



# HOUSING PRESERVATION NEWS

## CHPC Preservation Clearinghouse

Elyse Perry,  
Program Coordinator  
Ph:(415) 433-6804 x13  
Email:  
[eperry@chpc.net](mailto:eperry@chpc.net)

Matt Schwartz  
Executive Director  
Ph:(415) 433-6804 x11  
Email:  
[mschwartz@chpc.net](mailto:mschwartz@chpc.net)

### How to contact us:

#### MAIN OFFICE

369 Pine Street Suite 300  
San Francisco, CA 94104  
Ph: (415) 433-6804  
Fax: (415) 433-6805

#### INLAND EMPIRE

28545 Old Town  
Front Street, Suite 205  
Temecula, CA 92590  
Ph: (951) 506-3377  
Fax: (951) 506-3997

#### LOS ANGELES

800 South Figueroa  
Street, Suite 760  
Los Angeles, CA 90017  
Ph: (213) 892-8775  
Fax: (213) 892-8776

#### SACRAMENTO

PO Box 8132  
5325 Elkhorn Blvd.  
Sacramento, CA 95842  
Ph: (916) 683-1180  
Fax: (916) 683-1194

#### SAN DIEGO

PO Box 319  
113 West G Street  
San Diego, CA 92101  
Ph: (858) 693-1572  
Fax: (951) 506-3997

## Federal Housing Legislation Needed in 110<sup>th</sup> Congress

The commencement of the 110th congress in January holds new hope for affordable housing advocates, who have waited patiently for years for the opportunity to improve a number of existing federal housing programs. But it would be all too easy to let our pent up desire for change lead us into undisciplined advocacy for competing proposals that increase the likelihood that no changes occur. For this reason, the California Housing Partnership believes it is critical that we develop a united federal housing agenda. We hope to work with advocates across California and in Washington, D.C. over the next few months to reach broad agreement on the most important legislative priorities so that we can then turn our energies towards making the case for the importance of their passage during this Congress. The following is a draft list of what we see as the most important legislative changes needed to federal housing programs this year. (Note that we will address priorities for FY2008 appropriations in a separate newsletter; the focus here is on program changes not funding.) Please review this list and let us know if you have other items you believe should be on it or disagree with any of our recommendations.

### I. Preservation of Existing Subsidized Housing

#### A. Passage of Federal Exit Tax Relief

Efforts to preserve existing affordable housing frequently stall in California due to the unwillingness of investors to consent to a sale of the properties unless the sale price is sufficient to pay their recapture or "exit tax" liability. The alternative for owners is to hold the property until death at which point the tax basis is stepped up and the recapture tax liability is eliminated. The result is a large class of owners who lack sufficient motivation to sell their properties at reasonable prices. One way to address this growing problem is to amend the tax code so that the tax treatment that would apply at death applies earlier if the property is sold to a qualified preservation entity that agrees to invest new capital and to maintain the property as affordable housing for at least 30 more years. Eligible properties include Section 8, Section 221(d)(3), Section 236 and Section 515 rural housing properties. The value of the exit tax relief could be capped.

#### B. Preservation of Rural Rental Housing

Both House Financial Services Committee Chair Barney Frank (D-MA) and Housing and Community Development Subcommittee Chair Maxine Waters (D-CA) say they favor passage of legislation that would preserve the nation's remaining rural rental housing. Congress should pass legislation that will ensure the successful transfer of 515 properties and the ability of qualified entities to acquire these properties and preserve the affordability for the longest period of time.

#### C. Section 318 – Transfers of Section 8 Contracts

One of the most common situations in which owners decide to opt out of Section 8 contracts is when they conclude that the condition of their property is too far gone and the anticipated profit margin too small to warrant the effort of refinancing and substantially rehabilitating an older HUD-assisted property. Wouldn't it be great if owners could take these incredibly valuable and increasingly scarce contracts for federal rental assistance and attach them to a different property rather than simply giving them back to the federal government? Even industry veterans are still surprised to learn that there is a provision in federal law that theoretically does this. On its face, Section 318 allows the transfer of Section 8 contracts from a property that is physically obsolete and/or no longer economically viable to a similar property. However, there are a number of requirements that make Section 318 extremely onerous (some would say impossible) to use.

