

Rental Housing Revitalization Act (H.R. 6468)

Section-by-Section Summary

Section 1. Short title; table of contents

Denotes the title of the bill and provides a table of contents.

Section 2. Findings and purposes

The purpose of the bill is to (1) preserve the long-term affordability of rental housing for low-income households by providing owners with access to stable, predictable, reliable funding that will enable them to sustain operations and leverage private financing; (2) address the current and ongoing capital repair and replacement and energy-efficiency needs of properties receiving HUD-funded rental assistance; (3) provide uniform policies for rental assistance programs administered by HUD in order to promote administrative efficiency; and (4) enhance resident choice.

Section 3. Conversion of rental assistance

Section 3 establishes a new section 8(l) (lower case “L”) of the U.S. Housing Act of 1937. Section 8(l) would authorize the conversion of rental assistance and establish policies that apply to such conversions.

Authority for conversion of rental assistance. Authorizes the Secretary to allocate amounts for the voluntary conversion of public housing buildings and other specified properties to either property-based assistance contracts under subsection (n) or project-based voucher rental assistance contracts under subsection (o)(13). The other specified properties include those assisted under the Sec. 8 Moderate Rehabilitation, Rent Supplement, and Rental Assistance programs. Requires separate statutory authority to extend eligibility for conversion funding to properties assisted under other programs. Specifies that owners of project-based Section 8–assisted properties that wish to continue to renew under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) may do so.

Conditions and procedures for conversion process. Directs the Secretary to issue a Notice inviting eligible owners to request conversion and specifies the requirements that must be met in order for a conversion request to be approved.

Required conditions of conversion. Specifies that (1) converting properties undergoing substantial rehabilitation must obtain a green physical needs assessment, (2) conversion may not result in fewer assisted units or a reduction in the number of families receiving assistance, (3) conversion is not grounds for termination of tenancy; and (4) the owner of a converting property must comply with resident consultation requirements established by the Secretary. Makes clear that the proposed conversion of a public housing property will be considered a “significant amendment” to the agency plan.

Agreement to provide assistance. To facilitate an owner’s ability to obtain financing, for example to address the physical needs of a converting property, authorizes the Secretary to enter into an agreement to provide assistance.

One-for-one replacement of assisted units. Provides that a reduction in the number of assisted units at a converting property is permitted only if any assistance not converted is instead transferred to an equal number of replacement units. Replacement units must reflect the number of bedrooms needed to serve returning tenants, waitlist applicants, and future projected need and may not result in a decrease in the

number of accessible apartments. Off-site replacement housing shall offer access to economic opportunities and may not be located in areas of minority concentration or in areas of extreme poverty, unless such areas qualify as revitalizing neighborhoods. In areas where data demonstrate that the area housing market has consistently high vacancy rates, vouchers are easy to use, and existing voucher holders are geographically dispersed in areas of low-poverty, an owner will be permitted to replace up to half of converted units with tenant-based vouchers.

Use restrictions. Requires owners of converted properties to agree to serve tenants with the incomes and at the rents required by the U.S. Housing Act for the period of the initial contract and use agreement and any contract extension or renewal. The use agreement for a converted public housing property must have an initial duration of at least 30 years from the date of execution of the contract, and must be extended “continuously for the duration of each extension or renewal of such contract.” The term of the use agreement for other converting properties will be the greater of the remaining term of any prior use restriction or the initial term of the new rental assistance contract. Prohibits the transfer or sale of a converted public housing property subject to a use agreement without the Secretary’s prior approval. Permits the Secretary to approve a sale or transfer to a not-for-profit entity only if there is “no capable public entity willing to take ownership” and to a for-profit entity only to facilitate the use of Low Income Housing Tax Credits (LIHTCs). Authorizes the Secretary to establish procedures for the transfer of rental assistance from one property to another or others, upon request by an owner or expiration or termination of a rental assistance contract, subject to certain conditions, including tenant notice requirements and the payment of relocation costs.

