

**DISCUSSION DRAFT**  
**HOUSING PRESERVATION AND TENANT PROTECTION ACT OF 2009**  
**Dated June 23, 2009**  
**Sponsored by Rep. Barney Frank (D-MA)**

**Summary of Selected Provisions of Interest to NAHB**

**Purpose**

The purpose of the bill is to encourage the preservation of federally assisted affordable housing. The bill removes some statutory and regulatory barriers to preservation, creates incentives for owners to remain in HUD programs and establishes incentives for preservation entities to acquire and rehabilitate these properties. Additionally, the bill protects tenants from displacement due to mortgage maturity, prepayments and opt-outs.

Properties covered under the bill include those financed by the following programs:

- Section 8 project-based
- Section 202
- Section 236
- Section 221(d)(3) with Below Market Interest Rates (BMIRs)
- Sections 221(d)(3), 202, 236 and 231 with Rent Supplements or Rental Assistance Payments (RAP)
- Sections 515, 514 and 516 (rural rental housing and farm labor housing)

**Section 2 Definitions.**

Creates the term qualified preservation owner (QPO) – refers to a for-profit or nonprofit owner of a housing project that agrees to use and affordability restrictions for 30 years in exchange for receiving incentives to acquire and rehab a property or to continue its use as affordable housing. The QPO must also agree to provide an assignable right of refusal in favor of a state housing finance agency (HFA) at an agreed-upon price. This right of refusal is subordinate to a federal right of first refusal provision contained elsewhere in the bill (to be discussed below).

*NAHB has not supported first right of refusals for any housing program (see additional comments below on Section 103). Additionally, state HFAs typically do not purchase properties; this provision should be deleted.*

**Title I-Preservation of Federally Financed and State-Financed Affordable Housing at Risk of Conversion to Market-Rate Housing**

- Section 101. Conversion of Rent Supplement and RAP Contracts to Section 8 Project-based Rental Assistance. Allows owners of properties with rent supp and RAP assistance to convert to Section 8 project-based assistance. Additional rental affordability period applies and there are certain conditions that must be met in setting the rent levels.

- Section 102. Displacement Prevention. Provides loans and/or grants on a competitive basis to owners of assisted properties whose contract termination will happen within 10 years of enactment of this bill. Assisted properties include those financed under Section 221(d)(3), Section 236 interest reduction, Section 202, and Section 515 for rural rental housing. Funds must be used for non-recurring maintenance and capital improvements for the property. Property owner must keep units affordable for not less than 20 years, beginning on the existing contract termination date. Properties must be in strong rental housing markets and cannot already be receiving project-based or tenant based rental assistance from any source. New project-based rental assistance may be provided to unassisted residents. Upon termination of an existing rental subsidy program, residents would receive enhanced vouchers.
- Section 103 Federal First Right of Purchase Before Conversion of Multifamily Housing. This provision requires an owner of a property that is going to prepay the mortgage or opt out of a subsidy program to offer to sell the property to a QPO and that priority be given to a nonprofit QPO. A two-year notification period is imposed on owners whose covered housing property has an impending “conversion event.” A conversion event includes the expiration or non-renewal of a project-based rental assistance contract, any full payment, expiration, prepayment or termination of a mortgage for the housing; or any termination or expiration of use restrictions of affordability requirements for the housing. During this period, an owner cannot sell or otherwise transfer the property or enter into any sale or other transfer of the housing. During the first 12 months of this period, if an owner receives an offer to purchase the property from a QPO, the owner has to accept the offer and sell to that purchaser.

This section applies to housing that is financed by a loan or mortgage or assisted under the Section 8 project-based, Section 221(d) below market interest rate, Section 236, Section 202, and rent supplement programs; all of the multifamily rural housing programs administered by the U.S. Department of Agriculture (USDA); any housing financed by the Community Development Block Grant (CDBG) program, HOME Investments Partnerships and the McKinney-Vento Homeless Assistance programs; as well as to housing provided under Section 42, Section 142(d) and Section 147 of the Internal Revenue Code (IRS).

