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Preservation of HUD-Assisted Housing: Project-Based Housing

Final FY12 HUD funding bill:

- Fully fund the renewal of all project-based rental assistance contracts
- Funds project-based contract renewals at \$9.34 billion, an amount lower than both the House Subcommittee and Senate-passed bills. HUD says that funding provided in the bill will allow it to renew all project-based contracts for 12 months.

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.

Of the nation's 1.4 million units of multifamily assisted housing stock today, 450,000 units are at risk of leaving the affordable inventory because of owners opting out, maturity of the assisted mortgages, or failure of the property under HUD's standards. 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.

HUD issued a Notice of Funding Availability on October 17 for the long-awaited **Tenant Resource Network**, which will provide \$10 million to about 20 organizations for tenant education and assisted-housing preservation efforts. In reaction to flaws in the NOFA, NLIHC and other housing advocates have asked HUD to make changes to the NOFA. On December 2, HUD issued changes to the TRN NOFA, along with a new application deadline of January 4.

The final **FY12 HUD funding bill** included several assisted-housing preservation components:

Mark to Market Extension

The final bill extends the authority of the Mark to Market program until September 30, 2015. Mark to Market authority provides owners of assisted housing the ability to restructure assisted mortgage loans when rents are marked down to market levels. Without the extension of this authority, the requirement to mark rents to market would have remained, but the authority to restructure mortgage loans so that new lower rents would cover the financing would have expired. Mark to Market extension was in the Senate's T-HUD bill.

Tenant Protection Vouchers for Certain Unassisted HUD Tenants Facing Expiring Use Restrictions

The final bill includes the Senate bill's \$10 million set-aside of the voucher renewal account's funds for Tenant Protection Vouchers or Enhanced Vouchers to at-risk tenants in buildings with expiring mortgages or use restrictions who are not now eligible for assistance. Advocates in Illinois, Massachusetts and across the nation worked closely with Senators Richard Durbin (D-IL) and Scott Brown (R-MA), who advocated for these protections.

The National Housing Trust estimates that in FY12 alone, almost 13,000 affordable housing units nationwide, financed through various HUD-subsidized mortgage programs, face expiring restrictions, but tenants are not covered by project-



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based Section 8 contracts. These tenants do not qualify for any tenant protection assistance when these HUD-subsidized mortgages mature or certain non-renewable rental assistance contracts expire.

The final FY12 HUD language would provide tenant protection assistance, through Tenant Protection Vouchers or Enhanced Vouchers, to tenants in these properties if they are in low-vacancy areas and may have to pay rents greater than 30% of household income. This tenant protection assistance could also be utilized as project-based vouchers. HUD must issue implementation guidelines by mid-March.

Project-Basing Tenant Protection Vouchers

The final T-HUD bill also includes an amendment, championed by Senators Jeff Merkley (D-OR) and Scott Brown (R-MA), to authorize project-based vouchers in lieu of tenant-based vouchers that would otherwise be issued for expiration of a Rent Supplement (Rent Supp), Section 236 Rental Assistance Payment (RAP), or Section 8 mod rehab contract. Eligibility to project-base these tenant protection vouchers is limited to Rent Supp, RAP or mod rehab projects that converted to vouchers since October 1, 2006, or will do so in the future. HUD must issue guidelines that include tenant consultation and the agreement of a housing authority administrator. This authority was included under the bill's Rental Assistance Demonstration but will only be in effect in FY12 and FY13. In FY12 alone, HUD is expected to issue about 2,000 tenant protection vouchers for expiring Rent Supp and RAP tenants. This amendment will ensure these and other tenants have affordable housing, and that these homes are affordable for the long-term.

Any project-based vouchers issued under this provision will not count toward a public housing agency's 25% limit on the number of housing choice vouchers it may project-base.

Schumer Amendment to Retain Project-Based Assistance

The T-HUD appropriations bill has included the "Schumer Amendment" for several years. The language, spearheaded by Senator Charles Schumer (D-NY), requires the HUD Secretary to preserve project-based contracts on troubled properties before or during the foreclosure process. The Schumer amendment language is improved in FY12. The requirement now applies to all project-based contracts, not just those on HUD-insured or HUD-held properties. Also, prior to abating a contract and relocating tenants for health and safety threats, HUD must provide notice to tenants and obtain tenant consent, and first use other available remedies, including partial abatements and receivership.

Transfer of Project-Based Assistance

The T-HUD bill includes revised language authorizing the HUD Secretary to transfer some or all project-based assistance, debt, and use restrictions from one multifamily project to another multifamily project or projects. The FY12 T-HUD bill includes a new provision here, allowing the transfer to be done in phases to accommodate financing and other requirements related to rehabilitating or constructing the project or projects to which the assistance will be transferred. New language also allows the number of units in the property receiving the transferred assistance to be fewer than at the original property if those units were unoccupied and the reduction is needed to reconfigure bedroom sizes to meet current market demands. The FY12 T-HUD language also brings Section 811 properties under this overall transfer authority.

Advocates will also be working on the **Section 8 Savings Act**, a draft of which was circulated by House majority staff in June. The draft bill includes several preservation provisions, all of which NLIHC supports:

- Increasing the maximum **contract length for project-based vouchers** to 20 years.

- Prohibiting existing public and assisted housing families who receive enhanced vouchers or tenant-based vouchers because of demolition or disposition, or because of a termination of a HUD subsidy contract, from being considered a new applicant and being **re-screened** by the PHA.
- **Including enhanced vouchers** in the determination of a public housing agency's (PHA's) leasing rate.

NLIHC is urging Congress to include **additional preservation provisions in SESA**. These include two provisions that were in earlier versions of SESA in previous sessions of Congress:

- Modify how a PHA allocates project-based vouchers. Current law enables a PHA to provide 20% of their voucher funding to a project-based voucher program. Each PHA is authorized a set number of vouchers it can provide to the community. Changing the limitation to be based on authorized vouchers instead of funding will
- make it easier for a PHA and HUD to track, facilitating oversight of the program.
- Allow a PHA to use an additional five percent of authorized vouchers to serve disabled or homeless populations or in areas where vouchers are hard to use.
- Increase the number of units a PHA can provide project-based voucher assistance in smaller properties. Currently, a PHA may only provide PBVs to 25% of a building's units, unless it is serving elderly or disabled people along with
- supportive services. While this promotes income mixing, it can also be detrimental to creating smaller affordable housing developments.
- Clarify that owners of multifamily properties may evict tenants only for serious violations of terms of lease or violations of applicable law.

In Congress, advocates would like to see **broad legislation to preserve assisted housing** reintroduced. In the last Congress, significant movement was made to preserve these important housing resources, but the Congress closed without enacting needed legislation. The House Committee on Financial Services reported a bill in 2010 to provide a number of important resources and incentives to prevent the further loss of affordable housing units, including: providing grants and loans to for-profit and nonprofit housing sponsors to help ensure that properties can be recapitalized and kept affordable; allowing owners to request project-based assistance in lieu of enhanced vouchers; providing enhanced vouchers to protect tenants when their assisted housing is converted to market-rate housing; protecting the rights of states to enact preservation and tenant protection laws that will not be preempted by federal law; ensuring data needed to preserve housing is publicly available and regularly updated; allow for the creation of a single database for all federally assisted properties based on a unique identifier for each property. The bill also, for the first time, would have authorized a rural housing preservation program for USDA Section 515 properties. The bill also included an NLIHC priority: the establishment of a nationwide public database of federally assisted properties to enable policymakers, tenants, and advocates to more effectively monitor and preserve the existing portfolio of affordable housing.