Tenants residing in units at time of conversion. Prohibits rescreening or termination due to conversion; in the case of a converting property undergoing rehabilitation, prohibits rescreening, termination, or denial of reoccupancy after rehabilitation, irrespective of the form(s) of financing used. For properties using LIHTCs, specifies that units occupied by tenants who are otherwise over-income for the LIHTC program will be considered to be in compliance with LIHTC income eligibility requirements, including for purposes of calculating eligible basis. Specifies that income eligibility limitations for new admissions do not apply at conversion.

Energy efficiency. Authorizes the Secretary to facilitate energy efficiency in converting properties and replacement units.

Relocation assistance. Directs that the Uniform Relocation Act (URA) will apply to displacement and relocation activities that are a result of conversion, including the transfer of assistance to another property. Allows the Secretary to consider a period up to 24 months as “temporary” relocation, providing owners with more time to complete rehabilitation. Permits owners to use rental assistance funding to cover URA-related costs.

Assistance payment to owner. Defines the monthly assistance payment to an owner of a converted property as the difference between the contract rent plus any allowance for tenant-paid utilities minus the family’s required contribution.

Over-income tenants. Specifies that families that are over-income 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 and that the number of assisted units at the property shall not be reduced; instead authorizes the Secretary or PHA to use any funds not required for assistance to the over-income family for other rental assistance.

Designated housing. For converting properties designated as “elderly only,” “disabled only,” or “elderly and disabled only,” permits the continuation of the designation upon conversion.

Conversion of public housing. Establishes requirements unique to properties converting from assistance under section 9 (public housing). Specifies that, in addition to other requirements that the Secretary may establish, (1) such properties are not subject to the separate disposition process under Section 18; (2) PHAs using LIHTCs to finance the capital needs of a converted public housing property must retain an interest in the property; (3) the resident board membership requirement continues to apply; (4) the terms of existing contracts (e.g., Energy Performance Contracts, contracts entered into pursuant to the Capital Fund Financing Program) must be honored; (5) Capital Funds may be used to assist in the financing of rehabilitation; and (6) any required increase in tenant rent payments resulting from conversion shall be capped at 10 percent per year.

Transfer and use of funds. Directs that assistance provided to a property prior to conversion shall cease upon conversion, except that unexpended assistance of any type may be used to pay costs associated with conversion to the new form of contract, including upfront costs, project costs, and costs associated with contract administration. Authorizes the Secretary to transfer funds from public housing accounts to accounts through which converted properties are funded.

Release of prior requirements. Makes clear that conversion will release owners (including PHAs) from the requirements associated with the prior programs, unless otherwise specified.

Conversion from a property-based contract to a project-based voucher contract. Permits an owner to convert a property from assistance under a property-based contract to assistance under a project-based voucher (PBV) contract, as long as the property meets the applicable requirements under section 8(o)(13) and a public housing agency agrees to administer the PBV contract.

Notice requirements. Requires an owner of a property assisted with a project-based contract to provide notice of the intent not to renew a contract for rental assistance for a converted property. An owner who fails to provide notice as required may not evict tenants or increase their rent payments until such time as proper notice has been provided and a 12-month period from the date of such notice has lapsed.

Properties in default, foreclosure, or bankruptcy.

- Requires a lender to notify HUD if an owner of a converted property, including a PHA, defaults on a mortgage. Also requires an owner to notify HUD if there is a default on a mortgage for a converted property. Authorizes HUD to cure the default by suspending all or a portion of rental assistance payments to the owner and paying the lender directly and to audit the property's financials and take enforcement action, if necessary. Following cure of the default, authorizes the Secretary to resume rental assistance payments and to require appropriate corrective actions.
- In the event of foreclosure or bankruptcy of a converted property or owner, specifies that the property remains subject to the rental assistance contract and any extensions or renewals, all leases, and any use agreement, and requires any and all successors in interest to honor such agreements. In the case of a converted public housing property, specifies that the Secretary shall have the first option to purchase a property offered for sale pursuant to foreclosure or bankruptcy and requires the Secretary either to exercise the option or assign it to a public-entity purchaser that will exercise the option. Alternatively, the Secretary may require transfer of the rental assistance contract and other agreements in the case of a property that is not physically viable, subject to compliance with the procedures for the transfer of rental assistance, described in the section on use restrictions, above.

