring HUD to create an incentive (probably a bonus program) for rapid re-housing programs for families.

--Dedicating at least 10 percent of funding to permanent housing activities for homeless families regardless of disability status.

--Adding families to the definition of chronic homelessness making chronically homeless families eligible for the same permanent supportive housing programs that chronically homeless

individuals are.

--Requiring HUD to continue special incentives for permanent supportive housing for those who experience chronic homelessness.

PATH: Raising the State Minimum to Support Outreach for Homeless Mentally Ill

The New England Housing Network supports passage of S. 1098 and HR. 2636, which would increase funding for the Projects for Assistance in Transition from Homelessness (PATH) program. PATH was created under the Public Health Service Act in 1990 and is a formula block grant to provide services for homeless or those at imminent risk of becoming homeless because of mental illness. The PATH program provides funds for community-based outreach, mental health, substance abuse, case management and other support services, as well as a limited set of housing services for people who are homeless and have serious mental illnesses. It has successfully identified homeless people suffering from mental illness and helped deliver the treatment they need to lead stable lives.

S. 1098 was introduced last year by Senators Domenici and Kennedy and co-sponsored by Senators Leahy and Sanders. HR. 2636, the House companion bill, was introduced by Representatives Peter Welch and Heather Wilson. Together, these bills correct a fundamental funding inequity in the PATH program: since its inception in 1991, there has been no funding increase for the 26 states and territories that have rural and frontier populations. These states have continued to receive the minimum allocation of \$300,000 even as program appropriations have risen from \$33 million to \$50 million. Under the current formula, many States and territories will never receive an increase to their PATH program even with the increasing demand and inflation and additional appropriations. In the New England Region Vermont, Maine, New Hampshire, and Connecticut have had no PATH federal funding increases since 1991.

The two bills would raise the state minimum allocation to \$600,000 and change the minimum for territories from \$50,000 to \$100,000. In doing so, they hold harmless larger states and insure that no state will lose funding from prior allocations.