National Housing Trust 2019 Federal Legislative and Policy Priorities

Full Funding for Project-Based Rental Assistance

Project-based rental assistance (PBRA) provides affordable housing for over 1.2 million low income and very low-income households across the country. Fifty-six percent of these households have someone with a disability or who is elderly. The average household income is less than $12,000. Privately owned properties with project-based Section 8 assistance generate $460 million in property taxes for local municipalities annually and directly support 55,000 jobs. Failure to fully fund these contracts could result in short funding Section 8 contracts covering thousands of apartments, more than half of which are occupied by elderly and disabled households

PBRA provides a stock of long-term affordable rental housing for the lowest-income American families while a long-term affordable housing shortage has grown increasingly severe. The number of very low-income renters increased by 18 percent between 2003 and 2013 (from 15.7 to 18.5 million households) while the number of affordable units for these renters decreased by 10 percent (from 20 to 18 million units).

Preserving properties with PBRA assures that affordable rental homes will continue to be available in a wide range of housing markets throughout the nation, including urban, rural, and suburban locations. According to the Urban Institute, nationally about 36 percent of all PBRA units are located in low-poverty neighborhoods, where low-income families otherwise might be unable to find affordable housing. Other properties serve as well-maintained anchors preventing downward investment in other communities.

Nearly 10,000 of the 17,723 project-based Section 8 properties are insured by the Federal Housing Administration (FHA). The estimated unpaid balance of the FHA insured debt underlying properties assisted by project-based Section 8 contracts is over $13.5 billion. Without sufficient Section 8 rental assistance, many projects will fail and FHA will be left paying the tab. In HUD's own words, "If funding for the PBRA program is not provided, the value of this underlying debt to FHA and private lenders as well as existing equity in the physical structures could be severely eroded, contributing to significant loss of privately held wealth and community investment."

Over half of project-based Section 8 tenants are elderly or persons with disabilities. Many owners of HUD-assisted properties provide valuable supportive services which help their residents succeed and maintain their independence. These services help reduce taxpayer expenditures in Medicaid, Medicare and emergency shelter and healthcare services. Full funding for PBRA is essential to keep these services in place.

In 2019, NHT will continue its long-standing advocacy for 12 months of full funding for PBRA contract renewals.

Low-Income Housing Tax Credit Expansion and Protection

The Housing Credit and the related multifamily Housing Bond program are our nation's most successful tools for encouraging private investment in the production and preservation of affordable rental housing and have been responsible for nearly all the affordable housing built and preserved in recent decades. Since 1986, these programs have financed over three million affordable apartments, providing approximately seven million low-income families, seniors, veterans, and people with disabilities homes they can afford. These successful public-private partnerships bring to bear private sector resources, market forces, and state-level administration to create quality homes for those most in need, while supporting job creation, generating tax revenue, and improving communities and local infrastructure. To strengthen and expand the Housing Credit, NHT will continue advocating for Congress to enact the Affordable Housing Credit Improvement Act.

Real Estate Assessment Center (REAC) / HUD Enforcement

In light of recent media reports of HUD assisted housing being poorly maintained, HUD Secretary Carson has expressed interest in reexamining how the Department conducts REAC inspections and improving its inspection and enforcement protocols for assisted properties. The National Housing Trust (NHT) and national Preservation Working Group (PWG) have long advocated for strategies to maintain the quality and sustainability of the assisted multifamily housing stock, as well as a long-term commitment to its affordability. We believe that these issues are best addressed by broader utilization and more consistent application and coordination of HUD's existing property monitoring and enforcement tools. NHT and PWG support a reexamination of these issues, but we urge Congress to call upon HUD to fully engage with industry stakeholders and residents and carefully consider their input before making any changes to existing systems. More specifically, we encourage the Department to explore proactive steps like periodic tenant surveys and increasing HUD and owner accountability, as well as remedies like rent abatements and receiverships.

Energy Efficient Housing as Infrastructure

As Congress considers a possible infrastructure bill in the coming year, we urge Members to include investments in energy efficient, healthy affordable housing as a key component of the nation's infrastructure. Updating our outdated housing infrastructure can create high paying jobs, while addressing a backlog of physical repairs needed to improve safety and quality of life in publicly assisted housing.

Lack of energy and water efficiency is costly. Nowhere is this more evident than in publicly and privately-owned housing that is affordable to low-income residents. Low-income families spend an average of 7.2 percent of their income on energy bills, as compared to two percent by high-income households. [1] The

[1] Energy Efficiency for All, American Council for an Energy-Efficient Economy, *Lifting the High Energy Burden*, April 2016

average public housing authority spends 22 percent of its operating budget on energy and water[2]. In privately-owned properties financed with equity from Low-Income Housing Tax Credits (Housing Credits), utilities made up 18 percent of operating expenses.[3] In assisted housing, lower energy consumption reduces government subsidy costs and helps preserve these long-term investments by reducing operating costs and improving the long-term financial stability of the property.

