

### Comparison of Selected Provisions from PETRA Draft Legislation and Ellison Staff Discussion Draft<sup>1</sup>

Selected Topics	Provision, PETRA	Modifications to Provision, Ellison Staff Discussion Draft
<b>Resident Choice</b>	After two years (or other such period determined by the Secretary), families living in converted units (or, to the extent of available resources, living in other units with rental assistance), may choose to move and continue to receive rental assistance (comparable to a Housing Choice Voucher). PHAs must make available to such families not more than 1/3 of their Housing Choice Vouchers that turn over each year. (Section 8(m)(1)(A)(i))	Only families living in converted units are offered a resident choice option. For families living in units that undergo rehabilitation in conjunction with conversion, the 2-year period prior to eligibility for a moving voucher begins on the date of conversion; otherwise, the clock starts ticking from the date of the tenant’s initial occupancy. (Section 8(m)(1)(A)(i))  Agencies required to provide mobility vouchers shall do so, but no agency shall be compelled to contribute more than one-third of vouchers that become available annually. (Section 8(m)(1)(A)(ii))
<b>Tenant Organization Rights</b>	Owners shall not impede the efforts of tenants to organize and shall recognize legitimate tenant organizations; partially assisted properties may have a single tenant organization representing all tenants; a portion of renewal funding may be allocated competitively to facilitate tenants’ right to organize. (Section 8(m)(1)(A)(ii))	A portion of funds made available for the renewal of rental assistance shall be allocated to facilitate tenants’ rights to organize. The amount set aside for tenant organizing shall not be less than would have been available absent conversion. Allocation of funds to “legitimate tenant organizations” will not require competition. (Section 8(m)(1)(B)(i))
<b>Administration of Rental Assistance</b>	The Secretary may facilitate the streamlining of rental assistance administration and may award funding to entities authorized to administer such assistance. (Section 8(m)(1)(A)(v))	Authorizes the Secretary to establish “mechanisms, procedures, and policies” to enable applicants to apply in a single location to all rental assistance programs administered in a metropolitan or rural area. (Section 8(m)(1)(B)(iv))
<b>Implications of Default, Foreclosure,</b>	In the event of a foreclosure on a converted property or the bankruptcy of an owner of a converted property, the property remains subject to the rental assistance contract	It limits the occasions on which the Secretary can modify the ongoing requirements (contracts, affordability/use restrictions

<sup>1</sup> This table summarizes the changes between the May version of PETRA and Ellison’s October draft; for a detailed summary of the contents of the bill, see the Section-by-Section analysis.

<p><b>Bankruptcy</b></p>	<p>and any extensions of the contract, the leases between the tenants and prior owners, and any use agreements in effect prior to the foreclosure of bankruptcy. A successor-in-interest also remains subject to these contracts and restrictions, with an exception for a successor-in-interest who will occupy the property as a principal residence. The Secretary would be permitted to modify this requirement if the units were not considered physically viable or financially sustainable or if necessary to generate sufficient lender participation. (Section 8(m)(1)(A)(vii))</p>	<p>etc.) to cases where the property is not physically viable.</p> <p>It adds a provision requiring that both the owner of the property and the Secretary be notified in the case of a default on any mortgage or other security on a converted property. The Secretary would be permitted to suspend rental payments to the owner and use the suspended rental assistance funding to cure the default. The Secretary would then be permitted to audit the property and could require the owner to take corrective actions. The Secretary could also take enforcement action. (Section 8(m)(1)(B)(vi)(I))</p> <p>It adds a section requiring that, before a public housing property is sold (following foreclosure), the Secretary be provided a first option to purchase. The Secretary or another public entity must exercise that option. (Section 8(m)(1)(B)(vi)(II))</p>
<p><b>Enforcement</b></p>	<p>Authorizes the Secretary to bring enforcement actions directly. Permits the Secretary to terminate and transfer assistance from properties in violation of applicable requirements. Expands the basis for civil money penalties and broadens the list of liable parties. Authorizes the imposition of a penalty, establishes procedures for judicial review, and directs that civil money penalties be deposited in a "Rental Assistance Conversion Trust Fund." (Section 8(m)(1)(A)(viii))</p>	<p>Authorizes the Secretary to bring actions for the violation of an annual contributions contract in addition to other covenants and to require specific actions in addition to or in lieu of pursuing civil money penalties. (Section 8(m)(1)(B)(vii)(I))</p> <p>Modifies the termination and transfer language to require consultation with primary and subordinate mortgagees. (Section 8(m)(1)(B)(vii)(II))</p> <p>Specifies the equitable remedies available against a public housing agency that defaults on its obligations with respect to the administration of rental assistance. (Section 8(m)(1)(B)(vii)(III))</p> <p>Removes entities administering rental assistance and board members from the list of parties liable for civil money penalties, specifies the bases under which a civil money penalty may be imposed, and defines the investigative tools available to the</p>

