

110TH CONGRESS
2D SESSION

S. 3275

To establish a pilot program to preserve affordable housing options for low-income individuals.

IN THE SENATE OF THE UNITED STATES

JULY 16, 2008

Mr. SMITH (for himself and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To establish a pilot program to preserve affordable housing options for low-income individuals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Affordable Housing
5 Preservation Act of 2008”.

6 **SEC. 2. AFFORDABLE HOUSING PRESERVATION PILOT PRO-**
7 **GRAM.**

8 (a) ESTABLISHMENT.—The Secretary of Housing
9 and Urban Development shall establish a pilot program
10 under which funds in the residual receipts account of an

1 eligible multifamily housing property are transferred, at
2 the time of a qualified sale or exchange, to a preservation
3 entity.

4 (b) PURPOSE.—The purpose of the pilot program es-
5 tablished under this section is to facilitate the transfer of
6 multifamily housing projects with expiring section 8 hous-
7 ing assistance payments contracts to preservation entities
8 that are committed to maintaining the affordability and
9 preservation of such projects by allowing expanded access
10 to existing residual receipts to assist with the acquisition
11 and rehabilitation of the project.

12 (c) USE OF FUNDS.—A preservation entity that ac-
13 quires an eligible multifamily housing property through a
14 qualified sale or exchange shall use the funds in the resid-
15 ual receipts account transferred to it—

16 (1) to pay for rehabilitation costs approved by
17 the housing agency;

18 (2) to deposit funds into the replacement re-
19 serve account of the property;

20 (3) to pay for social and other services that di-
21 rectly benefit the tenants of such property, but in
22 any 1 year such payments may not exceed 10 per-
23 cent of the balance of the residual receipts account
24 of the property at the end of the prior fiscal year;

1 (4) to pay for costs associated with the acquisi-
 2 tion of the property, but such payments may not ex-
 3 ceed 50 percent of the amount in the residual re-
 4 ceipts account of the property at the time of acquisi-
 5 tion; and

6 (5) to pay for any other costs that have been
 7 approved by the housing agency and will directly
 8 benefit the tenants of the property.

9 (d) RESPONSIBILITIES OF THE SECRETARY.—The
 10 Secretary of Housing and Urban Development, or his or
 11 her designee, shall—

12 (1) determine whether the plan for rehabilita-
 13 tion and operation of a preservation entity—

14 (A) maintains and restores the decent,
 15 safe, and sanitary condition of the eligible mul-
 16 tifamily housing property; and

17 (B) is viable for not less than 30 years;
 18 and

19 (2) monitor the affordability and use restric-
 20 tions for the eligible multifamily housing property.

21 (e) PENALTY FOR NONCOMPLIANCE.—If the Sec-
 22 retary of Housing and Urban Development determines
 23 that all or a portion of an eligible multifamily housing
 24 property acquired by a preservation entity under this sec-
 25 tion is not in compliance with the requirements of this

1 section, the preservation entity shall reimburse the Sec-
 2 retary an amount equal to the amount originally trans-
 3 ferred from the residual receipts account at the time of
 4 acquisition, less the product of 3.33 percent of such
 5 amount, multiplied by the number of years after the quali-
 6 fied sale or exchange that the property was in compliance
 7 with the requirements of this section.

8 (f) DESIGNATION.—The Secretary shall, not later
 9 than 6 months after the date of enactment of this Act,
 10 designate not less than 3 States in which the program es-
 11 tablished under this section shall be carried out. In select-
 12 ing the States in which to carry out the program, the Sec-
 13 retary shall—

14 (1) consider States with the greatest number of
 15 units receiving project-based housing assistance pay-
 16 ments under section 8 of the United States Housing
 17 Act of 1937 (42 U.S.C. 1437f) where such units are
 18 located in active multifamily housing projects whose
 19 section 8 housing assistance payments contracts are
 20 set to expire between fiscal years 2009 and fiscal
 21 years 2011;

22 (2) consider States with eligible multifamily
 23 housing properties that have residual receipt account
 24 balances that can provide a meaningful preservation
 25 resource;

1 (3) aim for a regionally diverse sample of
2 States; and

3 (4) consider the extent to which market forces
4 may drive the conversion of eligible low-income hous-
5 ing to market-based rents.