Many states require utilities to invest in programs that support energy efficiency, but significant work remains to ensure that meaningful savings and benefits are realized in affordable multifamily housing. Federal investment is needed to leverage utility company and other private financing sources, and further incentivize private investment in efficient affordable housing infrastructure by ensuring that owners can benefit from utility cost savings and by expanding pay for success programs.

Public investments in infrastructure that enhance efficiency make good financial sense. They offer the chance to leverage public and private funds for short and long-term savings, job creation and greater opportunity for residents. Updating energy and water systems creates healthier homes for residents and establishes a better platform for their success. For example, healthy indoor air systems can significantly mitigate the consequences of asthma in a child or chronic respiratory disease in seniors. NHT asks Congress to support investments in energy efficiency improvements in assisted housing as part of any congressional infrastructure bill.

Affirmatively Furthering Fair Housing (AFFH)

In August 2018, HUD published an Advance Note of Proposed Rulemaking (ANPR) inviting public comment on amendments to HUD's Affirmatively Furthering Fair Housing (AFFH) regulations. The goal of the AFFH regulations is to provide HUD program participants with a specific planning approach to help them meet their statutory obligation to affirmatively further the purposes and policies of the 1968 Fair Housing Act. This carefully crafted rule was developed as a result of a years-long public participation process during the Obama Administration. NHT asks Congress to provide oversight to prevent HUD under the current Administration from dismantling regulations designed to address and correct decades of government policies which created and perpetuated racial segregation and discrimination.

With our partners, NHT submitted multiple written comments to HUD between 2013-2016 and participated in countless meetings and listening sessions on AFFH. In every instance, we emphasized the importance of a balanced approach to fair housing, which recognized both preservation of existing affordable housing and reinvestment in distressed or gentrifying neighborhoods as a valid fair housing strategy equal to mobility and moving to high opportunity areas. We strongly recommended that HUD revise early drafts of the AFFH rule to ensure that jurisdictions feel empowered to both revitalize distressed areas as well as to promote and preserve housing in areas of high opportunity.

As a result of the extensive public participation process, HUD modified the AFFH rule to embrace this balanced approach in the final rule published in 2015. But HUD's latest ANPR stated that the Department has determined that a new approach towards AFFH is required. So, we must state our case for a balanced approach again, to ensure that it is not lost in the rewrite.

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[2] Federal Register/Vol. 81, No 192/Tuesday, October 4, 2016/Notices/FR-5913-N-27

[3] Novogradac & Company, 2015 Multifamily Rental Housing Operating Expense Report

The ANPR cites that over the three years since the AFFH rule was adopted, its approach has not proven to be an efficient way to guide meaningful action by program participants. HUD expresses interest in minimizing regulatory burden while more effectively aiding program participates to plan for fulfilling their AFFH obligations, creating a process that is focused primarily on accomplishing positive results, providing for greater local control and innovation, seeking to encourage actions that increase housing choice, and more efficiently utilizing HUD resources.

We agree these are laudable goals and recognize that there may be room for improvement in the implementation of the AFFH process. However, the process has only been in place for two years, with a relatively small number of jurisdictions required to submit their first Assessments of Fair Housing (AFHs) between 2016 and 2018. NHT is greatly dismayed that HUD chose to suspend this process for almost three years and withdraw the Assessment Tool, making it impossible for jurisdictions to prepare and submit AFHs. Instead of halting the process in its tracks and returning to the dysfunctional Assessment of Impediments process previously in place, we would have much preferred to see HUD work on providing more technical assistance to program participants, highlighting early successful assessment strategies, and continuing to provide the valuable national data associated with the Assessment Tool.

Further, several of the questions posed by the ANPR provide a troubling view of HUD's priorities in implementing a new fair housing assessment process. For example, HUD asks if, instead of a data-centric approach, jurisdictions should be permitted to rely upon their own experiences through a qualitative approach. This possibility seems to ignore the history of segregation and discrimination in the United States and the critical need for objective data to help jurisdictions assess and address their fair housing challenges. The ANPR also raises the possibility of "safe harbors" for jurisdictions, which seems to be fundamentally contradictory to the intent and letter of the Fair Housing Act.

The Fair Housing Act created a mandate to affirmatively further fair housing to ensure access to decent, affordable housing in strong and healthy communities for all Americans. Following years of detailed and deliberate public participation, the previous Administration designed AFFH to incorporate the use of objective data and public input into a fair housing planning process that is integrated into overall community development planning. This approach recognized the importance of both preservation of existing affordable housing and reinvestment in neighborhoods as well as mobility to high opportunity areas as valid fair housing strategies.

NHT asks Congress to provide oversight and hold HUD accountable, to prevent a lapse in fair housing protections or a retreat to subjective, private decision making about the use of federal resources.

The U.S. Department of Agriculture (USDA) Section 515 Multifamily Rental Housing Portfolio

The U.S. Government Accountability Office (GAO) recently released a report outlining challenges for the USDA to manage and preserve properties in the Section 515 multifamily housing program portfolio. USDA currently is not utilizing available unused Rental Assistance (RA) to incentivize the preservation of Section 515 rural rental housing, although it has the authority to do so. Nothing in the RA program appropriation, authorization, or regulatory language limits the use of RA funding to renewal only. In fact, annual appropriations language specifically states that unused RA may be transferred for preservation and servicing.