Federal option to purchase. Specifies that the owner of a converted property may not sell the property without first offering the Secretary the option to purchase. The Secretary may exercise the option or

assign it; in the case of a converted public housing property, the Secretary must give first priority to a public entity assignee. The option would apply automatically to properties converted from assistance under the following programs: public housing, Rent Supplement or Rental Assistance Program, and Section 8 Moderate Rehabilitation. For other types of properties seeking to convert, participation would be voluntary.

Financing of properties with converted assistance. Requires the Secretary to establish policies and procedures governing the financing and underwriting of converted properties.

Recoveries. Authorizes the Secretary to recover rental assistance funds previously obligated for years beyond the fiscal year of conversion to properties that convert.

Rental Assistance Conversion Trust Fund. Establishes a “Rental Assistance Conversion Trust Fund” for the deposit of recovered funds, described above, the collection of costs associated with conversion, and the deposit of penalties (see below). Specifies that amounts in the fund may be used, to the extent provided in advance in appropriations Acts, for costs associated with the resident choice option (see below), conversions, and the Secretary’s exercise of the first option to purchase.

Section 4. Transformation authority¹

Section 4 establishes a new section 8(m) of the U.S. Housing Act of 1937. Section 8(m) would implement a resident choice option for residents of converted properties and authorize the Secretary to establish uniform policies and procedures for converted properties.

Resident choice. Provides that residents of a converted property will have the ability to move after residing in the property for not less than 24 months or such other period as provided in the PBV statute or as determined by the Secretary. Specifies that if a property is rehabilitated in conjunction with conversion, then the period begins on the date of conversion or the date of the tenant’s initial occupancy, whichever is later. The ability to move will depend upon the availability of resources, including turnover vouchers. Two types of public housing agencies (PHAs) will be required to provide turnover vouchers: PHAs that administer vouchers and have a property selected for conversion and PHAs that are selected to administer rental assistance contracts for converted properties. Both types of PHAs would be obligated to provide vouchers as required by the Secretary but in no case more than 1/3 of vouchers that become available through turnover each year. Authorizes PHAs to establish a separate waiting list for families eligible to exercise choice, if the demand for choice vouchers exceeds the supply.

Streamlining rental assistance programs. Authorizes HUD to establish uniform policies and procedures for converted properties and in some cases other HUD-funded rental assistance programs, including policies and procedures with respect to the following areas:

- Tenant organization rights. Directs HUD to ensure that all tenants with rental assistance may organize independently of owners or PHAs and to fund legitimate tenant organizations without a competitive process. Specifies that tenant organizations and organizing committees may hold meetings in buildings receiving rental assistance funding. Identifies the types of entities that are eligible to compete for funding to provide technical assistance and empower tenant organizations.

¹ The bill establishes a new form of property-based contract (PBC) that would be authorized under section 8(n) of the U.S. Housing Act of 1937. Owners would have the option of converting to a PBC or, if their property is eligible, to a project-based voucher (PBV) contract.

- Applicant and tenant procedural rights. Establishes uniform procedural rights for converted properties and the Housing Choice Voucher program, such as notice requirements for applicants or tenants, the right to inspect and copy documents, and the right to a review by an independent person.
- Nondiscrimination and affirmatively furthering fair housing. Requires compliance with civil rights and fair housing laws, including the obligation under the Fair Housing Act to affirmatively further fair housing. Requires compliance with Executive Order 13166, which addresses improving access to services for people with limited English proficiency.
- Administration of rental assistance. As part of the transformation authority provided by this section, permits the Secretary to facilitate regional portability agreements or consortia, allocate funds for the administration of rental assistance for converted properties, and facilitate the establishment of a one-stop shop for rental assistance applicants.
- Physical condition standards. Authorizes the Secretary to establish uniform physical condition standards for rental assistance programs.
- Enforcement. Provides direct authority to HUD to enforce through judicial actions any requirements in rental assistance program statutes, regulations, rental assistance contracts, annual contributions contracts, and use agreements. In the case of an owner in continued and repeated violation of HUD covenants, permits HUD, after notifying the relevant lenders, to transfer the contract and use agreement to another property. Tenants choosing not to move to the new property will be provided voucher assistance. In the event of a default by a PHA administering rental assistance, authorizes the Secretary to implement a number of equitable remedies, including taking possession of properties, appointing a receiver, and transferring the program to another PHA. Provides that amounts collected as a result of enforcement shall be deposited in the Rental Assistance Conversion Trust Fund or used to improve the property in question.
- Resident access to building information. Requires HUD to provide financial and management information concerning assisted properties to legitimate tenant organizations.
- Streamlined regulations. Authorizes the Secretary to establish streamlined review and compliance requirements for all small or partially assisted properties.

