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THE ADMINISTRATION'S PROPOSAL TO PRESERVE AND TRANSFORM PUBLIC AND ASSISTED HOUSING: THE TRANSFORMING RENTAL ASSISTANCE INITIATIVE

HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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THE ADMINISTRATION'S PROPOSAL TO PRESERVE AND TRANSFORM PUBLIC AND ASSISTED HOUSING: THE TRANSFORMING RENTAL ASSISTANCE INITIATIVE

Tuesday, May 25, 2010

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Barney Frank [chairman of the committee] presiding.

Members present: Representatives Frank, Waters, Velazquez, Watt, Moore of Kansas, Clay, McCarthy of New York, Baca, Scott, Green, Cleaver, Donnelly, Carson, Driehaus, Kosmas, Himes, Peters; Capito, Hensarling, Neugebauer, Marchant, Jenkins, Paulsen, and Lance.

The CHAIRMAN. The hearing will come to order.

Our witness today, a regular witness and a very welcome one, is the Secretary of HUD, who is doing a very good job. We are talking now about a very important subject, which is public housing. Let me say when you deal with public housing, you are dealing with some of the poorest people in America. And as I look at the record on public policy, one where we have the most to apologize for and, more importantly, the greatest need to improve, is in the way in which we treat the poorest people in America.

We have done far too much to push lower-income people into homeownership for which they were not prepared or financially able and not nearly enough to provide decent living quarters for them. There are a large number of children in this country who are living in inadequate housing that is run by the Federal Government and in some cases by States as well.

To me there is no greater priority for this committee, so I welcome the Secretary, and we will get right to his testimony. If there are no further requests for statements, we will begin the testimony with the Secretary. If the ranking member wants 5 minutes at the appropriate time, we will interrupt the proceeding. After the Secretary has concluded his testimony, in addition to the 5 minutes for questions, I will certainly recognize any one member on the Minority who wants to make a 5-minute statement.

On the other hand, I don't have subpoena power. If they want to stay away, I can live with that. The Secretary will proceed.

STATEMENT OF THE HONORABLE SHAUN DONOVAN, SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Secretary DONOVAN. Thank you, Mr. Chairman, and members of the committee. I want to thank you for giving me the opportunity to testify on the Administration's proposed legislation to preserve rental housing for generations to come. I believe the single most important thing we do at HUD is to provide rental assistance to America's most vulnerable families. And I know that you, Mr. Chairman, and so many members of this committee share that view and have worked tirelessly to ensure that we meet that commitment.

The current housing has underscored the broad impact HUD has on people's lives. In all, HUD provides deep rental assistance to more than 4½ million households, helping families and also giving communities the tools they need to tackle their development challenges. As anyone who has ever worked on housing preservation knows, the engine that drives capital investment at the scale needed in a mixed-finance environment is a reliable, long-term, market-based stream of Federal rental assistance. No other mechanism or no other source of government funding has ever proved as powerful in unlocking a broad range of public and private resources to meet the capital requirements of affordable housing that serves those with the greatest housing needs.

HUD's rental assistance programs are absolutely irreplaceable, but it does not take a housing expert to see that they are also in desperate need of simplification and that the status quo is no longer an option.

HUD currently administers 13 different rental assistance programs, each with its own rules, managed by three operating divisions with separate field staff. This proliferation of programs and delivery systems doesn't make housing more accessible but less, because families have to fill out dozens of applications, processed by scores of administrators, simply to have a decent chance of receiving assistance. At the same time, our public housing program alone has a backlog of unmet capital needs estimated at $20 billion to $30 billion. And in the last 15 years, the absence of a viable preservation strategy has led to the loss of 150,000 units through demolition or sale.

But as great as capital needs are they don't compare to the depth of human need. Countless public housing residents remain in neighborhoods of concentrated poverty because moving means giving up their subsidy. To the Obama Administration, failing to preserve these resources for the next generations is simply unacceptable. But it is just as clear that we need to do a better job for those generations, and that the Federal Government can't do it alone.

So at this moment, we face a choice. We can approach these challenges piecemeal or we can try to solve the problem in a comprehensive way. In so doing, we can not only put these programs on firmer ground, but can put an end to the parallel system that exists today in which most families live in housing that is financed, developed, and managed through mechanisms that can be integrated with the communities around them, while the 2½ million poor families served by HUD's oldest programs live in another.

That is why we have proposed the Preservation Enhancement and Transformation of Rental Assistance Act, Mr. Chairman. This legislation not only reflects our best thinking at HUD but, perhaps more importantly, our best listening, incorporating the lessons we have learned from Congress and other stakeholders about what it takes to build strong neighborhoods and help families make the housing choices they need. This legislation would authorize public and assisted housing owners to convert to long-term, property-based rental assistance under Section 8 on a voluntary basis.

For the sake of brevity, I will focus on three fundamental principles that guide this legislation: First, that the complexity of our programs is part of the problem. We have seen how smaller legacy programs like Section 8 mod rehab, contracts administered by PHAs, and properties assisted under the rent supplement or rental assistance programs have become orphans at HUD as new housing programs have evolved. Along with our Fiscal Year 2011 budget proposal, this will allow us to merge these programs with our core Section 8 program, creating new opportunities for long-term, property-based projects to preserve these units. And by creating a more coherent set of tenant organization and procedural rights and non-discrimination of fair housing requirements, this legislation will ensure that our programs are fairer, easier for families to access, less costly to operate, and more efficiently administered.

Second, this bill would change the funding structure of public housing to leverage public and private capital and open public housing to retail, schools, and other community anchors. I want to be completely clear, this bill will not privatize public housing. Neither President Obama nor I have any interest in risking such an important resource or opening the door for others to do so. To the contrary, this proposal doesn't change who owns this housing or who is served by it, but rather how this housing is financed. By allowing public housing properties to tap their inherent value to meet their capital needs like owners of other affordable housing are able to do, this legislation levels the playing field, making it more likely, not less, that properties will remain publicly owned and affordable to the lowest-income households. And by maintaining the targeting and affordability requirements of the U.S. Housing Act, the legislation ensures this assistance continues to be targeted to the neediest families.

To make sure that leveraging its value does not put this housing in jeopardy, we also have included strong protections in this bill that ensure long-term affordability and quality. This unprecedented combination of policies will protect tenants and prevent the loss of assisted housing units in the unlikely event of foreclosure.

The third principle of this legislation is to encourage resident choice. President Obama and I believe that residents should be able to choose where they live without fear of losing their rental assistance. This isn't a new idea. In the last decade, Federal policies like the project-based voucher program have overcome the old division between place-based and people-based assistance by allowing an owner the security and capital leveraging of a long-term, property-based contract while assuring that residents can choose to move with available tenant-based vouchers. So new project-based developments already use this tool. Our legislation ensures that

families who live in properties developed under one of our older programs have the opportunity to benefit from a similar policy as well.

And so, Mr. Chairman, I hope you can see that the goal of this legislation is to set up a system that meets today's housing needs, preserves these resources for future generations and ensures they better serve those generations. And by allowing these programs to truly integrate this housing to bring in a mix of uses and incomes and link this housing to surrounding neighborhoods, I hope you can see that we are committed to ensuring that all families can live in sustainable, vibrant communities of opportunity and choice wherever they live or whatever their circumstances. That is what this legislation is about, that is what this Administration is committed to, and that is what we look forward to realizing with you in the weeks to come.

Thank you.

[The prepared statement of Secretary Donovan can be found on page 46 of the appendix.]

The CHAIRMAN. I will now recognize for a 5-minute opening statement the ranking member, the gentlewoman from West Virginia. Then we will go to questions.

Mrs. CAPITO. Thank you, Mr. Chairman. Thank you, Mr. Secretary. Just briefly, I won't give my entire opening statement, but I would like to thank you again for joining us, Secretary Donovan, and I will just make a few comments.

Certainly, knowing that making government programs in all of the different rental assistance programs in HUD more efficient is a great goal. But at this time, as we know, in this fiscal year, the President's budget provides for $350 million in funding for phase one, just phase one of this program. And at a time when our Nation is facing record deficits, providing this level of funding to fundamentally change Federal programs might not be the best plan, especially when project-based assistance has been a more costly way to go in many instances.

Further, we have had a back-and-forth discussion in this committee on one-for-one replacement. This legislation calls for one-for-one replacement, meaning that local authorities must replace the existing units with the same number of new units regardless of need. In areas that have abundant affordable housing units, this may not be the most efficient or appropriate use of our government resources, and that is a debate I am certain we will have as we move forward.

As I said, I do support the Secretary's goal of making rental assistance programs more efficient. I do have some concerns that the proposal could make the market a bit more confusing. The absence of mandatory compliance could lead to a situation where some programs are replaced while others still exist, and how does this lead to streamlining if we have some areas that are complying and some that are not?

And lastly, my favorite part of the day, of this morning, not to disparage the Secretary, is I have a friend who will be testifying on the second panel. I look forward to hearing from my friend Mark Taylor from the Charleston-Kanawha Housing Authority. Mark has been an excellent resource for me as we continue to dis-

cuss ways to make our housing programs more efficient. He is a tireless advocate for those seeking affordable housing in Kanawha County. I am pleased he is able to join us today, and I look forward to hearing his thoughts.

I want to thank the chairman again for allowing me to give my statement, and I want to thank the Secretary for joining us today.

The CHAIRMAN. And I appreciate the gentlewoman doing it very directly. Mr. Secretary, you have addressed some of the concerns, and that is what we are going to be dealing with.

I guess I would separate out two questions. Going to a project-based Section 8 is one thing. The ability to finance and put ownership at risk is another. You say in your opening statement that ownership won't change, but it might if there is a financing and a foreclosure. How necessary is that? Is there some way to try to get financing without that? And if you have a foreclosure, would you then have a—you could have use restrictions, but you then have a private entity, it is almost like contract prisons. Is there then a private entity standing in the shoes of government, and what are the constitutional and other implications of that?

So that is what concerns me, is the—you anticipate under this, you could wind up with a foreclosure and a private ownership of public housing. Are they then required to maintain this public housing in perpetuity? Does a tenant or anyone else have the same constitutional rights vis-a-vis that owner in the municipalities? For instance, in many municipalities, public housing is a big part of the population. Does that diminish the right of the elected officials who have previously appointed them or in some cases they are elected? Would you address that? What is the status of a potential private owner of public housing?

Secretary DONOVAN. Just to be clear, broadly on this subject, this is intended to level the playing field.

The CHAIRMAN. Mr. Secretary, we only have 5 minutes. I understand that, but that is not my question. You will accept the fact that there may be foreclosures, and I need to know what happens in that case.

Secretary DONOVAN. Specifically, every other kind of housing today can access not only private—

The CHAIRMAN. Mr. Secretary, we have had a good working relationship. Don't jeopardize it by not answering the question. That is not what I asked you. You had a chance to talk about that. What happens with a privately-owned—public housing is now publicly owned. What happens, what is the status of a private owner who takes it over?

Secretary DONOVAN. There is a required, for any public housing building, there is a required 30-year minimum term with a use agreement initially with renewals of any property-based contract at the unilateral discretion of HUD. And so there is no way for an opt out to happen on those properties.

The CHAIRMAN. What is the status—stop, please. What is the legal position you have now with a private owner of what had been public housing, what is the constitutional relationship with the city, what are all those implications?

Secretary DONOVAN. I am sorry. I am trying to answer the question.

The CHAIRMAN. No, you are not. Please answer the question.

Secretary DONOVAN. The use agreement survives foreclosure.

The CHAIRMAN. Stop, please. I didn't ask about the opt out. People have—if you are living in a place owned by a government entity, you have one set of rules. Then, a private entity takes over. What does that do to your constitutional rights, to the relationships with the city? The mayor can't fire you anymore. That is a very important set of questions.

Secretary DONOVAN. And I thought you were asking about in foreclosure the risk of that happening.

The CHAIRMAN. Yes. Because then it becomes a private owner.

Secretary DONOVAN. And so all of those current requirements about the public ownership continue. And the fact that there is private financing does not change that ownership in any way.

The CHAIRMAN. Doesn't foreclosure transfer the ownership from the public entity to the private entity?

Secretary DONOVAN. The foreclosure, first of all, all of the requirements of affordability continue and—

The CHAIRMAN. I didn't ask you that, and you know it.

Secretary DONOVAN. And the transfer, any transfer of the property would be subject to the ability of HUD to have a right of first refusal on that transfer.

The CHAIRMAN. That is not the question. The question is, if in fact there is a private owner, what is the legal status of that private owner vis-a-vis the tenants, the rest of the city, etc.? That is pretty clear-cut.

Secretary DONOVAN. In terms of if there is a private owner of that housing, it would still operate under all of the requirements both for affordability, the housing authority itself would continue to be subject to all of the same appointment of commissioners, other current requirements of public ownership of that land.

So again, if I am missing the question, if you want to clarify it?

The CHAIRMAN. My time has expired. The gentlewoman from West Virginia.

Mrs. CAPITO. Thank you, Mr. Secretary. Certainly one of the questions, and we were discussing this earlier today, is the cost, the $350 million of the phase one. I mentioned that in my opening remarks. And the proposal proposes to convert rental assistance to a project-based voucher system which has traditionally been more expensive.

So I wonder, can you address that issue, the added expense of project-based vouchers? But also, it seems to me that any time you hear "streamline," there should be a cost savings. And there is $290 million of the $350 million which is used to convert. If you could address the cost issues with this and the project-based voucher assistance being more expensive and how that is going to play into this?

Secretary DONOVAN. There are three specific things I would say about that. First of all, the operating costs will increase, but there will be an offsetting savings on the need for capital investment in the properties at the same time. And so because the operating will be used to leverage additional capital to help to renovate the properties, there will not be the same need going forward for direct capital infusions in the property through appropriations.

Mrs. CAPITO. So, is there a decrease in the capital appropriations asked at HUD?

Secretary DONOVAN. We are proposing a decrease in the capital appropriations in the budget this year. It is not fully offsetting, but it is a—there will be—

Mrs. CAPITO. What is that, do you recall?

Secretary DONOVAN. Excuse me?

Mrs. CAPITO. What is the number of the capital offset?

Secretary DONOVAN. The reduction that we are proposing this year is $300 million, I believe. We are just checking on that right now.

Second of all, going forward there would be savings in terms of soft costs. Because of the complexity of the programs, the need for costs and operating them, as well as any transactions to bring in new capital into the property would be offset as well. Those are not incorporated into the budget for 2011. We are working on estimates of what those savings would be going forward. I would be happy to share those with you, but there are offsetting savings there as well.

And then the last thing I would say is there are substantial costs that we are incurring today because public housing is failing in the long term. An ounce of prevention today can avoid substantial long-term costs going forward. We already have a $20- to $30 billion backlog, and I believe strongly that if we don't act now to preserve this resource, the costs in the long term of failing to preserve public housing will be far larger.

Mrs. CAPITO. Let me ask a question. I was reading through Mr. Taylor's remarks, and accepting myself for not understanding every detail of what he was saying is that they are already committed to a capital reinvestment on their projects for 40 years, I think, for the next 40 years, is that correct—20 years.

What consideration in this program would go for one of the housing authorities which has already made the commitment to improve their properties, and done a very nice job. What kind of considerations and how would that influence what we are seeing here in this bill to the ongoing programs of the housing authorities?

Secretary DONOVAN. Certainly, if there is investment that is already slated for those properties, they are in good condition, that I think would be a benefit in terms of what would be offered by this legislation. It would give housing authorities that are in good condition more flexibility going forward in terms of the sources that they could bring to bear, but also would allow them because of the operating contracts more flexibility to use funding for services, to benefit their residents, to incorporate, for example, to bring in retail, to bring in other uses into their properties that could benefit the residents and better integrate them with the neighborhood and help them be sustainable for the long term.

So it is not just about the capital that is going into renovations, it is also about bringing in other uses, mixing incomes, a range of other things that could benefit those properties in the long term.

So I think there would be opportunities for those housing authorities that are in good condition currently to be able to improve the properties in the very long term.

Mrs. CAPITO. I see my time is about up. Thank you.

Secretary DONOVAN. Thank you.

The CHAIRMAN. The gentlewoman from California.

Ms. WATERS. Thank you very much, Mr. Chairman. Thank you, Mr. Secretary, for being here today. I am going to try and continue some of the discussion that was raised by the chairman in relationship to foreclosed properties. And I am going to go through this exercise because I think it is important for us to engage you on these very, very important issues. But I am starting out with a negative feeling about TRA.

Page 11 of your draft discusses properties in foreclosure or bankruptcy. It is my understanding that your proposal will provide that in the event of a foreclosure or bankruptcy, a use restriction would remain on the property. Okay, use restriction meaning that this property has to be utilized in the same manner. However, you have language on page 12, lines 1 through 5, stating that the Secretary can modify this requirement if the units are not physically viable, financially sustainable or if necessary to generate sufficient lender participation. The section goes on to require the Secretary to transfer the contract for assistance to other properties if he makes such a finding.

And I have a few questions about this. First, why would a property not be physically viable? Isn't it the point of TRA to allow housing authorities to assess the private market so they could rehabilitate their properties?

Second, by financially unsustainable, I assume that you mean that the debt on the property exceeds the net operating income needed to make the property run in the black. How would a property get to be in this position in the first place? Also, if the property is in foreclosure, isn't it by definition financially unsustainable? If the housing authority was unable to service the debt because let's assume the risks were insufficient, wouldn't the investor have the same problem?

Third, it seems that you want to be able to waive the use restriction entirely if you find that it presents an impediment to lenders making loans to housing authorities. Knowing that you could waive the use restriction, it seems to me that lenders would make waiving the restriction a condition of their participation. I think this provision essentially renders the use restriction meaningless.

Can you explain under what conditions you would grant such waivers?

And fourth, if the use restriction is waived, what happens to the tenants of that property? Do they have to move or do they receive enhanced vouchers? When a contract is transferred, what kind of property is it transferred to? Is it transferred to a property across town, next door, in the suburbs, on and on and on?

I know that I threw a lot of questions at you, but there are hundreds more about this TRA. Do you want to take a stab at some of those, Mr. Secretary?

Secretary DONOVAN. I would be happy to do that. First of all, we currently have—any new affordable housing that is developed is developed in this way. So we have long experience in how to protect properties in foreclosure from losing that housing. TRA would actually enhance our ability to do that in a number of ways. First of all, there would be a required use agreement that would survive

the foreclosure, as you said. In addition to that, however, we also would have a right of first refusal in order to ensure that if the current housing authority, the owner, is not able to keep up that property, if we don't believe they have the capacity to do that, that we could direct the property to a different public owner or to an owner that we are sure is going to be able to preserve it. So that is a very important tool to be able to ensure that the property is preserved in the long term.

The specific provision that you asked about, about transferring assistance, the truth is that we do have properties that are currently under severe distress that we will not be able to preserve even today. We have already, as I said in my testimony, lost about 150,000 units of public housing because of the inability to preserve them.

Ms. WATERS. Mr. Secretary, my time is just about up, and I will talk with you some more about this, but I just want you to know that I consider this experiment to be very dangerous. And as I have said over and over again, I am not about to be a part of privatizing public housing. I think that there are a lot of problems with this experiment, and I would like you to just really think about some of the questions that you are going to hear today. And if you are still interested in pursuing it, map out a time over the next 2 years where you can meet with residents, you can talk with advocates, you can have more hearings, you can flush all of this out rather than try to move with something this tremendous, this big.