NHT and its partners within the Rural PWG urge the Rural Housing Service (RHS) to use every available unit and dollar of RA to preserve irreplaceable rental properties and protect tenants. At the annual cost of roughly $5,000 per RA unit, RHS could fund 8,000 units with the $40 million that the Administration recently proposed to rescind. We ask Congress to call for oversight hearings to urge the Administration to utilize available RA for preservation.

Section 8(bb) Preservation Tool

Section 8(bb) of the United States Housing Act of 1937 (42 U.S.C. 1437f(bb)) provides HUD with a tool for preserving budget authority for project-based rental assistance (PBRA) under Section 8. Under Section 8(bb), if a project-based rental assistance (PBRA) Housing Assistance Payments (HAP) contract is terminated or expires and is not renewed, HUD is authorized to transfer any remaining budget authority to either a new or an existing PBRA HAP contract, to provide assistance to eligible families, including those receiving PBRA at the time of the contract termination, under terms and conditions prescribed by HUD.

Currently, Section 8(bb) is not being fully utilized because it is difficult for mission-driven affordable housing organizations to determine when a HAP contract will become available and because HUD's guidance directing the transfer process is cumbersome and confusing to both stakeholders and HUD field offices. NHT and PWG would like to see Section 8(bb) work better and provide a mechanism which ensures zero loss of project-based subsidy. We are actively engaged with HUD on how the use of this tool could be improved. We may look to Congress for help in making Section 8(bb) the most agile tool possible in the case of opt-outs.

HUD Staffing Levels

Since the beginning of the Trump Administration, HUD staff has decreased annually due to attrition and the slow pace of filling empty positions. NHT understands there is currently a greater than 10 percent vacancy rate at HUD. The Administration has proposed staffing levels for most HUD program offices at levels that reflect anticipated continued attrition.

As staffing levels decrease, we are concerned that HUD is not equipped to manage its programmatic and regulatory responsibilities. Inadequate staffing levels may increase instances of distressed properties and pose health and safety risks to HUD tenants.

NHT encourages Congress to hold HUD accountable to fill vacant positions as quickly as possible, and to explore whether HUD has triggered impoundment act violations by intentionally lapsing appropriated Salaries and Expenses funds to decrease staffing levels to the Administration's budget staffing levels.

Federal Housing Finance Agency (FHFA) Oversight & Housing Finance Reform

President Trump will appoint a new FHFA Director in early 2019. As the Agency transitions to new leadership, NHT asks the Congress to provide oversight to ensure that FHFA is continuing to enforce its Duty to Serve regulatory responsibilities, and to appropriately maintain the Housing Trust Fund and the Capital Magnet Fund. Duty to Serve, the Housing Trust Fund, and the Capital Magnet Fund also should be protected in any housing finance reform bill considered in 2019.

Federal Financing Bank (FFB) Risk Sharing Initiative

NHT supported the Federal Financing Bank (FFB) initiative with Section 542c Federal Housing Administration (FHA)- Housing Finance Agency (HFA) Risk-Sharing, which provides a valuable financing tool for preserving and building affordable rental housing. The FFB Risk-Sharing initiative was started in 2015 to stimulate affordable housing production and preservation in response to tightening bond markets and a lack of private sector funding and liquidity that followed the financial crisis. The initiative is designed so that the FHA and state HFAs share in the risk of the mortgage, and works as follows:

- Participating HFAs enter into contracts with HUD that provide for reimbursement to HUD for a portion of any insured loss;
- HFAs use their own underwriting standards and assume at least 50 percent of the risk of loss; and
- "A" rated HFAs have access to capital funds provided by the FFB, a government corporation that purchases the obligations of federal agencies. The HFAs then lend those funds to private developers for projects that meet certain affordability criteria.

The Trump Administration terminated the FFB Risk-Sharing Initiative at the end of 2018. We urge the Administration to reintroduce this important program and continue it over the long-term and ask Congress to provide oversight as needed.

Protections for Assisted Housing Residents

NHT calls upon Congress to provide Enhanced Vouchers (EVs) or Project-Based Voucher (PBVs) for tenants facing any change in subsidy status from any federal program, such as HUD Maturing Mortgage-Extended Use Restrictions (MM-EUR) or upcoming Low-Income Housing Tax Credit Year 30 expirations. We also ask the HFSC to urge HUD to adopt a final EV rule that clarifies that the Right to Remain limits evictions to cases in which the tenant breaches the lease, and to improve guidance to Public Housing Authorities about reasonable rent determinations for EVs. Finally, Congress should ask HUD to verify that tenants who have been displaced and awarded Tenant Protection Vouchers actually receive rehousing, in better-served neighborhoods of their choice, which often requires access to higher payment standards and adequate counseling