***Housing industry groups oppose the first right of purchase provisions. The bill should seek to provide incentives to owners to preserve affordable housing, not take away existing owners’ rights to sell their property. Instituting a two-year restricted period before a property can be sold and directing to whom the property can be sold is a breach of existing contracts. These provisions will be challenged in court. In addition, CDBG and HOME provide only gap financing for affordable housing; as such, only a small amount of funding could trigger the right of first purchase provision. In addition, these provisions would apply to Sections 42, 142(d) and 147 of the Internal Revenue Code, programs for which the House Financial Services Committee has no jurisdiction. A more useful approach would be to give HUD a role in matching up potential purchasers with owners who are interested in selling their affordable properties.***

- Section 104. Enhanced Voucher Assistance and Preservation of Section 8 Project-based Assistance for State-financed Affordable Housing. Authorizes enhanced voucher assistance for residents in state-financed units where the mortgage matures or is prepaid. At the owner's request, project-based vouchers can be provided instead of enhanced vouchers.
- Section 105. Project-Based Preservation Vouchers. At an owner's request, a PHA may provide project-based vouchers in lieu of enhanced vouchers in the event of an eligibility event (e.g., prepayment). Such vouchers would not count against the PHA's 20 percent limitation on using vouchers for project-based assistance.
- Section 106. Preservation of State-financed Affordable Housing Not Subsidized by Federal Government.

Provides that a Section 8 project-based contract on state agency financed properties will continue to the end of the original mortgage term even if the mortgage is refinanced (this corrects an on-going problem whereby a refinancing triggers the termination of the rental assistance contract).

Amends MAHRA to allow the right to mark rents up to market on the expiration of the Section 8 contract term made under the state agency program, regardless of the renewal provisions of the contract. During the five-year period prior to the final expiration of the contract, an owner can renew the contract at marked up to market rents for an additional five-year term.

For projects with Section 8 project-based assistance that were financed with debt provided by a state or local housing agency, subject to the agency's approval, the owner may terminate the Section 8 contract and enter into a new contract for project-based assistance for a term of 20 years, although the owner must enter into an enforceable commitment to preserve the affordability of the project for not fewer than 55 years from the date of such contract, subject to the continued provision of Section 8 or other rental assistance.

- Section 110 Market Rents for Tax Credit Financed Housing with Project-based Vouchers. This provision provides that in the case of a contract unit that has been allocated low income housing tax credits and for which the rent under Section 42 is less than the voucher rent, the PHA may allow the unit rent to be established at the higher voucher rent.
- Section 110. Use of Existing Section 8 Funds to Preserve and Revitalize Affordable Housing. Provides that funds in the residual receipt account of a property are transferred, at the time of a qualified sale or exchange, to qualified preservation owners. The funds may be used for rehabilitation, may be put in the reserves for replacement fund or may be used to pay for social and other services that benefit residents.

## **Title II-Restoration of Housing at Risk of Loss Due to Deterioration**

- **Section 201. Authority to Transfer Section 8 Assistance to Other Properties.** This provision allows HUD to transfer Section 8 assistance, debt interest reduction payments and use restrictions from one property to another in the same metropolitan area. The transferring project must be physically obsolete or economically non-viable. There are conditions to the transfer:
  - The number of low-income and very-low income units must remain the same. Vacant or obsolete efficiency units may be replaced with one-bedroom units
  - The net amount of federal assistance to the new project(s) must remain the same and the net dollar amount of federal assistance provided to the new project(s), unless an increase in federal assistance is necessary to secure project financing, to allow rent increases permitted under MAHRA, or to allow standard contract extensions, as determined by the Secretary.
  - If either the transferring or receiving project is insured under the National Housing Act (NHA), any lien of the receiving project resulting from additional financing obtained by the owner must be subordinate to any lien under a mortgage insured under the NHA that is transferred to or placed on the project, except this restriction may be waived if the Secretary determines it is necessary to facilitate the financing of acquisition, construction or rehabilitation of the project.
  - The transfer shall result in a reduction of any financial risk to the General and Special Risk Insurance Funds, except the Secretary can waive this requirement upon determining that the waiver is necessary to facilitate the financing of acquisition, construction or rehabilitation of the receiving project.
  - Federal liability with regard to the receiving project shall not be increased, as determined by the Secretary, except as for related to net amount of federal assistance and the Secretary's ability to increase it if needed to secure project financing, to allow rent increases permitted under MAHRA or to allow standard contract extensions.
  