Here are some examples of the problems with the current law and what we propose be done to address them to make this a useful tool:

- Section 318 requires the replacement units be ready for occupancy prior to moving the Section 8 contract and there is no authority for providing a written commitment that can be used as security for financing the development of the replacement units. Congress needs to direct HUD to issue written commitments to transfer the Section 8 contracts so it is more feasible to finance the acquisition, construction or rehabilitation of the replacement units.
- Currently, there is no clear standard for determining obsolescence. Congress should direct HUD to adopt a clear and reasonable standard for obsolescence similar to the one developed for the HOPE VI program.
- The authority to transfer Section 8 contracts under Section 318 will sunset on September 30th of this year. Congress should extend the authority permanently and expand it to cover other project-based subsidies (e.g., Rent Supplement contracts, PRACs, 236 subsidies, etc.)
- Currently, contracts transferred via Section 318 authority are not eligible to be marked up to market. Congress should allow all renewal options otherwise available to contract renewals, including Mark-Up-To-Market.
- Section 318 currently requires that replacement units be identical in size to the demolished obsolete units. Congress should allow flexibility to change unit mix and configuration in replacement housing while maintaining the same number of assisted bedrooms and units.

If Congress consents to making these types of changes, Section 318 has the potential to dramatically reduce the number of Section 8 contracts turned back to the federal government each year.

#### **D. Provide Project-Based Vouchers In Lieu of Enhanced Vouchers**

Authorize the HUD Secretary to provide project-based voucher assistance in lieu of enhanced voucher assistance in prepayment and opt-out situations where the project owner seeks to preserve affordable units, if requested by the owner and approved by the public housing authority. While greatly assisting preservation purchasers, this proposal is expected to reduce Section 8 subsidy costs since the maximum project-based voucher rents (at 110% FMRs) are less than the market rents in strong market areas.

#### **E. Use of Section 8 Residual Receipts Reserves for Rehabilitation**

HUD should continue to allow nonprofits that acquire and rehabilitate properties with existing project-based Section 8 contracts to use the Section 8 residual receipts reserve accounts for rehabilitation. Until recently HUD's policy was to allow the use of residual receipts reserve accounts for both acquisition and rehabilitation of properties. Oftentimes nonprofit purchasers rely on these reserves to acquire, rehabilitate and preserve as affordable properties with project-based Section 8. Many preservation transactions would not be feasible without these reserve funds. Recently HUD has become concerned about the large value of some of the project-based Section 8 projects' residual receipts accounts, and is considering a new policy that would only allow the use of residual receipts accounts to cover increased operating expenses rather than approve a rent increase request or allow the funds to be used for hard costs associated with rehabilitation.

## **II. Creating New Resources and Increasing the Efficiency of Existing Ones**

### **A. Creation of a National Housing Trust Fund**

Legislation should be introduced that will create a national housing trust fund with an ongoing, permanent and dedicated source of funding.

### **B. Improvements to the Low Income Housing Tax Credit**

The Low Income Housing Tax Credit is the most powerful financing resource currently available to increase the supply of affordable housing and has contributed to the development of more than 200,000 affordable homes in the twenty years it has been in existence. Yet, as users of the LIHTC well know, there are many ways that this successful resource can be made better. Here are some that we believe should be included in Congress' agenda for 2007:

- Fix the credit percentages at their theoretical face values of 9% (taxable) and 4% (tax-exempt). This change would increase the value of the credit significantly since current credit percentages are 8.15 and 3.49 respectively.
- Allow the use of below-market federal loans (e.g. HOME) without reductions in basis or other penalties (except tax-exempt bonds).
- Make it easier to use ongoing government subsidies (e.g., rent, interest, and operating subsidies) by treating them similarly to Section 8 payments instead of as grants.
- Allow using Tax Credits in refinancing Section 8 Moderate Rehabilitation properties. The existing prohibition is forcing many owners and buyers to opt-out of the valuable Section 8 contracts.
- Exempt LIHTC (and Tax-Exempt bond) investments from the Alternative Minimum Tax.
- Eliminate or modify the "10-year rule" to allow acquisition credits in a larger universe of projects, particularly in preservation purchases

### **C. Improve the Efficiency of Project-Based Section 8 Vouchers**

In the last six years more than a dozen housing authorities in California have successfully implemented Project-Based Voucher programs as components of their Section 8 Voucher programs, creating hundreds of new high quality apartments and leveraging hundreds of millions in additional private debt without any additional cost to the federal government or to housing authorities. Yet, over the past couple of years, HUD has decreased the usefulness and flexibility of this powerful program by imposing unnecessary and counterproductive restrictions. It is time for Congress to re-assert its authority over the Project-Based Voucher program by passing legislation to, among other things, do the following:

- Permit 15-year initial terms (still subject to annual appropriations) and the pre-commitment of subsequent renewals up to a total term of 30 years.
- Allow contract rents to be set at market in LIHTC developments.
- Give housing authorities the ability to set firm rent floors so that contract rents can be financed without fear of declines.
- Authorize housing authorities and owners to use site-based waiting lists
- Increase the percentage of vouchers to be project-based from 20% to 25%.