		Secretary in carrying out enforcement activities. (Section 6(c) — Conforming amendments to section 29)
<b>Resident Access to Building Information</b>	—	A new provision is added requiring that residents be given access to information about the properties in which they live. (Section 8(m)(1)(B)(viii))
<b>Streamlined Regulations</b>	—	A new provision would authorize the Secretary to establish streamlined review and compliance requirements for small or partially assisted properties. (Section 8(m)(1)(B)(ix))
<b>Authority for Conversion of Rental Assistance</b>	Authorizes the conversion of properties assisted under section 8, section 9 (public housing), the Rent Supplement and Rental Assistance programs, the Section 8 Moderate Rehabilitation program, and “other Federal affordable housing programs, as identified by the Secretary by notice.” (Section 8(m)(1)(B))	Affirms that owners of section 8–assisted properties may continue to request renewal under MAHRAA. Modifies language authorizing the Secretary to identify “by notice” other programs eligible for conversion, requiring instead that such authority be provided by statute. (Section 8(m)(1)(C))
<b>Conversion: Required Conditions</b>	Establishes baseline conditions that any converting property must meet: (1) no loss of assisted units, (2) no reduction in assisted families, (3) no termination of tenancy as a result of conversion, and (4) owner has complied with tenant consultation requirements. (Section 8(m)(2)(B))	Adds a required condition that any converting property undergoing substantial rehab must obtain a green physical needs assessment (green PNA). Also adopts more detailed language with respect to resident consultation, requiring resident involvement in planning for and implementation of conversion, resident meetings to establish re-occupancy preferences, and public meetings prior to adopting any significant changes to the conversion plan. (Section 8(m)(2)(B))
<b>One-for-One Replacement of Assisted Units</b>	The initial conversion may provide for a reduction in the number of assisted units only if the assistance is transferred to an equal number of units in a replacement property. Up to half of units may be replaced with tenant-based vouchers only in cases where local housing markets have an adequate supply of affordable rental housing in areas of low poverty. In these cases, the supply must be demonstrated by data	The criteria that must be met for units to be replaced with vouchers are expanded in several ways, including a requirement that the applicant for conversion provide a market analysis. It also allows vouchers to replace hard units in cases where a judgment, consent decree, or other order of a court limits the ability of an owner to comply with a hard-unit replacement requirement. (Section 8(m)(2)(D))

