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Foreclosure Bill Includes Important Changes for Low-Income Rental Programs

Yesterday, the President signed The Housing and Economic Recovery Act of 2008, H.R. 3221, which Congress passed last week. For a housing-related bill, the press has given unprecedented coverage to this legislation. But if your information has come only from the mainstream media, you may not be aware that the final bill includes a number of provisions concerning rental housing, in addition to measures designed to prevent foreclosures on owner-occupied homes and increase home sales. This e-mail highlights the provisions of particular relevance to persons interested in the housing voucher and public housing programs. It also includes a brief description of the 5 additional funding streams the bill provides for affordable rental housing.

Housing Voucher Program Changes

The bill includes a number of changes concerning project-based vouchers and also for tenant-based vouchers used in units that receive Low Income Housing Tax Credits that had been included in the House and/or Senate versions of the Section 8 Voucher Reform Act. (The Senate Banking Committee may still consider the remaining provisions of S. 2684 in September.)

Project-based Voucher Changes

Public housing agencies currently are allowed to "project-base" — or attach to particular structures — up to 20 percent of their vouchers. Families have the right to move with the next available tenant-based voucher after a year. H.R. 3221 includes the following changes to the statutory requirements governing project-based vouchers (section 8(o)(13) of the U.S. Housing Act), as part of sec. 2835(a)(1) of the bill. These changes should make it easier for PHAs and owners to use the PBV option to provide affordable rental opportunities in mixed income settings. (As a matter of law, these changes should be effective once the bill is signed. HUD should issue a notice suspending the conflicting regulations until revised regulations can be issued. This is what HUD did on most of the more comprehensive project-based voucher statutory changes enacted in late 2000.)

- Measures the 25 percent limit on the share of units that may received project-based voucher (PBV) assistance based on the "project" rather than per "building," as is now the case. (The bill does not change the current exceptions to the 25% limit, which does not apply to projects that primarily assist the elderly, people with disabilities or families receiving supportive services.)

- The initial contract term may be up to 15 years (matching the LIHTC compliance period), and PHAs and owners may agree at any time, including in the initial contract, to extend the term for up to 15 years at each expiration subject to certain conditions. (The initial term had been 10 years and HUD rules permit an extension agreement only in the last year of any term.)
- PHAs may set reasonable rents up to 110 percent of the HUD Fair Market Rent in units with Low Income Housing Tax Credits, even if this rent level exceeds the maximum rent under the LIHTC program, and may allow PHAs to agree in advance not to reduce the rent below the initial rent during the term of the contract.
- Permits PBVs to be used in cooperatives and in elevator buildings.
- Streamlines subsidy layering and environmental reviews for PBVs used in existing buildings, and eliminates duplicative reviews when a state or local agency has conducted a subsidy layering review as part of allocating tax credits or grant funds for construction or rehabilitation.

There are additional PBV changes included in the House or Senate SEVRA bills that would further improve the PBV option. For more information on the SEVRA provisions, see <http://www.cbpp.org/3-10-08hous-tables.pdf> starting at page 16.

Use of Tenant-based Vouchers in Tax Credit and HOME-funded Units

The bill makes it easier to use vouchers in units that have received funds under the LIHTC or HOME programs, and protects tenants against extra out-of-pocket costs for such rentals. Section 2835(a)(2) of the bill includes the following:

- For tenant-based vouchers used in units receiving Low Income Housing Tax Credits or HOME funds, PHAs do not need to make a separate determination of the reasonableness of the rent charged if it is at or below the rent for similarly assisted units not occupied by voucher holders; such rent levels are deemed to be reasonable.
- Prohibits use of vouchers in such units if rent exceeds both the voucher payment standard and the rent charged to non-voucher holders. In effect, this provision allows owners to continue to charge section 8 holders a higher rent than is paid by tenants who do not receive rental assistance, but only if it is reasonable (based on comparable unassisted units) and if the tenants do not have to pay more than 30 percent of income for rent and utility costs.

Public Housing

- Disaster Relief — Section 2804 of the bill eliminates a provision of the U.S. Housing Act that FEMA had used as justification for not assisting public housing agencies whose buildings were destroyed or damaged by the 2005 hurricanes in the same way as FEMA provides assistance when other government-owned buildings are damaged by declared natural disasters. While this change won't help Gulf Coast agencies affected by Katrina and Rita, it will help prospectively.

Vouchers and Public Housing

- PHA Plans — Section 2702 of the bill exempts most "small" agencies from the requirement to submit an annual plan to HUD. Small agencies are defined as those that administer a total of no more than 550 vouchers and public housing units. About 3,000 PHAs — 3/4 of all agencies that administer housing vouchers or manage public housing — are affected by the change. These agencies serve roughly 500,000 families. (Agencies designated as "troubled" or with a failing score under the Section 8 Management Assessment Program are not exempt.) Exempt agencies still must certify annually that they are complying with civil rights requirements; hold a public hearing annually on any proposed changes in their discretionary policies, and establish and consult with a resident advisory board. PHA groups had long sought such a change, to reduce administrative burdens on small agencies. The language adopted preserves key civil rights and resident participation requirements, and applies to fewer agencies than would have been exempted by a bill filed last year, which would have exempted agencies with 500 or fewer public housing units and any number of vouchers. Nonetheless, this change could make it more difficult for residents and other stakeholders to obtain key information concerning agency operations.
- Eligibility and Rents for disabled veterans — Section 2608 of the bill excludes from the definition of income for purposes of eligibility and rent determinations lump sum payments of veterans disability benefits. This provision treats such payments like Social Security disability lump sum payments.