- **Section 203. Use of Interest Reduction Payments for Rehabilitation Grants.** Authorizes HUD to obligate money recaptured from termination of Section 236 interest reduction payments for the purposes of rehabilitation; HUD must draft guidelines for how money recaptured from the termination of contracts for interest reduction payments can be made available as loans and grants.
  
- **Section 204. Clarification of Budget-Based Rent Increases for Rehabilitation Projects.** At an owner's request and for eligible projects, directs HUD to adjust rents on a budget-based basis to support the cost of rehabilitation, any increased debt service and other appropriate costs prior to work commencing (adjusted rents do not become effective until completion of the rehab). This provision is designed to aid in the underwriting of rehab projects.

### **Title III-Protection and Empowerment of Residents Facing Conversion**

- **Section 303 Ongoing Enforcement of Housing Quality Standards.** This section allows HUD to take a number of actions if a property is deemed to have serious “violations” of HQS or other “serious or repeated violations of other program requirements.” The actions may include: withholding rent increases; using withheld payments to make repairs; assuming possession and management of the property. In addition, tenants could withhold their rent contribution and put it into an escrow account controlled by HUD or use it for repairs. A petition submitted by 10 percent of the tenants or a request from the local government could trigger a property inspection or management review.

*The industry housing groups (including the nonprofits housing developers) oppose this provision. There are procedures already in place to respond to physical deficiencies and other serious violations, including the REAC property inspections, the management reviews and the 2530 previous participation certification process. No additional authority is needed.*

- **Section 304 Third Party Beneficiary Status for Residents.** This provision permits tenants and resident associations to become third party beneficiaries to contracts between HUD and other parties, such as owners. As a third party, they would have the right to sue to enforce HUD requirements or to seek damages.

*The housing industry groups (including the nonprofit housing developers) oppose this provision. Third parties may have vastly different interpretations of statutory and regulatory requirements related to the various programs, which could result in an onslaught of litigation. Such potential lawsuits from third parties could be disastrous to the financial health of the property. Tenants and resident associations already enjoy protections from eviction under state and local law, and there are other rights conveyed to them under the mark-to-market program, but with appropriate checks and balances.*

- **Section 305 Resident Access to Building Information.** This provision would allow residents to have access to certain financial information related to a property and property owner, including confidential business information such as statements of profit and loss, statements of account balances and management contracts. Information on the 2530 previous participation form, which contains social security numbers, would also be disclosed upon request.

*The housing industry groups (including the nonprofit housing developers) oppose this provision. Disclosure of confidential financial information would discourage investment in affordable housing and potentially expose property owners and investors to identity fraud.*

- **Section 306 Transparency Regarding Building Information.** This provision would require that certain information, such as REAC scores, management reviews notices to terminate insurance contracts, notices of intent to prepay, and others be posted on HUD’s web site.

*REAC scores are now posted on the HUD's web site. There are already requirements related to issuing notices of prepayment, etc., and it is not necessary to post them on HUD's web site. More thought needs to be given as to what information should be posted on the web site and for what purposes.*

#### **Title V-Incentives Under MAHRA for Owners to Maintain Housing Affordability**

- Section 502. Mark-to-Market for Moderate Rehabilitation Projects. This provision provides for comparable treatment of rent setting upon contract renewal for Section 8 mod rehab projects as for other Section 8 renewals under the Multifamily Assisted Housing Reform and Affordability Act (MAHRA). In addition, for mod rehabs that had rents reduced at initial renewal under the existing law, upon subsequent renewal under this act, the base rent will be adjusted to reflect the original rent prior to first renewal plus OCAFs. There is no retroactive increase, but the new rent will be higher going forward.
- Section 508 Independent Appraisal for Divergent Rent Studies. This provision would allow an owner to request a third appraisal if comparable market rent determinations made by the owner and HUD differ by 15 percent or more. The appraiser would be jointly selected and compensated by the owner and HUD. The results of the third appraisal would be binding.

