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Summary of HUD FY 2015 Affordable Housing Preservation Provisions

*[HR 83, the Consolidated and Further Continuing Appropriations Act,
2015, Pub. L. No. 113-235 (Dec. 16, 2014)]*

1. Funding Level for Project-Based Section 8

The Act provides a total of \$9.7 billion for project-based Section 8. This funding level is 2% below FY 2014. To make this funding level workable, HUD's FY 2015 budget request had indicated that it plans to adjust all PBRA contracts to align with the calendar year (as opposed to the fiscal year) starting in January 2015. HUD believes this change will permit more accurate prediction of the true cost of annually funding contracts and will streamline administration. By reducing the length of the funding increments that overhang into a subsequent fiscal year to a uniform three months (October through December), HUD projected that this change would produce net savings in the required budget authority for FY 2015, thus accounting for the reduced funding request. (In FY 2013 and FY 2014, HUD had provided many owners of PBRA properties with funding increments covering less than 12 months, but enough to carry them into the next fiscal year, referred to as "short funding.") Under the calendar year (CY) scheme, following a transition year in FY 2015, HUD would then have to provide full 12-month funding increments for all contracts starting in FY 2016 to cover CY 2016. To provide full funding for all PBRA properties, this will require at least an estimated \$1.2 billion in additional budget authority in FY 2016, beyond what is required to cover cost increases.

2. Funding Level for Tenant Protection Vouchers; Set-Aside for Mortgage Maturity or Expiring Use Restrictions

As in FY 2014, the Act maintains Tenant Protection Vouchers (TPVs) at \$130 million, up from a post-sequester level of \$71 million. TPVs protect tenants whose affordable HUD-supported homes are threatened by a variety of causes, including certain prepayments or maturities of HUD-subsidized mortgages, Section 8 project-based opt-outs or terminations, public housing demolitions or conversions, and expiration of legacy contracts, and they preserve the net level of subsidized units in a community, so long as the units were occupied within the 24 months prior to conversion. TPVs are also used for other purposes, including family unification, witness protection, etc.

The Act again includes a set-aside of up to \$5 million of these funds for enhanced vouchers or project-based vouchers to assist at-risk unassisted tenants in buildings with expiring mortgages, contracts or use restrictions who are otherwise ineligible for assistance. (We have marked this provision as “Mortgage Maturity/EUR set aside” in the statutory text below.) In addition to preserving affordable units, the PBV option permits many tenants’ rent burdens to be reduced to 30% of income, while also allowing tenant mobility. HUD must issue guidance for tenant eligibility for this set-aside by March 15, 2015. This guidance will likely resemble that issued for FY 2014 (HUD Notice HUD 2014-13 (May 20, 2014)), while also extending eligibility to any qualifying project in a HUD-designated low vacancy area with expiring restrictions prior to September 30, 2015.

The Act introduces a new limitation on TPVs for families that exit the program: PHAs can only reissue the voucher if it is a “replacement” voucher, otherwise the voucher will “cease to exist” when the initial household relinquishes it for any reason. (We have marked this provision as “Expiring Voucher addition” in the statutory text below.) HUD will determine what is a “replacement” voucher in a subsequent notice. This determination will likely involve identifying vouchers that were issued as the result of a loss of an actual unit of HUD-supported affordable housing.

2015 Statutory Text:

\$130,000,000 shall be for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to section 18 of the Act, conversion of section 23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act, HOPE VI and Choice Neighborhood vouchers, mandatory and voluntary conversions, and tenant protection assistance including replacement and relocation assistance or for project-based assistance to prevent the displacement of unassisted elderly tenants currently residing in section 202 properties financed between 1959 and 1974 that are refinanced pursuant to Public Law 106–569, as amended, or under the authority as provided under this Act: Provided, That when a public housing development is submitted for demolition or disposition under section 18 of the Act, the Secretary may provide section 8 rental assistance when the units pose an imminent health and safety risk to residents: Provided further, That the Secretary may only provide replacement vouchers for units that were occupied within the previous 24 months that cease to be available as assisted housing, subject only to the availability of funds: Provided further, [Mortgage Maturity/EUR set aside] That of the amounts made available under this paragraph, \$5,000,000 may be available to provide tenant protection assistance, not otherwise provided under this paragraph, to residents residing in low vacancy areas and who may have to pay rents greater than 30 percent of household income, as the result of (1) the maturity of a HUD-insured, HUD-held or section 202 loan that requires the permission of the Secretary prior to loan prepayment; (2) the expiration of a rental assistance contract for which the tenants are not eligible for enhanced voucher or tenant protection assistance under existing law; or (3) the expiration of affordability restrictions accompanying a mortgage or preservation program administered by the Secretary: Provided further, That such tenant protection assistance made available under the previous proviso may be provided under the authority of section 8(t) or section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)): Provided

further, That the Secretary shall issue guidance to implement the previous provisos, including, but not limited to, requirements for defining eligible at-risk households within 120 days of the enactment of this Act: Provided further, [Expiring Voucher addition] That any tenant protection voucher made available from amounts under this paragraph shall not be reissued by any public housing agency, except the replacement vouchers as defined by the Secretary by notice, when the initial family that received any such voucher no longer receives such voucher, and the authority for any public housing agency to issue any such voucher shall cease to exist: Provided further, That the Secretary, for the purpose under this paragraph, may use unobligated balances, including recaptures and carryovers, remaining from amounts appropriated in prior fiscal years under this heading for voucher assistance for nonelderly disabled families and for disaster assistance made available under Public Law 110–329.

3. Rental Assistance Demonstration Extension and Expansion

a. Expansion of RAD from 60,000 to 185,000 Units

Section 234 of the Act’s General Provisions triples the Administration’s Rental Assistance Demonstration (RAD) for conversion of public housing and Section 8 Mod Rehab from 60,000 to 185,000 units and extends the application deadline to September 2018. It also extends eligibility to Section 8 Mod Rehab SRO units under the McKinney-Vento Homeless Assistance Act.

b. Project-Basing of Tenant Protection Vouchers for Expiring Rent Supp, RAP and Mod Rehab Programs (RAD, 2d component, the “Merkley-Brown” portion of RAD)

The Act extends and expands the authority enacted in the FY 2012 Act to preserve expiring Rent Supplement (Rent Supp), Section 236 Rental Assistance Payment (RAP), or Section 8 Mod Rehab contracts under RAD. Notably, Congress in the FY 2015 Act eliminates the sunset date on this component of RAD, and now authorizes owners to directly elect Project Based Rental Assistance (PBRA), in addition to the option of obtaining tenant protection vouchers and converting to PBVs. This revision thus provides two tools for preserving affordable housing for both current and future tenants, while also permitting tenant mobility under the PBV option.

Eligibility to project-base these tenant protection vouchers is limited to Rent Supp, RAP or Mod Rehab projects that converted to vouchers since October 1, 2006, or where contracts on these properties will expire or terminate and trigger such vouchers in the future. Both the statute and HUD’s RAD Guidance (HUD Notice PIH 2012-32 REV-1 (July 2, 2013, tech. corr. Feb. 4, 2014)) require tenant consultation and the agreement of a PHA administrator in order to use PBVs, and the revised statute requires tenant consultation in order to use PBRA. Since this provision was first enacted, HUD has issued thousands of tenant protection vouchers for expiring Rent Supp and RAP tenants, which have then been project-based under this authority.¹

Project-based vouchers issued under this provision do not count toward a PHA’s 20% program limit on the number of its vouchers it may project-base. HUD has increased the PBV program’s ordinary 25% limit on the number of units in the property that may receive PBV assistance to 50% of the units (HUD Notice PIH 2012-

¹ <http://portal.hud.gov/hudportal/HUD?src=/RAD/info>

32 REV-1 (July 2, 2013, p. 32)), which can augment the existing exception under PBV rules for units serving tenants who are seniors or people with disabilities, or that receive social services. The applicable rent caps for PBVs remain at 110% of FMR.

Funding to support these Rent Supp/RAP/Mod Rehab conversions is provided both through the TPV account and through a series of new provisions in the RAD account that affect the funds provided or previously appropriated under the accounts for Rent Supp and RAP (“Rental Housing Assistance”), or for tenant-based rental assistance. (As we learn more about the impact of these provisions, we will provide further information.)

RAD, as revised:²

[**Bold** denotes additions, ~~strikeout~~ denotes deletions made by Public Law 113–235]

*To conduct a demonstration designed to preserve and improve public housing and certain other multifamily housing through the voluntary conversion of properties with assistance under section 9 of the United States Housing Act of 1937, (hereinafter, “the Act”), or the moderate rehabilitation program under section 8(e)(2) of the Act ~~(except for funds allocated under such section for single room occupancy dwellings as authorized by title IV of the McKinney-Vento Homeless Assistance Act)~~, to properties with assistance under a project-based subsidy contract under section 8 of the Act, which shall be eligible for renewal under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, or assistance under section 8(o)(13) of the Act, the Secretary may transfer amounts provided through contracts under section 8(e)(2) of the Act or under the headings “Public Housing Capital Fund” and “Public Housing Operating Fund” to the headings “Tenant-Based Rental Assistance” or “Project-Based Rental Assistance”: Provided, That the initial long-term contract under which converted assistance is made available may allow for rental adjustments only by an operating cost factor established by the Secretary, and shall be subject to the availability of appropriations for each year of such term: Provided further, That project applications may be received under this demonstration until September 30, ~~2015~~ **2018**: Provided further, That any increase in cost for “Tenant-Based Rental Assistance” or “Project-Based Rental Assistance” associated with such conversion **in excess of amounts made available under this heading** shall be equal to amounts transferred from “Public Housing Capital Fund” and “Public Housing Operating Fund” or other account from which it was transferred: Provided further, That not more than ~~60,000~~ **185,000** units currently receiving assistance under section 9 or section 8(e)(2) of the Act shall be converted under the authority provided under this heading: Provided further, That tenants of such properties with assistance converted from assistance under section 9 shall, at a minimum, maintain the same rights under such conversion as those provided under sections 6 and 9 of the Act: Provided further, That the Secretary shall select properties from applications for conversion as part of this demonstration through a competitive process: Provided further, That in establishing criteria for such competition, the Secretary shall seek to demonstrate the feasibility of this conversion model to recapitalize and operate public housing properties (1) in different markets and geographic areas, (2) within portfolios managed by public housing agencies of varying sizes, and (3) by leveraging other sources of funding to recapitalize properties: Provided further, That the Secretary shall provide an opportunity for public*

² RAD, as established by Pub. L. 112-55, 125 Stat. 673 (2011), and revised by Sec. 234 of the Gen'l Prov'ns of Pub. L. No. 113-235, div. K, tit. II (Dec. 16, 2014).

comment on draft eligibility and selection criteria and procedures that will apply to the selection of properties that will participate in the demonstration: Provided further, That the Secretary shall provide an opportunity for comment from residents of properties to be proposed for participation in the demonstration to the owners or public housing agencies responsible for such properties: Provided further, That the Secretary may waive or specify alternative requirements for (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment) any provision of section 8(o)(13) or any provision that governs the use of assistance from which a property is converted under the demonstration or funds made available under the headings of “Public Housing Capital Fund”, “Public Housing Operating Fund”, and “Project-Based Rental Assistance”, under this Act or any prior Act or any Act enacted during the period of conversion of assistance under the demonstration for properties with assistance converted under the demonstration, upon a finding by the Secretary that any such waivers or alternative requirements are necessary for the effective conversion of assistance under the demonstration: Provided further, That the Secretary shall publish by notice in the Federal Register any waivers or alternative requirements pursuant to the previous proviso no later than 10 days before the effective date of such notice: Provided further, That the demonstration may proceed after the Secretary publishes notice of its terms in the Federal Register: Provided further, That notwithstanding sections 3 and 16 of the Act, the conversion of assistance under the demonstration shall not be the basis for re-screening or termination of assistance or eviction of any tenant family in a property participating in the demonstration, and such a family shall not be considered a new admission for any purpose, including compliance with income targeting requirements: Provided further, That in the case of a property with assistance converted under the demonstration from assistance under section 9 of the Act, section 18 of the Act shall not apply to a property converting assistance under the demonstration for all or substantially all of its units, the Secretary shall require ownership or control of assisted units by a public or nonprofit entity except as determined by the Secretary to be necessary pursuant to foreclosure, bankruptcy, or termination and transfer of assistance for material violations or substantial default, in which case the priority for ownership or control shall be provided to a capable public entity, then a capable entity, as determined by the Secretary, shall require long-term renewable use and affordability restrictions for assisted units, and may allow ownership to be transferred to a for-profit entity to facilitate the use of tax credits only if the public housing agency preserves its interest in the property in a manner approved by the Secretary, and upon expiration of the initial contract and each renewal contract, the Secretary shall offer and the owner of the property shall accept renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year of such renewal: Provided further, That the Secretary may permit transfer of assistance at or after conversion under the demonstration to replacement units subject to the requirements in the previous proviso: Provided further, That the Secretary may establish the requirements for converted assistance under the demonstration through contracts, use agreements, regulations, or other means: Provided further, That the Secretary shall assess and publish findings regarding the impact of the conversion of assistance under the demonstration on the preservation and improvement of public housing, the amount of private sector leveraging as a result of such conversion, and the effect of such conversion on tenants: Provided further, That ~~for fiscal years 2012 and through December 31, 2014, owners of properties assisted under section 101 of the Housing and Urban Development Act of 1965, section 236(f)(2) of the National Housing Act, or section 8(e)(2) (except for funds allocated under such section for single room occupancy dwellings as authorized by title IV of the McKinney-Vento Homeless Assistance Act)~~ of the United States Housing Act of 1937, for which

*an event after October 1, 2006 has caused or results in the termination of rental assistance or affordability restrictions and the issuance of tenant protection vouchers under section 8(o) of the Act, shall be eligible, subject to requirements established by the Secretary, including but not limited to tenant consultation procedures ~~and agreement of the administering public housing agency~~, for conversion of assistance available for such vouchers to assistance under a long-term project-based subsidy contract under section 8 of the Act, which shall have a term of no less than 20 years, with rent adjustments only by an operating cost factor established by the Secretary, which shall be eligible for renewal under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), or, subject to agreement of the administering public housing agency, to assistance under section 8(o)(13) of the Act, to which the limitation under subsection (B) of section 8(o)(13) of the Act shall not apply and for which the Secretary of Housing and Urban Development may waive or alter the provisions of subparagraphs (C) and (D) of section 8(o)(13) of the Act: **Provided further, That amounts made available under the heading ‘Rental Housing Assistance’ during the period of conversion under the previous proviso, which may extend beyond fiscal year 2016 as necessary to allow processing of all timely applications, shall be available for project-based subsidy contracts entered into pursuant to the previous proviso: Provided further, That amounts, including contract authority, recaptured from contracts following a conversion under the previous two provisos are hereby rescinded and an amount of additional new budget authority, equivalent to the amount rescinded is hereby appropriated, to remain available until expended for such conversions: Provided further, That the Secretary may transfer amounts made available under the heading ‘Rental Housing Assistance’, amounts made available for tenant protection vouchers under the heading ‘Tenant-Based Rental Assistance’ and specifically associated with any such conversions, and amounts made available under the previous proviso as needed to the account under the ‘Project-Based Rental Assistance’ heading to facilitate conversion under the three previous provisos and any increase in cost for ‘Project- Based Rental Assistance’ associated with such conversion shall be equal to amounts so transferred: Provided further, That ~~with respect to the previous with respect to the previous four provisos~~, the Comptroller General of the United States shall conduct a study of the long-term ~~impact of the previous proviso~~ **impact of the fiscal year 2012 and 2013 conversion of tenant protection vouchers to assistance under section 8(o)(13) of the Act on the ratio of tenant-based vouchers to project-based vouchers.*****

4. Schumer Amendment to Retain Project-Based Assistance for Troubled Properties

As requested in the President’s budget, the Act includes the “Schumer Amendment,” enacted annually since 2006, generally requiring HUD to preserve project-based contracts on troubled properties before or during the foreclosure process, countermanding HUD’s prior policy of automatically terminating contracts.

2015 Statutory Text: [was Section 218 in FY14]

SEC. 216. Notwithstanding any other provision of law, in fiscal year 2015, in managing and disposing of any multifamily property that is owned or has a mortgage held by the Secretary of Housing and Urban Development, and during the process of foreclosure on any property with a contract for rental assistance payments under section 8 of the United States Housing Act of 1937 or other Federal programs, the Secretary shall maintain any rental assistance payments under section 8 of the United States Housing Act of 1937 and other programs that are attached to any dwelling units in the property. To the extent the Secretary determines, in consultation with the tenants and the local government, that such a multifamily property owned or held by the Secretary is not feasible for continued rental assistance payments under such section 8 or other programs, based on consideration of (1) the costs of rehabilitating and operating the property and all available Federal, State, and local resources, including rent adjustments under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (“MAHRAA”) and (2) environmental conditions that cannot be remedied in a cost-effective fashion, the Secretary may, in consultation with the tenants of that property, contract for project-based rental assistance payments with an owner or owners of other existing housing properties, or provide other rental assistance. The Secretary shall also take appropriate steps to ensure that project-based contracts remain in effect prior to foreclosure, subject to the exercise of contractual abatement remedies to assist relocation of tenants for imminent major threats to health and safety after written notice to and informed consent of the affected tenants and use of other available remedies, such as partial abatements or receivership. After disposition of any multifamily property described under this section, the contract and allowable rent levels on such properties shall be subject to the requirements under section 524 of MAHRAA.

5. Transfer of Project-Based Assistance

The Act includes language identical to FY 2014 authorizing the HUD Secretary to transfer some or all project-based assistance, debt, and use restrictions from one multifamily project to another multifamily project or projects, for FYs 2015 and 2016. This authority to transfer project-based assistance is in addition to that provided by Section 8(bb) of the United States Housing Act (42 U.S.C. § 1437f(bb)), which HUD has recently implemented (Notice H 2014-14 (Oct. 9, 2014)).

2015 Statutory Text: [was Section 214 in FY14]

SEC. 212. (a) Notwithstanding any other provision of law, subject to the conditions listed under this section, for fiscal years 2015 and 2016, the Secretary of Housing and Urban Development may authorize the transfer of some or all project-based assistance, debt held or insured by the Secretary and statutorily required low-income and very low-income use restrictions if any, associated with one or more multifamily housing project or projects to another multifamily housing project or projects.

(b) PHASED TRANSFERS.—Transfers of project-based assistance under this section may be done in phases to accommodate the financing and other requirements related to rehabilitating or constructing the project or projects to which the assistance is transferred, to ensure that such project or projects meet the standards under subsection (c).

(c) The transfer authorized in subsection (a) is subject to the following conditions:

(1) NUMBER AND BEDROOM SIZE OF UNITS.—

- (A) For occupied units in the transferring project: the number of low-income and very low income units and the configuration (i.e., bedroom size) provided by the transferring project shall be no less than when transferred to the receiving project or projects and the net dollar amount of Federal assistance provided to the transferring project shall remain the same in the receiving project or projects.*
- (B) For unoccupied units in the transferring project: the Secretary may authorize a reduction in the number of dwelling units in the receiving project or projects to allow for a reconfiguration of bedroom sizes to meet current market demands, as determined by the Secretary and provided there is no increase in the project-based assistance budget authority.*
- (2) The transferring project shall, as determined by the Secretary, be either physically obsolete or economically nonviable.*
- (3) The receiving project or projects shall meet or exceed applicable physical standards established by the Secretary.*
- (4) The owner or mortgagor of the transferring project shall notify and consult with the tenants residing in the transferring project and provide a certification of approval by all appropriate local governmental officials.*
- (5) The tenants of the transferring project who remain eligible for assistance to be provided by the receiving project or projects shall not be required to vacate their units in the transferring project or projects until new units in the receiving project are available for occupancy.*
- (6) The Secretary determines that this transfer is in the best interest of the tenants.*
- (7) If either the transferring project or the receiving project or projects meets the condition specified in subsection (d)(2)(A), any lien on the receiving project resulting from additional financing obtained by the owner shall be subordinate to any FHA-insured mortgage lien transferred to, or placed on, such project by the Secretary, except that the Secretary may waive this requirement upon determination that such a waiver is necessary to facilitate the financing of acquisition, construction, and/or rehabilitation of the receiving project or projects.*
- (8) If the transferring project meets the requirements of subsection (d)(2), the owner or mortgagor of the receiving project or projects shall execute and record either a continuation of the existing use agreement or a new use agreement for the project where, in either case, any use restrictions in such agreement are of no lesser duration than the existing use restrictions.*
- (9) The transfer does not increase the cost (as defined in section 502 of the Congressional Budget Act of 1974, as amended) of any FHA-insured mortgage, except to the extent that appropriations are provided in advance for the amount of any such increased cost.*
- (d) For purposes of this section—*
- (1) the terms “low-income” and “very low-income” shall have the meanings provided by the statute and/or regulations governing the program under which the project is insured or assisted;*
- (2) the term “multifamily housing project” means housing that meets one of the following conditions—*
- (A) housing that is subject to a mortgage insured under the National Housing Act;*
- (B) housing that has project-based assistance attached to the structure including projects undergoing mark to market debt restructuring under the Multifamily Assisted Housing Reform and Affordability Housing Act;*
- (C) housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzales National Affordable Housing Act;*
- (D) housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the Cranston-Gonzales National Affordable Housing Act;*

- (E) housing that is assisted under section 811 of the Cranston-Gonzales National Affordable Housing Act; or*
- (F) housing or vacant land that is subject to a use agreement;*
- (3) the term “project-based assistance” means—*
- (A) assistance provided under section 8(b) of the United States Housing Act of 1937;*
- (B) assistance for housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of such Act (as such section existed immediately before October 1, 1983);*
- (C) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965;*
- (D) interest reduction payments under section 236 and/or additional assistance payments under section 236(f)(2) of the National Housing Act;*
- (E) assistance payments made under section 202(c)(2) of the Housing Act of 1959; and (F) assistance payments made under section 811(d)(2) of the Cranston-Gonzalez National Affordable Housing Act;*
- (4) the term “receiving project or projects” means the multifamily housing project or projects to which some or all of the project-based assistance, debt, and statutorily required low-income and very low-income use restrictions are to be transferred;*
- (5) the term “transferring project” means the multifamily housing project which is transferring some or all of the project-based assistance, debt, and the statutorily required low-income and very low-income use restrictions to the receiving project or projects; and*
- (6) the term “Secretary” means the Secretary of Housing and Urban Development.*
- (e) PUBLIC NOTICE AND RESEARCH REPORT.—*
- (1) The Secretary shall publish by notice in the Federal Register the terms and conditions, including criteria for HUD approval, of transfers pursuant to this section no later than 30 days before the effective date of such notice.*
- (2) The Secretary shall conduct an evaluation of the transfer authority under this section, including the effect of such transfers on the operational efficiency, contract rents, physical and financial conditions, and long-term preservation of the affected properties.*

6. Mandatory HUD Enforcement Protocol for Assisted Properties with Low REAC Scores

The Act renews the FY 2014 prescriptive language for properties with Section 8 project-based or similar assistance that receive substandard REAC scores. These include projects (1) with a REAC score of 30 or less, or (2) that receive a physical inspection score between 31 and 59 either (a) twice in a row or (b) that fail to certify to HUD correction of all deficiencies within 60 days. These requirements do not apply to project-based vouchers or public housing. Upon occurrence of the REAC score trigger, HUD must notify the owner and provide an opportunity for a response within 30 days; if violations remain, HUD must develop a Compliance and Enforcement Plan within 60 days, with a timetable for correcting all deficiencies, and give notice to the owners, tenants, local government, mortgagees and contract administrator. If noncompliance persists at expiration of the term of the Plan, HUD may require replacement of the managing agent, and must take one of the following actions, providing notice to the previously specified parties: (1) impose civil money penalties; (2) partially or fully abate the contract until deficiencies are corrected; (3) pursue a transfer of the property to an approved owner who will repair the property and renew the contract; or (4) seek judicial appointment of a receiver to manage the property and correct the deficiencies or seek a judicial order for specific performance by the owner. The protections of the Schumer Amendment would continue to apply. HUD must report semi-annually on

properties with REAC scores less than 30 or twice below 60, including a description of HUD's actions to enforce and to protect tenants. However, as of Dec. 31, 2014, HUD has apparently issued no implementation guidance, nor provided any reports to Congress.

2015 Statutory Text: [was Section 230 in FY14]

SEC. 226. (a) The Secretary of Housing and Urban Development shall take the required actions under subsection (b) when a multifamily housing project with a section 8 contract or contract for similar project-based assistance:

(1) receives a Real Estate Assessment Center (REAC) score of 30 or less; or

(2) receives a REAC score between 31 and 59 and:

(A) fails to certify in writing to HUD within 60 days that all deficiencies have been corrected; or

(B) receives consecutive scores of less than 60 on REAC inspections.

Such requirements shall apply to insured and noninsured projects with assistance attached to the units under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), but do not apply to such units assisted under section 8(o)(13) (42 U.S.C. 1437f(o)(13)) or to public housing units assisted with capital or operating funds under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g).

(b) The Secretary shall take the following required actions as authorized under subsection (a)—

(1) The Secretary shall notify the owner and provide an opportunity for response within 30 days. If the violations remain, the Secretary shall develop a Compliance, Disposition and Enforcement Plan within 60 days, with a specified timetable for correcting all deficiencies. The Secretary shall provide notice of the Plan to the owner, tenants, the local government, any mortgagees, and any contract administrator.

(2) At the end of the term of the Compliance, Disposition and Enforcement Plan, if the owner fails to fully comply with such plan, the Secretary may require immediate replacement of project management with a management agent approved by the Secretary, and shall take one or more of the following actions, and provide additional notice of those actions to the owner and the parties specified above:

(A) impose civil money penalties;

(B) abate the section 8 contract, including partial abatement, as determined by the Secretary, until all deficiencies have been corrected;

(C) pursue transfer of the project to an owner, approved by the Secretary under established procedures, which will be obligated to promptly make all required repairs and to accept renewal of the assistance contract as long as such renewal is offered; or (D) seek judicial appointment of a receiver to manage the property and cure all project deficiencies or seek a judicial order of specific performance requiring the owner to cure all project deficiencies.

(c) The Secretary shall also take appropriate steps to ensure that project-based contracts remain in effect, subject to the exercise of contractual abatement remedies to assist relocation of tenants for imminent major threats to health and safety after written notice to and informed consent of the affected tenants and use of other remedies set forth above. To the extent the Secretary determines, in consultation with the tenants and the local government, that the property is not feasible for continued rental assistance payments under such section 8 or other programs, based on consideration of (1) the costs of rehabilitating and operating the property and all available Federal, State, and local resources, including rent adjustments under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (“MAHRAA”)

and (2) environmental conditions that cannot be remedied in a cost-effective fashion, the Secretary may, in consultation with the tenants of that property, contract for project-based rental assistance payments with an owner or owners of other existing housing properties, or provide other rental assistance. The Secretary shall report semi-annually on all properties covered by this section that are assessed through the Real Estate Assessment Center and have physical inspection scores of less than 30 or have consecutive physical inspection scores of less than 60. The report shall include: (1) The enforcement actions being taken to address such conditions, including imposition of civil money penalties and termination of subsidies, and identify properties that have such conditions multiple times; and (2) Actions that the Department of Housing and Urban Development is taking to protect tenants of such identified properties.

7. *Mark to Market Extension*

The final bill extends the authority of the Mark to Market program until October 1, 2017. Mark to Market authority provides HUD and owners of assisted housing the ability to restructure assisted mortgage loans when rents are marked down to market levels. Without extension of this authority, the requirement to mark rents to market would have remained, but the authority to restructure mortgage loans so that the new lower rents would adequately cover the debt service would have expired.

2015 Statutory Text:

SEC. 237. Section 579 of the Multifamily Assisted Housing Reform and Affordability Act (MAHRA) of 1997 (42 U.S.C. 1437f note) is amended by striking “October 1, 2015” each place it appears and inserting in lieu thereof “October 1, 2017”.

8. *Other:*

A. *Choice Neighborhoods Initiative*

The Act provides just \$80 million for the Choice Neighborhoods Initiative (CNI), a reduction of \$10 million from FY 2014 (which was already below the prior FY 13 post-sequestration level) and only two-thirds of the \$120 million sought by the Administration. (The House had approved only \$25 million.) At least \$50 million of the total must be awarded to PHAs, \$5 million less than in FY 2014.

For FY2015, the Act clarifies that, for purposes of environmental review, a grantee shall be treated as a public housing agency, and grants under this heading shall be subject to the regulations under United States Housing Act Section 26 (allowing for environmental review responsibility to be led by a state or local government entity). And it provides that unobligated HOPE VI balances in fiscal year 2011 and prior fiscal years may be used for CNI.

2015 Statutory Text:

*For competitive grants under the Choice Neighborhoods Initiative (subject to section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), unless otherwise specified under this heading), for transformation, rehabilitation, and replacement housing needs of both public and HUD-assisted housing and to transform neighborhoods of poverty into functioning, sustainable mixed income neighborhoods with appropriate services, schools, public assets, transportation and access to jobs, \$80,000,000, to remain available until September 30, 2017: Provided, That grant funds may be used for resident and community services, community development, and affordable housing needs in the community, and for conversion of vacant or foreclosed properties to affordable housing: Provided further, That the use of funds made available under this heading shall not be deemed to be public housing notwithstanding section 3(b)(1) of such Act: Provided further, That grantees shall commit to an additional period of affordability determined by the Secretary of not fewer than 20 years: Provided further, That grantees shall undertake comprehensive local planning with input from residents and the community, and that grantees shall provide a match in State, local, other Federal or private funds: Provided further, That grantees may include local governments, tribal entities, public housing authorities, and nonprofits: Provided further, That for-profit developers may apply jointly with a public entity: **Provided further, That for purposes of environmental review, a grantee shall be treated as a public housing agency under section 26 of the United States Housing Act of 1937 (42 U.S.C. 1437x), and grants under this heading shall be subject to the regulations issued by the Secretary to implement such section: Provided further, That of the amount provided, not less than \$50,000,000 shall be awarded to public housing authorities.** Provided further, That such grantees shall create partnerships with other local organizations including assisted housing owners, service agencies, and resident organizations: Provided further, That the Secretary shall consult with the Secretaries of Education, Labor, Transportation, Health and Human Services, Agriculture, and Commerce, the Attorney General, and the Administrator of the Environmental Protection Agency to coordinate and leverage other appropriate Federal resources: Provided further, That no more than \$5,000,000 of funds made available under this heading may be provided to assist communities in developing comprehensive strategies for implementing this program or implementing other revitalization efforts in conjunction with community notice and input: Provided further, That the Secretary shall develop and publish guidelines for the use of such competitive funds, including but not limited to eligible activities, program requirements, and performance metrics: **Provided further, That unobligated balances, including recaptures, remaining from funds appropriated under the heading “Revitalization of Severely Distressed Public Housing (HOPE VI)” in fiscal year 2011 and prior fiscal years may be used for purposes under this heading, notwithstanding the purposes for which such amounts were appropriated.***