Authorization of appropriations. Authorizes the appropriation of \$350,000,000 for fiscal year 2011 and such sums as may be necessary for 2012 through 2015 for the activities identified under this subsection (transformation authority) and conversion authorized under subsection (I).

Allocation. Authorizes the Secretary to allocate by notice amounts authorized. Specifies that publication of a new notice shall not be required from year to year if the method of allocation does not change, except in the case of a competitive allocation.

Section 5. Property-based contracts (PBCs)

Section 5 establishes a new section 8(n) of the U.S. Housing Act of 1937. Section 8(n) would authorize the Secretary to enter into property-based contracts (PBCs) for converted properties.

Authority. Authorizes 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 subsection (I).

Contract term.

- Initial term. Establishes an initial contract term of 20 years for converting public housing properties; 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 renewals and extensions. Permits contract extensions of up to 20 years; extensions could be agreed to in advance. HUD must offer the owner of a property converted to property-based assistance a renewal contract of up to 20 years (subject to appropriations) in the 2-year period prior to contract expiration unless HUD determines that the property is ineligible for renewal. HUD cannot offer or agree to renew a contract if the property is unsuitable for continued use as assisted housing due to its physical condition, location, or “other factors which cannot be remedied with available Federal, State and local resources” or if the owner has been debarred, suspended, or found to be in “serious and repeated non-compliance with applicable requirements.” The owner of a converted public housing property must accept a contract renewal or extension under the same conditions that HUD must offer it.
- Renewals upon expiration. In the case of a contract that has expired or terminated, permits an owner to request renewal and the Secretary to renew as long as tenant protection vouchers have not been issued and the rental assistance has not been transferred. An owner may renew expiring contracts in whole or in part; in the case of a partial renewal, the assistance not renewed may be transferred, or tenants may be provided vouchers.

Calculation of rent to owner.

- Initial calculation. Provides that the initial rent will be established at the level requested by the owner, up to the rent of comparable unassisted units in the local marketplace. With HUD approval, a market rent could exceed 110 percent of the applicable area rental (i.e., the Fair Market Rent (FMR)). For a property with a market rent in excess of 110 percent of the FMR that has been approved under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), the initial rent could be established at the higher MAHRA rent. Above-market “exception rents” would also be permitted for preservation-worthy properties. Exception rents would be capped at the higher of 110 percent of the FMR or 120 percent of the comparable market rent. A property that has had an exception rent approved pursuant to a Mark-to-Market (M2M) debt restructuring could convert at the M2M-approved rent level, even if that level exceeds the cap. If an owner requests a below-market initial rent, HUD would be authorized to approve that rent subject to a determination that the rent level is adequate to meet the needs of the property.
- Rent adjustments. Authorizes HUD to establish more than one rent adjustment index, based on market rent or operating cost changes, and states that no such index shall result in a negative rent adjustment to an owner.
- Tax credit or HOME projects. Provides that, for units assisted with LIHTCs or HOME funds, contract rents may be established at levels equal to or less than the rents on comparable unassisted units in the project.

Tenant contribution. Provides that 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.

Eligible tenants. Provides that tenants are eligible for assistance under a property-based contract if they are lawfully residing in a unit at the time of conversion or, upon initial receipt of such assistance, are “low-income” (income not in excess of 80 percent of the area median income). Owners must comply

with income targeting requirements for new admissions and waiting list policies established by the Secretary.