Thank you. I yield back the balance of my time.

The CHAIRMAN. The gentleman from Texas.

Mr. MARCHANT. Mr. Secretary, I would like to follow up a little bit on the chairman's previous question. If the lender even for foreclosure is bound by a previous set of circumstances and has a very limited amount of discretion what the lender can do with the property once the foreclosure takes place, doesn't that significantly reduce the number of potential buyers for the property, and doesn't it potentially restrict the pool, the borrowing, to where the lenders with the prospect of not having the freedom once they get the property back to dispose of it in the way they normally would, won't that limit the borrowers, or am I misunderstanding?

Secretary DONOVAN. I think it is very important that we are clear with any lenders or any other investors in the property. There would be tax credit equity that would come into these properties. We have long experience now with affordable housing, and lenders do as well, with those types of restrictions. So to be very clear, I think it is, there is a large market for lending on these properties that is developed already. And lenders are, well understand the restrictions as they go into these deals, and there are a pool of buyers that would be available, but they will be required to preserve this housing as affordable going forward should we get to that foreclosure situation.

So would it restrict the buyer somewhat? Yes, but that is a restriction that we believe is important to ensure that the property continues as affordable housing. And there is a broad market for lending for these types of properties already that could be tapped given those restrictions.

Mr. MARCHANT. Well, in most of the syndicated programs that I have seen, most of the tax benefits are stripped out of the units in the early years, and the tax credits are separated away from the unit, and then usually there are investors that take the benefits of those tax credits so that when you get into the mid to later stages of the finance and the repayment and you get the property back, would you then propose that when it was resold by the lender that you would—tax credits would be reconstituted?

Secretary DONOVAN. There are a number of ways to handle a situation like that where it is late in the compliance period. Typically, States are requiring at least 30 years, but typically much longer, use restrictions already. And so we see those situations come up where those properties can be recapitalized. Sometimes new tax credits may be necessary for the next generation of repairs to the property, but in many cases, other types of financing debt or other forms of assistance, whether it be home or CDBG funding from HUD or other sources, are available. So that is one option that you describe, but it is not the only option available. And again, this is something that we see happening with all new affordable housing that is developed through the low-income housing tax credit already.

Mr. MARCHANT. And my second question: If this program is mandatory and you have a significant number of people who choose not to convert, you will then be required to continue to operate two separate programs. And so whatever consolidation savings you thought you were going to get, are you going to really be able to realize them with having to operate now instead of one program, another program.

Secretary DONOVAN. We believe that there will be significant savings even from the first year in terms of—I talked earlier about many of our orphan programs that are quite small programs today that don't have any option for preservation today. We believe there will be very strong participation even on a voluntary basis that will allow us to streamline a number of the programs very quickly. In the longer run, we believe that we need to demonstrate the effectiveness of this conversion process we are proposing a first year, and that we should come back to Congress to discuss whether other properties in future years would be required to convert rather than making a decision today on that. But in the long run, we believe there is a potential if we get this right to bring all the programs together and achieve the full benefits of that consolidation. We believe there will be the benefits in the early years, but the full benefits would come in later years with further legislation from Congress.

Mr. MARCHANT. Thank you.

The CHAIRMAN. The gentlewoman from New York.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. Mr. Secretary, this TRA is quite an ambitious proposal, and if adopted it will transform the way housing assistance is provided in the United States. As proposed, it gives you flexibility to include additional rental programs. Can you explain to us what will be the process for adding those, and are you planning to include additional housing programs like HOPWA if this is an open-ended flexibility?

Secretary DONOVAN. Our initial focus will be on public housing, but also on assisted housing that is funded through rent supplement and the rental assistance program and the Section 8 moderate rehabilitation.

The other piece I would mention is that there are about 40,000 units of assisted housing that are owned by public housing agencies that now operate under different rules.

Ms. VELAZQUEZ. So it will give that authority, that is what I wanted to know.

Secretary DONOVAN. We do not propose whether it is HOPWA or any of the other programs currently.

Ms. VELAZQUEZ. I know. But it says here, and this is the legislative language, other Federal affordable housing programs as identified by the Secretary by notice.

Secretary DONOVAN. We do believe that if this is successful, we will see interest from housing authorities in converting some of their other programs. HOPWA is not at this point one of those programs that we are interested in.

Ms. VELAZQUEZ. As you know, hundreds of thousands of New Yorkers are on the waiting list for public housing in Section 8, and in your testimony you suggest that in certain cases, waiting lists may be affected as a result of TRA. In what instances would that take place?

Secretary DONOVAN. I am sorry, Congresswoman, just to be very clear, HOPWA actually is not one of those programs that each legislatively would be allowed under the current legislation. So it is not included in one of those programs. We could give you more detail on which programs would be possible, but HOPWA is not one of them.

Ms. VELAZQUEZ. I am just reading your language. It says here, "other Federal affordable housing programs as identified by the Secretary by notice." So it is open-ended and could include HOPLA if you deem.

Secretary DONOVAN. I think the place that the language would modify in the statute does not include HOPWA, and so it is a limited number of programs. We could get you specifics of which exactly would be allowed by that.

Ms. VELAZQUEZ. Okay. So in what instances would that take place? Your testimony suggests that in certain cases, waiting lists may be affected.

Secretary DONOVAN. Yes. Currently, there is the ability for project-based voucher recipients to move to the front of the line for waiting lists.

Ms. VELAZQUEZ. Okay. So my next question is—you answered my question—how is HUD balancing the needs of applicants currently on waiting lists with tenants who may be newly eligible under TRA for Section 8 assistance? Would that happen at the expense of people in the waiting list, Section 8?

Secretary DONOVAN. That is a very good question. We have had a lot of comments and input about this from stakeholders that we have met with. What we would do in order to ensure fairness for those on the waiting list is have a minimum 2-year residency within the development before you could get access to a voucher, and a requirement that no more than one-third of vouchers that are

freed up would have to go to residents who want to exercise that mobility right. So that we believe would institute a fair process to ensure those on the waiting list already would have access to vouchers.

Ms. VELAZQUEZ. One out of three, right?

Secretary DONOVAN. One out of three. We believe that the current limitation that for a resident of public housing the only way that they can continue to receive assistance is to remain in their unit, that if they want to move to take a job or because their family is moving or if a relative is sick they have no ability to keep their assistance. So we do believe that this is an important benefit to residents of public housing and other forms of assisted housing for them.

Ms. VELAZQUEZ. But it will be at the expense of those who have been for so long on a waiting list for Section 8.

Secretary DONOVAN. I believe we balance that. I would also say that it would free up units within public housing. The unit that they were leaving would continue to be project-based and would be open then to somebody off the waiting list there. So there continues to be housing opportunities available for those on waiting lists.

Ms. VELAZQUEZ. Thank you.

The CHAIRMAN. The gentleman from North Carolina.

Mr. WATT. Thank you, Mr. Chairman. Mr. Secretary, thank you for being here.

I don't want to belabor the point that the Chair and several other members have made, but I do have some concerns about your ability to bind folks after there is a foreclosure or a bankruptcy. And I also have a concern about the flexibility that would be given to the Secretary to waive the requirements.

I am reading the summary of the bill and it says, this clause provides that the terms of new rental assistance contracts or use agreements remain in effect in the event of foreclosure or bankruptcy. That is fine. But the Secretary would be authorized to modify this requirement if the units were not viable or "if necessary to generate sufficient lender participation."

So you have two concerns that are raised here. One is the legal situation that is created and your ability to bind somebody, both a lender who is making a loan and a purchaser who is buying in at a foreclosure, which is questionable. But the other side of that is the amount of discretion that is given to Secretaries of HUD to waive those requirements under certain circumstances. I want to say publicly that I have eminently good confidence in you in this Administration making those decisions, but I tell you I wouldn't have had a hill of beans worth of confidence in the last Secretary of HUD in the last Administration making those same decisions. So I think that would be a real concern to me.

Second, but I am not going to beat that horse anymore, several people have elaborated on that. A concern that I have expressed about this proposal and about the choice proposal is, and I have had this discussion in my office with several people from your Department, actually, it is a great way to generate more capital to be more entrepreneurial, but I am not sure that you all appreciate the variation in the entrepreneurial ability of housing authorities around the country out there.

There is a great deal of variation of entrepreneurial expertise in these housing authorities, and I see it in the variation in the housing authorities in my own congressional district. Some of them are very business savvy, others are very good at administering public housing and keeping it up and collecting the rent and, you know, doing what HUD requires them to do, but I don't see any level of entrepreneurial expertise out there.

So this variation that takes place, unless you are going to put in place some kind of very strong support system, which coincidentally hadn't necessarily been in place from HUD administration to HUD administration either, there is not the confidence, again—I don't want to beat the last Administration's HUD Secretary to death, he is a good friend of mine personally, but we never could get any answers out of him for this committee when we would ask him anything, and I am not sure I would want him to be putting in place the support mechanisms for housing authorities that vary.

So if you could comment on that quickly, my time is about to run out, and I have taken too much of it asking the question.

Secretary DONOVAN. Three specific things I would say: First of all, that for those housing authorities, particularly smaller housing authorities, we already impose on them what I would say are too complex and burdensome rules and requirements for their operation. We frankly treat them kind of one-size-fits-all like they were larger housing authorities. And one of the things that moving to TRA would allow us to do, I believe, is simplify the requirements for particularly those smaller housing authorities or housing authorities with less capacity that would actually make it easier for them to operate rather than harder, first.

Second, we see with property-based contracts many, many small nonprofits or other small for-profits that are able to work successfully with us under the kind of proposal that we are putting forward. And I believe, I would be happy to spend more time with you to give you some of the specifics about the way those benefits would flow to them, that we could effectively operate with them with the support that they would need.

The third thing I would say is we have had a lot of discussion with FHA about the ability to offer debt for those properties where there might be some initial difficulties in figuring out how to access capital along with other forms of technical assistance.

So I do believe, through FHA and through other forms of technical assistance, we could help those housing authorities.

The CHAIRMAN. The gentleman from Kansas.

Mr. MOORE OF KANSAS. Thank you, Mr. Chairman. Mr. Secretary, I held an Oversight Subcommittee hearing a few weeks ago on the issue of debt and leverage and how we need to reverse our overdependence on both. If there is one thing I hope we have learned from the recent financial crisis, it is that we need to get back to living within our means like our parents and grandparents did and learned to do after the Great Depression. Part of that lesson I think must include the understanding that not everyone can be a homeowner. And that is okay as long as there is affordable housing available.

In that spirit, how would this transforming rental assistance initially meet the objective to affordable housing options for individuals and families who are not homeowners?

Secretary DONOVAN. This would do that by ensuring that these precious resources, public housing and other affordable housing that we provide, is preserved for the next generation who can't be homeowners. The fact that we have a $20 billion to $30 billion backlog of unmet capital needs in this housing, that this, particularly public housing today, has no ability to access low-income housing tax credits or other sources of capital that every other form of affordable housing in the country has ability to access. I believe that if we stay on the path that we are on, the status quo, we will continue to lose critical rental resources year after year because we don't have the capital available to them to be able to keep that housing up.

So I think this is a very important step in preserving that rental housing for those who can't become homeowners.

Mr. MOORE OF KANSAS. Thank you. Does the Administration's proposal include oversight enhancements or fraud mitigation provisions to ensure that taxpayer dollars are used efficiently and properly? If so, would you describe those? And if not, could they be added to the proposal to ensure we fully expose and minimize waste, fraud, and abuse?

Secretary DONOVAN. We do have provisions to ensure strong oversight of the properties. If there are others that you would be interested in discussing with us, I would be happy to talk about them.

What I would say is it does give us, the legislation, the ability to pursue civil money penalties that are enhanced for violations of provisions under the contracts or the requirements of the use agreements.

Mr. MOORE OF KANSAS. And has HUD performed any cost-benefit analysis on this proposal to see if taxpayer dollars will be used more effectively compared to current programs? And if not, would your Department be able to do a cost-benefit analysis and provide that in writing to members of this committee?

Secretary DONOVAN. We would be happy to do that. We have begun that analysis. We have looked obviously at the 2011 costs and benefits of it. But we are analyzing the longer-term cost and benefits today. I would be happy to provide that to the committee.

Mr. MOORE OF KANSAS. Thank you very much. Mr. Chairman, I yield back my time.

The CHAIRMAN. The gentleman from Missouri.

Mr. CLAY. Thank you, Mr. Chairman. And thank you, Mr. Secretary, especially for your visit yesterday to my hometown, St. Louis, Missouri, and your tour of the Northside Regeneration Project. Hopefully, we can establish a strong working relationship to see that project through.

Let me start off by asking you, can you give us examples of the use of the $4 billion in ARRA funding that went to capital improvements of public housing units. Can you point out what that money was used for by those local housing authorities and do you think it was an effective use of the funds?

Secretary DONOVAN. I do believe that the ARRA funds have been very effective, that they have gotten out quickly. And to date, we already have about 180,000 units of public housing that have completed renovations thanks to the ARRA funds. A lot of that is longstanding work, basic work of replacing roofs, providing better, whether it is plumbing fixtures or kitchens or other basic amenities in those apartments. They have also been used very effectively, and St. Louis is a good example, to introduce energy efficiency into public housing. Solar is a particular focus that the St. Louis Housing Authority is pursuing with their competitive funds from ARRA. And what is important about those is that they both improve the living conditions for residents, they lower the costs for residents, but they also lower the cost to the taxpayer. Typically, those investments are paying back the initial investment in 3 to 5 years.

Mr. CLAY. And I guess certain units get to the point where you have to make a decision of whether we demolish those units or we try to make improvements to it. How do you see that?

Secretary DONOVAN. This is the fundamental challenge that we are trying to address with this bill, is despite being able to get $4 billion of desperately needed capital in the Recovery Act, there continues to be $20 billion to $30 billion of capital needs in public housing alone. And given the current fiscal challenges that we have, I just don't think there is a way that we are going to get to that full capital need through direct appropriations. And so what we are trying to do with this bill is to ensure that we make those investments today so that we can avoid at the point that the roof actually caves in and the property can no longer be saved or that it can only be saved at a far higher cost, much better to prevent that from happening today with investments in keeping up those properties than to have to suffer the loss of housing and the much higher cost of saving those properties down the line. We believe the time to invest in these properties is now, and that is really what TRA is trying to achieve.

Mr. CLAY. In an ideal world, how do you envision streamlining some of HUD's housing programs?

Secretary DONOVAN. Well, first of all, we don't see a need to have so many of them. We have 13 deep rental assistance programs today. Many of them really operate like orphans. They are earlier programs that are no longer actively used for new housing, but whether it is the alphabet soup of rent supp and RAP and mod rehab, all of those programs today continue and we have a very hard time preserving those properties for future generations. By being able to simplify our programs, bring those into our Section 8 umbrella we could both preserve them, continue to have good housing going forward, while at the same time not having so many different rules and regulations for the different housing that we operate, and making it simpler for tenants to be able to understand the rules, not have to fill out as many different applications with different rules that they currently have to do in order to get access to decent housing.

Mr. CLAY. It sounds like something we need to modernize, public housing and assistance in this country.

Mr. Chairman, I yield back. Thank you.

The CHAIRMAN. The gentlewoman from New York.

Mrs. MCCARTHY OF NEW YORK. Thank you, Mr. Chairman, and thank you, Mr. Secretary. Listening to the questions and answers, I guess I will follow through with that, because I still think there is a little bit of concern on the consolidation. My concern on two fronts would be on how we are going to work with the—how do you envision a consolidation taking place that doesn't interrupt the current services to the various sectors of people who serve, for example, the disabled and the elderly? And just out of curiosity, between the public housing and the private housing of Section 8, and you might not have this answer at this time, and I will take it down the road, but on safety issues for the residents, I can speak for some in the public housing and the private housing on Long Island, safety issues are a big concern. People are afraid to go out of their apartments in the evening time, and that is in the suburban area. Certainly reading the papers and looking at some of the things that happen in public housing, how do we make the public housing safer for those residents who are in there?

Secretary DONOVAN. I think you ask a really important question, particularly about the elderly and the disabled, because we have almost 1½ million households who are either elderly or disabled or both living in units that would be covered by TRA. And one of the fundamental barriers to making them safe for the residents that you are talking about, whether it is accessibility and being able to continue to live in those units with the kind of features that are necessary, as well as just overall safety in terms of protection for the residents, whether it is installing security measures or having funding for resident programs and other things that enhance safety, all of that is hurt by the lack of capital to be able to keep these properties up. And so that $20 billion to $30 billion capital gap that I talked about is a fundamental barrier to making public housing more safe and accessible to elderly and disabled families. What we are proposing is a way to be able to bring that capital, $25 billion in total is our estimate, that we could access to be able to improve public housing for access to those residents and their safety.

Mrs. MCCARTHY OF NEW YORK. Because one of the concerns I have is that being into some public housing, especially for the elderly and the disabled, what some people would consider that it has been fitted for a disabled person or an elderly person. I hope that you have better architects out there. A handrail here and a handrail there doesn't cut it. We are talking about whether it is a sit-in shower, whether it is an open tub, I know those things are expensive but those are the qualities of life to give, so that we can keep them out of nursing homes, to be very honest with you. It comes down to a point that if they can't take care of themselves or with an aide, they are going to end up in a nursing home and it is going to cost a lot more money. And of course down the road I guess we are going to see some disagreement on allowing guns into public housing, something I will try to fight, and hopefully I can work with you on language that we can work with together so those undesirables in public housing don't have guns to threaten other residents who are actually just trying to have a peaceful life.

Secretary DONOVAN. I would just recommend to you, I saw a remarkable example in your colleague's district yesterday of a universally designed, fully accessible development there with a mix of in-

comes, disabled, nondisabled, and really a remarkable example, I think, of the work that can be done to make housing more accessible.

Mrs. MCCARTHY OF NEW YORK. Thank you.

The CHAIRMAN. The gentleman from California.

Mr. BACA. Thank you very much, Mr. Chairman. And thank you very much, Mr. Secretary, for being here. Reading your statement, and I just want to quote on what you stated here, on page 2, you said HUD currently administers 13 different rental programs, each with its own rules, managed by three operative divisions with separate field staff.

What do you propose in streamlining this process in making it more effective in providing assistance?

Secretary DONOVAN. Our initial proposal under the 2011 budget and the legislation—supported by the legislation that we proposed would focus on four of those programs primarily: public housing; the rental assistance program; the rent supplement program; and Section 8 mod rehabilitation. Those are particularly smaller programs that don't have preservation options that we believe need to be given those options and could be consolidated into Section 8.

Public housing is the other main focus. And there the biggest issue really is the access to capital that I have talked about earlier. In terms of the streamlining that would exist, what it would allow us to do is just, for example, not have different rules in terms of incomes for those who could be admitted to the property the way that those calculations are done, different rules if you want to be able to refinance those properties.

Mr. BACA. They would all be separate rules? Because, right now, you are complaining and saying that everyone operates on their own and are managed by a different set of rules. These would be the same set of rules that would be applied to these—

Secretary DONOVAN. Exactly. The goal will be to harmonize and standardize those rules on income and a range of other criteria.

Mr. BACA. In doing so, I am also very concerned that as you move in that direction, that diversity will also be there in terms of the hiring of individuals who would implement these kinds of programs, and hopefully you will take that into consideration as well.