Increased Funding for Affordable Rental Housing

The bill increases funding available to states and localities for affordable rental housing through 5 different funding streams. Some of these increases could be used to preserve public and other assisted housing, as well as to increase the affordable housing supply.

- 1) Grants to States and Localities to Redevelop Foreclosed Properties — By November 2008, states and localities should receive their share of the \$3.92 billion provided by the bill to stabilize neighborhoods hard-hit by foreclosures. Funds may be used to purchase, manage and resell foreclosed and abandoned properties. These funds can only be used to assist individuals and families with incomes at or below 120 percent of area median income and 25 percent of the funds must be used for households with incomes at or below 50 percent of area median. Estimates of each state's share of funds are at http://www.saveamericasneighborhoods.org/fact_sheets.asp. States and localities have a great deal of discretion in how to use the funds, but they must act fast: funds must be committed within 18 months, so it is important for communities that are not already well along on planning how to use the funds to work quickly. HUD is directed to ensure "to the maximum extent practicable and for the longest feasible term," that the homes in which funds are invested (for rental or sale) remain affordable consistent with the eligibility and targeting requirements. Thus, these funds represent a long-term investment of at least \$1 billion in housing affordable to very low-income families and individuals. At the discretion of state and local grantees, public housing agencies are eligible to use funds provided by the bill to purchase properties, which they could continue to operate as affordable rental housing. (PHAs could use vouchers to make rents affordable to the lowest income families.)

- 2) Affordable Housing Trust Fund — The bill establishes a permanent Affordable Housing Trust Fund administered by HUD. Beginning in 2010, funds based on a share of new business conducted by Fannie Mae and Freddie Mac will be available for affordable housing activities. About \$300 million per year will be available when the assessment is fully effective in 2012. In the future, Congress may designate other sources for the Trust Fund. After reservation of funds for administrative costs (which may not exceed 10 percent of annual grants), states must use at least 90 percent of remaining funds for production, preservation, rehabilitation and operation of rental housing (with 10 percent available for first-time homebuyers), and 75 percent of rental funds must benefit extremely low-income households (with incomes at or below 30 percent of area median income or the federal poverty line). Remaining funds may be used for households with incomes up to 50 percent of area median. Funds will go to states based on a formula largely specified in the bill. AHTF funds may be used for preservation of public and assisted housing. For more information, see the website of the National Low Income Housing Coalition, which spearheaded the campaign to establish the fund, at www.nlihc.org.
- 3) Capital Magnet Fund — The bill also requires Fannie Mae and Freddie Mac to set aside funds for a Capital Magnet Fund administered by the Treasury Department. This fund will receive half the amount allocated to the AHTF. Treasury will award funds through a national competition to Community Development Financial Institutions or non-profits that develop or manage affordable housing. Funds may be used for affordable housing and economic development/community revitalization activities. It appears that such funds could be an important component of the type of activities funded by the HOPE VI public housing revitalization program.
- 4) Increase in Low Income Housing Tax Credits — The bill increases the amount of tax credits allocated to states in 2008 and 2009. For states that receive per capita allocations, the allocations would go up by \$0.20 per capita. This amounts to an increase of 10 percent in 2008, and just under 10 percent in 2009. The bill also increases the minimum allocations provided to small states by 10 percent in both years.
- 5) Increase in Housing Bond Authority — The bill provides an additional \$11 billion nationally in 2008 authority for states to issue tax-exempt bonds to support rental housing or homeownership. The added authority can be carried forward through 2010.

LIHTC Data Collection

Section 2835(d) of the bill creates a new requirement that state agencies administering LIHTCs submit data annually to HUD on the characteristics (including race, ethnicity, family composition, age, disability status, receipt of vouchers, income, and rent payments) of tenants living in each LIHTC development. The bill also requires HUD to establish standards for data collection, provide technical assistance to states, and make data publicly available each year. Previously, little information has been available on the characteristics of the families assisted through the LIHTC.

Other LIHTC and Multifamily Housing Bond provision

The bill also contains a number of changes to the rules governing low-income housing tax credits and multifamily housing bonds. Importantly for projects seeking to make rents affordable for the lowest-income tenants, several of these increase the amount of tax credit that can be provided per unit or allow credits to be used more easily with other forms of federal housing assistance. One such provision allows states to provide "basis boosts" increasing credit amounts by 30 percent for projects (excluding bond financed projects receiving 4 percent credits) outside the limited areas — "Qualified Census Tracts" and "Difficult Development Areas" — where the boosts are now permitted. The bill also provides that the full range of federal rent and operating subsidies can be combined with tax credits without reducing the credit amount, and eliminates a prohibition on using tax credits in projects receiving Section 8 Mod Rehab assistance. For a full summary of the bill's LIHTC and multifamily bond provisions, see <http://www.lisc.org/content/article/detail/7396>.

A detailed (25 page) summary of all the provisions of this nearly 700 page bill is available on the website of the Massachusetts Citizens Housing and Planning Association, www.chapa.org.