



July 16, 2012

Regulations Division
Office of General Counsel
451 Seventh Street SW
Room 10276
Department of Housing and Urban Development
Washington, DC 20410-0500

Re: Docket No. FR-5242-P-01, the Housing and Economic Recovery Act of 2008 (HERA):
Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs

To Whom It May Concern:

Thank you for the opportunity to comment on HUD's proposed rule to make conforming changes to the regulations of the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher (PBV) programs to reflect the self-executing provisions of the Housing and Economic Recovery Act of 2008 (HERA), to amend the regulations required to implement those statutory provisions of HERA that are not self-implementing, and to make other changes to update or clarify regulations. The National Council of State Housing Agencies (NCSHA) recommends HUD broaden the proposed rule's definition of "existing housing" in the final rule and adhere more closely to the statutory language on rent levels in Low Income Housing Tax Credit (Housing Credit) units occupied by tenant-based voucher holders.

NCSHA represents the nation's state Housing Finance Agencies (HFAs), which administer a wide range of affordable housing and community development programs, including project-based Section 8 rental assistance, Housing Choice Vouchers, tax-exempt Housing Bonds, Housing Credits, HOME, down payment assistance, and state trust funds.

Broaden the Definition of "Existing Housing"

HUD's proposed rule would significantly narrow the range of properties that would be eligible to receive PBV assistance as "existing housing." We are extremely concerned that this policy change would impact negatively HUD's ability to meet its goal of preserving existing affordable housing, including some of the specific preservation initiatives that HUD's Office of Multifamily Housing is currently undertaking. HUD's proposed change would directly

contradict the changes made in HERA that are intended to make it easier to attach PBVs to existing housing by reducing regulatory requirements. For example, HERA allows a public housing agency (PHA) to forego subsidy layering and environmental reviews for existing housing.

Currently, PHAs have significant discretion to determine when to provide PBVs to existing housing. This flexibility has been critical to preserving existing affordable units in communities where rental housing has become increasingly scarce, including the stock of privately-owned, HUD-assisted housing with expiring use restrictions and subsidy contracts. This discretion also has facilitated HUD-approved conversions of public housing to project-based vouchers.

Under the proposed rule, PHAs would be permitted to provide PBVs to existing housing only where the anticipated cost of repairs is less than \$1,000 per unit. The procedures for housing that needs rehabilitation may delay the initiation of rental assistance, creating significant cash shortfalls for preservation transactions which rely on the PBV income stream to support new financing for rehabilitation and often acquisition. These developments typically meet Housing Quality Standards (HQS), but may require additional rehabilitation (e.g. for energy retrofits and modernization) to satisfy the requirements of lenders and Housing Credit investors, or to improve long-term stability.

Because rehabilitation in these properties is carried out with tenants in place, current rental income is needed to cover ongoing operating expenses. In many cases, the financing is structured as a permanent loan with construction holdbacks, requiring full debt service payments starting immediately. Contract rents must meet a “rent reasonableness” standard as soon as the new PBVs are effective. Consequently, owners often forgo higher rents that may be charged after rehabilitation is complete.

HUD recently launched the Rental Assistance Demonstration (RAD) program, authorized by Congress in the Fiscal Year (FY) 2012 HUD Appropriations Act. One of RAD’s objectives is to encourage owners of certain types of assisted multifamily housing with expiring subsidy contracts to convert to PBVs. HUD has the authority to waive or modify all of Section 8(o)(13) for the conversion of public housing to PBVs, but waiver authority is limited when converting expiring Rent Supplement or Rental Assistance Payment properties. Many of these developments currently meet HQS, but will require additional rehabilitation with tenants in place for the reasons discussed above. Many of these proposed preservation transactions will not be feasible without the flexibility for PHAs or owners of eligible privately-owned multifamily housing to treat these developments as existing housing if they are occupied and pass HQS, even if some rehabilitation is planned. It is important that any new changes to the PBV program not impede an owner’s ability to rehabilitate a property after converting to PBVs through the RAD program.

NCSHA recommends that HUD either retain the current definition of “existing housing”

or revise the proposed definition by deleting the part of the proposed definition that would eliminate the possibility of rehabbing a property in the first year of the HAP contract and by increasing the per-unit rehabilitation dollar amount for units that need immediate repair to pass HQS.

**Adjust the Rent-Setting Formula for Housing Credit Units
Occupied by Tenant-Based Voucher Holders**

HUD should ensure that its final rule follows the intent of the HERA provision on voucher program rent reasonableness. By amending Section 8(o)(10) of the U.S. Housing Act, HUD's proposed change to 982.507(c)(2) could produce a result contrary to Section 2835(a)(2) of HERA, and possibly contrary to HUD's intention, in certain situations.

Specifically, where an owner requests a rent level above the approved rent for Housing Credit units which are not occupied by voucher-holders, the PHA could be forced to reduce the voucher rent level below the existing rent. This could occur even if the existing and proposed rents do not exceed comparable rents, undercutting the purpose of the statutory change. This would occur if the PHA payment standard at the time of the requested rent increase is below the rent for other Housing Credit units or the requested rent. For example, if an owner requests a rent increase of \$50 bringing the rent to \$950 (below the comparable rent of \$1,000), the rent for other Housing Credit units is \$900, and the applicable PHA payment standard is \$800, HUD's proposed rule would require the rent to be set at the lowest of the three amounts, i.e., \$800. Under the HERA language, the rent in this example should be set at \$900, because the statute requires the rent to equal the greater of the Housing Credit rent or the payment standard, if otherwise reasonable.

NCSHA recommends that HUD revise the proposed rule and follow the "greater of" statutory language thereby avoiding this adverse consequence for owners requesting rent increases.

Thank you for your consideration of our comments. Please do not hesitate to contact me if we can provide additional information.

Sincerely,

A rectangular box with a thin black border, used to redact the signature of the sender.

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives