

The Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010

Section-by-Section Summary

Overview

The Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010 (PETRA) would authorize the policies and activities necessary to implement the Department's Transforming Rental Assistance (TRA) initiative. The President's 2011 budget requests \$350 million for the first phase of this initiative. The goals of TRA are to:

- preserve public and assisted housing by providing owners with the opportunity to convert to property-based contracts that will enable them to sustain operations and leverage private financing to address immediate and long-term capital needs and implement energy-efficiency improvements;
- enhance housing choice for recipients of HUD-funded housing assistance;
- increase administrative efficiency at all levels of program operations; and
- create more uniform policies across all HUD-funded rental assistance programs.

The bill would achieve the first goal through a new section 8(n) of the U.S. Housing Act of 1937 that authorizes long-term project-based contracts for converted properties, and modification of the project-based voucher statute at section 8(o)(13).

Through a new section 8(m), PETRA authorizes the conversion process and the use of funds to increase the efficiency of rental assistance administration and promote resident mobility, allows the Secretary to establish certain uniform policies across all HUD-funded rental assistance programs, including the Housing Choice Voucher program, and establishes the right of residents of converted properties to move with available rental vouchers after two years.

Section 1. Short title; table of contents

PETRA contains six sections. The first two are the short title and table of contents and the findings and purposes. Section 3 authorizes a new section 8(m), which contains two parts: 8(m)(1) contains the streamlining and resident choice features described above, and 8(m)(2) governs the conversion process and includes policies that will apply to properties whether the owner converts to assistance under 8(n) or 8(o)(13). Section 4 describes the policies that will apply to properties converting under 8(n), while Section 5 authorizes changes to the project-based voucher statute. Finally, Section 6 includes conforming amendments.

Section 2. Findings and purposes

The findings and purposes section focuses on the complexity of HUD's rental assistance programs, both in terms of how programs are administered and because of their differing legal requirements. The challenges associated with this complexity are spelled out: the transaction costs for developers and compliance and asset management costs for owners, the confusion confronting families as they seek to

apply for rental assistance, and the barriers at the local level to combining rental assistance with other programs intended to support positive outcomes for HUD-assisted families.

Section 3. Transforming rental assistance

Section 3 of PETRA would authorize a new section 8(m) in the U.S. Housing Act of 1937 concerning the Transformation of Rental Assistance. Section 8(m)(1), titled “Transformation Authority,” authorizes activities to streamline policies across rental assistance programs; section 8(m)(2) authorizes the conversion of rental assistance.

Authority to streamline rental assistance. In section 8(m)(1)(A), PETRA would authorize the Secretary to establish uniform policies and procedures across rental assistance programs, including policies and procedures with respect to the following areas:

- Resident choice. Residents of properties converted to project-based contracts under section 8(n) and potentially of other properties receiving project-based rental assistance would have the right to move after residing in a property “for a period of not less than 24 months,” subject to the availability of resources; a public housing agency (PHA) that administers vouchers in addition to public housing would be required, if one or more properties is selected for conversion, to make available not more than one-third of turnover vouchers to support families exercising the choice option. (The right of residents of units with project-based voucher assistance to move after one year with the next available voucher would not change.)
- Tenant organization rights. All tenants with HUD-funded rental assistance would be guaranteed the right to organize independent of owners or public housing agencies. This provision would establish uniform requirements regarding recognition of “legitimate” tenant organizations, including organizations of voucher program participants and jurisdiction-wide or area-wide organizations; and would authorize the use of a portion of rental assistance renewal funding to support tenant organizing.
- Applicant and tenant procedural rights. For properties converting under section 8(n) and for other rental assistance programs designated by the Secretary, this provision would establish uniform procedural rights, including notice requirements for applicants to or tenants of properties under a variety of circumstances, ranging from ineligibility for assistance to eviction, and procedures for the review of actions, including the right to inspect documents, bring a representative, and have a review conducted by an independent person.
- Nondiscrimination and affirmatively furthering fair housing. Compliance with civil rights and fair housing laws and with section 808(e)(5) of the Fair Housing Act with respect to affirmatively furthering fair housing would be required.