#### **Title VI-Preservation Database**

- Section 601 Preservation Database. This provision would require HUD to develop and post on its web site a large database of properties, including those financed or assisted by HUD, the USDA's Rural Housing Service, and Low Income Housing Tax Credits (LIHTCs). The provision requires a wide range of information to be provided in the database, including REAC scores; financial information; demographic information on tenants; property specifics such as number of units, bedroom mix, contract rents; affordability and use restrictions; prepayment notices; and notices of proposed termination of contracts, among other items. The provision provides grants to state and local governments to use the database and to make the information publicly available.

*The housing industry groups do not support this provision. Some of the information listed is already posted on the web site, such as REAC scores. Confidential financial information should not be posted publicly or provided directly to tenants (as proposed elsewhere in the bill). There are already numerous requirements to provide certain information/notices to tenants. In addition, HUD may impose the collection of significant amounts of information on property owners without providing funding to do so. Housing industry groups also point out that HUD's existing database systems are seriously inadequate and should be improved before new databases are added.*

## Title VIII-Rural Housing Preservation

- Section 802. Preservation of Multifamily Housing. This section is based on previously introduced bills that would establish a preservation program for the Section 515 portfolio. Elements of the program include:
  - Owners to submit applications for assistance;
  - Priority to projects located on tribal trust lands or other Indian areas; colonias or in other small, poor, low income communities;
  - Secretary of USDA to prepare and approve a long-term viability plan in determining whether to offer a restructuring plan to the owner;
  - Requires a new long-term use agreement (with rent restrictions, extended affordability period; a covenant that runs with the land), as well as a physical needs assessment of 30 years and a financial plan;
  - Restructuring plan may include reduction or elimination of interest on the loan or loans made under section 515; partial or full deferral of payments due under these loans; subordination of these loans; reamortization of the loans; grants; ability to obtain third party equity; direct loan or guarantee of a loan, with a subsidized interest rate without regard to the value of the project;
  - Maximum household contribution to rent and utilities cannot exceed 30 percent of adjusted income of the household; rents may be adjusted up or down on an annual basis;
  - Provides for a work incentive by preventing any rent increases for one year if household income increases due to employment and allows a phased-in rent increase;
  - Prohibits participation in the program by owners with a history of poor management or maintenance of the properties; who are in default on a Section 515 loan; or if the owner is suspended or debarred from participating in federal housing programs;
  - Prohibits participation by owners that are a party to a prepayment lawsuit and conditions participation by owners who were awarded damages through a prepayment lawsuit by requiring them to contribute the lesser of 50 percent of the damage award or \$100,000 towards revitalizing the property. ***This provision is opposed by industry groups.***
  
- Section 803. Rural Preservation and Rural Tenant Protection Vouchers. Provides rural preservation vouchers to tenants not assisted by Section 521 rental assistance or Section 8 rental assistance and who are residing in a property that is accepted into the preservation program. The voucher assistance remains with the property as long as the property is under the long-term use agreement. The amount of assistance must be sufficient to allow the tenant to remain in the project after it is preserved; the tenant pays 30 percent of adjusted income for rent and utilities.

Provides rural tenant protection vouchers to tenants not assisted by Section 521 or Section 8 rental assistance where the project mortgage is prepaid or foreclosed upon. Tenants may stay in the unit or use the voucher for other housing. The tenant pays 30 percent of adjusted income for rent and utilities. Tenants staying in the project would

receive enhanced vouchers, which would revert to regular tenant-based vouchers when the tenant left the project.

The bill authorizes the USDA Secretary to contract with a public housing agency or a private or nonprofit organization to administer the preservation and rural tenant protection voucher programs.