

## Preservation of HUD-Assisted Housing: Project-Based Housing

- Enact comprehensive preservation legislation such as H.R. 4868, “Housing Preservation and Tenant Protection Act of 2010,” introduced by Representative Barney Frank (D-MA).
- Such legislation should:
  - Protect against the preemption of state and local preservation laws
  - Ensure that properties are preserved in cases where an owner sells or retains a property at the end of use restrictions
  - Make available enhanced vouchers for tenants with expiring mortgages
  - Give HUD the flexibility to use project-based Section 8 assistance as needed to preserve properties, including permitting the transfer of such assistance to a new property when needed to maintain the assistance and continuing such assistance when HUD disposes of a property
  - Create a public database that can be used by advocates to track assisted properties and support local preservation activities
- Support full funding of \$9 billion for the project-based Section 8 program

### Background:

From the mid-1960s to the mid 1980s, the federal government encouraged the development of affordable rental housing through a variety of programs. The government provided financial incentives for the private sector to build and maintain rental housing affordable to low income households. The largest such program is the project-based Section 8 program. This assisted, privately-owned rental housing is located in every part of the country and is critically important to the families that call it home.

As these affordable properties have aged and their restricted use periods come to an end, the federal government needs to take steps to preserve these properties. Since 1995, about 360,000 project-based Section 8 units have been lost to conversion to market rate housing. Annually, another 10,000 – 15,000 units leave this federally subsidized, affordable housing inventory.

Preserving this housing is good policy; it is a cost effective way to invest in our communities. According to the National Housing Trust, it costs approximately 40% less to preserve existing housing than to construct a new one.

While H.R.4868 generally represents a consensus around the need to preserve the assisted housing stock, there are areas of controversy. The draft bill circulated by the House Financial Services Committee in June 2009 established a strong right-to-purchase on behalf of a preservation-minded buyer when an owner chooses to discontinue affordability restrictions at the end of a mortgage or contract term. The introduced bill dropped this provision in favor of a preservation exchange program and a right of first refusal.

The bill’s voluntary preservation exchange program would provide incentives to owners to transfer or  
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sell their property to a preservation purchaser who agrees to accept new long-term affordability restrictions. If an owner chooses to participate in the exchange program, the owner agrees not to sell or transfer the property and to negotiate in good faith with potential preservation purchasers. In exchange, the Secretary would be authorized:

- To provide financial and regulatory incentives, including the suspension of physical inspections and management reviews of the project;
- To streamline approval of requests for prepayment, assignment of Housing Assistance Payment contracts, transfer of physical assets, and other activities and functions to facilitate the sale or transfer to a preservation purchaser;
- To release project replacement reserve funds or project residual receipts; and
- To provide advances in the form of a forgivable loan for direct predevelopment and administration costs.

The Secretary would also be authorized to provide grants or loans for the purpose of purchasing or rehabilitating the preservation project. Participation in the exchange program would be for a period of 12 months, and could be renewed at the owner's option, and with the Secretary's approval.

In addition to the voluntary incentive program described above, H.R. 4868 establishes a first right of refusal which would give HUD, or its assignee, the ability to match a third party offer and purchase the property at fair market value only when it is being sold. Under this provision, the owner would notify HUD, the state, and the tenants that the owner was opting out of the program one year before the expiration of the affordable housing agreement. The owner would then offer the property for sale and HUD, or HUD's assignee, would have the option to purchase the property on the same conditions as would be offered by a purchaser on the private market.

Neither of these provisions would preserve the properties in cases where the owner simply chooses not to participate in the programs and elects to hold the property.

Advocates will be seeking to strengthen the provisions currently in the bill and to include a right to purchase to ensure that housing that is currently assisted remains in the stock.

#### Appropriations

While the American Recovery and Reinvestment Act in 2009 provided funds to address the gap that had prevented 12-month funding for each project-based Section 8 contract in 2007 and 2008, it is important that Congress provide, as part of the regular appropriations process, the funds needed to fully fund project-based Section 8 contract renewal needs in FY11. Private multifamily housing owners rely on the annual renewal of their project-based Section 8 subsidy contracts. Without stable funding, many of these owners could decide to leave this critical affordable housing program.