- Administration of rental assistance. To streamline the administration of vouchers and other rental assistance, the Secretary is authorized to facilitate the implementation of regional portability agreements, consortia, or other methods to promote efficiency and advance the goal of resident choice, and may allocate funds for these purposes.
- Physical condition standard. The Secretary would be authorized to establish uniform physical condition standards for rental assistance programs.
- Properties in foreclosure or bankruptcy. Like the Protecting Tenants at Foreclosure Act enacted last year, this clause provides that the terms of new rental assistance contracts or use agreements remain in effect in the event of foreclosure or bankruptcy, but the Secretary would be authorized to modify this requirement if the units were not viable or “if necessary to generate sufficient lender participation.” Upon such a determination, the Secretary would be authorized to transfer the contract for assistance to one or more other properties.
- Enforcement. This clause strengthens HUD’s ability to bring legal action “to protect or enforce any right conferred upon the Secretary” in a rental assistance contract “or any statute or regulation applicable to the rental assistance contract or the property assisted under such contract.” The language defines liable parties and violations and authorizes the imposition of a civil money penalty. Applicable procedures and provisions are defined. Upon continued or repeated violations of requirements, or upon a substantial default under a contract or other agreement, the Secretary may transfer assistance to another property or properties that have the capacity to accept the tenants of the property in violation or default as determined by regulation.

Authority for conversion of rental assistance. The remainder of section 8(m)(1) would authorize the Secretary to allocate funds to PHAs and other owners of “eligible properties” for the conversion to properties assisted under sections 8(n) or 8(o)(13). It defines eligible properties as those assisted under sections 8 (various types of project-based contracts, including Moderate Rehabilitation) and 9 (public housing) of the U.S. Housing Act of 1937, the rent supplement program, the rental assistance program, and “other federal affordable housing programs, as identified by the Secretary by notice.” It also authorizes funding for all activities under section 8(m), beginning with \$350,000,000 in FY2011, and authorizes the Secretary, for converting properties, to establish and collect fees, in accordance with a fee schedule established by the Secretary that shall not exceed \$100,000 per property, and to recover previously obligated funds. It would establish a “Rental Assistance Conversion Trust Fund” to hold such funds. Amounts in the Fund shall be available only to the extent provided in advance in appropriations Acts. Finally, it would authorize the Secretary to allocate amounts for the costs of rental assistance administration, the promotion of tenant organizing rights, resident mobility, efforts to affirmatively further fair housing, and the expenses associated with streamlining the delivery of rental assistance.

Conversion of rental assistance. The new section 8(m)(2) authorized by PETRA would establish conditions and procedures to govern the voluntary conversion process, including:

- Required consultation with tenants. The Secretary is authorized to establish a requirement that an owner consult with tenants prior to making application for conversion. For public housing agencies, conversion “shall be considered a significant amendment to the agency plan.”
- One-for-one replacement of assisted units. PETRA places obligations on HUD and owners to avoid a loss of rental assistance. First, HUD’s policies and procedures must assure that there is no reduction in the number of families receiving rental assistance as a result of conversion. Second, owners and HUD have particular obligations with regard to maintaining the number of units with project-based rental assistance. The owner must provide a plan indicating the timely replacement of converted units that are demolished or would not receive rental assistance (as a result of a mixed income plan or other reason). Replacement housing shall reflect the number of bedrooms that are needed to adequately serve returning tenants, waitlist applicants, and future projected need. Off-site replacement housing shall not be located in areas of minority concentration, defined in relation to the metropolitan area or rural county in which the project is located, or in areas of extreme poverty, except in areas that qualify as revitalizing neighborhoods. Only if data demonstrate that the area housing market has consistently high vacancy rates and that vouchers are easy to use, including in neighborhoods of opportunity, would an owner be permitted to replace up to half of converted units with tenant-based vouchers. Less than 10 percent of current project-based assisted units are potentially subject to this exception. HUD would be required to issue new vouchers to replace any such units, regardless of whether the units were occupied at the date of the conversion request.
- Use and affordability restrictions and federal option to purchase. Owners of converting properties must agree to serve income-eligible tenants paying rents at the levels required by the U.S. Housing Act for specified periods. Converting public housing properties will be subject to at least a 30-year use agreement and other housing is subject to a use restriction for the remaining term of any prior restriction or the term of the rental assistance contract, whichever is greater. The bill would authorize the transfer of assistance to another property during the term of the use agreement, subject to the Secretary’s approval and the owner’s payment of tenants’ relocation costs. Owners of converted properties would be required to give notice of their intent not to renew the rental assistance contract after the expiration of the use agreement and would not be permitted to sell a property without offering the Secretary or an assignee of the Secretary the option to purchase it. The federal option to purchase would not apply to properties converted from one of the project-based section 8 programs with long term contracts except by mutual agreement. Tenants of properties converted under section 8(n) would receive vouchers in the event of the non-renewal or non-extension of a contract beyond the term of the use agreement. The Secretary would have the authority to provide replacement vouchers for units vacant at the time of contract termination.

