

Ellison Staff Draft

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) ensure long-term preservation of affordable rental units for low-income households and provide owners and operators the necessary tools in order to achieve this goal; 2) promote long-term property viability by accessing private finance in order to address the physical needs of the property and make properties energy-efficient; and 3) provide uniform policies for rental assistance programs administered by HUD in order promote administrative efficiency, and 4) enhance resident choice.

Section 3. Transforming rental assistance

Resident choice. Residents of properties that have converted to a project-based contract would have the ability to move with a housing choice voucher after some period of time in a converted unit, subject to the availability of resources. A PHA that converts a property and also administers vouchers would be required to make not more than 1/3 of turnover vouchers available to residents in a converted property utilizing the choice option. To enable residents of other converted properties to exercise the choice option, HUD may create incentives through the award of contracts to administer the new rental assistance contracts for converted properties, or tap other resources that may be used for this purpose.

Authority to streamline rental assistance. Authorizes HUD to establish uniform policies and procedures across 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 would be allowed to organize independent of owners or public housing agencies (PHAs), funds legitimate tenant organizations, and clarifies which groups are eligible for competitive funds to provide technical assistance and empower tenant organizations.
- Applicant and tenant procedural rights. Establishes uniform procedural rights for converted properties and the voucher program, such as notice requirements for applicants or tenants, eviction procedures, and right to review and inspect documents.
- 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. Empowers the Secretary to facilitate regional portability agreements or consortia, authorizes the Secretary to allocate funds for the administration of

rental assistance for converted properties, and authorizes the Secretary to facilitate the establishment of a one-stop shop for rental assistance applicants.

- Physical condition standard. Authorizes the Secretary to establish uniform physical condition standards for rental assistance programs.
- Properties in default, foreclosure, or bankruptcy. PETRA contained important protections against foreclosure which have been strengthened in the new version. PETRA provided that the terms of new rental assistance contracts, use agreements and leases remain binding on landlords that take ownership after foreclosure, but the Secretary would have been authorized to modify this requirement if the units were not viable or “if necessary to generate sufficient lender participation” and transfer the contract for assistance to one or more other properties. The language authorizing the Secretary to modify the requirement “if necessary to generate sufficient lender participation” has been deleted in the Ellison staff discussion draft.

Requires the lender to notify HUD if an owner, including a PHA, defaults on a mortgage. Authorizes HUD to prevent foreclosure by paying the lender with rental assistance payments due to the owner and to audit the property’s financial statements and take enforcement actions as necessary.

In the event of foreclosure or bankruptcy, requires HUD to purchase the converted property or assign to another public entity the power to purchase the property. (In addition to other funds that may be used for this purpose, allows HUD to use funds in the Rental Assistance Conversion Trust Fund established by this bill.)

- Enforcement. Provides direct authority to HUD to enforce 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.
- Resident access to building information. Requires HUD to provide basic financial and management information to legitimate tenant organizations concerning multifamily and other converted properties.

Authority for conversion of rental assistance. Authorizes the Secretary to allocate funds for the voluntary conversion of rental assistance contracts to PHAs and to owners of properties assisted under the Sec. 8 Moderate Rehabilitation, Rent Supplement, and Rental Assistance programs. Requires statutory authority to extend eligibility for conversion funding to properties assisted under other programs. Allows 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) to do so.

Authorizes the Secretary to recover previously obligated funds and establishes a “Rental Assistance Conversion Trust Fund” to hold such funds, which shall be available only to the extent provided in advance in appropriations Acts. Authorizes 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.

Allows HUD to establish and collect fees related to conversion up to \$100,000 per property to pay costs associated with rent comparability studies and physical needs assessments.

Conversion of rental assistance

- Required conditions of conversion. Residents must be consulted prior to application for conversion. Conversion may not result in fewer assisted units or a reduction in the number of families receiving assistance. A property undergoing substantial rehabilitation must obtain a green physical needs assessment.
- One-for-one replacement of assisted units. Individual converting properties may have fewer assisted units only if any assistance not converted at the property 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. Off-site replacement housing 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 and vouchers are easy to use, including in neighborhoods of opportunity, an owner will be permitted to replace up to half of converted units with tenant-based vouchers.
- Use and affordability restrictions. Requires landlords 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.” Allows a 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.
- Notice requirements. Requires an owner to provide notice of their intent not to renew a contract for rental assistance for a converted property. For a property assisted with a project-based contract, the Secretary will make available enhanced voucher assistance to tenants and, subject to the availability of appropriations, replacement vouchers for vacant units. In lieu of providing such assistance, the Secretary may, following notice and consultation with tenants, transfer the assistance contract to another property. In the case of a converted public housing property, first priority for the receipt of transferred assistance must be given to another property owned by a public entity.
- Sale or transfer of public housing property. The sale or transfer of a converted public housing property is subject to prior approval by the Secretary. The Secretary may 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).

