



Preservation-Related Provisions of the Housing and Economic Recovery Act

The foreclosure response package signed by the President on 7/30/08 includes several important provisions that affect the ability to preserve and improve existing HUD or RHS assisted multifamily rental housing. Here are some highlights:

1) Low Income Housing Tax Credit Changes:

- Authorizes state credit agencies to provide a 30% basis boost for 9% projects to improve project feasibility, even if the property receives HOME funds or is outside of a QCT or DDA;
- Makes housing tax credits apply toward the alternative minimum tax, encouraging new investors;
- Provides a 10% increase in low-income housing tax credits, with a 10% increase in the small-state minimum, for calendar years 2008 and 2009;
- Allows costs funded by below-market federal loans to be included in basis;
- Allows federal rent and operating subsidies, such as IRP, to be used in combined with Housing Credits;
- Increases minimum rehab requirements for tax credits to 20% of adjusted basis or \$6,000 per unit, adjusted for inflation;
- Eliminates the 10-year placed-in-service rule for federally subsidized properties;
- Sets the minimum annual allocated Housing Credit percentage at 9 percent through 2013;
- Eliminates the need for annual income certification unless a property has a new tenant with income above the low income ceiling;
- Repeals the Housing Credit recapture bond rule for 5 years when the building will continue to be operated as a qualified low-income building and the taxpayer elects to be subject to a three-year statute of limitations following a recapture event;
- Extends the time limit to incur 10% of LIHTC costs to one year;
- Increases permitted Related Party ownership interest from 10% to 50%;
- Adds energy efficiency and historic character to items that must be factored into state QAPs;
- Modifies the Housing Credit student rule to make children who received foster care assistance eligible for Housing Credit apartments;
- Expands the allowable basis for community service facilities;
- Permits the use of national non-metropolitan median income limit for 9% properties in rural areas;
- Requires state housing finance agencies to submit data annually to HUD on the characteristics of residents of LIHTC properties and requires HUD to provide technical assistance to states, establish standards for data collection, and make data publicly available each year;
- Requires HUD and the Rural Housing Service to speed up processing of project approvals for assisted properties with LIHTC and revises certain LIHTC and HUD program rules;
- Repeals the prohibition for Section 8 Mod Rehab properties in the Housing Credit program.

2) Use of Housing Credits with FHA Programs:

- Requires FHA to create, within 180 days of enactment, a pilot program using designated underwriters to insure all LIHTC projects;
- Simplifies subsidy layering for FHA loans with LIHTCs;
- Exempts LIHTC projects from FHA builders cost certification requirement if the FHA mortgage is less than 80% of project cost;
- Lifts the requirement to escrow LIHTC equity proceeds or provide other security;
- Exempts LIHTC projects from periodic FHA property inspection requirements if FHA determines that state allocation agency monitoring procedures are sufficient;
- Requires HUD to delegate review and processing of mixed-finance 202s to a state or local housing agency with experience underwriting supportive multifamily housing. The State/local agency must agree to issue a firm commitment within 12 months of delegation and HUD must execute capital advance within 60 days of commitment. The delegated agency may recommend a higher rental assistance amount than HUD initially awarded;
- Requires HUD to delegate review and processing of Shelter plus care to a state or local housing agency near the project with experience underwriting supportive multifamily housing, unless no interested agency exists.

3) National Affordable Housing Trust Fund:

A 4.2% levy on the outstanding balance of new loans purchased by Fannie Mae and Freddie Mac will provide new funding for affordable housing. The Congressional Budget Office estimates that assessments will total \$283 million in FY2010 and over \$600 million a year by FY 2012. An initial portion of the funding will offset the expected costs of the new FHA insurance program (100% in 2009, 50% in 2010, and 25% in 2011). Of the amount remaining:

- 65% is dedicated to the Trust Fund, to be distributed through state housing finance agencies "to increase and preserve the supply of rental housing for extremely low and very low income families, including homeless families." At least 75% of the Trust Fund will be for extremely low income rental housing. At least 80% of grant must be used for rental housing production, preservation, rehab and operating costs (75% of rental spending must benefit ELI and poverty level families, while up to 25% can assist those at 30.1-50% AMI). Grants to states will begin in 2010.
- 35% is dedicated to a Capital Magnet Fund, to be available to Community Development Financial Institutions for affordable housing, economic development, and community service facilities.