- Tenants residing in units at time of conversion. Residents of converting units will not be subject to re-screening or termination and tenants in occupancy do not count as new admissions with respect to the targeting requirements applicable to the program to which the property is converted.
- Relocation assistance. The Uniform Relocation Act (URA) will apply to displacement and relocation activities pursuant to conversion, including the transfer of assistance to another property. The legislation allows the Secretary to consider a period up to 24 months as temporary relocation during which residents relocated for purposes of rehabilitation and with a right of return will not be considered “displaced.” Owners may use rental assistance funding to cover related costs.
- Tenant rents. Tenants typically will pay 30 percent of adjusted income for rent and utilities, with the remainder of the contract rent met by the rental subsidy. Families that are or become over-income for continuing subsidy (because their rental obligation is more than the contract rent) will pay the contract rent on the unit.
- Security of tenure. Tenants may only be evicted for good cause. Protections apply to victims of domestic violence.
- Special requirements for conversion of public housing. Section 8(m)(2) would establish some requirements specific to converting public housing properties. The legislation streamlines the conversion process by clarifying that properties are not subject to the separate disposition process under Section 18; defines a project or unit owned by a PHA broadly, to include units owned by entities controlled by the PHA; carries forward the requirement related to resident membership on the PHA board; and requires compliance with the terms and conditions of financing and energy performance contracts and similar obligations in effect before conversion.

Transfer and Use of Funds. Owners of converting properties would be permitted to use unexpended assistance provided under prior HUD contracts to pay all or a portion of transaction costs, including upfront costs, required reserve deposits, financing of renovations, initial contract funding, and contract administration. Converting properties would be released from requirements associated with the prior programs (except as specified above regarding public housing) and would become subject to the requirements associated with the assistance under sections 8(n) or 8(o)(13). HUD would also be permitted to transfer amounts among accounts to provide for the more efficient use of funds during and after the conversion process.

Section 4. Property-based contracts

Section 4 of PETRA would establish a new section 8(n) of the U.S. Housing Act of 1937, and authorize the Secretary to enter into a long-term, property-based contract for rental assistance, subject to annual

appropriations, with the owner of a public housing or other eligible property converting to assistance under this subsection.

- Contract term. For converting public housing properties, the initial contract term would be 20 years; for other properties, the term would be at least equal to that of the term remaining on the legacy contract or could be up to 20 years. Contract extensions of up to 20 years would be permitted and could be agreed to in advance (to provide more security to lenders or other reason). Owners of former public housing properties must agree to any extension offered by the Secretary. Other owners may renew expiring contracts in whole or in part, subject to the Secretary's approval and the availability of appropriations.
- Establishment of rents. Unit rents would be established at the level requested by the owner, up to the rents of comparable units in the local marketplace. Rents would not be permitted to exceed 110 percent of the applicable area rental (i.e., the Fair Market Rent (FMR)) without approval by the Secretary. The Secretary may approve "exception rents" above the comparable market rent for preservation-worthy properties, up to the higher of 110 percent of the applicable area rental or 120 percent of the comparable market rent. A below-market rent would be permitted for a property that is physically and financially sustainable at such lower rent, and rents for units that are exempt from local rent control would have to be reasonable in comparison with other exempt units.
- Adjustment of rents. Contract rents would be adjusted annually using an index intended to reflect changes in the rents of multifamily properties. At least every 5 years, rents would be re-benchmarked to market, subject to any applicable caps. Contracts could provide a rent floor at the initial rent level. In the interim, an owner that undertakes significant improvements to a property would be permitted to request an increase above the index, and HUD could reset rents to market based on a comparability study. For units receiving capital subsidy through the Low Income Housing Tax Credit or HOME program, a rent comparability study would not be required if the contract rents requested are equal to or less than rents in other units in the property occupied by unassisted families.
- Selection of tenants. Households eligible for assistance would include those living in units at the time of conversion and "low-income" families (those with incomes not greater than 80 percent of the area median income). At least 40 percent of new admissions annually to each converted property must be "extremely low-income" (with incomes not greater than 30 percent of the area median income). Owners must honor pre-conversion waiting lists, and would be permitted to maintain site-based waiting lists or a single waiting list for multiple properties. Owners and public housing agencies that maintain multiple site-based waiting lists would be required to allow applicants to apply for all properties in one location, and to adopt affirmative marketing procedures. Admissions preferences that comply with civil rights requirements are permitted. Owners would screen and select families.

- Physical and financial requirements. Converted properties would be required to meet physical condition standards at periodic inspections and would be subject to annual financial review. Owners must comply with the operating and replacement reserve requirements and any limitations on the use of cash flow established by the Secretary. Ability to access cash flow may not differ based on the for-profit or non-profit tax status of the owner.

Section 5. Property-based voucher contracts

Section 5 of PETRA would modify the project-based voucher (PBV) statute at subsection 8(o)(13), including by adopting some provisions in H.R. 3045, the version of the Section 8 Voucher Reform Act approved by the House Financial Services Committee. New developments as well as converting properties that meet the revised requirements may receive project-based voucher contracts. Properties initially converted to assistance under section 8(n) may shift to project-based voucher assistance if they meet the applicable conditions.

- Percentage limitation. Section 5 would establish a new limitation on the share of vouchers that may be project-based. The limitation would be determined based on the number of units assisted, rather than the share of funding, to eliminate a disincentive for agencies to project-base assistance in higher rent areas (which are likely to offer greater opportunities). Up to 25 percent (rather than 20 percent) of units may be assisted in housing that serves homeless individuals and families, where supportive services are provided, or that is located in areas where vouchers are difficult to use. An additional exception for agencies administering vouchers for projects converting under section 8(m)(2) would provide that up to 40 percent of the dwelling units assisted by an agency may be project-based.
- Income-mixing. The project-based voucher income-mixing requirement would be modified by Section 5 of PETRA. With some exceptions, PETRA would allow for assistance at the greater of 25 dwelling units or 25 percent of the dwelling units in any project. This limitation would not apply to properties serving elderly families or households eligible for comprehensive social services that are available at the property. (This exception would not apply to more than 40 percent of the dwelling units in the case of properties serving elderly families or households eligible for comprehensive social services converting to PBVs under section 8(m)(2).) The Secretary could establish additional monitoring and oversight requirements for properties that have assistance on more than 40 percent of units at a property. For areas in which vouchers are difficult to use and for census tracts with a poverty rate of 20 percent or less, up to 40 percent of units in a property would be permitted to be assisted without additional conditions.
- Contract term and funding. To create uniformity for contracts under the new section 8(n) and the PBV program, section 5 of PETRA would alter the PBV contract term, extending it from a maximum of 15 to 20 years subject to the availability of funds and the owner's compliance with HUD's physical inspection standard. Continued funding under PBV contracts would be

protected in case of a shortfall in annual voucher renewal funding. The bill would also permit a PHA to decline to offer to extend a contract on a converted public housing property, but only with the advance approval of the Secretary.

- Rents. Unit rents must be “reasonable” in light of comparable unassisted units in the local market, but the Secretary would have new authority to approve a rent above 110 percent of the FMR. Unlike section 8(n), there is no authority for above-market exception rents. The Secretary could require that PBV rents be adjusted annually using an index based on changes in the rents for multifamily properties, but the contract may provide a rent floor at the initial rent level. The same rules as apply under section 8(n) would apply if the Secretary requires the use of an index to adjust rents.
- Tenant selection. Like the policy in H.R. 3045, an owner of a PBV-assisted property would be permitted to establish a site-based waiting list, subject to compliance with civil rights, fair housing, and other requirements. If a voucher is project-based in an occupied unit, the tenant must receive an absolute preference for assistance, if eligible.
- Security of tenure. The termination of leases and tenancy would be permitted only for good cause.

Section 6. Conforming amendments

Section 6 would make the following conforming amendments:

- Definition of a public housing agency. Section 6 would amend the definition of a public housing agency for purposes of section 8 programs to include not-for-profit entities. It would also clarify that a consortium of public housing agencies may designate a legal entity or entities authorized to act as its legal representative, and it would authorize the Secretary to “establish and allocate” a fee for the administration of PBV contracts for converted properties. (PETRA does not change current law that allows PHAs to administer PBV contracts in properties they own, subject to third party inspection and rent determinations.)
- Mainstream voucher renewals. Section 6 would shift authority for Mainstream Vouchers under section 811 of the Cranston-Gonzalez National Affordable Housing Act to the section 8 voucher program, consistent with the proposal in the President’s 2011 budget to shift renewal funding to the tenant-based rental assistance account. Turnover vouchers must continue to serve “qualified persons with disabilities and...qualified non-elderly disabled families.” The language would also make unexpended amounts under section 811 available until expended for renewal vouchers, and it would authorize the Secretary to provide technical assistance to PHAs to assist them in providing permanent supportive housing.

- Income eligibility. The definition of project-based assistance in section 16 of the U.S. Housing Act would be amended to include the new contract under subsection 8(n).
- Enforcement. The availability of civil money penalties is extended to public housing agencies administering rental assistance under section 8.
- Section 3 of the Housing Act of 1968. Converted properties would remain subject to the hiring and contracting requirements that apply under their pre-conversion funding source. That is, public housing converted to section 8 assistance would remain subject to the Section 3 requirements that apply to public housing. Hiring preferences are streamlined into two categories that apply uniformly: (1) recipients of federal rental assistance in the area, and (2) other low- and very-low income residents. The Secretary may add additional preferences by regulation.