Selection of tenants. Provides that owners of properties assisted with project-based contracts must honor pre-conversion waiting lists. Permits an owner to maintain a waiting list or use a list maintained by a PHA. For an owner of more than one property or a PHA administering rental assistance contracts for multiple properties, allows a single waiting list for all or some properties or site-based waiting lists for individual properties, so long as applicants are made aware of all options. If a PHA or other owner administers multiple site-based waiting lists, requires that an applicant be able to apply in a single location. Permits the adoption of preferences consistent with affordable housing needs. Requires affirmative marketing and compliance with civil rights and fair housing laws. For applicants on a waiting list for tenant-based vouchers, authorizes the Secretary to establish policies for such applicants to place their names on the waiting list for admission to a converted property if their wait for a tenant-based voucher is extended due to the use of turnover vouchers to satisfy the PHA's resident choice obligation. Affirms that screening and selection shall be the function of the owner. Provides that an otherwise-eligible family residing in a converted unit shall be given an absolute preference for occupancy.

Leases and tenancy. The termination of leases and tenancy would be permitted only for good cause. Protections apply to survivors of domestic violence.

Vacancy payments. Provides for vacancy payments for a period not to exceed 60 days as long as the vacancy is not the fault of the owner and the owner is taking actions to fill the unit. Prohibits double compensation for vacancies.

Physical inspections of properties. Provides that converted properties must meet physical condition standards at periodic inspections. HUD may accept inspection results conducted by jurisdictions or entities that employ inspection standards equivalent to HUD's.

Use of rental amounts. Requires converted properties to comply with any HUD-established operating and replacement reserve requirements. Any limitations on the use of cash flow established by HUD may not differ based on the tax status of an owner or sponsor.

Expiration or termination of contract or use agreement. Requires the Secretary to make enhanced vouchers available to tenants in the event of termination or expiration of the contract or use agreement, whichever is later, unless the contract is terminated because the Secretary is prohibited from renewing it due to the physical condition of the property or the status of the owner, in which case regular vouchers will be issued. Subject to the availability of appropriations, the Secretary shall also provide vouchers for units vacant on the date of termination or expiration. In lieu of providing vouchers, as described, the Secretary may instead, upon notice to and consultation with tenants, transfer the assistance to another property or properties. In the case of a converted public housing property, the Secretary shall give first priority to another property owned by a public entity.

Financial reviews. Provides that converted properties will be subject to annual financial review.

Section 6. Project-based voucher contracts

Percentage limitation. Bases the amount of PBV allowable by PHA on the number of the PHA's authorized vouchers rather than the amount of funding a PHA receives for vouchers. For units that serve homeless individuals and families, where supportive services are provided, or that are located in areas where vouchers are difficult to use, up to 25 percent (rather than 20 percent) of units could be assisted.

Provides that an agency administering vouchers for a converted property would be eligible to project-base up to 40 percent of the dwelling units it assists, but it would not be permitted to exceed the otherwise applicable percentage limit by means other than conversion of assistance.

Income-mixing. Allows for PBV assistance at the greater of 25 dwelling units or 25 percent of the dwelling units in any project. Specifies that this limitation would not apply to properties serving elderly families or households eligible for comprehensive social services that are available to residents of the property. Authorizes the Secretary to 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, would permit up to 40 percent of units in a property to be assisted without additional conditions. Provides that up to 40 percent of the units in a converted property serving elderly families or households eligible for comprehensive social services could be assisted with PBVs.

Contract term. Alters 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. Protects funding for PBV contracts in case of a shortfall in annual voucher renewal funding.

Extension of contract term. In the case of properties converted from other forms of rental assistance, authorizes a PHA with the advance approval of the Secretary to decline to extend a PBV contract if the property is "unsuitable" as low-income housing, the owner is in repeated violation of HUD requirements, or no funding is available.

Unit rent. Permits the Secretary to approve a contract rent above 110 percent of the FMR.

Rent adjustments. Authorizes the Secretary to require that PBV rents be adjusted using the same index as described in section 5.

