Housing Law Bulletin

Volume 39 • February 2009

Published by the National Housing Law Project
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Cover: Developed by the Chinatown Community Development Center on the site of a former freeway off-ramp in San Francisco's dense Chinatown neighborhood, Broadway Family Housing has 81 units for very low-income families. It features a Head Start childcare center, two commercial spaces, landscaped interior courtyards, and a community room. Photograph by Tim Griffith.

The *Housing Law Bulletin* is published 10 times per year by the National Housing Law Project, a California nonprofit corporation. Opinions expressed in the *Bulletin* are those of the authors and should not be construed as representing the opinions or policy of any funding source. A one-year subscription to the *Bulletin* is $175. Inquiries or comments should be directed to Eva Guralnick, Editor, *Housing Law Bulletin*, at the National Housing Law Project, 614 Grand Avenue, Suite 320, Oakland, CA 94610, Tel: (510) 251-9400 or via e-mail to nhlp@nhlp.org

Congress Considers Affordable Housing Funding in Stimulus Package

President Obama's push for an economic recovery program during the first few weeks of his Administration has provided an unprecedented opportunity for Congress to address years of funding neglect for affordable housing programs serving the lowest-income people most in need of federal help. The quickly deepening recession promises to accelerate housing affordability problems experienced by millions, as family incomes are reduced by cuts in hours, jobs and possibly public benefits. Advocates, led by the National Low Income Housing Coalition, have been working diligently to encourage Congress to inject substantial sums for affordable housing into the more than $800 million in spending and tax cuts intended to stimulate demand and economic activity. [*Ed. Note: See box on page 50 for summary of funding components in final bill signed by the President on February 17, 2009. More detail in the next Bulletin.*]

Affordable housing programs provide an excellent match for the Administration's stated objectives of expeditiously creating domestic jobs, improving energy efficiency, providing long-term investments, and strengthening the social safety net as the recession deepens.

Advocates' Requests

In a January 14 letter to Speaker Pelosi, advocates sought funding for a wide range of affordable housing needs, at a total cost of approximately $45 billion. Affordable housing funding at such an unprecedented scale is consistent with several major policy objectives expressed by the President:

- *Providing relief to families hit hardest by the recession*. Rising unemployment is causing poverty to increase, forcing even more families into an already undersupplied low-cost rental housing market, even as single-family home values drop. Spending on affordable housing programs for very low-income families is required to prevent a surge in homelessness, which is both more humane and less costly in the long run.
- *Stimulating the economy by creating hundreds of thousands of new jobs* in the housing industry. Investment in housing is an economic stimulus because housing construction and rehabilitation are labor and material intensive, thus creating jobs, increasing sales of building and home furnishing goods, and generating new state and local tax revenue. Affordable housing construction and rehabilitation can replace jobs lost during the recent contraction of the housing industry.

- *Contributing to the "green" agenda*. As much housing rehabilitation and new construction as possible funded through the economic recovery package should use state-of-the-art green technology, for energy efficiency and environmentally friendly construction and operation. Such homes will save operating costs for tenants and owners, and ultimately taxpayers.
- *Promoting long-term social investments.* Rehabilitation of the existing federally assisted rental housing stock will also preserve it for future generations in need of affordable homes.

Included among advocates' requests were:

Emergency Shelter Grant (prevention and rehousing only)	$2 billion
HOME (for green rehab)	$7.4 billion
Housing Choice Vouchers	$3.6 billion
Low-Income Housing Tax Credit (fund stalled projects)	$5 billion
National Community Stabilization Trust	$1 billion
National Housing Trust Fund	$10 billion
Neighborhood Stabilization Program	$5 billion
Project-based Section 8 Green Rehab	$3 billion
Public Housing Capital Fund	$5 billion
Rural Housing Programs	$1.8 billion
Section 202 Elderly Housing and related services	$1.2 billion

House Floor and Senate Committee Versions

As with all appropriations measures, the House of Representatives was the first to take up the bill. On January 28, the House passed its $819 billion American Recovery and Reinvestment Act, H.R. 1. The vote was 244 to 188. All Republicans and eleven Democrats voted no.

The Senate Appropriations Committee commenced consideration of its recovery package in mid-January. The version that emerged for consideration on the Senate floor at the beginning of February[1] contained many housing provisions similar to the House-passed bill, although sometimes differing significantly on funding levels or program details.

Both bills included funds for vital affordable housing programs of the Department of Housing and Urban Development (HUD), including:

- public housing capital funds ($5 billion in both the House and the Senate bills)
- rehabilitation funding for energy efficiency retrofitting of project-based HUD-assisted housing, including Section 8, and Section 202 and 811 properties for the elderly and people with disabilities ($2.5 billion in House, $1.37 billion in Senate), plus another $2.13 billion in the Senate bill for fully funding one-year renewals of project-based Section 8 contracts)
- temporary housing assistance through the Emergency Shelter Grant program ($1.5 billion in both bills), with flexible uses to permit assistance for tenants facing economic hardships that jeopardize housing stability
- new funds for the Neighborhood Stabilization Program (created last July to address the community impacts of foreclosure) and related technical assistance ($4.19 billion in the House bill, $2.25 billion in the Senate bill)
- funding for the HOME program ($1.5 billion in the House, $2.25 billion in the Senate)
- funds for Native American Housing Block Grants ($500 million in the House, $510 million in the Senate)

Aside from the public housing and multifamily green rehab and renewal shortfall components, neither bill directed funds to the production of homes affordable for extremely low-income families.

Advocates had also requested capitalization of the National Housing Trust Fund (NHTF), created by the Housing and Economic Recovery Act last July, because its primary specified funding mechanism will likely yield little revenue for some time.[2] The initial capitalization for the National Housing Trust Fund went dormant when the Federal Housing Finance Agency suspended Fannie Mae and Freddie Mac contributions to the fund in December, as permitted by the law. Neither bill ultimately provided such a jump start, although the NHTF campaign sought sponsorship of an amendment on the Senate floor to include initial capitalization of the Fund.

Another major advocates' request sought funds for new rental assistance vouchers. A proposed House amendment providing for 200,000 new vouchers failed to obtain the rule required for floor consideration, and the Senate also declined to provide more vouchers.

The stimulus bills also contained various tax proposals, including provisions intended to address the collapsing Low-Income Housing Tax Credit (LIHTC) market that jeopardizes development or rehabilitation of thousands of affordable low-income units. Tax credits have become substantially less valuable because financial institutions, with fewer profits to offset the credits, have less need for them, not to mention the uncertainty and higher costs surrounding other necessary financing. The House bill would

[1]The Senate version was denominated Senate Amendment No. 98 (sponsored by Appropriations Chair Senator Inouye).

[2]Pub. L. No. 110-289, § 1131, 122 Stat. 2711 (July 30, 2008), which established the Fund along with its dedicated funding source—a percentage of new business of the Government Sponsored Enterprises.

Major Low-Income Housing Provisions of American Recovery and Reinvestment Act

	House (bill passed Jan. 28)	**Senate** (bill passed February 10)	**Final Conference Agreement**
Emergency Shelter Grants for homelessness prevention	**$1.5B** through formula (funds may be used for a range of specified homelessness prevention activities, including legal services)	**$1.5B** allocated in the same manner and used for the same purposes (except for legal services).	**$1.5B** (funds may be used for a range of homelessness prevention activities (possibly up to grantees to decide)
Public housing capital	**$5B; $4B through formula and $1B in targeted grants.**	**$5B; $3B through formula and $2B in targeted grants** (purposes similar to House).	**$4B**, **$3B through formula and $1B in targeted grants (priority critieria to be set by HUD)**
Privately-owned assisted housing energy retrofit (for 202, 811 and project-based sec. 8 developments)	**$2.5B** in loans or grants for energy retrofit and green investments, subject to owner agreement to extend affordability term as specified by HUD	**$118M** for similar purposes; additional affordability period of at least 15 years required.	**$250M** for similar purposes; additional affordability period of at least 15 years required.
Project-based Section 8 Renewal Funding	**$0**	**$2.1B** (to allow commitment of full 12 months of budget authority at annual renewal)	$**2.0B** (to allow commitment of full 12 months of budget authority at annual renewal)
CDBG for Neighborhood Stabilization (re foreclosed properties) ***Renter protection language***	**$4.19B**; $3.44M in competitive grants; non-profits as well as state/local governments eligible; HUD may use up to **$750M** to nonprofits for TA, capacity-building, and to increase scale of neighborhood activities. For properties acquired with new funds, protects renters from displace-ment and prohibits discrimination against voucher holders.	**No provision**	$2B to be distributed through competition to areas with high rates of foreclsure. Non-profits as well as state/local governments are eligible., and may partner with for-profit entities. For properties acquired with new funds *or with NSP funds appropriated in 2008 and committed after enactment*, protects renters from displacement and prohibits discrimination against voucher holders.
HOME	**$1.5B** – formula	**$225M** by formula	**none**
HOME LIHTC “gap filler	**No provision**	**$2B**	**$2.25B,** allocated by HOME formula to state LIHTC agencies
Native American block grant	**$500M**	**$510M**	**$510M**
CDBG	**$1B** in formula grants	**$0**	**$1B** in formula grants to 2008 grantees
Lead Hazard Reduction	**$100M**	**$100M**	**$100M**
Vouchers	$0	$0	$0
National Housing Trust Fund	$0	$0	$0
Total HUD Funding	**$16.3 billion**	**$11.6 billion**	**$13.6 billion**
LIHTC tax “fixes”	**$69M** to allow states to exchange unsold 9% LIHTCs from previous years and up to 40% of 2009 9% credits for 85 cents on the dollar	**$1.53 billion** to allow taxpayers to “accelerate” value of 9% credits in first 3 years of credit period.	**$69M** to allow states to exchange unsold 9% LIHTCs from previous years and up to 40% of 2009 9% credits for 85 cents on the dollar

Courtesy of the Center on Budget and Policy Priorities. Updated February 13, 2009.

allow state housing credit allocating agencies to receive a portion of their 2009 LIHTC allocation as a grant to address funding gaps for projects approved during 2007 and 2008. The Senate Committee bill would permit any credits from 2008 and 2009 to be carried back for five years, thus making the credits more valuable to investors who may not have current or future profits against which to use the credits.

On January 30, a coalition of thirty-two national and state organizations, including the National Low Income Housing Coalition, sent a letter to Congress urging a comprehensive approach to solving the LIHTC crisis.[3] Recommendations included:

- $5 billion to state credit agencies to provide gap funding to restore financial viability to credit projects stuck in the pipeline;
- Authorization to exchange a portion of 2009 credits for cash grants to provide substitute funding (as proposed by the House bill);[4]
- Accelerating the use of the credits earlier in their ten-year lifespan; and
- Allowing credit investors to carry back credits for up to five years to offset prior tax liabilities (as proposed by the Senate Finance Committee).

Senate Compromise Version

During floor debate on the Senate bill the week of February 2, an amendment was offered and passed to provide tax credits to homebuyers of any income, at a reported cost to the Treasury of $35 billion.[5] In light of the moderates' desire for a smaller overall price tag under $800 billion, this provision presented an enormous risk to funds devoted to affordable rental housing for very low-income families.

Also on the Senate floor, an amendment provided $2 billion in HOME funds to state allocating agencies to be used for providing gap financing for LIHTC pipeline properties.

As the Senate Appropriations Committee version of the bill was being debated on the floor, a group of self-described moderate Senators (including about a dozen Democrats and at least three Republicans, Senators Collins and Snowe of Maine and Specter of Pennsylvania) worked to develop a compromise version intended to reduce its overall costs, while providing more of the stimulus resources through tax cuts rather than direct spending. That compromise effort became central to passage of any legislation—securing sixty votes could cut off debate and force a vote on the legislation, in time to meet the President's request for a bill that he could sign by mid-February.

Late on Friday, February 6, this group reached an agreement on a compromise Senate version, known as the "Nelson-Collins amendment."[6] The Senate voted to end debate and approved the bill in middle of the following week.

On the low-income housing provisions, the Senate compromise provided $4.7 billion less for HUD programs than the House-passed bill.[7] The Senate compromise sharply reduced funding for energy efficiency and preservation

[3]For a copy of the letter, go to http://www.nlihc.org/doc/FIRM-SIGN-ON-LETTER.pdf.

[4]For background on the exchange proposal, *see* Center on Budget and Policy Priorities, *Exchange Plan in House Recovery Bill Offers Best Fix for Low-Income Housing Tax Credit*, available at http://www.cbpp.org/2-2-09hous.htm.

[5]For analysis of the homebuyer credit, *see* http://www.cbpp.org/2-9-09hous.htm.

[6]The text is available at http://thomas.loc.gov/cgi-bin/query/R?r111:FLD001:S01908.

[7]See the updated chart at http://www.cbpp.org/2-3-09hous-prac.pdf reflecting the changes.

Update on Final Stimulus

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111- 5. Major funding levels and changes in governing law for affordable housing programs are summarized on page 49 detailing the bills and the final Act, prepared and used with the permission of the Center on Budget and Policy Priorities. Highlights include:

- $4 billion for the Public Housing Capital Fund to repair existing public housing;
- $2 billion to fully fund one-year renewals of project-based Section 8 contracts;
- $250 million to repair and green privately owned HUD-assisted affordable multifamily housing;
- $1.5 billion in Emergency Shelter Grant funding for homelessness prevention;
- $2 billion for CDBG Neighborhood Stabilization funding; and
- significant new resources to help fund stalled Low-Income Housing Tax Credit properties nationwide, including a credit exchange program and $2.25 billion in gap funding through the HOME program.

of privately owned HUD assisted housing ($118 million in the Senate compromise, compared to $2.5 billion in the House bill) and zeroes out funding for Neighborhood Stabilization grants (the House provided $4.2 billion). In contrast to the House bill, the Senate bill provides $2.1 billion to enable HUD to commit a full twelve months of budget authority when renewing annual project-based Section 8 contracts.

To respond to the sharp reduction in the funding yielded by LIHTCs, the Senate compromise includes $2 billion of HOME funds to fill the gap on projects previously awarded LIHTCs. However, the Senate compromise bill provides only $225 million for HOME formula grants, compared to $1.5 billion in the House bill, and nothing for CDBG formula grants, for which the House had $1 billion. The Senate compromise bill includes the provision to "accelerate" the amount of the credit claimable in the first three years, which is intended to make the credit more attractive to investors (at an estimated cost of $1.5 - $2 billion), but not the more costly credit carryback provision included in the Senate Finance committee bill (estimated to cost $11 billion). It is likely the final bill will include both the House's exchange option and possibly the acceleration provision, but prospects for advocates' proposed extension of the exchange option to include 4% credits remained unclear.

While the total cost of the House and Senate compromise bills was similar, there were significant differences on how they would allocate funds. A Conference was being quickly held to resolve these differences in order to send a bill to the President.

As of press time, Conference negotiations had reportedly been concluded and bill language was being finalized. ■

Court: VAWA Bars Landlord from Evicting Domestic Violence Victim

In one of the first decisions of its kind, a New York City housing court ruled that the Violence Against Women Act of 2005[1] (VAWA) barred the eviction of a project-based Section 8 tenant. In *Metro North Owners, LLC v. Thorpe*,[2] the court rejected the landlord's argument that the tenant created a nuisance by stabbing her former partner during a domestic dispute, finding that the allegations were unsubstantiated. Instead, the court found that the tenant was in fact the victim of domestic violence and therefore entitled to VAWA's eviction protections. The tenant was represented by the Legal Aid Society, Harlem Community Law Offices.

Factual Background

In April 2008, police officers and emergency medical services responded to a violent incident at the tenant's apartment.[3] After this incident, the landlord commenced holdover proceedings against the tenant, alleging that the tenant violated her lease by creating a nuisance.[4] The tenant moved for summary judgment, arguing that VAWA required dismissal of the proceedings at the pretrial stage.

According to an affidavit from a property manager, the tenant stabbed her former partner during the incident.[5] The property manager also alleged that the tenant regularly allowed her former partner into the building, even though she had a criminal protection order against him, and complained when security guards denied him entry.[6] Further, the property manager alleged the tenant had repeatedly engaged in loud fighting, yelling, and screaming with her former partner.[7] The landlord submitted a security guard's incident report containing similar information.[8]

The tenant conceded that her former partner told the security guard and police that she had stabbed him, but

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[1]Pub. L. No. 109-162, 119 Stat. 2960 (Jan. 5, 2006). For a complete overview of VAWA's housing protections, see NHLP, *Reauthorized Violence Against Women Act Protects Housing Rights of Domestic Violence Survivors*, 36 Hous. L. Bull. 53 (Mar. 2006); Naomi Stern, *HUD Begins VAWA Implementation*, 36 Hous. L. Bull. 181 (Sept. 2006); NHLP, *HUD Continues VAWA Implementation*, 37 Hous. L. Bull. 7 (Jan. 2007); NHLP, *PHAs and Advocates Begin Early Efforts to Implement VAWA*, 37 Hous. L. Bull. 193 (Dec. 2007).
[2]870 N.Y.S.2d 768 (N.Y. Civ. Ct. 2008).
[3]*Id.* at 770.
[4]*Id.*
[5]*Id.* at 772.
[6]*Id.*
[7]*Id.*
[8]*Id.*