Secretary DONOVAN. Absolutely. And, in fact, the legislation specifies that what we call Section 3—those are the requirements for hiring residents both of public housing and the local communities—would continue for housing authorities moving forward under the legislation.

Mr. BACA. Thank you.

Then, on page 3, you said, given the size of the Federal deficit and the challenge we inherited, it is clear that the Federal Government alone will not be able to provide funds needed to bring properties up-to-date and preserve them for the next generation. How do we achieve this? And how do we become more cost-effective in providing public housing?

Secretary DONOVAN. The major barrier for public housing today is that, unlike every other kind of affordable housing, they are unable, except with extreme efforts that are very, very difficult, to access low-income housing tax credits, loans from any other source; and so the fundamental way that we would be able to preserve par-

ticularly public housing through this proposal is to open up the ability to get access to funding and other support both from other public-sector sources and private-sector sources.

But the other thing that I think is critical that I don't want to lose focus on as well, today, it is almost impossible for the typical public housing development to bring in retail development or bring in other types of uses and services because of the way it is financed and structured in terms of the ownership of the land. And so providing more flexibility to bring in those other uses we believe is an equally important part of the long-term preservation. It will allow public housing to be integrated with the communities around it with other types of uses, rather than just the single use of residential that has been effectively required of public housing in the past.

Mr. BACA. Would that help in reference to what was said earlier with the Section 8? There are many people on the waiting list, but it takes almost 2 years. And the problem is is that people are without jobs, without housing, and yet need to get into affordable housing. Yet there is a waiting list, you know, that is there that could go up to 2 years. Would this expedite that process? What would be done to reduce that? Because people are in need right now to get into this housing.

Secretary DONOVAN. One of the reasons that we have more people on the waiting list than we would like is that we have many public housing apartments that don't have funding to be renovated and made available for rental. We have lost about 150,000 units of public housing over the last decade or so through abandonment—

The CHAIRMAN. The gentleman's time has expired.

Secretary DONOVAN. —because there hasn't been the capital available to keep them in good condition, and this TRA would allow us to access that capital.

The CHAIRMAN. The gentleman from Georgia.

Mr. SCOTT. Thank you, Mr. Chairman. Welcome, Secretary Donovan.

Secretary Donovan, one of the most heartbreaking situations that our homeowners are facing now is the fact that since we have been in this real depression, we have lost about $9 trillion in home values. I wanted to, first of all, before I get into these questions on the rental assistance, what are your thoughts about that? How are we dealing with this? What is available to the homeowner who may be watching this hearing as to what they can do to restore the values of their homes? What is the Administration doing to address this terrible issue of the loss of home values to the tune of $9 trillion? What are we doing to recapture that?

Secretary DONOVAN. There is no single answer to what we can do. What it has required over the last year is a broad range of efforts that go to stabilizing the economy and the job picture more broadly. Obviously, the Recovery Act was critical to that. And then more specifically, keeping interest rates low, encouraging refinancing, modifying the mortgages of over 1.2 million families to date across the country and providing more financing options particularly for underwater borrowers. FHA has been a very effective tool for doing that, and we are expanding this summer even further the options for underwater borrowers to refinance.

All of that has led to the housing market stabilizing and beginning to turn around. Since April of last year, we have actually added $1 trillion in equity for homeowners in this country. You compare that to the $9 trillion that you talked about, 30 straight months of declines in housing values when we came into office. We are not out of the woods, by any means. We still have a ways to go, but we have been able to stabilize that and begin to help homeowners build equity again, a total of $1 trillion, according to the Federal Reserve.

Mr. SCOTT. But does a homeowner have anything at his disposal? He gets in the mail this form that says that his home has lost this much in value, and they want to maybe appeal that. Is there anything moving where they have some access to address that and appeal that amount?

Secretary DONOVAN. The most direct way that we can help underwater homeowners is through refinancing of those properties and getting a write-down of their existing loan to a level that is sustainable. That is what our FHA program is intended to do.

What I would suggest to homeowners is that they reach out to a HUD-approved housing counselor in their community. You can find that on our HUD Web site. We have counselors available in every community, and they can help with the specific needs of a homeowner to help connect them to options.

Mr. SCOTT. In Georgia, I represent counties like Clayton County and Cobb County and Douglas County all around Atlanta. We have had one of the highest foreclosure rates in abandoned homes. What is the relationship that HUD has to the Neighborhood Stabilization Act? And how would you rate that in terms of impacting on the issue of continuing to raise that value, and how successful has that been?

Secretary DONOVAN. We believe the Neighborhood Stabilization Program has been very successful. To date, about 17,000 homes have been completed, and we believe with the $6 billion that has been allocated in total that we should reach a total of about 80,000 homes. In fact, I was in the Philadelphia neighborhood in your area near your district just on Friday and witnessed an entire street that has been stabilized thanks to the investments of neighborhood stabilization.

We believe that, actually, we ought to invest more money in neighborhood stabilization. We announced last week Administration support for doing that.

Mr. SCOTT. Before the chairman brings his hammer down, this question on the TRA, in units converted on the TRA, residents would have the right to move out of their homes and maintain rental assistance with a housing choice voucher. How many people in the converted units are expected to use their mobility rights under this initiative?

Secretary DONOVAN. Currently, what we see is that about 11 percent of residents move out each year; and with the 300,000 units that we propose for TRA in the first year we believe that we could certainly balance vouchers through turnover, natural turnover in the voucher program for those folks who want to move out without disadvantaging those who are in the waiting list or having any risk to those properties that are in the program.

Mr. SCOTT. Thank you, Mr. Secretary.

The CHAIRMAN. I can't resist noting that the Neighborhood Stabilization Program was written here with the gentlewoman from California in the lead and was the product of this committee under her leadership, and we appreciate the seriousness with which it has been taken.

The gentleman from Indiana.

Mr. CARSON. Thank you, Mr. Chairman.

Mr. Secretary, as you are aware, our most vulnerable families are facing an unprecedented crisis today. TRA will give low-income families greater flexibility to rent housing in a wide range of neighborhoods. I am interested in understanding how HUD will determine which voucher holders are ready to move into better neighborhoods. I also want to ensure that this plan will not conflict with the overall goal of improving existing rental housing.

And, secondly, generally speaking, I would like to also understand, sir, what HUD is doing to ensure rental units meet minimum standards of health and safety.

Secretary DONOVAN. So, first of all, what I would say is I think the most important thing that TRA would achieve is to ensure that we do preserve existing housing for future generations. Quite simply, a capital backlog of $20 billion to $30 billion will not allow these properties to serve future generations. We are at risk of losing tens of thousands more units of public housing if we don't act quickly to try to bring resources to the table to preserve that housing. So that is really the primary goal of TRA, is the preservation of public housing and other assisted housing. So I think that is key.

Second of all, what I would say is we do believe that with the feature of choice that we are proposing to add that it is a critical thing and an important statement to say low-income people should have opportunities to move without the risk and the fear of losing their rental assistance. And today, we provide that in project-based vouchers, but we don't provide it in the large majority of our programs.

But we do recognize that it isn't just enough to say there is a voucher. TRA, we are actually proposing to provide some of the first-year funding towards counseling and other forms of assistance that would help families using vouchers to access neighborhoods of opportunity. Those have been shown to be successful in many places around the country, and we want to support that kind of assistance to ensure that families have a real choice, not just a theoretical choice about where they live.

Mr. CARSON. Thank you, Mr. Secretary.

Madam Chairwoman, I yield back my time.

Ms. WATERS. [presiding] Mr. Donnelly.

Mr. DONNELLY. No questions, Madam Chairwoman.

Ms. WATERS. If there are no more questions, the Chair notes that some members may have additional questions for the Secretary which they may submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to the Secretary and to place his responses in the record.

We would like to thank you, Mr. Secretary, for being here today. Your testimony has been very, very helpful to us.

We have over 1,000 petitions that have been signed by individuals concerned about TRA. Without objection, I would like to submit them for the record.

[The petitions referenced above are contained in committee files.]

Ms. WATERS. And, with that, we will call on our second panel. Thank you.

I am pleased to welcome our distinguished second panel.

Our first witness will be Mr. Thomas Gleason, executive director, MassHousing, on behalf of the National Council of State Housing Agencies. Our second witness will be Mr. Paul T. Graziano, executive director and housing commissioner, Housing Authority of Baltimore City, on behalf of the Council of Large Public Housing Authorities. Our third witness will be Ms. Terri Preston-Koenig, president, National Leased Housing Association. Our fourth witness will be Ms. Betsey Martens, senior vice president, National Association of Housing and Redevelopment Officials. Our fifth witness will be Ms. Judy Montanez, board member, National Alliance of HUD Tenants. Our sixth witness will be Ms. Damaris Reyes, executive director, Good Old Lower East Side, on behalf of National People's Action. Our seventh witness will be Mr. John Rhea, chairman, New York City Housing Authority. And our final witness will be Mr. Mark Taylor, executive director, Charleston-Kanawha Housing Authority, Charleston, West Virginia.

Without objection, your written statements will be made a part of the record.

I will now begin with our first witness to be recognized for 5 minutes, Mr. Gleason. Thank you very much.

STATEMENT OF THOMAS GLEASON, EXECUTIVE DIRECTOR, MASSHOUSING, ON BEHALF OF THE NATIONAL COUNCIL OF STATE HOUSING AGENCIES (NCSHA)

Mr. GLEASON. Thank you, Madam Chairwoman, and committee members, for the opportunity to testify on HUD's Transforming Rental Assistance Initiative.

My name is Tom Gleason, and I am the executive director of MassHousing.

Ms. WATERS. I am sorry. You cannot be heard up here. Is your microphone on?

Mr. GLEASON. Technology eludes me, Madam Chairwoman.

I am testifying today on behalf of the National Council of State Housing Agencies. NCSHA supports HUD key goals for the TRA initiative: preservation; simplification; and mobility.

While we are still analyzing this proposal, we want to raise five preliminary concerns for the committee:

First, we believe that the property recapitalization demands that the TRA initiative will place on the housing credit and other Federal housing resources have not been adequately assessed. These programs are already oversubscribed in many States, and the TRA initiative will only cause further strain on these limited resources. We ask that you work with the leadership of the Ways and Means Committee to ensure that additional credit is provided to States to meet this increased demand. Otherwise, States will have to make difficult choices, choices between preserving TRA developments,

producing new rental housing, or preserving existing privately financed, affordable housing developments.

Second, we are pleased that the latest TRA proposal provides for project-based Section 8 for most of the developments that undergo conversion. Years of experience have shown us that project-based Section 8 is the best tool available for ensuring long-term affordability and attracting private capital. We believe that HUD's proposal provides the Secretary with the discretion allowed for converted TRA developments to utilize market rents and, in some cases, budget-based rents that exceed market rents, where necessary, to support appropriate rehabilitation and higher operating costs.

This rent-setting flexibility is critical to ensure successful TRA conversions in high-cost but low-rent areas. In fact, we believe the chairman's preservation bill is a better vehicle to accomplish this for several existing project-based rental assistance programs. It will provide not only more options but increased certainty in how particular projects will be financed.

Third, NCSHA strongly supports mobility as a means for creating opportunity for residents to improve the quality of their lives. However, it must be achieved without reducing the resources available to help other families. It is troubling that residents of converted TRA developments will be able to have a priority over many needy, unassisted individuals and families who have been waiting for voucher assistance for years. We believe that this cannot be treated as a zero-sum game. In order to accommodate the TRA mobility feature without impacting on existing waiting lists, additional rental vouchers are needed. Furthermore, tenant mobility will have the unintended consequence of creating higher vacancies at these developments, leading to lower operating income, which will, in turn, reduce the amount of debt that can be leveraged in the future for property rehabilitation.

Fourth, NCSHA is pleased that HUD's TRA proposal relies exclusively on voluntary participation by PHAs and private owners. We urge the committee not to make participation mandatory. We also urge the committee to limit HUD's authority to expand the TRA program to additional programs too quickly. We recommend that the committee fully review the outcomes of the TRA initiative before allowing HUD to extend the program simply by notice. One way to do this would be by authorizing this effort as a PILOT program only.

Fifth, and finally, HUD needs to define the kinds of entities it will seek to administer rental assistance contracts on TRA properties and to elaborate on the scope of their expected activities. Many HFAs would be interested in expanding their responsibilities to include TRA properties. This would be especially true for those like MassHousing that have successfully participated for more than a decade in HUD Section 8 project-based contract Administration program.

However, we are concerned that the opportunity for HUD to take advantage of HFA experience and capacity may be lost if HUD stays on its current course toward rebidding PBCA contracts without recognizing the unique strengths that HFAs bring to their role as contract administrator.

Thank you, Madam Chairwoman, and members of the committee, for the opportunity to testify; and please let me know if NCSHA can provide any further information to help you.

[The prepared statement of Mr. Gleason can be found on page 69 of the appendix.]

Ms. WATERS. Thank you very much.

Mr. Graziano.

STATEMENT OF PAUL T. GRAZIANO, EXECUTIVE DIRECTOR AND HOUSING COMMISSIONER, HOUSING AUTHORITY OF BALTIMORE CITY, ON BEHALF OF THE COUNCIL OF LARGE PUBLIC HOUSING AUTHORITIES (CLPHA)

Mr. GRAZIANO. Thank you, Madam Chairwoman, and members of the committee. My name is Paul Graziano. I am the executive director of the Housing Authority of Baltimore City, housing commissioner for the City of Baltimore, and a board member of the Council of Large Public Housing Authorities. I am pleased to be here representing CLPHA for today's hearing on the PETRA legislation.

CLPHA has been actively engaged in discussions with public housing stakeholders to develop a preservation strategy through reform of the funding and regulatory system. Such reform was a primary focus of the Summit on the Future of Public Housing convened by CLPHA in 2008 and the policy framework produced by the Summit participants.

The criteria for preservation is straightforward. As the Summit Framework called for, we seek a long-term funding structure that addresses reasonable operating costs, adequate replacement reserves, and recapitalizes the portfolio by converting public housing to more adequate, reliable, and flexible subsidy models.

We commend Secretary Donovan for his vision and commitment to preserve and expand affordable housing. To hear the Secretary say that public housing is an irreplaceable public asset that must be preserved represents a turning point in this most important public policy debate. We are dedicated to the mission to serve the needs of low-income people. We do not want to put the properties or the people we serve at risk.

There are many competing demands in determining how to reform and transform affordable housing programs, including HUD's own internal administrative streamlining objectives and other social policy mandates. But, for us, the most immediate and compelling objective is the preservation and improvement of public housing stock. We are very concerned that this urgent goal may be lost in the maelstrom of transformation for the Department and other housing programs.

PETRA creates an overly complex approach to preservation, with a complicated financial and rent-setting framework, sweeping and untested social policy mandates, and burdensome administrative and regulatory requirements, some of which undermine the very goal of preservation. More to the point, we favor a slimmed-down bill that focuses on preservation, not on transforming HUD.

In general, the bill tries to do too much, too soon, with too few resources. Rental assistance conversion should be the core focus purpose and entirety of the bill.

Our concerns with the authority to convert are centered around the options and opportunities for PHAs to use more reliable subsidy models to leverage private capital and, in particular, the restrictions on the use of project-based vouchers as a viable conversion option. Project-based vouchers have significant market acceptance as an effective redevelopment tool for PHAs and their private partners. Converting public housing to the PBV program is simply a way to address the capital backlog once and for all over the next several years, thereby establishing a more sustainable and administratively efficient program for the future.

We are particularly heartened by the financial leveraging tools embodied in other proposed legislation which would pledge the full faith and credit of the United States in the public housing loan guarantee and also authorizes housing tax credit exchange for rehabilitation of qualified public housing units. These tools are integral and critical elements to ensure the success of public housing preservation strategy.

At the core of the effective preservation strategy, there must be a rent-setting policy that ensures long-term sustainability of the housing. HUD estimates 300,000 units can be preserved through PETRA. We have done a study at CLPHA, and we believe that the $290 million will actually preserve approximately 60,000 to 65,000 units, funding at an average level of approximately $80,000 per unit in rehab.

Furthermore, according to our estimates, about 58 percent of the national portfolio would be able to raise sufficient debt using FMRs to preserve the properties and cash flow. The remaining 42 percent of the properties would need exceptions above the FMR to cover this cost.

I have attached to our written testimony a couple of appendices.

Appendix B, which I will just refer to very briefly, shows a range of developments in the City of Baltimore, and you will see that the rents vary by neighborhood. And so that is a real issue. The level of rehab is the same, but comparable rents are lower, so we need to address that issue. With respect to resident choice and mobility, we are very concerned about the impact here on our waiting list and whether it is an equitable decision.

In closing, I would just like to say that we think the program needs to focus on those core principles of public housing preservation. We applaud HUD and we thank the committee for the opportunity to speak today.

[The prepared statement of Mr. Graziano can be found on page 77 of the appendix.]

Ms. WATERS. Thank you.

Our next witness will be Ms. Terri Preston-Koenig.

STATEMENT OF TERRI PRESTON-KOENIG, PRESIDENT, NATIONAL LEASED HOUSING ASSOCIATION

Ms. PRESTON-KOENIG. Thank you.

My name is Terri Preston-Koenig, and I am the director of community development and affordable housing services for Baker Tilly Virchow Krause, a consulting services firm. I am here representing the National Leased Housing Association as the incoming president. I am very happy to be able to present testimony today.

Madam Chairwoman and members of the committee, thank you for the opportunity to testify on the Administration's proposal to radically overhaul our assisted housing programs. This is far-reaching and complex legislation. It can impact the viability and preservation of 2.6 million units in HUD-assisted projects, affect the tenant-based voucher program that assists 2.2 million poor households, and adversely impact millions of poor persons who may be in dire circumstances because they do not have affordable housing and are seeking to obtain Federal housing assistance that is, indeed, in limited supply.

We have the utmost respect for Secretary Donovan, but we believe the transformation initiative to be ill-conceived and unrealistic. HUD seeks to justify its sweeping proposal by asserting that it has too many separate rental housing programs. It designates 13 within its own rules and that these should be consolidated into fewer programs. Among the 13 programs that HUD has actually identified that should be eliminated include programs such as Housing Opportunities for People With AIDS, Shelter Plus Care for homeless persons, Section 202 assistance for elderly persons, and Section 811 assistance for disabled persons. These programs serve people with distinctive needs. We are unsure what consolidation will do for the nonprofit sponsors or, more importantly, for those people that they serve.

Also included in this list of 13 is a Section 8 project-based program. This program assists families in about 1.4 million units. This program is an extremely valuable long-term resource for providing affordable rents for poor families and is functioning well.

It is beyond our understanding why HUD would propose to convert any established program into a new program with new rules. HUD says, don't worry, conversion to the program would be voluntary. No owner would be required to convert. But if some owners convert and others do not, how can streamlining occur if two programs replace one?

Any perceived streamlining could only be achieved if HUD does induce conversion. Indeed, Secretary Donovan noted in his testimony that full benefits could only be achieved if all programs converted.