B. Section 202 and Section 811 provisions:

The Act provides funding for both the Section 202 program for senior housing (\$420 million – an increase from \$384 million in FY 2014 – including \$70 million for service coordinators and congregate services, down from \$72 million) and the Section 811 program for Supportive Housing for People with Disabilities (\$135 million). These funds provide an important source of new rental

assistance (such as Senior Preservation Rental Assistance Contracts (SPRAC), which HUD did not provide, despite authorization, for FY 2014) or, more commonly, renewal of expiring assistance contracts at existing properties. The Section 202 account is set out below (the statutory language for both accounts is similar).

2015 Statutory Text:

HOUSING FOR THE ELDERLY

*For amendments to capital advance contracts for housing for the elderly, as authorized by section 202 of the Housing Act of 1959, as amended, and for project rental assistance for the elderly under section 202(c)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for senior preservation rental assistance contracts, **including renewals**, as authorized by section 811(e) of the American Housing and Economic Opportunity Act of 2000, as amended, and for supportive services associated with the housing, **\$420,000,000** to remain available until September 30, **2018**: Provided, That of the amount provided under this heading, up to **\$70,000,000** shall be for service coordinators and the continuation of existing congregate service grants for residents of assisted housing projects: Provided further, That amounts under this heading shall be available for Real Estate Assessment Center inspections and inspection-related activities associated with section 202 projects: Provided further, That the Secretary may waive the provisions of section 202 governing the terms and conditions of project rental assistance, except that the initial contract term for such assistance shall not exceed 5 years in duration: Provided further, That upon request of the Secretary of Housing and Urban Development, project funds that are held in residual receipts accounts for any project subject to a section 202 project rental assistance contract, and that upon termination of such contract are in excess of an amount to be determined by the Secretary, **up to \$16,000,000 in any such excess amounts** shall be remitted to the Department and deposited in this account, to be available until September 30, 2018, **for purposes under this heading, and shall be in addition to the amounts otherwise provided under this heading for such purposes.***

C. Other Rent Supplement and Section 236 RAP

The Act provides \$18 million for amendments to Rent Supplement and state-aided, non-federally insured RAP contracts – a decrease from \$21 million in FY 2014. This amount, plus unobligated balances (including recaptures and carryover) remaining from RS and RAP funds appropriated after FY 2005, is also available for extensions of up to one year of expiring RS and RAP contracts. Note that new provisions added to the RAD account, §3 *supra*, for supporting the costs of converting assistance on RS and RAP projects under RAD Component 2 also affect the use of this account.

2015 Statutory Text:

RENTAL HOUSING ASSISTANCE

For amendments to contracts under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) and section 236(f)(2) of the National Housing Act (12 U.S.C. 1715z-1) in State-aided, non-insured rental housing projects, \$18,000,000, to remain available until expended: Provided, That such amount, together with unobligated balances from recaptured amounts appropriated prior to fiscal year 2006 from terminated contracts under such sections of law, and any unobligated balances, including recaptures and carryover, remaining from funds appropriated under this heading after fiscal year 2005, shall also be available for extensions of up to one year for expiring contracts under such sections of law.

D. Reports to Congress re Status of Project-Based Section 8

The FY 2015 Act substitutes new language on HUD's reporting duties. It deletes language from FY 2014 directing the HUD Secretary to provide project-specific detail on HUD's efforts to preserve units and to review the impact of the loss of any subsidized units in that the local housing market, but adds language requiring HUD to identify units lost by opt-out or other termination, and the reasons.

2015 Statutory Text:

SEC. 221. The Secretary of Housing and Urban Development shall report annually to the House and Senate Committees on Appropriations on the status of all section 8 project-based housing, including the number of all project-based units by region as well as an analysis of all federally subsidized housing being refinanced under the Mark-to-Market program. The Secretary shall identify all existing units maintained by region as section 8 project-based units, all project-based units that have opted out or have otherwise been eliminated, and the reasons these units opted out or otherwise were lost as section 8 project-based units.