	indicating that certain criteria (included in the bill) are met. (Section 8(m)(2)(D))	
<b>Use Restrictions</b>	<p>Public housing that converts would be subject to a use restriction for at least 30 years after conversion. Other converting properties would be subject to a use restriction for the longer of the remaining term of any previous use restriction, or the length of the rental assistance contract. (Section 8(m)(2)(E))</p> <p>If the rental assistance contract on a converted property is not extended or renewed and the property is no longer subject to a use agreement, subject to appropriations, eligible tenants shall be provided with Housing Choice Vouchers and the Secretary may also provide replacement vouchers for vacant units. (Section 8(m)(2)(E)(iv))</p>	<p>For public housing, the use restriction is required to be continuous for the duration of each extension or renewal of the rental assistance contract. (Section 8(m)(2)(E)(i)(aa))</p> <p>During the term of the use agreement, a PHA would be prohibited from selling or transferring converted public housing without the prior approval of the Secretary. The Secretary would not be permitted to approve such a sale or transfer to a for-profit entity, unless necessary for a Low Income Housing Tax Credit transaction. It would also only allow the Secretary to approve a sale or transfer to a nonprofit entity if there is no capable and willing public entity. (Section 8(m)(2)(E)(i)(bb))</p> <p>If a contract is not renewed after expiration of a use agreement, tenants will receive enhanced vouchers, except in the case that the non-renewal was the result of HUD enforcement action, in which case, the tenants receive regular vouchers. Also allows for the issuance of regular vouchers for vacant units, subject to the availability of appropriations. Adds a provision allowing the Secretary to transfer the assistance from the contract that was not renewed to a new contract at another property (or properties). In the case of converted public housing, the Secretary would be required to make the transfer, with first priority to a publicly owned property. (Section 8(n)(11))</p>
<b>Tenants Residing in Units at Time of Conversion</b>	Tenants lawfully residing in properties undergoing conversion will not be subject to rescreening, termination of their assistance, or eviction because of the conversion. (Section 8(m)(2)(F))	The provision is expanded to add the denial of reoccupancy after rehabilitation to the list of prohibited actions. It also adds that tenants cannot be subjected to these consequences because of requirements associated with any other funds used to finance the rehabilitation of the property, including Low Income Housing Tax Credits (LIHTCs). New language states that

		tenants lawfully residing in converted properties shall be considered to be in compliance with the income requirements of the LIHTC program. (Section 8(m)(2)(F))
<b>Energy Efficiency</b>	—	In addition to the green PNA that is a required condition of conversion for some properties, PETRA now includes a standalone provision authorizing the Secretary to facilitate the adoption of cost-effective energy-efficiency measures and green technologies in converting properties and newly constructed replacement units. (Section 8(m)(2)(G))
<b>Public Housing Properties using Low Income Housing Tax Credits</b>	States that a project owned by an entity in which a PHA has a “direct or indirect interest” may be considered to be owned by a PHA. (Section 8(m)(2)(M)(ii))	Provides that owners of converted public housing properties that access LIHTCs will be required to retain an option to purchase the property at the end of the tax credit compliance period, to maintain an active role in property management decisions, or to adopt any other provision established by the Secretary “to ensure the preservation of the interest of the public housing agency in the property.” (Section 8(m)(2)(L)(ii))
<b>Transition Rents</b>	—	Directs the Secretary to require PHAs to implement transition rent policies that prevent tenants from experiencing a rent increase of more than 10 percent per year solely as a result of conversion. (Section 8(m)(2)(L)(vi))
<b>Federal Option to Purchase</b>	Owners of certain converted properties may not sell without first offering the Secretary an option to purchase. The Secretary may purchase or assign his or her option to another entity. If neither the Secretary nor the assignee purchases the property, then the owner may sell it to a third party. (Section 8(m)(2)(Q))	In assigning his or her right to purchase a converted public housing property, the Secretary must provide first priority to a public entity and second priority to a not-for-profit entity, which may include a tenant organization. (Section 8(m)(2)(Q))
<b>Financing of Properties with Converted Assistance</b>	—	A new provision directs the Secretary to “establish policies governing the use of sound financing and underwriting standards” for converting properties. (Section 8(m)(2)(R))