If this proposal is enacted, it could immediately destabilize the preservation of the Section 8 project-based inventory. The reason lenders and investors put their funds into preservation in Section 8 projects is based because they have confidence in the predictability and stability of the Section 8 project-based rules. Why should a lender make a long-term loan on good terms to a property with a current project-based Section 8 HAP contract when there is a chance that this project could be converted to another program with more restricted rents and more undesirable rules? And why should a Section 8 owner renew its contract if HUD makes it disadvantageous to remain under the Section 8 program, even if the owner chooses not to convert?

We urge the committee to reduce the scope of this proposal to areas of recognized need where some good might be accomplished. This program aimed at preserving public housing could actually provide an additional tool. We believe that instead of promoting a large-scale transformation, we should look at requesting a program

to preserve public housing. This would aid programs such as public housing to look towards residents, investors, and communities and develop a workable framework that might support preservation.

When you look at rent sup and RAP conversions, this is an area where rental subsidy contracts could actually be helped. However, there is no need to create a new program to preserve these units. We have attached language which could accomplish the objective.

The same holds true for the Section 8 mod rehab program. A pending provision in the preservation bill before this committee could provide adequate solutions to the preservation of the 27,000 units that are outstanding on the moderate rehabilitation programs.

Finally, regarding mobility, this is simply not great policy. Resident choice doesn't mean that residents can wait their turn for a voucher. This means that they can jump to the top of the voucher waiting list. It is inequitable and unsound housing policy to extend the time a poor person must wait on this list, for example, from 2 to 3 years, or roughly 50 percent longer. Thank you.

[The prepared statement of Ms. Preston-Koenig can be found on page 124 of the appendix.]

Ms. WATERS. Thank you.

Our next witness will be Ms. Betsey Martens.

STATEMENT OF BETSEY MARTENS, SENIOR VICE PRESIDENT, NATIONAL ASSOCIATION OF HOUSING AND REDEVELOPMENT OFFICIALS (NAHRO)

Ms. MARTENS. Chairwoman Waters, and members of the committee, good morning. My name is Betsey Martens, and I am the executive director of Boulder Housing Partners, the housing authority serving the City of Boulder, Colorado. I am here today in my capacity as the senior vice president of the National Association of Housing and Redevelopment Officials. On behalf of NAHRO's more than 23,000 agency and individual members, I thank the committee and the Administration for engaging NAHRO in this important dialogue.

The fundamental premise of TRA is strong. It recognizes what NAHRO and others have suggested as the future of public housing. Nevertheless, NAHRO has serious concerns regarding the PETRA discussion draft.

As my colleague from CLPHA underscored, the preservation of public housing's physical assets should be the first and overriding priority of any conversion proposal. Conversion should be entirely voluntary and based on existing programs. To that end, NAHRO's conversion proposal relies upon Section 8 project-based rental assistance program.

Beyond conversion options, PHAs must also have continued access to a fully funded public housing program supported by robust implementation of the Section 30 programs and featuring a streamlined regulatory environment, particularly for small public housing agencies. On this last point, NAHRO is proudly working side-by-side with the Public Housing Authorities Directors Association to advance a small PHA reform proposal designed to free small agencies and residents from burdensome regulatory requirements.

Turning to PETRA, instead of emphasizing preservation over other priorities, the proposal includes several collateral policy initiatives that would likely inhibit the financial repositioning of public housing. The preservation of converted public housing developments depends upon adequate stable funding in combination with a rational approach to setting rents. The Administration has not made the case regarding PETRA's ability to provide a sustainable funding environment.

Because it creates the potential for rents to be adjusted, including decreases, at any time and because HUD has the unilateral power to force contract extensions, PETRA includes too many disincentives for participation by owners and lenders. Although mobility is desirable and important, PETRA's resident choice option will significantly distort housing choice voucher waiting lists and complicate preservation efforts. This feature risks transforming converted developments into way stations for households seeking tenant-based vouchers.

PETRA also allows for the extension of its mobility feature to the entire federally-assisted inventory, private and public, converted and unconverted. This overreach could ultimately lead to reductions within the affordable housing inventory.

While the consolidation of voucher programs in consortia would not be required under PETRA, regional configurations could still be given a priority by HUD in evaluating applications. Regionalization could become a de facto requirement for participation, a troubling outcome that we should avoid.

PETRA leaves too many questions unanswered, making it impossible to evaluate the adequacy of the Administration's Fiscal Year 2011 budget request for TRA. Of primary concern to NAHRO is the lack of information on financing. NAHRO is concerned that HUD's leveraging assumptions may be too optimistic and that the proposed amount for year one incremental funding may prove insufficient.

Given the concerns NAHRO and others have raised, including my colleagues on this panel, we would suggest that our conversion proposal represents a more prudent way forward. Under NAHRO's proposal, PHAs would have the option to voluntarily convert public housing to the existing PBRA program, with oversight transferred to HUD's Office of Housing. Given the Office of Housing's less administratively burdensome regulatory environment and lenders' familiarity with the existing PBRA program, conversion under NAHRO's proposal would provide for a sustainable operating environment and a proven approach to leveraging assets to meet capital needs.

Keeping in mind fiscal constraints and an eye on the legislative calendar, NAHRO suggests initiating the preservation of public housing through voluntary conversion by providing for a PILOT program based on our proposal. NAHRO estimates that a PILOT to convert 50,000 public housing units to units assisted through PBRA would require an appropriation of approximately $100 million for Fiscal Year 2011. NAHRO has developed legislative language to authorize such a PILOT which we would be pleased to share with you. It is our hope that you will support this approach and communicate that support.

Thank you for providing NAHRO with the opportunity to testify today.

[The prepared statement of Ms. Martens can be found on page 90 of the appendix.]

The CHAIRMAN. Thank you, Ms. Martens.

Next, we have Ms. Judy Montanez, who is a board member of the National Alliance of HUD Tenants.

STATEMENT OF JUDY MONTANEZ, BOARD MEMBER, NATIONAL ALLIANCE OF HUD TENANTS (NAHT)

Ms. MONTANEZ. Good morning, Chairman Frank, and members of the committee. Thank you for inviting the National Alliance of HUD Tenants, NAHT, to testify.

Since 1992, NAHT has represented the 1.3 million families who receive project-based Section 8 in privately owned HUD multifamily housing. NAHT is the only national multifamily tenants union in the United States today, with membership in 25 States.

Although PETRA will mainly target public housing in this first year, HUD intends to expand it to all HUD-assisted housing, starting with 30,000 privately owned apartments next year. So our membership is directly affected.

NAHT supports the principles of rent simplification, tenant empowerment, and extension of grievance rights to HUD's multifamily tenants and can support the mobility proposal in PETRA with increases in voucher funding. We can offer support in principle the consolidation of 13 disparate programs into one new funding stream and rental assistance program, provided this is done in the most cost-effective manner, as outlined in our written testimony.

But the Administration's bill falls short of promises to preserve public housing under public ownership with maximum affordability, one-to-one replacement, and guarantee repairs. Instead, the bill could result in a permanent privatization and loss of the Nation's system of publicly owned housing by imposing a 30-year use restriction with no requirement to renew and bring in powerful investors and banks into the ownership of these buildings.

Unless these problems are corrected, NAHT must oppose the PETRA proposal. In effect, HUD's bill would bring the whole nightmare of expiring use housing into the Nation's system of public housing. For 40 years, HUD's multifamily tenants have waged countless struggles building by building against the rent increases, decline in services, substandard conditions, and expiring use restriction.

I have lived this nightmare firsthand, as a tenant in expiring use housing. The Castleton Park Tenants Association in Staten Island, which I co-chair, had to rally 454 families to fight a predatory equity investor who planned to destroy our community for profit. After an accident left me unemployed and disabled, I would have been homeless many times over had I not lived in a subsidized complex. We found ourselves rallying against HUD to enforce the law and begging tenants for donations to pay for the fight to keep our homes.

Beyond Castleton, this struggle has been a nightmare for the 400,000 families who have lost their affordable housing because HUD and Congress 40 years ago tried to build low-income housing

on the more costly dealt bargain with private investors. The Nation's investment in those affordable homes has been squandered.

Another 200,000 more face expiring mortgages today, an issue which the committee is addressing through H.R. 4868. We urge Congress to not make the same mistake twice. Do not impose the same crisis and struggle of our sisters and brothers in public housing.

Any proposal to invest in public housing should require owners and HUD to commit to the longest-term use restriction legally allowed. All PETRA owners should be required to accept and renew Section 8 subsidy contracts as long as Congress provides funds with no discretion to the future Secretary.

NAHT proposes a budget-based subsidy principle like the original project-based Section 8 program which based subsidy levels on actual operating costs, plus capital grants or minimal debt service for required repairs and limited fee for owners. This will achieve transparency and simplification.

PETRA should also require HUD and owners to maximize capital grant sources to meet these needs, including an increase in public housing modernization grant to preserve housing at the least long-term costs of the Federal Government.

HUD has justified PETRA as a means to simplify 13 diverse programs and reduce complexity and confusion. But bringing complexity of multi-housing into public housing will do the opposite.

We urge Congress to conduct an independent cost comparison of three funding models outlined in our written testimony to meet public housing repair backlogs for embarking on PETRA. With these changes, NAHT stands ready to work with HUD, Congress, and our tenant leaders for public and voucher housing to realize the positive aspects of PETRA to save our homes.

Thank you.

[The prepared statement of Ms. Montanez can be found on page 111 of the appendix.]

The CHAIRMAN. Next, we have Ms. Damaris Reyes, who is the executive director of the Good Old Lower East Side, and she is here on behalf of National People's Action.

STATEMENT OF DAMARIS REYES, EXECUTIVE DIRECTOR, GOOD OLD LOWER EAST SIDE, ON BEHALF OF NATIONAL PEOPLE'S ACTION

Ms. REYES. Good morning. Thank you, Chairman Frank, Congresswoman Waters, Congresswoman Velazquez, and members of the committee, for inviting me here today to speak about PETRA.

My name is Damaris Reyes, and I am a public housing resident and the executive director of Good Old Lower East Side in New York City. I speak to you today on behalf of National People's Action, a network of community organizations from across the country that works to unite everyday people in cities, towns, and rural communities throughout the United States, including thousands of public housing residents and subsidized housing residents who demand a voice in their housing and a voice in decisions that will affect them.

The stated goal of PETRA is to streamline funding and policies for all social housing in America. The main advantage of the pro-

posal, we are told, is to turn our public housing assets into leveraged properties eligible for mortgage to banks. According to HUD, this is necessary because of tens of billions of capital needed to make the needed repairs to our public housing stock.

We are here today discussing this bill because this country has starved public housing of necessary resources. It is because previous Administrations, Congress, and Congresses as a whole have failed to act. As a country, we have turned our backs on families, the elderly, and the disabled who live in HUD-assisted housing.

So now we are looking to the private market to save our public assets. Let us not forget that this is the same private market that just crashed our economy, took billions in taxpayer-funded bailouts, and aren't fixing the mess they created.

We cannot put ourselves at the mercy of the market, and it is imperative that if we propose solutions for filling the gap in capital needs, we do it right. If we go down this road, we won't easily be able to go back.

National People's Action does not support PETRA in its current form. There are several areas in PETRA we feel must be changed and strengthened in order to for us to support this bill.

We have to ensure that the affordable housing units we have now, a number that is, frankly, far below the number needed, stay affordable in perpetuity, that the human rights and dignity of all public and subsidized housing residents are enshrined into law, and that protections are in place to retain hard housing units and keep units from reverting to the private market via foreclosure or bankruptcy.

It would seem that we have not learned anything from the current subsidized housing crisis. Thousands of units are currently bleeding out of the system as landlords, who were given subsidized mortgages and tax credit financing, reach the end of the contract term that kept the units affordable.

As PETRA is currently written, converting units would be subject to a 30-year use restriction with a 20-year renewable subsidy contract. We have an opportunity now not to repeat the same mistakes of the past or to literally mortgage our futures.

Permanent use restrictions must be included for any conversion plan for public housing. Permanent land use restrictions or land trust arrangements can be written into the law that would maintain the affordability and perpetuity while enabling leverage on the structures themselves. Maintaining hard housing units, Section 8 tenant-based vouchers are not a replacement for hard affordable units of housing.

Tenant-based vouchers can be a good option for some families as a way to enable mobility and choice, but they should always be in addition to brick-and-mortar units. In the majority of cities and States, it is perfectly legal for landlords to discriminate and refuse to rent an apartment to a family holding a voucher.

Vouchers come with hard dollar limits. In some markets, vouchers are extremely difficult to use, for example, in the Lower East Side in New York City.

In addition, this proposal should not cause families already on the waiting list to wait any longer.

PETRA proposed to allow landlords to voucher up to 50 percent of the hard units that were before conversion publicly owned and permanently affordable units. Under this plan, half the units could disappear likely forever; and once the units are gone, our experience is that they don't come back.

Section 5(D) of the PETRA draft is particularly disturbing. Properties that convert public housing buildings to project-based vouchers will only be allowed to retain subsidy on 40 percent of the units. What is the plan for the other 60 percent of the tenants who were, until conversion, living in stable, affordable housing?

We need more clarity on this issue. We would never consider mortgaging our national monuments, our park systems, but this proposal seeks to mortgage our Nation's homes.

The current economic crisis should stand as a sharp reminder of what can happen when the private market is given free reign. It is essential that we put every possible safeguard in place to ensure that these assets are not forfeited to the private ownership through foreclosure or bankruptcy.

In the case of bankruptcy or foreclosure, HUD is not compelled to buy the properties back, and there is no guarantee that even if HUD wanted to buy them back, the money would be available to do so.

This is not enough. We must require that all mortgages taken out against converted properties have FHA multifamily insurance on the first lien. Beyond that, strictures must be put in place so that FHA cannot privately market these REOs. HUD must retain its right to own the properties or sell them only to tenants who have organized to purchase their homes.

In conclusion, over the last several months, I have been part of a series of convenings hosted by HUD with public and subsidized residents from around the country. We were told, when you go to sleep at night, it will be public housing. When you wake up in the morning, it will be public housing. It seems what was meant to be said was that while you may go to sleep in public housing, there is a nightmare coming.

We can do better, and we call on Congress to work with us to make this proposal one that actually can work to increase capital without decreasing opportunity. Thank you.

[The prepared statement of Ms. Reyes can be found on page 134 of the appendix.]

The CHAIRMAN. Next is John Rhea, who is the chairman of the New York City Housing Authority.

STATEMENT OF JOHN B. RHEA, CHAIRMAN, NEW YORK CITY HOUSING AUTHORITY (NYCHA)

Mr. RHEA. Chairman Frank, Ranking Member Capito, Congresswoman Velazquez, and other distinguished members of the committee, I appreciate being given the opportunity to testify today.

I am John B. Rhea, chairman of the New York City Housing Authority. NYCHA is the country's first and largest housing authority. In May of 1935, 75 years ago, Eleanor Roosevelt opened First Houses; and I am proud to report that First Houses still provides decent, affordable public housing for 126 low-income families.

Today, NYCHA operates more than 178,000 units of public housing in 334 developments and provides assistance through Section 8 to more than an additional 250,000 New Yorkers in cooperation with private landlords. If NYCHA was a city, it would rank as the 20th largest in the United States, with more than 650,000 New York City residents served by NYCHA public housing and Section 8 programs.

Nearly half of the community that NYCHA serves is made up of working families. Another 42 percent receive assistance from Social Security Supplemental Security Income, veterans benefits, or a pension; and this population is growing, aging, and diversifying.

There is a strong need for additional affordable housing stock in New York. We must build new housing, and we must preserve our existing housing. There is a waiting list in New York City for public housing that includes nearly 131,000 families; and the Section 8 waiting list is currently closed, with an additional 128,000 families waiting for a voucher.

So I speak today in support of HUD's Transforming Rental Assistance initiative. I support PETRA's goal of preserving the Nation's public housing stock. There is a national backlog of unmet capital needs between $20 billion to $30 billion, an enormous obstacle to overcome that continues to grow.

NYCHA alone has a backlog that is estimated as exceeding $6 billion. Unfortunately, I do not anticipate Congress will provide grant outlays that would address such a large requirement. Although this is a very large amount, it translates into a little more than $35,000 per unit, which is a relatively modest amount, especially compared to replacement costs.

Therefore, the best resource to address these capital needs is to use our assets and long-term financial assistance agreements to leverage private market funding. Only by engaging the private markets and using all of our assets will housing authorities be able to preserve the national investment that has been made to public housing.

Transforming Rental Assistance mirrors New York City Mayor Michael R. Bloomberg's new housing marketplace plan to create or preserve 165,000 affordable housing units by 2014. The City is well on its way to achieving the mayor's target, with 100,000 units already created or preserved.

With HUD assistance, NYCHA has converted 2,200 apartments from public housing to Section 8 voucher assistance and plans to convert up to an additional 6,200 more. We also federalized 20,000 public housing units by leveraging Federal stimulus funding to access $400 million in public and private market funding.

Residents will continue to pay 30 percent of their rent income under PETRA. The contract rent must cover reasonable operating costs, including a management fee, debt service on previous capital borrowings, the costs of newly accrued capital needs as identified in each agency's 5-year capital plan, and an initial reserve for replacement.

I am concerned that, under PETRA, HUD appears to have the sole authority to increase or decrease contract rent. My suggestion is to refer to data submitted by the local housing authorities, including independent studies of the local rental markets, and let

that data play a significant role when determining the levels of contract rent.

Any private market capital financing should be insured by the Federal Housing Administration or should be subject to a government guarantee.

I support Chairman Frank's draft of the Public Housing Preservation and Rehabilitation Act that includes a full faith and credit guarantee.

I also support the preservation bill's proposed provision of grants in lieu of tax credits for the rehabilitation of qualifying public housing.

I support the basic concept of one-for-one replacement. PETRA provides greater flexibility than we have seen in other measures on the same issue.

I support the bill's provision on allowing replacement units off-site within the neighborhood or within the metropolitan area. It is important that this should be done in consideration of fair housing standards and the need to deconcentrate poverty. There may be situations when one-for-one replacement is not appropriate.

I support the bill's provision on using tenant-based vouchers in narrow circumstances.

I support allowing portability after 24 months of residence.

However, I am concerned about the one out of three provision that would allow one-third of turnover vouchers to be held and reserved for families who may one day opt to move. This would be unfair to all households on the waiting list for Section 8. My suggestion is to draw portability from an annual appropriation of incremental vouchers or from the Tenant Protection Account.

PETRA incorporates Section 3, and I support passage of Representative Velazquez's Earnings and Living Opportunities Act to reform Section 3. Resident Opportunities and Self Sufficiency, known as ROSS, authorizes a full range of job training and employment opportunities. If we are serious about resident employment, it is time for ROSS to be funded separately at $1 billion, with the vast majority going to job training and resident employment initiatives.

The Transforming Rental Assistance initiative is a multi-year program. The current public housing and Section 8 programs will continue for years to come. I urge Congress to provide housing authorities with the flexibility to administer their current portfolios, including full fungibility between their capital funding, operating funding, and Section 8 funding, allowing housing authorities with this excess cash flow to use these funds to cover debt and addresses capital needs.

I have prepared formal responses to your earlier questions and would like to submit them for the record as well. Thank you.

[The prepared statement of Mr. Rhea can be found on page 140 of the appendix.]

The CHAIRMAN. And Mr. Mark Taylor, who has already been introduced by the ranking member of the subcommittee.

Mr. Taylor.

