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HUD Notice Issued Concerning Housing Voucher Program Changes in Foreclosure Bill

The Housing and Economic Recovery Act of 2008, H.R. 3221, enacted a number of changes concerning project-based vouchers and also for tenant-based vouchers used in units that receive Low Income Housing Tax Credits. The bill, Public Law 110-289, was signed by the President July 30, 2008. On November 24, 2008, HUD published a Federal Register notice concerning these changes (73 Fed. Reg. 71037). Comments concerning the notice are due December 24, 2008. Details about the notice and areas for potential comment are identified below.

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. The changes made by section 2835(a)(1) of the bill, described below, should make it easier for PHAs and owners to use the PBV option to provide affordable rental opportunities in mixed income settings.

- **Measures the 25 percent limit on the share of units that may receive project-based voucher (PBV) assistance based on the "project" rather than per "building."** (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.) A "project" is defined by the statute to mean a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. *HUD has declared this provision to be self-implementing, but requests comments by December 24, 2008 on the impact on deconcentration efforts of this change.* The effective date is not specified, but as a self-implementing change it should be effective upon enactment (July 30, 2008).
- **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.) *HUD's notice specifies that these changes are effective July 30, 2008.* The notice, however, contains ambiguous language stating that "such contract or contract extension may not exceed 15 years cumulatively." *Comments concerning this statement could be helpful so that the regulatory change does not undermine the intent of the provision on advance agreements to extend contract terms.*
- **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. HUD's current regulations are consistent with this provision,

which HUD's notice deems to be self-implementing.

- **PHAs may commit in advance not to reduce the rent below the initial rent during the term of the contract.** *HUD's notice postpones the effectiveness of this statutory change, on the grounds that it is permissive rather than mandatory. It appears that HUD will publish a proposed rule. Comments could address the appropriateness of HUD's decision to delay the implementation of this provision.*
- **Permits PBVs to be used in cooperatives and in elevator buildings.** *HUD's notice makes these changes effective July 30, 2008.*
- **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. *HUD's notice makes the change concerning subsidy layering reviews for existing projects immediately effective. HUD states that it will issue guidance concerning such reviews for newly constructed or rehabilitated housing. The notice also appears to make the change regarding environmental reviews have no effect. Comments on these aspects of the notice would be appropriate.*

All of these changes were originally included in the House or Senate versions of the Section 8 Voucher Reform Act (SEVRA). 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/3-10-08hou-tables.pdf>. The 110th Congress did not complete action on SEVRA. We expect that similar bills will be filed early in the new Congress.

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. In these situations, a PHA does not have to compare the unit rent to unassisted units in the private market.
- Prohibits use of vouchers in such units if the rent exceeds both the voucher payment standard and the rent charged to non-voucher holders. In effect, in properties where the voucher payment standard exceeds the rent paid by tenants who do not receive voucher assistance, this provision allows owners to continue to charge section 8 holders a higher rent, but only if it is reasonable (based on comparable unassisted units) and if the rent does not exceed the payment standard. The measure assures that voucher tenants in LIHTC- or HOME-assisted units do not have to pay more than 30 percent of income for rent and utility costs.

In the Nov. 24th Federal Register notice (73 FR 71039), HUD announced that these provisions are self-implementing and effective retroactively to July 30, 2008. HUD will later amend the voucher regulations.