4) Purchase and Rehabilitation of Foreclosed and Abandoned Properties:

Provides \$3.92 billion for state and local governments for this purpose. Funds can only be used to assist households at or below 120 percent of area median income and 25 percent must be used for households at or below 50 percent of area median. HUD must develop a formula by late September and dispense funds by late October 2008; states must commit funds within 18 months of receipt. Due to the short turnaround of the expenditure of these funds, we suggest that these funds are better spent on existing housing, in existing markets. HUD is directed to ensure that homes utilizing funding remain affordable "to the maximum extent practicable and for the longest feasible term." Rental housing is specifically included, and funds can be used to purchase and manage properties as affordable rental housing.

5) \$11 Billion in Tax-Exempt Bonds:

To be used to refinance subprime loans, finance the construction of low-income rental housing, and support loans to first-time homebuyers.

6) Project-based Vouchers:

- Changes the 25 percent PBV cap from individual building counts to the total project count;
- Permits PBV contracts and renewals to be for up to 15 years, and to be committed at any time;
- Allows PHAs to set PBV rents up to 110 percent of Fair Market Rents, in excess of LIHTC rents, and to commit that PBV rents will not be reduced below the initial contract rent;
- Permits PHAs to use PBVs in cooperatives and in elevator buildings;
- Eliminates the requirement for Subsidy Layering reviews for PBVs in existing buildings or when a state or local agency is doing a subsidy layering review;
- Eliminates the requirement for environmental reviews, unless otherwise required;
- Exempts about 3,000 small public housing agencies that administer fewer than 550 vouchers and public housing units from HUD annual plan requirements;
- Eliminates the requirement for PHAs to make a separate determination of rent reasonableness for vouchers used in units receiving LIHTC or HOME funds if the rent is at or below the rent for similarly assisted units not occupied by voucher holders;
- Prohibits use of vouchers in LIHTC or HOME units if rent exceeds both the voucher payment standard AND the rent charged to non-voucher holders.

7) Government Sponsored Enterprises:

- Clarifies Fannie Mae's and Freddie Mac's Duty to Serve underserved markets, including manufactured housing, affordable housing preservation, and rural markets;
- Requires each GSE to report the number of rental units affordable to low income families contained in mortgages it purchases for 2-4 unit owner occupied single family homes. Permits FHFA to establish requirements regarding such units;
- Requires FHFA to establish a single annual multifamily housing goal, either by unit or dollar volume, for mortgages that finance dwelling units affordable to low-income families (<80% AMI), with additional requirements for units affordable to very low income families.

8) Special Preservation Provisions:

- Sec. 1603: authorizes the conversion of RAP contracts to Section 8 at Starrett City, with right to renew and mark up to market.
- Sec. 2801: permits the use of discount sales to local governments and up-front grants for Parkview Apartments in Ypsilanti, Michigan.
- Sec. 2802: provides enhanced vouchers for Heritage Apartments in Malden, Massachusetts, a nonprofit-owned 236 being refinanced, and provides for the vouchers to be project-based by the Housing Authority.
- Sec 2803: directs HUD to allow the transfer of project-based Section 8 rental assistance contracts for properties in Franklin County and Hamilton County, Ohio, including authority to change unit sizes.
- Sec. 2805: provides enhanced vouchers for Nihonmachi Terrace in San Francisco, California, a nonprofit-owned 236 being refinanced, and directs that the vouchers be project-based by the Housing Authority.