STATEMENT OF MARK TAYLOR, EXECUTIVE DIRECTOR, CHARLESTON-KANAWHA HOUSING AUTHORITY, CHARLESTON, WEST VIRGINIA

Mr. TAYLOR. Thank you, Chairman Frank.

Chairman Frank, Ranking Member Capito, and members of the committee, my name is Mark Taylor. I am the executive director of the Charleston-Kanawha Housing Authority located in Charleston, West Virginia. I am honored to present our views regarding the Administration's TRA proposal. I want to thank my Representative, Congresswoman Shelley Moore Capito, for the invitation to testify on this important and ambitious proposal.

TRA, if authorized, will have a profound impact for housing authorities like mine. I want to acknowledge the commendable effort made by the Department to gather comments on this proposal from stakeholders. There remain, however, a number of unanswered questions.

Charleston-Kanawha Housing Authority is the largest assistance agency in West Virginia. We provide housing assistance to more than 4,400 families. We manage 12 public housing communities, serving more than 2,000 residents; and we manage over 2,900 rental assistance vouchers, serving nearly 7,000 residents.

We are changing the face of public housing in our area by redeveloping our 3 oldest communities, all of which are more than 50 years old. This is being done using private and public financial resources, including utilizing low-income housing tax credits, leveraging one-third of our capital funds, and accessing private loans. This effort will result in 500 public housing and project-based units.

We estimate our modernization needs for preserving our 9 remaining housing communities to be as much as $84 million over the next 20 years. With this in mind, we will need a variety of tools to enable us to preserve our remaining stock of affordable housing and produce desperately needed new units. I believe the conversion of public housing to a known and reliable form of assistance like project-based rental assistance, assuming it remains voluntary, moves us in the right direction.

At my housing authority, the conversion to project-based assistance would likely succeed for smaller developments 50 to 100 units which are less than 30 years old and have more modern design features. Securing modest financing for modernization upgrades would be relatively simple. Larger 100-plus unit developments that are more than 40 years old without outdated designs would not be viable for conversion without either major redevelopment or modernization funding as provided through the capital fund.

We have been very fortunate in the timing of resources available to us to redevelop our aging developments, including $4 million in NST funds and $6 million in TCAP funds.

While I only have limited information regarding the proposed aging program, I am concerned about the acceptance of the marketplace, especially to the lending community, given the number of secondary policy objectives aging would impose. The imposition of Section 3 requirements, community service, fair hearings upon converted developments are all examples of well-intended policy goals not required in the private sector, all of which will add cost.

With regard to the "Resident Choice" feature in the current proposal, my immediate concern is that it essentially allows clients who are already receiving rental assistance to jump the voucher waiting list and receive one out of every three vouchers that becomes available, which in our housing authority's case would be approximately 150 vouchers annually. We currently have over 2,000 families on the voucher waiting list, with our average wait approximately 12 to 18 months. Unfortunately, 150 fewer of these unassisted families per year would receive assistance under this proposal.

Public housing residents in my housing authority clearly have choice. Approximately 25 percent of our residents choose to leave their units annually. In this past year, about 66 of those residents were provided the opportunity to receive a voucher. They also had the opportunity to transfer to other public housing sites. Therefore, public housing residents are no more constrained in their housing choices than any of the low-income families.

With respect to regionalization, while the voluntary consolidation of housing choice voucher programs or the adoption of multi-agency portability agreements would not be required in the current proposal, I believe using this as grounds for qualification will lead to regionalization becoming a requirement for participation.

The decision to enter into a regional agreement should be left to local authorities. I think PHAs, including my own, would be far more likely to enter into cooperative agreements if the Department implemented statutory language that increased flexibility through regulatory administrative measures.

Mr. Chairman, I believe at this point there are far too many unanswered questions concerning TRA. For example, it is my understanding that the Department's proposal will be phased in over the next several years. Assuming this remains a voluntary program, what can those who do not convert expect? Would the Department continue to request capital funding resources sufficient to address the ongoing modernization needs for those who do not convert?

There also seems to be no consideration for the authorities that have currently obligated their capital funds for preservation efforts under the current Capital Fund Financing Program. Would they be able to access replacement housing factor funds?

In conclusion, who would administer the set-aside poor Resident Choice vouchers? Where will housing authorities that do not administer housing choice vouchers that are required to exercise rent choice obtain exit vouchers? The revised TRA proposal presently does not provide details on key elements that authorities like mine need to know. Should you choose to advance conversion legislation this year, I would strongly suggest first implementing a PILOT to assess its merits in a variety of markets.

Thank you for this opportunity to testify, and I am happy to answer any questions that you may have.

[The prepared statement of Mr. Taylor can be found on page 146 of the appendix.]

The CHAIRMAN. Thank you. This has been very useful, and this is obviously a very major step. We have the Choice Neighborhoods bill before us, and we have already voted out of this committee the separate bill, the reform of vouchers. As a practical matter, I think

it is unlikely that we will also in the remaining time this year, given this committee has spent so much time on financial reform, be able to finalize any action on this, but we want to get it started. And I appreciate the Secretary's fundamental impulse here, which is to get more money into public housing because it is a shame that we have done so little for the poorest people.

But I have my fundamental question, and I will ask you all to think about this: I worry about a situation in which units that are now owned publicly are foreclosed upon and become privately owned. I think that raises serious issues constitutionally of the diminution of rights you have against a public entity versus a private entity.

I think mayors might feel somewhat different about this. There are mayors who now have large numbers of public housing units in their city. The mayors in my experience have some influence over who is head of the public housing authority. These would now be purely privately owned. There is the question about how long it stays there. And part of the dilemma here is, what my colleague from Texas, who is sitting in the ranking member's chair, has now mentioned. To the extent that you write safeguards in for the tenants, you would to some extent diminish the incentive to lend.

So what I want to ask people to work on is this: I appreciate the importance of getting more money in. I certainly agree with the witness who suggested that we should not have to do this, but we do. But is there a way to access the private market that incentivizes loans but does not put public ownership of this asset at risk? I would be very reluctant to do that. The public hasn't been a great trustee, but I think abandoning the whole notion that the public has some role here would be a mistake and is unlikely in the long term to work. So let me ask preliminarily, are there things we could do that could incentivize private lending? Going to project-based Section 8 is not a problem to me. The problem—and getting, accessing private capital is obviously an advantage. The concern that I have is that if the price of accessing private capital is to put public ownership at risk, that may be too high a price.

Do any of the witnesses have any ideas about how we might access private capital in this way with alternative forms of security other than taking over a public housing authority, which I must say to many lenders probably wouldn't be their first choice how to spend their time anyway. The notion that you get to be the housing authority isn't one that is necessarily going to unlock great pools of capital. But does anyone have any ideas about that?

Mr. RHEA. Chairman Frank, my view on this is the biggest risk to foreclosure is too much leverage on these properties. One way to approach this with not dealing with your immediate issue about not having a risk of foreclosure and the private market having ownership in public housing is to ensure that the underwriting standards in which private investors and banks would participate in don't.

The CHAIRMAN. And I agree with that. But, as you said, that wasn't my question. I don't mean to be rude but I would rather talk about my question. That is a dilemma. Now, again, there may be other ways to do this that may involve alternative guarantees. But I do want to be clear that is my approach.

Mr. Gleason?

Mr. GLEASON. Mr. Chairman, I think your questions to the Secretary and your comments hit this issue right on point. I don't think as they currently—

The CHAIRMAN. Well, I am glad someone does.

Mr. GLEASON. I don't think there is a perfect solution as the market currently works. I think your suggestion just now about alternative guarantees is probably the only way that you can ensure that will take place. It would seem that those guarantees to ensure that there is public ownership after the fact would have to come from a public entity guaranteeing that.

The CHAIRMAN. Again, my colleaguefrom Texas' question started out, I am afraid of falling between two schools of writing in so many protections for the tenants which I support, but nobody wants to lend them the money, or incentivize lending the money at the price of not having the protection of the tenants. And that leads me to think of a third way.

The gentleman from Texas.

Mr. MARCHANT. Thank you, Mr. Chairman. I would like to ask unanimous consent to submit a letter signed by nine multi-family housing providers.

The CHAIRMAN. Without objection, it is so ordered. I have a list here: Public Housing Authority's Director, Mr. Rod Solomon; Massachusetts Public Housing Tenants; 19 urban academics; the Multi-Family Housing Institute of Los Angeles Housing and Human Rights; the Los Angeles Coalition on Hunger and Homeless; Chicago Housing and Human Rights; and others, a list which will be made public. I ask unanimous consent to insert their submissions in the record. Without objection, it is so ordered. And whoever gave me this, thoughtfully added at the end for me an instruction that says, to close the hearing, say this hearing is adjourned and bang gavel. I appreciate being so instructed, but whoever wrote that should say, but don't do it too soon, stupid. And the gentleman from Texas is now recognized.

Mr. MARCHANT. Mr. Taylor, you have also raised concerns about how lenders would respond to a new and untested program. Have you had any opportunity to visit with lenders about this and what effect it would have?

Mr. TAYLOR. No, I have not visited with lenders at this point. In other transactions we have done thus far they are more familiar with the project-based voucher. I can tell you when we closed those deals, at the onset they were very interested in getting those contracts in hand that are signed that commit those funds to those units for the first 20 years with that renewal. I am not sure what their response would be to this. And my concern in Charleston is that it would slow our process down. We are in the middle of redeveloping these housing authorities or these housing properties, and I am concerned changing to this new type voucher they may kind of back off some.

Mr. MARCHANT. You have expressed some concerns about the mobility in a clause in TRA. What would you suggest as an alternative to the Administration's proposal to address the matter?

Mr. TAYLOR. I am not really fond of the choice component. I understand it. A person with a tenant-based voucher already has the

right after a year to move and report their voucher to other States. That program is working. And also in a project-based unit, after a year, that tenant can choose to get a tenant-based voucher and relocate as well, and that seems to be working fine.

Mr. MARCHANT. Okay. Thank you. Ms., is it "Koenig?"

Ms. PRESTON-KOENIG. Yes.

Mr. MARCHANT. You indicated and you signed a letter that says that your industry group characterizes the changes by the Administration as being an undefined hybrid of the project-based voucher system. Can you explain to the committee what you meant by that?

Ms. PRESTON-KOENIG. Essentially, they really haven't given a great deal of detail on exactly how they expect all of this to take place. We have the sort of framework for how they anticipate some of these attributes of the conversion of the program will take place, but they haven't really told us all of the attributes of how they anticipate it will shape up. For instance, they really don't explain where they will get forward funding from for the capital, where they will get other funding from, and they really don't explain all of the rules and regulations they intend to modify and change going forward. It is not transparent.

Mr. MARCHANT. Do you believe that it places too much discretion in the hands of the HUD Secretary?

Ms. PRESTON-KOENIG. Absolutely.

Mr. MARCHANT. And do you believe that will have a chilling effect on any syndication or any group of people who traditionally put together these housing deals?

Ms. PRESTON-KOENIG. Yes, I do.

Mr. MARCHANT. Is that your major client?

Ms. PRESTON-KOENIG. Yes, it is.

Mr. MARCHANT. And do your clients have any ideas about how this capital could be put into the public system to their satisfaction that would create this battle that the chairman has talked about?

Ms. PRESTON-KOENIG. Well, right now, the system that they are working with, my public housing clients, they are working with the replacement housing factor and their capital funds and they are blending that with the existing programs that are available. So they are utilizing things like tax credits, green community funding, and other opportunities to do preservation and create opportunities that are available to them. So there are existing tools that they are using to preserve their stock.

Mr. MARCHANT. Do they access the tax exempt financing credits?

Ms. PRESTON-KOENIG. Yes, they use the tax exempt bond financing.

Mr. MARCHANT. To the State housing?

Ms. PRESTON-KOENIG. To the State housing finance program.

Mr. MARCHANT. So they are using that in addition to the tax credits?

Ms. PRESTON-KOENIG. Yes. They get the 4 percent tax credits back into the bond program, and then they balance that with the additional funds they have access to.

Mr. MARCHANT. The last question would be, if you convert public to private, do you have any property tax issues that would raise the expenses on the project whereas a project now might have a tax exempt status and have no property tax liability, whereas if you

put it into private hands you would have an immediate, the expense would go up immediately and that would be a big burden on the system?

Ms. PRESTON-KOENIG. First, I would say in many cases, public housing authorities pay a PILOT (payment in lieu of taxes) to their community so they have some tax requirements, real estate tax requirements. When you modify and include a tax credit to it, there are a lot of States that have some sort of element written into their tax code that have a modified structure, so that there is a tax component that does apply to the property itself. Most of the time public housing authority is the sponsor, so it is not technically privatizing because they have brought in their private entity as a minor member and they hold ownership and retain ownership and it converts to them after the 15-year compliance period.

Mr. MARCHANT. With some of these school districts, States being strapped right now, I would suggest that if there is a major change to this program, that State legislatures may begin to look at and use this as an opportunity to kind of come back in and redefine their exempt status on some of these projects.

Ms. PRESTON-KOENIG. I would agree.

The CHAIRMAN. The gentlewoman from New York.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. And I would like to take this opportunity to welcome my constituent from New York, Damaris Reyes. Damaris, if I may, I would like to address my first question to you, and I would like Ms. Martens to comment on it, as well. According to Secretary Donovan, PETRA will strengthen tenants' rights and those of tenants' organizations in all properties, not just those at greatest risk of losing project-based assistance.

Do you agree with the Secretary's assertion, and if not, what should we do to strengthen tenant rights going forward?

Ms. REYES. We worked with HUD and we do feel that there was a considerable amount of work that was done to include some of our suggestions regarding resident and tenant rights. There were a few minor issues around organizing, for example, like there is no clarity around the tenant participation funds which are essential in helping folks to organize, and so there is not a dollar amount. And the program itself is at the discretion of the Secretary, and with all due respect, Secretaries change and so does political will, right? And so in those areas, we are a little concerned. I think there were some places where we missed opportunities, for example, where folks who have been involved in activities on or off properties who become ineligible for public housing can be evicted, and those we should have commented or tried to address those issues for those families and we didn't address that, or like community services, things like that. So there were some good things, but you know, there are still some questions, in particular around the grievance procedures.

Ms. VELAZQUEZ. Do you have anything else to add?

Ms. MONTANEZ. I think both public housing and multi-family housing have a very strong presence. I would like to organize regulations like 245 and 964, and I think they should stay strongly in place—most of us agreed that we have. Many of the aspects of those regulations can be coordinated together as one. The $25 funding, it should be in place but it has to be very clear that it needs

to be completely independent of owners and public housing employees and management agents so that there would be no interference and no conflict of interest, as well as the resources for organizers and tenants to be also independent of the organizers, and that would strengthen the right to organize.

Ms. VELAZQUEZ. Thank you. Mr. Rhea and Mr. Taylor, PETRA applies the current requirements of the Section 3 program to convert the properties. What kind of changes do you suggest to a Section 3 program under this new subsidy scenario to maximize economic opportunities for low-income tenants?

Mr. TAYLOR. My reference to Section 3 wasn't so much a better way of implementation of it, and we actually have a Section 3 plan with our redevelopment. We do our best and our utmost to encourage folks in our community to apply for these jobs and make sure they are aware of them and monitor contractors. My point I bring up in my testimony, which is to say that while we do these programs in public housing and we are required to do these programs and we do them, there is an added cost to that. If we are to be funded like a private sector, I think it is something the private sector doesn't face that we do.

Mr. RHEA. A couple of things, obviously, as we have discussed this before, there is no current funding in place for implementing Section 3 on the part of public housing authority, so it is an unfunded mandate that requires a substantial amount of investment.

Ms. VELAZQUEZ. But it will have a greater economic impact for the local housing authorities in the sense that if you have a person who is unemployed and is in public housing get training and then employed will make their income, will have better revenues, generate better revenues for housing authorities.

Mr. RHEA. Well, I feel strongly, and I am sure all my colleagues strongly support, the ideals of Section 3, and we have done a lot at the New York City Housing Authority to implement it. We spend $5 million a year on implementing Section 3 with no actual funding from HUD or from Congress to implement the program. This is not an issue of do we have the will or the commitment to it; it is how can you support and sustain it in light of the other constraints.

The other piece is that when we look at job training and the things that will move people to work and take them from underemployment to better jobs and better wages, that has a substantial cost beyond what the housing authority on its own can do, and so we have worked on developing partnerships with not-for-profits and with the private sector that is focused on training residents and low-income Americans to put them to work. So we think partnerships and ways to encourage partnerships could be an important piece of this.

And lastly, as I mentioned in my formal testimony, we believe funding of ROS is the best direct way to do it. That program was set up to ensure that there is support for residents economically, and we would suggest that is the place.

Ms. VELAZQUEZ. Thank you.

The CHAIRMAN. The gentlewoman from West Virginia.

Mrs. CAPITO. Thank you, Mr. Chairman.

Mr. Taylor, you heard me ask the question of the Secretary, a point that you raised in your written testimony, about the extension of 20 years of obligations that you put forth in the very good replacement and regeneration of public housing, and I commend you, you are doing a great job.

The way I heard his remark was that this will free up more for development in a commercial, maybe some commercial availabilities within the housing units or near and around. How did you interpret what he said, and does it ease your mind a little bit about some of the concerns that you raised in your written testimony?

Mr. TAYLOR. Actually, it doesn't, because my concern is, and in my testimony what I am saying is we leverage one-third of our future capital funds over a 20-year period. Currently, our houses will receive about $2.1 million annually in capital funds. Over the next 20 years, right now, we will be paying $600,000 of those funds. And those funds kind of come in what we call clumped together; they are not assigned to any one development. So if the capital fund decreases, we get whatever is allotted to us minus that $600,000, which I will have to have those funds to maintain the rest of the housing developments.

Mrs. CAPITO. So your concern is on, as he said, decreasing the capital fund by $300 million, that would decrease your, whatever your, yes, and are you going to be able to meet the mortgage payments that you have extended or the payments that you have extended over the last 20 years? Am I understanding that?

Mr. TAYLOR. You are. And I am not sure that we would actually have an option to convert in this, because when we signed that loan, we agreed Fannie Mae actually was our lender in this case.

Mrs. CAPITO. Oh, that is good.

Mr. TAYLOR. But we agreed not to decrease our public housing units because it is a form of the program for the capital fund.

Mrs. CAPITO. Okay. Thank you for that.

Also on the one-to-one replacement, we have kind of gone back and forth in this in a very small way. I can't imagine, Mr. Rhea, what you go through in your units, your numbers are so much greater than ours. How do you feel about one-to-one replacement, and do you have the flexibility now and in this bill to be able to either make the decisions to move in different regions, different areas, different income groups; how do you see that?

Mr. TAYLOR. Well, my concern about the one-for-one replacement is we are piecemealing our developments to get them done. And typically in West Virginia, because a lot of them are tax credits, the 9 percent will allow us only to do about 44 units at a time. When we close those deals, I just don't know that I can commit to, if I am tearing some units down at that time or demolishing units, that I can actually commit to replace those units at that point given in time. It is the board's goal to replace the maximum units that we can back to our original configuration. But when we close a deal with a lender, and all the parties at the table, I just can't confirm on that date by a given specific time in the future that I can replace those units one-for-one. And we don't want to replace back onsite because our oldest developments that we are redeveloping, it is too dense, and it is better and safer for our residents if we dedensify somewhat.

Mrs. CAPITO. Does anybody else have a comment on the one-for-one replacement? Do you have a comment?