<p><b>Contract Terms, Extensions, and Renewals</b></p>	<p>Rental assistance contracts would initially be for terms of at least 20 years, in the case of public housing, or the time of the remaining contract or up to 20 years, in the case of other housing. (Section 8(n)(2)(A))</p> <p>At the request of an owner, the Secretary would be permitted to extend the rental assistance contract for up to 20 years beyond the contract term, subject to the availability of appropriations. The Secretary would be permitted to obligate the owner and any successors to accept such an extension. Owners of public housing would be required to accept such an extension, unless they offered compelling reasons, accepted by the Secretary (Section 8(n)(2)(B))</p> <p>The private owner of a converted property with project-based rental assistance would be permitted to renew an expired contract in whole or in part. (Section 8(n)(2)(C))</p>	<p>The new legislation clarifies the requirements for contract extensions and renewals. Specifically, it adds a provision requiring that, within two years prior to the expiration of the contract, the Secretary offer a renewal for up to 20 years (as long as the property is not “unsuitable” and the owner has not persistently violated HUD requirements). It also changes the public housing requirement so that the owner must renew unless the property is obsolete and unsuitable, as determined by the Secretary, in consultation with tenants and local government. (Section 8(n)(2)(B)(ii))</p> <p>If a private owner requests renewal of an expired contract, the Secretary could renew if the property meets the “good property/good owner” criteria, tenant protection vouchers have not yet been issued, and the assistance has not been transferred away from the property. (Section 8(n)(2)(C)(i))</p> <p>If a private owner requests partial renewal, the assistance not renewed may be transferred or issued in the form of vouchers. (Section 8(n)(C)(ii))</p>
<p><b>Rent Setting and Adjustment</b></p>	<p>Rents under the new project-based rental assistance contracts could be set at the level of rents charged at comparable unassisted units and would need approval from the Secretary if such rents exceeded 110 percent of the applicable area rental. Rents could be set lower than comparable unassisted rents if the Secretary determined that such rents would be sufficient to meet the financial and physical sustainability needs of the property. (Section 8(n)(3)(A)(i))</p> <p>The Secretary could approve above-market rents (exception rents) if necessary to meet the financial and physical sustainability needs of the property and if the property meets certain preservation criteria set by the Secretary. These</p>	<p>The provision allowing the Secretary to set initial rents below market would be made subject to an owner’s request. To approve a market rent in excess of 110 percent of the applicable area rental, the Secretary would need to make a determination that the higher rent is “cost effective.”</p> <p>Properties with market rents approved by HUD under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA) may convert at such rents, even if they exceed 110 percent of the applicable area rental. (Section 8(n)(3)(A)(i))</p> <p>To approve an above-market rent for a converting property, the Secretary must determine that the property either is not obsolete or will not be obsolete after rehabilitation and that reasonable modifications in combination with higher rents will</p>

	<p>exception rents cannot exceed the greater of 110 percent of area rent or 120 percent of the rent for comparable unassisted units. (Section 8(n)(3)(A)(ii))</p> <p>Rents would be adjusted annually using an index established by the Secretary to reflect changes in local market rents. Owners could request adjustments above the index in certain circumstances. Rents would be rebenchmarked to market at least every 5 years. (Section 8(n)(3)(B))</p>	<p>be cost-effective to extend the useful life of the property. The new legislation's cap on exception rents will not apply to properties with above-market rents approved by HUD pursuant to a Mark-to-Market debt restructuring; such properties may convert at such rents without respect to PETRA's caps. (Section 8(n)(3)(A)(ii))</p> <p>The Secretary may use multiple indices to adjust rents, and these indices should take into account changes in the cost of operating multifamily rental housing or changes in rents. Further, it adds a provision to prevent rent adjustments from being negative. (Section 8(n)(3)(B))</p>
<b>Waiting Lists</b>	<p>An owner of a property assisted under the new project-based rental assistance contract must select families from a waiting list, which the owner may maintain. The owner may also use a waiting list maintained by a public housing agency (PHA). The owner or PHA may establish preferences and must adopt affirmative marketing procedures.</p> <p>An owner of more than one property or a PHA that administers rental assistance for converted properties may maintain a single waiting list or establish site-based waiting lists but must disclose to each applicant all other options. A PHA that administers site-based waiting lists must make it possible for an applicant to apply in one location to all such lists. (Section 8(n)(6)(A))</p>	<p>A new provision authorizes the Secretary to establish wait-list policies for applicants for tenant-based assistance whose receipt of assistance is delayed as a result of the resident choice option (without altering owners' ability to maintain site-based waiting lists). (Section 8(n)(6)(A))</p>
<b>Physical Inspection of Properties</b>	<p>Authorizes the Secretary to establish uniform physical condition standards for converted properties. (Section 8(m)(1)(A)(vi))</p>	<p>Authorizes the Secretary to accept inspection results conducted by jurisdictions or entities that employ inspection standards at least equivalent to those established by the Secretary. (Section 8(n)(9)(D))</p>
<b>Cash Flow Limitations</b>	<p>Authorizes the Secretary to establish cash flow standards but prohibits the establishment of cash flow limitations that vary</p>	<p>Expands the language on cash flow limitations to make clear that access to cash flow shall not be limited based on the tax</p>