- Tenants residing in units at time of conversion. Prohibits re-screening or termination due to conversion and specifies that income eligibility limitations for new admissions do not apply at conversion. Also specifies that owners and agencies cannot deny re-occupancy after rehabilitation because of the requirements of other funding sources (such as LIHTCs). Additionally, to assure that units occupied by tenants who are otherwise over-income for the LIHTC program will still be counted in the project's eligible basis, the new version states that such tenants will be considered to be in compliance with LIHTC income eligibility requirements.
- Relocation assistance. 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. Owners may use rental assistance funding to cover URA-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 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.

Requires PHAs to implement transition rent policies that prevent those few tenants that will experience a rent increase from experiencing a rent increase of more than 10 percent per year solely as a result of conversion.

- Security of tenure. Requires that tenants may only be evicted for good cause. Protections apply to survivors of domestic violence.
- Special requirements for conversion of public housing. Converting properties are not subject to the separate disposition process under Section 18. PHAs using LIHTCs to finance the capital needs of their converted public housing properties must retain an interest in the property. The requirement related to resident membership on the PHA board continues. 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. Allows PHAs to use capital funds to pay all or a portion of transaction costs, including upfront costs and required reserve deposits, as well as financing of renovations, initial contract funding, and contract administration.
- Release of prior requirements. Conversion would release owners and PHAs from the requirements associated with the prior programs (except as specified above regarding public housing).

Section 4. Property-based contracts

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 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 renewals and extensions.
 - 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).
 - The owner of a converted public housing property must accept a contract renewal or extension under the same conditions that HUD must offer it.
 - Other owners may renew expiring contracts in whole or in part, subject to the Secretary's approval and the availability of appropriations.
 - HUD must offer the owner of a property converted to PBC 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."
 - If the contract is not renewed for either of the reasons in the prior bullet, HUD may transfer the contract to another property or properties or provide vouchers.
 - If an owner in good standing requests renewal of an expired rental assistance contract and the property is suitable for continued use as assisted housing, HUD must renew unless tenant protection vouchers have already been issued to tenants of the property or rental assistance formerly provided at the property has been transferred to another property.
 - An owner may request a partial renewal of assistance, with certain requirements:
 - Must comply with the one-for-one replacement requirement if the property in question is subject to a use restriction (which will be true of any converted public housing property). If the PHA does not seek to transfer the remaining portion of the contract to another property it owns, HUD must give first priority to a receiving property owned by a public entity and may give second priority to a receiving property owned by a not-for-profit entity.
 - For other converted housing that is no longer subject to a use restriction, the owner must comply with the applicable notice requirements, making clear the intent to renew only in part, and HUD must either provide enhanced vouchers to tenants residing in units for which assistance is not renewed or, following consultation with such tenants, may transfer assistance to a new property or properties.
- Establishment of rents.
 - Market rents

affirmative marketing procedures. Admissions preferences that comply with civil rights requirements are permitted. Owners would screen and select tenants.

- Physical and financial requirements. Converted properties must meet physical condition standards at periodic inspections and will be subject to annual financial review. Owners must 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. HUD may accept inspection results conducted by jurisdictions or entities that employ inspection standards equivalent to HUD's.

Section 5. Property-based voucher contracts

- Percentage limitation.
 - *Changes that apply to all properties that become assisted with PBVs.* Bases the amount of PBV allowable by PHA on the number of the PHA's vouchers rather than the amount of funding a PHA received 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.
 - *Changes that apply only to properties converted from another form of assistance.* An agency administering vouchers for properties converted 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.
 - *Changes that apply to all properties that become assisted with PBVs.* Allows for PBV 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. 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.
 - *Changes that apply only to properties converted from another form of assistance.* Converted properties serving elderly families or households eligible for comprehensive social services available at the property could have PBVs for up to 40 percent of the units in a property.
- Contract term and funding. 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. With the advance approval of the Secretary, PHAs may decline to extend PBV contracts if "unsuitable" property or "bad owner."

- Rents. Provides the Secretary with new authority to approve a market rent above 110 percent of the FMR for a particular property. The Secretary could require that PBV rents be adjusted using the same index as described in section 4, above.
- Tenant selection. Owners 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.
- Conversion from a PBV contract to a project-based contract. Conversion from PBV to PBC 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 PBC 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. Properties with voucher holders, including enhanced vouchers, may convert to a PBC-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 6. 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. The definition of project-based assistance in section 16 of the U.S. Housing Act would be amended to include the new form of project-based contract authorized under this bill.
- Enforcement. Makes a number of entities liable for civil money penalties. Removes from the list of such entities PHAs administering rental assistance and any individual employees. 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. 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.