Mr. RHEA. Yes. Obviously, many of us are faced with legacy communities that have strong concentrations of low-income and poverty. We believe that the flexibility that is written in the proposal is prudent in that it allows for one-for-one replacement at the site but also to have one-for-one replacement in other locations, which allows you to bring in other families that would have the effect of deconcentrating poverty in our existing housing authority locations as well as allow you to build new housing in locations where acquisition of land costs and other things are less prohibitive, ultimately allowing you to bring new units on cheaper and to work with some of the other objectives of economic deconcentration. So we think that this is actually a move forward.

Mrs. CAPITO. Okay. Thank you.

Ms. Martens, this is a big question for not much time. You have commented in your testimony about what you feel are misaligned priorities of the Administration concerning preservation and conversion. Can you help us understand why you question that and how you would like to see those changes?

Ms. MARTENS. Yes. Our understanding of PETRA is that the goals are noble and good and very broad. And, we understand that in this society, there are always competing values, and we always try to have it all, and having it all often gives us consequences that are unintended. So our overarching statement is that preservation must come first.

PETRA talks about goals of preservation, streamlining programs, consolidating programs, creating opportunities for residents. And our point is that we really need to make an incremental step, because as the committee members have expressed today the risk of loss is too great to make a mistake. So what we are talking about is, first, the overriding priority of migrating public housing to a real estate platform, getting it stabilized, and from there addressing the rest of the concerns that are the right ones, creating efficiencies, creating opportunities for residents.

The CHAIRMAN. The gentleman from Missouri.

Mr. CLEAVER. Thank you, Mr. Chairman.

Ms. Koenig, I was intrigued by your statement earlier about PILOTs. In places where that occurs, who would be responsible for the PILOTs?

Ms. PRESTON-KOENIG. Could you repeat the question? I am not sure I heard it.

Mr. CLEAVER. You mentioned in some communities, they pay PILOTs, payments in lieu of taxes.

Ms. PRESTON-KOENIG. Payments in lieu of taxes. Particularly a number of the housing authorities that I work with in Wisconsin, their agreement with our communities is that they will pay a PILOT.

Mr. CLEAVER. For the school district?

Ms. PRESTON-KOENIG. They pay to support the basic infrastructure where they hold housing. So they do not pay the normal assessment that they would pay for any other entity. If they were a for-profit entity, they would pay a payment in lieu that supports

the basic school district and water and utility, fire fighting elements.

Mr. CLEAVER. I am a former mayor, and we just generally did that for, you know, tax abatements, tax income financing, that kind of thing.

Ms. PRESTON-KOENIG. It is fairly common for your public entities to have an agreement with their local governments to pay the basic levels to support that infrastructure.

Mr. CLEAVER. Ms. Martens?

Ms. MARTENS. Could I add to that, because we have done something similar in Boulder, where we have an agreement with our local government to essentially parse the PILOT so that schools and fire safety and the essential services are paid and then the rest of it is not. Because the margins of managing affordable housing are so thin that we are looking for every increment.

Mr. CLEAVER. That is why I was surprised at it because—

Ms. MARTENS. The parsing of PILOTs, I think, is not uncommon.

Mr. CLEAVER. To those of you who operate housing authorities, do you think that this issue of mobility, the mobility option, is a way for us to finally achieve scattered site housing?

Mr. Graziano?

Mr. GRAZIANO. I think the mobility question is really one of fairness. There are thousands of people on the waiting list for Section 8 and they, too, want to have mobility, they, too, want to have affordable and decent housing. So I would make a modest proposal to modify this currently written bill to say that if people are in developments that are converted from public housing to this new model, that they certainly can apply for Section 8 and be put on the waiting list like everybody else. And then that way, their name would come to the top of the list in the same timeframe that somebody else's would. The notion that somebody after 2 years would trump other people who have been on the list for several years, I think is problematic.

We certainly embrace the notion of choice, but it should be equitably delivered. So I think we just say if your development is converted you simply apply, which you can do anyway, for the Section 8 program, your name will move up the list naturally.

The other point I would say about that is if it is within a public housing inventory and some portion of the portfolio has been converted and some has not, there could be provisions to allow people to move from a converted site to a nonconverted site within the public housing authority's portfolio, assuming there were vacant units. Because currently you can apply to transfer from one development to another, there is no reason why we couldn't modify that to say you can go from a former public housing site that was converted to another site that is still public housing. So there are ways to deal with this that are equitable.

Mr. CLEAVER. But do we have a challenge? One of the problems, at least when we have tried scattered site housing in the past, is that when we go to the private market, the Section 8 voucher is not sufficient to live anywhere except another low-income neighborhood.

Mr. GRAZIANO. We have had very good success actually with people using their vouchers to move not only throughout the City, but

the metropolitan area of Baltimore. You do have to pay a higher rent in those areas, so therefore you have to have that flexibility on the rent standard.

Mr. CLEAVER. All right. Ms. Koenig?

Ms. PRESTON-KOENIG. I think when you asked the question about mobility, this mobility, this choice that they are offering doesn't actually open up changes to how someone will access housing in the greater nation. All it does is move people up, jump them up in front of people who are waiting. It doesn't change their access to housing around the Nation, it just allows them to say, I no longer want to be here and now I get one out of the next three available, so now the people who have been waiting have to wait longer. It doesn't change their ability to find other housing choices.

Mr. CLEAVER. Thank you, Mr. Chairman.

The CHAIRMAN. I am going to go one more round. Mr. Taylor, you intrigued me. You said you have a loan from Fannie Mae. What kind of loan?

Mr. TAYLOR. Fannie Mae has a product called Modernization Express.

The CHAIRMAN. Called what?

Mr. TAYLOR. Modernization Express. It is just a product name. But in HUD now, there is a Capital Fund Financing Program, we call CFFP, and again it is where you leverage one-third of your capital funds. And when we put that out for bid, and it may speak to lenders interested in this, I am not sure, but when we put that out for bid, we had two responses: one from Fannie Mae; and I think the other one was from Bank of America.

The CHAIRMAN. And which one did you take?

Mr. TAYLOR. We took the Fannie Mae.

The CHAIRMAN. Why?

Mr. TAYLOR. They had a product that was more readily approved.

The CHAIRMAN. When was this?

Mr. TAYLOR. We closed it actually last summer, but it has been in process since 2004. We have been working on the deal that long.

The CHAIRMAN. Is that a useful product, do you think, that Fannie Mae has?

Mr. TAYLOR. Very useful.

The CHAIRMAN. Do you think we should abolish that product before we come up with a replacement?

Mr. TAYLOR. Excuse me?

The CHAIRMAN. Should we abolish their ability to offer that product without coming up with a replacement?

Mr. TAYLOR. I don't think so. I like that product.

The CHAIRMAN. Thank you. I hope you inspired some others.

The hearing is adjourned.

[Whereupon, at 12:30 p.m., the hearing was adjourned.]

A P P E N D I X

May 25, 2010

Written Testimony of Shaun Donovan
Secretary of the U.S. Department of Housing and Urban Development
Transforming Rental Assistance
Hearing before the House Financial Services Committee

Tuesday, May 25, 2010

Mr. Chairman, Ranking Member Bachus, members of the Committee – I want to thank you for holding this important hearing and giving me the opportunity to testify on the Administration's proposed legislation to implement the Transforming Rental Assistance initiative submitted as part of the President's Fiscal Year 2011 Budget Request.

I also want to thank you for the key role this Committee has played in helping to preserve the stock of affordable housing, and to make the policies governing this housing work more effectively. The legislation builds on the substantial work this Committee already has done.

I want to focus on what I believe is the single most important thing we do at HUD – and that is to provide rental assistance to America's most vulnerable families.

Indeed, the current housing crisis has underscored the broad impact HUD has on people's lives, with our public housing program alone serving 2.3 million residents in 3,500 communities. In all, HUD provides deep rental assistance to more than four-and-a-half million households – helping families, and also giving communities the tools they need to tackle their development needs and challenges.

An Unsustainable System

Unfortunately, for all of our progress, HUD's continued ability to serve families in need is at risk.

As you know, this administration came into office during the worst financial crisis since the Great Depression. At one point, housing prices dropped every month for over two years. During that time, homes lost over $6 trillion of their market value. The lending market was stopped dead in its tracks. In helping our economy recover, it was essential that we strengthened the housing market and helped families maintain their homes. We have clearly made substantial progress --restoring a trillion dollars in home equity in the last year, stabilizing the housing market as a result of keeping interest rates low, making sure capital is available through FHA and other means at those low interest rates, ensuring that there is demand through the homebuyer tax credit, as well as attacking foreclosures directly.

But the harm inflicted by the economic crisis we inherited was by no means limited to homeowners and homeownership. In fact, this crisis reaffirmed the need to achieve a better

balance between ownership and rental housing and to provide more options—and better options—for families.

It does not take a housing expert to see that HUD's rental assistance programs desperately need simplification. HUD currently administers thirteen different rental assistance programs, each with its own rules, managed by three operating divisions with separate field staff. Too often, additional programs designed to meet the needs of vulnerable populations have been added without enough thought to the disjointed system that would result. This unwieldy structure fails to serve the Department, our government and private sector partners, and—most importantly—the people who live in HUD-supported housing.

In my last job, as Commissioner of the New York City Department of Housing Preservation and Development, I personally experienced the challenges of working with HUD rental assistance to preserve and develop affordable housing on a large scale. While implementing the City's 165,000 unit New Housing Marketplace plan, it was a constant struggle to integrate HUD's rental assistance streams, and capital funding resources for that matter, into the local, state, and private sector housing financing that we had to leverage in order to get the job done.

But I was willing to deal with the transaction costs of engaging with HUD's misaligned subsidy programs for a simple reason: the engine that drives capital investment at the scale needed, in a mixed-finance environment, is typically a reliable, long-term, market-based, stream of **federal** rental assistance. Historically, no other mechanism—and no other source of government funding—has ever proven as powerful at unlocking a broad range of public and private resources to meet the capital needs of affordable housing. Our programs may be imperfect, but they are absolutely irreplaceable.

This said, tolerating the inefficiencies of the status quo is no longer an option. The challenges this Department faces are too great to continue to ignore the costly inefficiencies created by the current array of programs. And quite frankly, the capital needs of our Nation's affordable, federally-assisted housing stock are too substantial and too urgent. The Public Housing program in particular has long wrestled with an old physical stock, and currently has a backlog of unmet capital needs that may exceed $20 billion. To be sure, nearly two decades of concentrated efforts to demolish and redevelop the most distressed public housing projects, through HOPE VI and other initiatives, has paid off. The stock is in better shape overall than it has been in some time, and the $4 billion in ARRA funds targeted to public housing capital improvements are further stabilizing the portfolio. This very progress has created a unique—but time limited — opportunity to permanently reverse the long-term decline in the Nation's public housing portfolio and address the physical needs of an aging assisted housing stock.

My many years of experience in dealing with affordable housing on a large scale—both in New York and overseeing HUD's multifamily assisted housing programs during the 1990's—have drilled home two key lessons. First, it is far more costly to build new units than to preserve

existing affordable housing. And, second, an affordable housing project can limp along for some time with piecemeal, ad hoc strategies to address its accumulating capital backlog, but eventually the building will reach a "tipping point" where its deterioration becomes rapid, increasingly expensive to remedy, and often irreversible. This moment in time calls for a timely, crucial federal investment to leverage other financial resources to the task of maintaining the number of safe, decent public and assisted housing units available to our nation's poor families—an objective that, if we don't begin to act now, will end up costing the taxpayer substantially more to achieve by other means.

Not only are many properties deteriorating, but enterprising public housing agencies have been driven to look for ways to raise the capital that properties need but that is not available in the current public housing program. The absence of a viable preservation strategy has led to the loss of 150,000 units through demolition or sale over the last 15 years. Given the size of the federal deficit and the challenges we've inherited, it's clear the Federal government alone will not be able to provide the funds needed to bring properties up to date and preserve them for the next generation. We will do our part, but we will need partners to supply the capital needed.

And, of course, rehabilitating these aging properties is not enough. As great as capital needs are, the depth of human needs is even greater.

Decades after William Julius Wilson awakened America to the shattered lives of those living in public and assisted housing in our poorest neighborhoods with *The Truly Disadvantaged*, countless residents still remain trapped in neighborhoods of concentrated poverty – because moving means giving up their subsidy.

Particularly in this challenging economy, tenants of HUD-subsidized projects also need the option to pursue opportunities for their families in other neighborhoods and communities as they arise, without losing the subsidy that is so crucial to maintaining their housing stability. Today, we lack the seamless connection that should exist between HUD's largest project-based assistance programs— Multifamily Project-based Section 8 (PBRA) and public housing—and the Housing Choice Voucher program. This leaves tenants of PBRA and public housing with limited ability to move to greater opportunity. As a result, these families not only lack mobility – in many cases, they lack opportunity and choice.

And so Mr. Chairman, at this moment, we face a choice of our own: we can approach the challenges facing this population ad hoc, piecemeal, from program to program, as we have for decades.

Or we can deal with them now, in a comprehensive way, and put our rental assistance programs on a more sustainable footing for years to come.

With this perfect storm of challenges and opportunities before us, I believe now is the moment to finally move HUD's rental housing programs—and the people who rely upon them—into the housing market mainstream.

Transforming Rental Assistance

To address these issues, HUD proposes to launch an ambitious, multi-year effort called the Transforming Rental Assistance (TRA) initiative that forms the basis of the legislation we discuss today. This initiative is guided by five fundamental principles:

1. **Streamline and simplify--** The complexity of HUD's programs is part of the problem. We must streamline and simplify our programs so that they are easier for families to access, less costly to operate and easier to administer at the local level. TRA is intended to move properties assisted under these various programs toward a more unified funding approach, governed by an integrated, coherent set of rules and regulations that better aligns with the requirements of other of federal, state, local and private sector financing streams. In a world where the old city/suburb stereotypes are breaking down, and our metropolitan areas are emerging as engines of innovation and economic growth, we have to ensure our rental assistance programs keep up.

2. **Change the funding structure to leverage capital --** The key to meeting the current and ongoing capital needs of HUD's public housing portfolio lies in shifting from the federal capital and operating subsidy funding structure we have today—which exists in a parallel universe to the rest of the housing finance world—to a federal project-based subsidy that lenders understand and that can be used to leverage additional capital from public and private sources. This can be done *without* risking the loss of assisted units.

3. **Bring in the market --** Bringing market investment to all of our rental programs will also bring market discipline that drives fundamental reforms. Only when our programs are truly open to private capital will we be able to attract the mix of incomes and uses and stakeholders necessary to create sustainable, vibrant communities.

4. **Encourage resident choice --** We must combine the best features of our tenant-based and project-based programs to support resident choice and mobility. It's wrong that residents of public and assisted housing cannot choose where they want to live unless they give up the rental assistance that they need. TRA reflects HUD's commitment to complementing resident choice with the benefits that a reliable, property-based, long term rental assistance subsidy can have for neighborhood revitalization efforts and as a platform for delivering social services.

5. **Target the Neediest Families** – Lastly, HUD must continue to target its rental assistance resources on the neediest families. TRA maintains the targeting and affordability requirements embedded in programs under the U.S. Housing Act.

The Preservation, Enhancement, and Transformation of Rental Assistance Act

Mr. Chairman, in crafting this proposal, we didn't approach this subject lightly. Over the past year, we conducted an extensive strategic planning process that engaged over 1,500 internal and external stakeholders plus tens of thousands more through the Internet. We hosted three convenings with a cross-section of state and local agency administrators, residents, developers, property owners, lenders, advocates and other stakeholders to explore in depth issues in each of our three major rental assistance programs. We also held two additional convenings with residents of our programs, one with public housing residents and in the other, for the first time in the history of the Department, we brought together tenants of public and assisted housing and participants in the Housing Choice Voucher program to discuss how these programs could be improved.

Collectively, this process has not only affirmed the need for our rental programs to change, but also provided valuable insight into *how* they must change – what works, what doesn't and what we need to do better. It is based on this feedback from those who know our programs best—their strengths and their weaknesses—that we have developed the legislation before you today.

The Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010 (PETRA) will authorize the conversion of public and assisted housing properties to long-term property based rental assistance under Section 8 of the U.S. Housing Act. I want to underscore that participation in the programs authorized by this legislation is entirely ***voluntary*** and up to each public housing agency (PHA) and assisted owner.

We recognize that it will be important to demonstrate that conversion will help owners leverage the funds needed to rehabilitate their properties and that tenants will benefit from the changes TRA will make possible. This is not to say that this legislation, even after it has been modified and approved by the Congress, will be the last word on transforming rental assistance. Experience also will certainly teach us how the policies in this legislation can be improved, and we want to work with this Committee to ensure that will be done, if and when it is necessary.

Allow me now to explain the specifics of the legislation.

Basic Policies

PBC or PBV contracts

Through a new section 8(n), the bill will allow HUD to enter into rental assistance contracts with PHAs similar to current project-based section 8 contracts, but with some important

improvements. Most public housing properties would convert to these project-based contracts (PBCs). Properties that qualify as small or partially assisted will have the option to convert to a PBC or to a project-based voucher (PBV) subsidy.[1] PETRA proposes some modifications to the current project-based voucher program to make it easier to use for new development and to make core policies consistent with the new project-based contracts under 8(n). Most of our proposals are similar to policy changes this Committee already approved in the Section 8 Voucher Reform Act (SEVRA), H.R. 3045, and they are discussed further below.

The policies governing these long-term contracts are designed to preserve this largely irreplaceable public resource and at the same time achieve the first three principles that guide the TRA initiative: streamlining, changing the public housing operating and capital funding structure to leverage capital, and bringing market principles into the operation of the properties. In addition, PETRA will enable residents of converted properties to move with rental assistance, similar to the residents of properties with project-based voucher assistance and other voucher program participants, and will require that converted properties continue to provide affordable homes to the neediest families.[2]

Use agreement and contract term

Converted public housing properties will be subject to a use agreement for a minimum of 30 years.[3] The use agreement locks in the critical requirements to provide a specified number of units to income-eligible tenants paying rents at the levels required by the U.S. Housing Act. Initial contracts for converted public housing properties will be for a 20-year term, subject to annual appropriations. Repeated contract extensions of up to 20 years would be permitted and could be agreed to in advance (to provide more security to lenders or for other reasons). To preserve the public asset, owners of former public housing properties must agree to any

[1] A "small" property is one with 25 or fewer units. A "partially assisted" property eligible for conversion to PBVs is one that has project-based assistance for no more than the greater of 25 units or 25 percent of the units; or for no more than 40 percent of the units if (a) the property is located in an area of low-poverty (20 percent or less) or (b) where vouchers are difficult to use, or (c) the units serve elderly families or (d) households eligible for available comprehensive social services. PETRA section 5, pp. 45-46, amending sec. 8(o)(13)(D) of the U.S. Housing Act.

[2] The same rent rules that apply generally to Section 8 and public housing residents, contained in Section 3 of the U.S. Housing Act, will apply to converted units. At least 40 percent of new admissions each year to converted properties must be extremely low-income households (with incomes at or below 30 percent of the area median income). See PETRA section 6(d), p. 54. This is the same standard that now applies to public housing (on an agency-wide basis) and to Multifamily project-based section 8 properties.