	based on the tax status of the owner. (Section 8(n)(8)(B))	status of the property owner <i>or</i> project sponsor, or whether the property was formerly public housing. (Section 8(n)(10)(B))
<b>Project-Based Voucher Contracts</b>	<p>Changes the limitation on the percentage share of vouchers that may be project-based to base it on the number of units and not the funding available to an agency. Allows PHAs to project-base 20 percent of their authorized vouchers rather than 20 percent of voucher funds. Permits PHAs to project-base an additional 5 percent of vouchers for supportive housing and up to a total of 40 percent considering converted properties.</p> <p>Changes the income-mixing requirement to provide that not more than the greater of 25 dwelling units or 25 percent of the dwelling units in a project may be assisted and establishes exceptions for properties serving certain households or located in low-poverty areas or areas where vouchers are difficult to use. No converted property may have more than the greater of 25 units or 40 percent of funds assisted with PBVs.</p> <p>Increases the initial contract term and the term of any extension from 15 to 20 years.</p> <p>For converted properties, specifies that a PHA may decline to renew a contract only with the advance approval of the Secretary, allows rent levels above 40 percent of FMR with approval, and specifies that the same rent adjustment method that is employed for properties assisted under the new project-based rental assistance contract may be used for PBV-assisted properties. (Section 5 of PETRA, amending Section 8(o)(13))</p>	<p>Clarifies that the Secretary may provide advance approval for the non-renewal of a PBV assistance contract renewal only if the property does not meet the same criteria for non-renewal of a contract for PB assistance (generally related to the owner and property being in good standing).</p> <p>Adds a new provision to provide for the conversion of a property assisted under a PBV contract to a property assisted under a PB contract.</p> <p>Adds a new paragraph to provide that a property where some families receive rental assistance through tenant-based vouchers (including enhanced vouchers) may convert to a property assisted under a PB contract.</p>
<b>Conforming Amendments</b>	Would change the definition of a public housing agency for the purposes of rental assistance administration.	With respect to mainstream vouchers, provides that the assistance may be administered by the entity that administered



	<p>Would authorize the Secretary to establish and allocate a fee for the administration of rental assistance for properties converted to PBV assistance.</p> <p>Would convert the authority for mainstream vouchers to the regular voucher program, while protecting turnover (mainstream) vouchers for continued use for people eligible under the mainstream program. Requires the Secretary to provide guidance to PHAs to assure that assistance continues to be provided to qualified families. Authorizes the Secretary, subject to the availability of appropriations, to provide technical assistance to PHAs and other administering entities.</p> <p>Would authorize the use of unexpended amounts from prior years for the renewal of converted assistance.</p> <p>Makes the income-targeting requirements of the public housing program apply at the property level for converted properties.</p> <p>Broadens the parties liable for civil money penalties and the basis for pursuit of such penalties.</p> <p>Amends Section 3 to maintain the requirements that applied prior to conversion for particular types of converting properties and to establish an order of priority for assistance that applies in all instances.</p>	<p>the assistance prior to conversion and that the administering entity “shall be considered a [PHA] authorized” to administer tenant-based assistance under Section 8. Broadens the range of PHAs for which the Secretary is required to develop and issue guidance. Authorizes the Secretary to reallocate certain unexpended amounts to entities administering assistance under this section for the purpose of establishing a reserve.</p> <p>With respect to civil money penalties, the changes are described above in the Enforcement summary.</p>
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