Over-income tenants. Specifies that families that are over-income 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 and that the PHA and owner may agree to retain the number of units assisted under the contract, subject to policies issued by the Secretary.

Tenant selection. Provides that an otherwise-eligible family residing in a converted unit shall be given an absolute preference for occupancy. Authorizes owners of PBV-assisted properties to establish site-based waiting lists, subject to compliance with civil rights, fair housing, and other requirements.

Vacancy payments. Authorizes vacancy payments for 60 days from the date the vacancy occurred.

Leases and tenancy. Specifies that termination of leases and tenancy will be permitted only for good cause.

Properties in foreclosure or bankruptcy. Provides that for all properties assisted with PBVs after the date of enactment of the Protecting Tenants in Foreclosure Act (May 20, 2009), any rental assistance contract and any extensions or renewal, all leases, and any use agreement survive foreclosure or bankruptcy, and any and all successors in interest must honor such agreements.

Conversion from a PBV contract to a project-based contract. Specifies that conversion from PBV project-based contracts to property-based contract assistance would be available at an owner's request, subject to the Secretary's discretion and approval, under the following circumstances: (a) for a property assisted with PBVs as a result of conversion, the Secretary would be required to reduce the annual contributions contract (ACC) for the PHA administering the contract for PBV assistance and to transfer the funding to the entity administering the contract for property-based contract assistance; and (b) for a property otherwise assisted with PBVs, if the PHA administering the contract for PBV assistance has not

breached its contractual obligations under the ACC, the assistance may be converted and the amount of the ACC may be reduced accordingly only with the agreement of the administering PHA.

Conversion from tenant-based vouchers to a project-based contract. Provides that properties with voucher holders, including enhanced vouchers, may convert to a property-based contract-assisted property at the owner's request and subject to the Secretary's discretion and approval, under the following circumstances: (a) the Secretary will be required to reduce the ACC for the PHA administering the contract and to transfer the funding to the entity administering the contract for PBC assistance; (b) tenants living in units assisted through such a conversion will retain a resident choice option; and (c) the PHA consults with the Resident Advisory Board and the community, and the owner consults with the affected residents. Vouchers project-based under this authority are considered a conversion subject to the special 40 percent ceiling on the share of vouchers that may be project-based.

Section 7. Conforming amendments

Definition of a public housing agency. Amends the definition of a public housing agency for purposes of section 8 programs to include not-for-profit entities. Allows a consortium of public housing agencies to designate a legal entity or entities to act as its legal representative.

Administrative fee. Authorizes a fee to entities administering rental assistance for properties converted to project-based voucher assistance that differs from the fee payable for tenant-based vouchers.

Mainstream voucher renewals. Shifts Mainstream vouchers to the section 8 voucher program but requires turnover vouchers to serve "qualified persons with disabilities and...qualified non-elderly disabled families." Makes unexpended amounts under section 811 available until expended for renewal vouchers and provides administering entities with program reserves that are needed under the new renewal funding policy. Authorizes the Secretary to provide technical assistance to PHAs to assist them in providing permanent supportive housing. Allows the entities that administer assistance under the Mainstream Voucher program prior to conversion to continue and considers them public housing agencies for the purposes of administering tenant-based assistance.

Income eligibility. Amends the definition of project-based assistance in section 16 of the U.S. Housing Act to include the new form of project-based contract authorized under this bill.

Enforcement. Makes a number of entities liable for civil money penalties. Narrows the liability of corporate owners to members of limited liability companies with full or significant ownership interests in a property, rather than covering "any officer or director of a corporate owner" of rental housing assisted under section 8. Authorizes the imposition of a civil money penalty for the violation of a use agreement. Expands the investigative tools available to the Secretary in carrying out his or her enforcement authorities, including with respect to the issuance and enforcement of subpoenas.

Section 3 of the Housing Act of 1968. Provides that public housing converted to section 8 assistance would remain subject to the Section 3 requirements that apply to public housing. Streamlines into two categories hiring preferences, which will then apply uniformly: (1) recipients of federal rental assistance in the area, and (2) other low- and very-low income residents. Authorizes the Secretary to add preferences by regulation.