[3] See new section 8(m)(2)(E)(i), PETRA p. 24. Some states impose much longer use agreement periods for properties receiving Low Income Housing Tax Credits. The bill allows HUD the flexibility to set parallel requirements.

extension offered by the Secretary.[4] A PHA cannot sell or otherwise transfer a converted public housing property without the permission of HUD, which has the first option to purchase.[5]

Consultation requirements

Prior to applying to HUD to convert to a section 8 funding stream, a PHA would be required to consult with residents of the property, the PHA's Resident Advisory Board, and the public. (The bill specifies that the decision to convert the form of HUD subsidy is a "significant amendment" to the PHA plan, triggering these requirements.[6])

Conversion process

HUD will establish priorities and criteria to select properties for conversion through notices in the Federal Register. This procedure allows HUD to adapt priorities for conversion based on the amount of funding made available in appropriations acts and any requirements imposed by the appropriations bill. PETRA lists four outcomes for the "conditions and procedures" governing the conversion process:

1. Promoting the rehabilitation, energy-efficiency, and long-term financial and physical sustainability of properties;
2. Deconcentrating poverty;
3. Increasing administrative efficiency; and
4. Promoting physical accessibility for persons with disabilities.[7]

A rent comparability study and "green" physical condition assessment will be required as part of the conversion process. Properties will be underwritten to ensure their long-term physical and financial sustainability, including through the establishment of a capital replacement reserve that will enable owners to address repair and rehabilitation needs as they arise. The capital needs backlog that is such a prominent feature of the public housing program today will become largely a thing of the past. HUD will be authorized to charge fees to owners for the costs of such studies and for the underwriting.[8] HUD will establish physical condition standards for converted properties, and in fact will be authorized to make such standards uniform for all of its rental assistance programs.[9]

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[4] Section 8(n)(2)(B) lines 20-22, p. 36. A parallel requirement for converted public housing properties with project-based vouchers would permit a PHA to decline to offer to extend a contract only with the advance approval of the Secretary. PETRA, p. 47, lines 10-15, amending section 8(o)(13)(G).

[5] Section 8(m)(2)(Q), p. 32. If HUD has no funds available that may be used to purchase such properties, HUD would act as an intermediary to identify an appropriate purchaser. In addition, and as is currently the case with virtually all of HUD's contracts with owners under the project-based section 8 programs, the assistance contract will require an owner to obtain HUD's permission prior to sale of an assisted property during the term of the contract, and the contract would be assigned to an approved purchaser.

[6] See section 8(m)(2)(B)(iv), p. 20.

[7] Section 8(m)(2)(A), p. 19.

[8] Section 8(m)(1)(E)(i)(I), p. 18.

[9] Section 8(m)(1)(A)(vi), p. 11.

Unit rents

Rents will be market-based. Asking rents will be capped at the comparable market rent for similar unassisted properties in the area, up to 110% of the applicable area rental,[10] unless HUD approves a market rent above this cap.[11] A below-market rent would be permitted for a property that is physically and financially sustainable at such lower rent; HUD could use this authority if the competitive process for properties to be selected for conversion does not prevent "windfall" rents. Rents for units that are exempt from local rent control would have to be reasonable in comparison with other exempt units. For properties that are not sustainable at the comparable market rent, *and* meet HUD-established criteria for preservation-worthiness, HUD could approve an exception rent. Exception rents would be strictly capped at the higher of 110 percent of the applicable area rental or 120 percent of the comparable market rent.[12] Before approving an exception rent, HUD would have to consider whether a PHA (or other owner) could use unexpended HUD funding in lieu of an above-market rent to meet the property's needs.

Leverage

For the public housing portfolio as a whole, we estimate that the shift to rental assistance contracts authorized by PETRA would leverage more than $25 billion in private capital.[13] This substantial leverage capacity will result not only in improved living conditions for residents but also in increased employment opportunities.

Together with the investments that Congress has made through HOPE VI and ARRA, as well as grants that will be available through the Choice Neighborhoods program, we believe that the capital that can be raised through a market-based rent policy will be sufficient to rehabilitate most properties. We recognize that some properties will have greater needs than can be met with this one tool, particularly if PHAs determine that the best strategy for a property is to replace it rather than rehabilitate it. Like other affordable housing properties, these properties will need to access additional capital through the Low Income Housing Tax Credit, HOME grants, housing trust funds (state, local and hopefully soon federal), or other sources. Based on the experience of the initial phases of TRA as well as the Capital Needs Study,[14] HUD will have the more

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[10] HUD is in the process of designing a new Small Area Fair Market Rent policy to make FMRs more accurate and respond to the directive of this Committee in SEVRA. See http://www.huduser.org/portal/datasets/fmr/fmr2010f/Small_Area_FMR_Demonstration.pdf, 75 Federal Register 27808, May 18, 2010. To allow for this change in FMR calculations, the bill uses the term "applicable area rental" instead of "fair market rental."

[11] HUD may approve a market rent above 110 percent of the applicable area rental for properties converted under section 8(n) if the properties meet preservation criteria established by the Secretary. Section 8(n)(3)(A)(i), p. 37.

[12] Section 8(n)(3)(ii), pp. 37-38. Exception rents will be available only for properties that convert to project-based contracts with HUD under section 8(n). Project-based voucher rents will continue to be capped at comparable market, but PETRA would give HUD new authority to grant exceptions to the 110% of FMR rent cap.

[13] These estimates are based on a pro forma modeled on the terms of FHA mortgages and the rent policies in PETRA. Comparable market rents are based on gross rents for units rented with housing vouchers in the area and applicable area rentals (FMRs) are calculated under the Small Area FMR methodology (see note 10). .

[14] HUD hopes to have the results from the Capital Needs study by November 2010.

complete data needed to assess whether additional tools are needed to complete the process of preserving public housing.

Cost

Conversion of public housing to long-term property-based Section 8 contracts that will leverage the capital needed to rehabilitate properties will cost somewhat more than the current operating and capital subsidies. Some stakeholders have been surprised at the relatively low incremental cost of the change we are proposing compared to the substantial leveraging potential. Let me take a moment to explain why this is the case. There are two basic reasons. First, the change to a single rental assistance funding stream that can leverage debt means that PHAs can borrow the funds needed to rehabilitate their properties, and can use most of the funding they otherwise would have received through the Capital Fund to make payments on the mortgage (minus the amount saved in a replacement reserve). Second, an additional $1,000 per year in funding available for debt payment leverages $13,500 in loan funds.[15] Thus, with the $290 million requested for the supplemental cost of conversion in the 2011 budget, we expect properties converted in phase one to leverage approximately $7 billion.

Ownership

The changes we're proposing aren't about who owns public and assisted housing – but how it's funded. For years, we've seen public sector owners lose units for lack of funding: the programs under which they operate are unsustainable. By allowing public owners to access capital and other resources like private owners do today, we're leveling the playing field and making the preservation of publicly-owned housing much more possible.

TRA strongly promotes the retention of public ownership of properties that have been developed and funded under the public housing program. By enabling public housing properties to tap their accumulated equity value to meet their capital needs, as owners of any other form of real estate do, the long-term Section 8 rental assistance contracts authorized by PETRA will make it more likely that properties will remain publicly owned and affordable to the lowest income households – bringing these properties into the mainstream, with the mixed incomes and uses that are so vital to creating sustainable communities. Indeed, we anticipate that many properties will be able to meet their capital needs without Low Income Housing Tax Credits, through borrowing and possibly capital grants from other sources, and thus will easily be able to remain publicly owned.

If PHAs do need LIHTCs to fund the rehabilitation or replacement of properties—requiring some form of partnership with an entity that has tax liability—PETRA encourages PHAs to establish for this purpose an instrumentality or affiliate over which the PHA retains effective public control. If PHAs structure the transaction in this way, the conversion process will be streamlined and agencies will not be required to go through a separate process to "dispose" of the

[15] This assumes a 35-year mortgage at 6.7% interest (including mortgage insurance).

property.[16] Further, it is important to recognize that while relatively few public housing agencies have met capital needs through tax credits and private debt, this is how housing production and preservation have been financed for decades. Having run HUD's multifamily programs and built and preserved tens of thousands of housing units in New York City, I've seen that for myself.

Preservation

I have already described the policies concerning rents, contract terms and extensions, and the minimum 30-year use agreement with HUD's first option to purchase that are the core elements of the preservation strategy embodied in PETRA. In addition, PETRA places a set of obligations on HUD and owners to avoid a loss of assisted units.

No reduction in families assisted

PETRA states that HUD's policies and procedures must assure that there is no reduction in the number of families receiving rental assistance as a result of conversion.[17]

One-for-one replacement

Owners and HUD will have particular obligations with regard to maintaining the number of units with project-based rental assistance (one-for-one).[18] If a PHA proposes, as part of the conversion process, to reduce the number of assisted units on the site of the converted property, the PHA must provide a plan for timely replacement of units to be demolished or that otherwise would not receive rental assistance (as a result of a mixed income plan or other reason). Replacement housing must reflect the number of bedrooms that are needed to adequately serve returning tenants, waitlist applicants, and future projected need, and may be located on the original site, in the neighborhood or in another location within the metropolitan area not more than 25 miles from the original site. Any off-site replacement housing must be located in areas that qualify as revitalizing neighborhoods or in other areas that are not extremely poor or where the share of the population composed of members of racial or ethnic minorities is not greater than the share of such families in the overall metropolitan area or rural county in which the project is located.

Only if data demonstrate that the area housing market has persistently high vacancy rates and that vouchers are easy to use, including in neighborhoods of opportunity, would a PHA or private owner be permitted to replace up to half of converted units with tenant-based vouchers. Less than 10 percent of current public housing and multifamily assisted units are potentially subject to this exception, largely because few areas have persistently high vacancy rates. HUD

[16] Section 8(m)(2)(M)(ii), p. 30.
[17] Section 8(m)(2)(B)(ii), p. 20.

[18] Section 8(m)(2)(D), pp. 20-24.

would be required to issue new vouchers to replace any such units, regardless of whether the units were occupied at the date of the conversion request.[19]

Once a property is converted, the use agreement and the rental assistance contract will require the PHA or private owner to maintain the number of assisted units under contract. The assistance contract may be transferred to another property (for some or all of the units) only with HUD's agreement and if tenants' relocation rights are fully protected. In the unlikely event that a PHA or owner would sell or transfer a property to another owner, the same requirements and tenant protections would apply.

Protections against foreclosure, bankruptcy and the termination of assistance
We have listened to the concerns of residents and others that despite these policies, mortgaging properties creates a risk that PHAs will default on their loans or otherwise mismanage funds, leading to foreclosure, bankruptcy, and potential termination of the rental assistance contract. I am as committed as these stakeholders to preserving these precious resources, and I want to assure you that the legislation before you today contains an unprecedented combination of policies intended to minimize the risk to tenants or of the loss of deeply affordable rental units in the unlikely event of a foreclosure, bankruptcy or owner malfeasance.

In addition to the private sector asset management that will come with leveraging debt or equity, most converted properties will be required to submit annual financial statements to HUD and will be subject to regular monitoring of their physical and financial condition through HUD's performance-based contract administrators (PBCAs).[20] Complementing HUD's monitoring efforts, tenant organizations—required by PETRA to be independent of PHAs—will be able to "blow the whistle" if properties are not being well-managed or maintained. Further, PETRA will give HUD new powers to bring legal actions directly to enforce compliance with the terms of the contract and the governing law.[21] Before a property enters foreclosure, HUD will have authority under PETRA to transfer the rental assistance to another property (or properties) that can house the tenants,[22] and the threat of such a transfer is likely to be a strong incentive for owners to bring properties into compliance or to sell them to a mission-oriented entity. HUD also has the authority to condition receipt of cash flow upon owner compliance with physical, financial, and other program requirements — another strong incentive.

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[19] Section 8(m)(2)(D)(v), pp. 22-23. PETRA also allows a PHA or other owner, regardless of market conditions, to demolish or eliminate up to 5 units (or 5 percent of the units, if fewer) to modify the number of bedrooms or provide services to residents. Section 8(m)(2)(D)(vi).

[20] Only the small share of properties that convert to project-based voucher contracts will not be subject to such HUD oversight because HUD is not a party to such contracts.

[21] Section 8(m)(1)(A)(viii)(I), p. 12, gives the HUD Secretary the power to enforce rental assistance contracts and use agreements, or bring other enforcement actions (except regarding the Fair Housing Act), rather than having to rely on the Justice Department, which often has other priorities. Section 6(e) of PETRA, pp. 54-56, would give HUD similar powers regarding public housing agencies administering rental assistance. These are very important new tools to help ensure that properties are well-maintained, eligible families are served, and public funds are used for their intended purposes.

[22] Section 8(m)(1)(A)(viii)(II), pp. 12-13.

If despite this new set of tools a lender does foreclose on a mortgaged property or a PHA/owner declares bankruptcy, PETRA provides that the Section 8 contract, tenants' leases and the use agreement either remain in place, as they do in the case of most multifamily assisted properties today, or are transferred to another property.[23]

Resident involvement and tenant rights

PETRA creates a platform to establish uniform standards and requirements for resident involvement and tenant rights across rental assistance programs. For public housing tenants, PETRA maintains and enhances the rights that such tenants have long enjoyed, including the right to be involved in decisions about their housing and to procedural protections in the case of adverse actions. The bill will also provide tenants the right to move to a location of their choice without sacrificing the rental assistance they need. (The Resident Choice option is discussed further below.)

Participation

PHAs will continue to be required to include at least one assisted tenant on their governing board on the board of directors or commissioners. PHA Plan requirements, including requirements concerning Resident Advisory Boards, are not amended.[24] The right of tenants to be consulted about a PHA's proposal to convert to Section 8 project-based assistance is noted above. In addition, tenants potentially subject to relocation due to rehabilitation or replacement of a property or transfer of a rental assistance contract to another property must be consulted in advance and be provided with relocation assistance.[25]

Tenant organizations

PETRA will substantially strengthen the rights of recipients of HUD-funded rental assistance, including residents of converted public housing, to organize. PHAs will be required to "give reasonable consideration" to concerns raised by "legitimate" tenant organizations concerning tenants' living environment and the terms and conditions of their tenancy. All tenants with HUD-funded rental assistance would be guaranteed the right to organize independent of owners or public housing agencies. This provision would establish uniform requirements regarding recognition of "legitimate" tenant organizations, including organizations of voucher program participants and jurisdiction-wide or area-wide organizations; and would authorize the use of a portion of rental assistance renewal funding to support tenant organizing – ensuring we have eyes and ears on the ground.[26]

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[23] Section 8(m)(1)(A)(vii), pp. 11-12. HUD may modify this requirement "if necessary to generate sufficient lender participation."

[24] PHAs with 550 or more vouchers and remaining public housing units would continue to be subject to annual planning requirements, and residents of all HUD-assisted properties owned by the PHA would be eligible to participate in the planning process.

[25] Sec. 8(m)(2)(E)(iii), (G), pp. 24-26..

[26] Section 8(m)(1)(A)(ii), pp. 5-6, and sec. 8(m)(1)(F), pp. 18-19.

No loss of housing as a result of conversion

The change in funding source for rental subsidies should be seamless for tenants.[27] Residents of converting units will not be subject to re-screening or termination because of conversion.[28] If tenants are displaced temporarily while properties are rehabilitated (or replacement housing is constructed), they will have a right to return so long as they have not committed "serious or repeated violations of material terms of the lease."[29]

Procedural rights

Procedural rights for applicants to and tenants of public housing converted to Section 8 assistance are maintained. New section 8(m)(1)(A)(iii) establishes the core elements of due process review that apply to all adverse actions. These rights are essentially the same as those enumerated in section 6(k) of the U.S. Housing Act regarding "administrative grievance procedures" for public housing tenants. Moreover, PETRA incorporates in statute more specific procedural rights for applicants than the U.S. Housing Act currently provides.[30]

Finally, PETRA would authorize HUD to create uniform procedural rights for all rental assistance programs, simplifying the maze of rules that now apply to PHAs operating different HUD programs. In recognition of the fact that the requirement to provide procedural rights to applicants and tenants entail costs for assisted owners, PETRA specifies that HUD must consider such costs as operating costs of the property.

Resident Choice Option

Providing residents with choice is a centerpiece of the Transforming Rental Assistance initiative.

As I noted at the outset of my testimony, it is wrong that residents of public housing and our old assisted housing cannot choose to live where they want without giving up the rental assistance they need. In the last decade, new federal policies have overcome this division between place-based and people-based assistance. The project-based voucher program incorporates a hybrid policy that allows an owner the security and capital leveraging of a long-term property-based contract while assuring that residents can choose to move with available tenant-based vouchers.

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[27] Higher income public housing tenants who are paying less than 30 percent of adjusted income for rent, due to ceiling or flat rent policies, will be required to pay 30 percent of income for rent and utilities, like all other assisted tenants. If 30 percent of adjusted income exceeds the rent and utility allowance for the unit, the family could remain in place as an unassisted tenant. The subsidy would remain available for the unit in the future if the family's income drops or the family is replaced by a new tenant that qualifies for assistance. Sec. 8(m)(2)(F), p. 25.

[28] Sec. 8(m)(2)(F), p. 25.

[29] Sec. 8(m)(2)(G)(ii), p. 26.

[30] Under section 8(m)(1)(A)(iii), pp. 6-9, applicants and tenants must be notified of ineligibility or other adverse actions, including eviction or termination of assistance, and have a right to request a review of the decision, which must be conducted by an independent person. The applicant or tenant has the right to inspect relevant documents at a reasonable time in advance, to bring a representative to the review, and to receive a written decision. Section 6(c)(3) of the U.S. Housing Act, 42 U.S.C. 1437d(c)(3), states only that denied applicants shall be notified of the reasons and an opportunity for an "informal hearing" with no specific procedures required.

This policy represents the future – and will apply to *new* development with HUD rental assistance.

PETRA would create a similar hybrid policy for properties initially developed under one of the older programs that converts to assistance under the new section 8(n). To balance concerns we heard about implementation and fairness, after an assisted household has resided for two years in a property converted to a project-based contract, the family would be eligible to receive an available Housing Choice Voucher to move to a location of their choice. The property-based rental assistance would remain with the unit.

The primary source of such voucher assistance would be turnover in the Housing Choice Voucher Program as families leave the program. About 11 percent of voucher households leave the program each year, making about 240,000 vouchers available for reissuance if Congress fully funds voucher renewals. HUD may also be able to provide a modest amount of funding for additional moving vouchers by reallocating voucher funding that agencies leave unspent above the level of allowable reserves, as proposed in the 2011 budget and in the Section 8 Voucher Reform Act. Reliance on turnover vouchers to provide moving vouchers means that many families can be provided this important new right *at no additional cost.*

A public housing agency that administers vouchers in addition to public housing would be required, if one or more properties is selected for conversion, to make available not more than one-third of its turnover vouchers to support families exercising the Choice Option. This limitation would enable most turnover vouchers to serve applicants on voucher waiting lists. When tenants exercise their Choice Option, new families would be able to receive rental assistance by moving into the vacated units, so the total number of new households receiving HUD-funded rental assistance each year would not decrease as a result of extending a Choice Option to converted properties.

The Choice Option for residents of properties assisted under section 8(n) would be more limited than for residents of properties that have project-based voucher contracts. Under the PBV program, residents who want to move receive the next available voucher after one year. This policy encourages agencies to choose to project-base assistance only in properties in which tenants would want to continue to live, and helps give assisted tenants the same right to move at the end of their lease term as unassisted families.

