

**NEWS from Congressman John W. Olver (MA-1)**

**Chairman, House Appropriations Subcommittee on Transportation, Housing and Urban Development**

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FOR IMMEDIATE RELEASE: April 23, 2008

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**Prepared Remarks of Chairman John W. Olver**

**Project Based Section 8, Part II**

**Brian Montgomery, HUD Assistant Secretary for Housing/FHA Commissioner**

Let me welcome HUD Assistant Secretary for Housing and FHA Commissioner Brian Montgomery back to the Subcommittee. Mr. Montgomery, I know you have been very busy with the ongoing mortgage crisis and FHA modernization, and I appreciate your being here to testify.

This afternoon's hearing will focus on the growing crisis in the Project Based Section 8 Program.

During today's discussion, we are going to talk a lot about Housing Assistance Payment (HAP) contracts, Anti-Deficiency Act (ADA) violations, short-funding, budget shortfalls and the like.

With such mind-numbing and arcane terms it is easy to lose sight of the primary reason for this hearing: Over a million affordable housing units are at stake and we must ensure that the families that live in these units, many who are elderly and disabled, are not forced out of them.

This morning we heard from owner's and tenant's groups who testified that the current uncertainty in the Section 8 Program has created a crisis of confidence that may lead to a significant reduction in the number of affordable units.

Our collective actions on dealing with this loss of confidence in Section 8, will determine whether these units and families are protected or lost.

Let me begin today by giving a brief overview of the program and my understanding of how we came to the current crisis.

**Background**

The Project Based Section 8 Program provides about 1.3 million affordable rental units for low-income families, over half of which are elderly or disabled.

As the initial 20 year long-term contracts from the 1970's began to expire in the 1990's, the contracts were replaced with shorter contracts subject to annual appropriations.

Currently, close to 80 percent of Section 8 units or 14,000 contracts are funded by 1-year contracts through annual appropriations.

### **Genesis of the Current Crisis**

It is my understanding that for initial contract renewals, HUD obligated 12 months of funding. Year-long contracts maintained confidence in the program by assuring owners and tenants that the contract would be fully funded throughout the year.

It is also my understanding that sometime in the 1990's, HUD modified this policy of obligating 12 months of funding *without notifying property owners or tenants that it had done so*.

Instead of obligating a full year of funding at renewal, HUD increasingly provided only a few months for some contracts, typically just enough to cover the remaining months of a fiscal year.

The net effect of this policy change shifted the funding needs of the Section 8 program from one fiscal year to the next, thereby masking program shortfalls.

In FY 2007, HUD's legal office determined that the "short-funding" of contracts as I just described constituted a potential violation of the Anti-Deficiency Act (ADA).

Yet, it was the wholly inadequate response to this legal opinion, by both HUD and OMB that created the current crisis in the Section 8 Program. Instead of requesting additional funding from Congress to cover the shortfall, HUD began to issue 3 to 5 month contracts to landlords, instilling a crisis of confidence in the long-term viability of the program.

### **Congressional Response**

In last year's budget, our Committee grappled mightily with this problem. We repeatedly requested from the Department the actual dollar amount necessary to cover the short-fall in the program, but our requests went unanswered. Officially we were told that the \$5.522 billion requested in the President's budget was enough to fund the program, even though this figure was \$306 million below the amount we provided in fiscal year 2007.

In the end, we provided \$6.139 billion for Project-Based Section 8 renewals, a full \$600 million over the President's initial request.

More importantly, the Committee required HUD and OMB to determine, by January 15, 2008, whether an ADA violation actually occurred when HUD was secretly short-funding contracts.

If no ADA violation occurred, HUD was ordered to issue 12-month contracts. If there was an ADA violation, HUD and OMB would be legally required to report the shortfall immediately so that Congress could adequately address the issue.

As you know Mr. Montgomery, that deadline has come and gone without an adequate response and it appears that the Administration is prepared to run out the clock and leave this problem for the next President.

### **The FY '09 Budget**

While HUD and OMB have refused to answer questions about potential ADA violations, there does appear to be some recognition in the President's fiscal year 2009 budget that there is a shortfall that could jeopardize the program.

The Administration has proposed \$7 billion, which is over \$600 million more than we provided last year, as well as an advance appropriation of \$400 million to help extend contracts into the new fiscal year.

This is clearly a step in the right direction, but with an estimated funding gap of about \$2.8 billion, we still have a long way to go to stabilize and restore confidence in the program.

We would like to explore with you today how we can stabilize the Section 8 Project Based Program. It is my sincere hope that we can have an honest discussion about the true financial needs of the project-based program.

Mr. Montgomery, I know that you have spent countless hours over the last several weeks in an effort to address the housing foreclosure crisis that our nation is currently experiencing. I applaud your efforts to minimize the number of families that are at risk of losing the homes that they own. Our efforts this morning, however, are to try to make sure that we address the housing needs of families that don't have the luxury of owning their own homes.

Mr. Montgomery, before we hear from you, I would like to recognize my Ranking Member, Mr. Knollenberg, for any comments that he would like to make.

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