6 (g) REPORT TO CONGRESS.—

7 (1) TIMING OF REPORT.—Not later than 3
8 years after the initiation of the pilot program estab-
9 lished under this section, the Secretary of Housing
10 and Urban Development shall submit a report to the
11 Committee on Banking, Housing, and Urban Affairs
12 of the Senate and the Committee on Financial Serv-
13 ices of the House of Representatives.

14 (2) CONTENT OF REPORT.—The report re-
15 quired under paragraph (1) shall include an analysis
16 of—

17 (A) the effectiveness of expanding the use
18 of amounts in the residual receipts accounts of
19 eligible multifamily housing properties to in-
20 clude preservation activities; and

21 (B) which States or regions of the United
22 States could most benefit from the expansion of
23 such eligible uses.

1 (h) EFFECTIVE DATE.—This section shall apply to
 2 qualified sales or exchanges made during the period begin-
 3 ning December 31, 2007 and ending December 31, 2013.

4 (i) DEFINITIONS.—In this section, the following defi-
 5 nitions shall apply:

6 (1) AFFORDABILITY AND USE RESTRICTIONS.—

7 The term “affordability and use restrictions” means
 8 the affordability and use restrictions in connection
 9 with project-based housing assistance payments
 10 made under section 8 of the United States Housing
 11 Act of 1937 (42 U.S.C. 1437f).

12 (2) EXTENDED USE PERIOD.—The term “ex-
 13 tended use period” means the period beginning on
 14 the date of sale and ending on the earlier of—

15 (A) 30 years after the close of the sale; or

16 (B) the date that the property is acquired
 17 by foreclosure (or instrument in lieu of fore-
 18 closure).

19 (3) ELIGIBLE MULTIFAMILY HOUSING PROP-
 20 erty.—The term “eligible multifamily housing prop-
 21 erty” means a project that—

22 (A) is receiving project-based housing as-
 23 sistance payments under section 8 of the
 24 United States Housing Act of 1937 (42 U.S.C.
 25 1437f); and

1 (B) was financed pursuant to part 883 of
 2 title 24, Code of Federal Regulations, on or
 3 after February 29, 1980.

4 (4) HOUSING AGENCY.—The term “housing
 5 agency” means, with respect to any eligible multi-
 6 family housing property, the housing agency which
 7 administers housing assistance with respect to such
 8 property.

9 (5) PRESERVATION ENTITY.—The term “pres-
 10 ervation entity” means a housing agency, organiza-
 11 tion, or entity (for profit or nonprofit) approved by
 12 the Secretary of Housing and Urban Development,
 13 or his or her designee, that has the capacity and
 14 commitment to successfully acquire and preserve an
 15 eligible multifamily housing property.

16 (6) QUALIFIED SALE OR EXCHANGE.—

17 (A) IN GENERAL.—The term “qualified
 18 sale or exchange” means the sale of an eligible
 19 multifamily housing property to, or an exchange
 20 of such property with, a preservation entity
 21 which agrees to maintain affordability and use
 22 restrictions regarding the property that are—

23 (i) for a term of not less than the ex-
 24 tended use period; and

25 (ii) legally enforceable.

1 (B) FUTURE APPLICABILITY OF RESTRIC-
 2 TIONS.—The restrictions under subparagraph
 3 (A) shall be—

4 (i) binding on all successors of the
 5 preservation entity; and

6 (ii) recorded as a restrictive covenant
 7 on the property pursuant to State law.

8 (C) CERTIFICATION BY PROGRAM ADMINIS-
 9 TRATOR.—The term “qualified sale or ex-
 10 change” shall not include any sale or exchange
 11 of property unless the housing agency certifies
 12 that—

13 (i) the transferee with respect to such
 14 property is a preservation entity;

15 (ii) affordability and use restrictions
 16 will be maintained with respect to such
 17 property during the extended use period;
 18 and

19 (iii) new capital will be expended
 20 that—

21 (I) maintains or restores the de-
 22 cent, safe, and sanitary condition of
 23 the property; and

24 (II) funds adequate reserves.

1 (7) RESIDUAL RECEIPTS.—The term “residual
2 receipts” means funds generated by a property in
3 excess of the amount needed for operating expenses,
4 operating reserve requirements, and allowable dis-
5 tributions to project owners.

6 (j) RESIDUAL RECEIPTS NOT TREATED AS FEDERAL
7 FUNDS.—For the purposes of section 42 of the Internal
8 Revenue Code of 1986, residual receipts used pursuant to
9 the pilot program established under this section shall not
10 be considered Federal funds.

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