After substantial analysis of expected demand for moving vouchers and the limited supply at a time of constrained resources, we have concluded that it is not feasible to extend the existing PBV policy to all converted properties without unduly distorting voucher waiting lists and undermining the important role vouchers play in meeting diverse community needs.[31] In

[31] HUD's modeling suggests that these policies will provide a sufficient supply of vouchers to meet anticipated demand for moving vouchers for a majority of, but not all, public housing properties. It will be important to analyze how this new feature works in practice, whether demand is similar to our estimates and how the policy affects

addition, the two-year wait before residents of most converted properties can receive a moving voucher will deter applicants from accepting an available unit with an intention to leave as soon as possible.

Application of PETRA to Other Properties with Project-based Rental Assistance
In addition to public housing, PETRA would allow owners of other properties with HUD-funded project-based rental assistance to convert to long-term Section 8 property-based rental assistance contracts. This option is an important means of preserving the approximately 47,000 units now assisted under legacy programs that have no such long-term renewal feature.

Currently, HUD provides rental subsidies to 9,585 households through the Rent Supplement program and to 11,380 households through the Rental Assistance Program (RAP). The funding for these contracts was provided decades ago, and is rapidly diminishing. The majority of the 380 remaining contracts for these properties will expire within the next seven years, and many will run out of money before their expiration date. HUD has no authority to renew these contracts or to offer owners new project-based assistance. Indeed, just in the last month, contracts on five properties with more than 100 assisted families expired and could not be renewed. PETRA would create the authority to preserve these properties, giving owners the same options to convert to contracts with HUD under section 8(n) or to project-based voucher contracts as discussed above for public housing.

There are also about 25,000 units assisted under the 1980s-era Section 8 Moderate Rehabilitation program, administered by PHAs, that are now eligible only for annual contract renewals. Without long-term rental assistance, these properties have difficulty obtaining the capital needed for rehabilitation. PETRA would allow owners of these properties to apply for long-term section 8 contracts at market-based rents.

The preservation of these properties is also a focus of Chairman Frank's preservation bill, H.R. 4868. Under PETRA, rental assistance contracts could be for a term of up to 20 years, with available extensions. The minimum term and use agreement period would be the remaining term of the existing contract. Unlike H.R. 4868, PETRA would give owners of properties that qualify as "small" or partially assisted the option to convert to the less regulated environment of project-based vouchers. Initial analysis indicates that a significant share of these properties could qualify for PBV conversion.

The 2011 budget makes these three types of HUD-assisted properties eligible for conversion. This consolidation will preserve these properties with long-term affordability for residents, assure renewal on terms that are physically and financially sustainable, and streamline HUD oversight to save the taxpayer money.

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applicants on voucher waiting lists. PETRA gives HUD the authority to increase the two-year waiting period or otherwise modify the right to a moving voucher based on available resources. Section 8(m)1)(A)(i), pp. 3-4.

PETRA also permits the conversion of properties with other forms of Section 8 project-based assistance to contracts under section 8(n) or, if they are small or partially-assisted, to project-based voucher contracts under section 8(o)(13). While these properties have available long-term renewal options under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA), owners may prefer the policies that would apply after such a conversion. For example, PHAs that own properties with project-based section 8 assistance – there are about 40,000 such units owned by PHAs – may prefer to operate their properties under uniform rules. Owners of properties eligible to convert to PBV assistance may prefer the reduced reporting requirements that such a conversion would bring. Other owners may want to use the flexibility that PETRA would create to transfer rental assistance for a portion of the units in a property to another location, facilitating a transition to mixed income housing.

Policies governing such contracts under PETRA would be similar to what owners are familiar with under MAHRAA: contracts up to 20 years, market-based rents with annual adjustments and 5-year rebenchmarking to market, same tenant eligibility, ability to have site-based waiting lists, etc. But the "live" authority under PETRA creates greater flexibility for owners to adapt properties to current conditions than is now often possible due to Congressional repeal of the authority for new project-based section 8 contracts in 1983.

For tenants of these properties, conversion to assistance authorized by PETRA would create a number of benefits. Most importantly, tenants would for the first time have the option to move without giving up rental assistance, as discussed above. In addition, the procedural rights of tenants and applicants would be strengthened and tenant organizations in all properties, not just those at greatest risk of losing project-based assistance, would be eligible for funding. PETRA would enhance the tools available to HUD to ensure that properties are well-maintained and well-managed, and also would provide a federal first option to purchase when owners wish to sell their properties. This option would enable HUD to facilitate a sale to an owner that will preserve the affordable housing opportunities the property provides.

For HUD, unifying the policies applicable to the major project-based rental assistance programs will create opportunities for economies of scale in rule-making, monitoring and enforcement. In the long-term, creating a common platform for HUD rental assistance will make it easier for communities and regions to plan comprehensively and use HUD programs.

Modifications to the Project-based Voucher Program

Section 5 of PETRA would modify the project-based voucher (PBV) statute at subsection 8(o)(13) of the U.S. Housing Act, including by adopting some provisions in H.R. 3045, the version of SEVRA approved by this Committee last year. New developments as well as converting properties that meet the revised requirements may receive project-based voucher

contracts. Properties initially converted to assistance under section 8(n) may later shift to project-based voucher assistance if they meet the applicable conditions.[32]

Share of vouchers that may be project-based

PETRA would modify the share of vouchers that may be project-based. To eliminate a disincentive for agencies to project-base assistance in higher rent areas (which are likely to offer greater opportunities), the limitation would be determined based on the number of units assisted, rather than the share of funding, as is the case under current law. Up to 25 percent (rather than 20 percent) of units may be assisted in housing that serves homeless individuals and families or that provides supportive housing to the elderly or persons with disabilities, or that is located in areas where vouchers are difficult to use. (HUD will determine the criteria for such areas by regulation.)

An additional exception for agencies administering vouchers for projects converting under section 8(m)(2) would provide that up to 40 percent of the dwelling units assisted by an agency may be project-based.[33] This limitation is designed to minimize the tension between the demand for moving vouchers under the Resident Choice option in the PBV program and an agency's voucher waiting list. Under this policy, a PHA with a relatively large voucher program that opts to convert one or more properties to PBVs could administer the contract for the additional units itself, with third party performance of key functions such as inspections and rent determinations.[34] In other cases, HUD would award the additional vouchers to another PHA that would enter into the PBV contract with the converting PHA.[35]

Income-mixing

Similar to H.R. 3045, PETRA would allow for assistance at the greater of 25 dwelling units or 25 percent of the dwelling units in any project; and 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. Properties serving elderly families or households (of any type) eligible for comprehensive social services that are available at the property could be fully assisted, but in the case of converted properties no more than 40 percent of units serving

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[32] Section 8(m)(2)(P), p. 32. HUD approval is required.

[33] See page 44 of PETRA, amending sec. 8(o)(13)(B). H.R. 3054 would increase by 10 percent, to a maximum of 30 percent, the share of voucher funding that can be project-based. The Administration believes the increase should generally be limited to 5 percent, for a total of 25 percent, but up to 40 percent for converted properties, and only be available for the specified purposes.

[34] In this respect, PETRA differs from the proposed appropriations language submitted as part of the President's budget, which would prohibit a PHA from administering the PBV contract for a property it owns. The proposed prohibition was premised on the assumption that wholly assisted properties would convert to PBV subsidies. Based on stakeholder comments, we decided to propose instead the authority in PETRA to enter into new project-based contracts under section 8(n). With conversion to PBV assistance limited to small or partially assisted properties, HUD's policy concerns are alleviated.

[35] HUD could set a different fee for administration of PBVs in converted properties than for other vouchers. PETRA Section 6(b), p. 52, amending section 8(q) of the U.S. Housing Act.

such populations could be assisted. (PETRA would eliminate the exception in current law for fully-assisted properties that serve people with disabilities but do not provide comprehensive services. Allowing such single population housing is perceived by some to be a form of segregation, and is contrary to the shift to more integrated housing policies for people with disabilities embodied in the Frank Melville Supportive Housing Investment Act of 2009, approved by the House last year.) PETRA would authorize HUD to establish additional monitoring and oversight requirements for properties that have assistance on more than 40 percent of units at a property.

Contract term and funding

To create uniformity for contracts under the new section 8(n) and the PBV program, PETRA would alter the PBV contract term, extending the initial term and extensions 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. One of the concerns expressed by stakeholders about HUD's initial proposal to use PBVs as the form of assistance for converted properties was the perceived vulnerability of PBV funding to shortfalls in the Tenant-based Rental Assistance account. This Administration understands the importance of reliable rental assistance funding, particularly to induce lenders to rely on HUD funding. PETRA would amend section 8(o)(13)(F) to give priority to renewal of funding under PBV contracts in case of a shortfall in annual voucher renewal funding.[36]

Rents

Rents for PBV units must always be "reasonable" in light of comparable unassisted units in the local market, but the Secretary would have new authority to approve a market rent above 110 percent of the FMR.[37] Unlike section 8(n), there is no authority for above-market exception rents. The Secretary could require that PBV rents be adjusted annually using an index based on the same index used for properties assisted under 8(n) (based on changes in the rents for multifamily properties). The same rules as apply under section 8(n) would apply if the Secretary requires the use of an index to adjust rents.[38]

Tenant selection

Like the policy in H.R. 3045, an owner 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

[36] PETRA, p. 46, lines 13-16.
[37] PETRA, p. 47, line 22.
[38] PETRA would not change the provision added by Congress in the Housing and Economic Recovery Act of 2008 (HERA) that allows a PHA to agree to provide a rent floor at the initial rent level regardless of market changes, to induce lenders to rely on the PBV subsidy stream.

requirements. If a voucher is project-based in an occupied unit, the tenant must receive an absolute preference for assistance, if eligible.[39]

Security of tenure

Just as for properties assisted under section 8(n), or currently assisted through the public housing or multifamily programs, the termination of leases and tenancy would be permitted only for good cause.[40]

Other policies to streamline and create uniformity in HUD programs

In addition to creating greater uniformity in the policies governing physical conditions standards, tenant organization, and procedural rights for participants in different HUD programs discussed above, PETRA makes two other significant changes to streamline HUD programs.

Section 3 hiring preferences

Under Section 3 of the Housing Act of 1968, recipients of HUD funding for rental assistance (and community development) are subject to certain requirements concerning hiring and contracting preferences in the expenditure of funds. Better implementation of Section 3 is a priority of this Administration, as part of multifaceted strategies to improve the economic well-being of low-income individuals and communities. One barrier to more effective implementation is the different priorities that now apply to each HUD funding stream, making it difficult for HUD grantees in a locality or region to create economies of scale by combining their Section 3-related programs.

PETRA would remove this barrier by streamlining hiring preferences into two categories that apply uniformly: (1) recipients of federal rental assistance in the area (including public housing, other subsidized properties, and Section 8 vouchers), and (2) other low- and very-low income residents. The Secretary may add additional preferences by regulation.[41]

At this point we do not, however, propose uniform hiring and contracting obligations for all types of HUD rental assistance funding. Creating workable policies for the different operating environments of the range of owners that receive HUD rental assistance will take more time; we look forward to working with members of this Committee on this effort. For now, PETRA extends to converted properties the hiring and contracting requirements that apply under their pre-conversion funding source. That is, public housing converted to section 8 assistance would remain subject to the Section 3 requirements that apply to public housing, and multifamily properties remain subject to the requirements that now apply to those programs.

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[39] PETRA, pp. 49-50.
[40] PETRA, p. 51, inserting a new section 8(o)(13)(N).
[41] Section 6(f), pp. 56-57.

Mainstream vouchers

HUD currently provides tenant-based vouchers earmarked by Congress for people with disabilities through two programs: the regular Housing Choice Voucher program and Mainstream Vouchers under section 811of the Cranston-Gonzalez National Affordable Housing Act. Renewal funding is provided through two separate parts of HUD's budget, and some different policies are required by the different authorizing statutes, hindering HUD's ability to streamline administration of the two otherwise similar programs.

The President's 2011 budget shifts renewal funding for the approximately 15,000 Mainstream Vouchers to the tenant-based rental assistance account. Consistent with this funding shift, PETRA would amend the section 811 statute to specify that these vouchers shall be provided under the legal authority of the section 8 voucher program. PETRA also requires that turnover vouchers must continue to serve "qualified persons with disabilities and...qualified non-elderly disabled families," and would also make unexpended amounts under section 811 available until expended for renewal vouchers. The Secretary is authorized to provide technical assistance to PHAs to assist them in using these and other vouchers to provide permanent supportive housing for persons with disabilities, particularly as part of strategies to end chronic homelessness and to help states meet community care requirements.[42]

Administration of rental assistance

As I said at the outset, the complexity of HUD's rental programs is part of the problem. This is true of program administration as well as policy. To increase efficiency, enhance housing choice and expand access for families to a broad range of neighborhoods – core purposes of the TRA initiative – it is important to reduce the number of entities administering HUD rental assistance.

Fewer entities, serving larger areas, will streamline access to rental assistance for low-income families, eliminating the pressure applicants face to get on as many waiting lists as possible to increase their chance to receive the assistance they need. Expanding the geographical reach of program administrators also will broaden housing choice, increase access to neighborhoods of opportunity, enable grantees to meet their obligation to affirmatively further fair housing,[43] and facilitate coordination of rental assistance with other infrastructure (housing, transportation, etc.) and human service investments. Finally, if HUD contracts directly with fewer administrative entities, HUD staff can work more effectively with our partners to improve program performance.

Consistent with the voluntary nature of the TRA initiative – and recognizing the local political sensitivity of program administrative geography – PETRA and our 2011 budget proposal focus on providing incentives to solve these problems. For example, PETRA authorizes HUD to facilitate the implementation of regional portability agreements among PHAs administering housing vouchers, as well as consortia of agencies and other methods of "streamlining

[42] PETRA section 6(c), pp. 50-54.
[43] Section 8(m)(1)(A)(iv)(II), pp. 9-10.

administration of vouchers and other rental assistance on an area-wide basis as the Secretary determines appropriate to promote greater efficiency in the use of resources and to increase informed resident choice and mobility".[44] The 2011 budget request for TRA specifies that a portion of the funds may be used to help offset the cost to PHAs of such administrative changes.[45] PETRA would also require HUD to award funds for the administration of rental assistance for converted properties in a manner that promotes administrative efficiency and informed choice of where to live by recipients of HUD rental assistance.[46]

In addition to providing financial incentives, HUD plans to facilitate such agreements among PHAs by revising regulations governing consortia and portability, making it easier for PHAs to take these steps. But I want to emphasize that it would be voluntary for PHAs to take such actions.

To help achieve the streamlining goal of TRA, PETRA would make a conforming change to the definition of a "public housing agency" to allow HUD to contract directly with non-profits to administer Section 8 rental assistance.[47] HUD already contracts directly with non-profits to administer rental assistance under a number of other tenant-based programs, such as the section 811 Mainstream program and the McKinney-Vento Shelter-Plus-Care program, as well as a number of project-based programs. Folding the 811 Mainstream Voucher program into the Housing Choice Voucher program, discussed above, requires broadening the existing definition of a PHA. Under current law HUD may contract directly with a non-profit to administer the Housing Choice Voucher Program, but only if the entity had a contract with HUD or a PHA for this purpose when Congress enacted the Quality Housing and Work Responsibility Act in 1998.[48] Such piecemeal grandfathering undermines our broader streamlining efforts. To enable administering agencies to achieve economies of scale and take on increased responsibilities – for which they will earn additional fees – we must modernize the administrative structure of our rental assistance programs.

In case this explanation of our proposals has not been clear enough, let me state it more plainly: HUD has no plans to *require* agencies to consolidate. But we will hold ourselves and our

[44] Section 8(m)(1)(A)(v)(I), p. 10. In addition, PETRA clarifies that HUD may contract with a single entity authorized to act on behalf of PHAs that are members of a consortium. Section 6(a)(4), p. 51.
[45] The budget request specifies that "up to $50 million [of the $350 million requested for TRA] shall be available for services to promote resident mobility and up-front expenses of public housing agencies related to the transformation of rental assistance under this heading." Section 8(m)(1)(F), p. 18, authorizes the Secretary to allocate funds available for TRA for various purposes, including for "expenses of combining administrative components of local programs under section 8(o)."
[46] Section 8(m)(1)(A)(i) and (v)(II), pp. 3-4, 10-11.
[47] PETRA Section 6(a), p. 51.
[48] Section 3(b)(6)(B)(ii) of the U.S. Housing Act.

partners accountable to achieve the goal of our new 5-year strategic plan to "expand families' choices of affordable rental homes located in a broad range of communities."[49]

Meeting the Housing Needs of Every Family

So, Mr. Chairman, Ranking Member Bachus, and other members of the Committee: really, this is just beginning – and we look forward to working with you to ensure we get the transformation of our rental programs right.

Doing so requires us to recognize what drives affordable housing today. In the 1970's, it was the public sector. In the last decade, it was the tax code.

Today, it must be a partnership – one that draws upon the best practices of the past and present to leverage not only resources but also the experiences and successes of local not-for-profits, city and state governments, private actors, and all the other innovators and partners that have emerged in recent years. As I saw for myself in New York City, when we achieve this balance of both public and private resources, all parties can see they are getting a real set of benefits – from the managers, to the owners, to the most important stakeholder of all: the people.

At the outset of my testimony, I mentioned *The Truly Disadvantaged.* Of all the tragedies that book revealed, perhaps the most tragic was that the segregation of the very poorest families into the very poorest neighborhoods across the country didn't happen in spite of government policy – but more often than not, because of it.

But in America, we don't accept one public education system for one group of children – and a better one for everyone else.

We don't accept one set of rules about what pollutants can be in the water some people drink – and another set for the rest of us.

We don't accept a worse set of health outcomes for one population – and another for everyone else.

So, why should we do that with housing – with all that we know about how central housing is to creating a geography of opportunity? Why shouldn't we make this right?

I hope the progress we've begun these last 16 months has demonstrated the commitment that we in this Administration and at HUD have to meeting the housing needs of every family in this nation.

To putting HUD-assisted rental housing on a strong foundation for decades to come.

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[49] HUD's FY 2010-2015 Strategic Plan is available at http://portal.hud.gov/portal/page/portal/HUD/program_offices/cfo/stratplan. The quoted subgoal is part of Goal 2, available at http://portal.hud.gov/portal/page/portal/HUD/program_offices/cfo/stratplan/HUD_Strategic_Plan_D_goal2.pdf.

To building a truly integrated federal housing system that serves families better – *every* family in *every* neighborhood in America.

That is our goal – and in the weeks and months ahead, may we work together to build it with this legislation.

And with that, I thank you and I look forward to your questions.

Testimony of Thomas Gleason, Executive Director, MassHousing,

on Behalf of the National Council of State Housing Agencies

on HUD's Transforming Rental Assistance (TRA) Initiative

before the House Committee on Financial Services

May 25, 2010

Thank you, Chairman Frank, Ranking Member Bachus, and members of the House Financial Services Committee, for the opportunity to provide feedback on HUD's Transforming Rental Assistance (TRA) initiative. I am Tom Gleason, executive director of MassHousing, the Housing Finance Agency (HFA) of the Commonwealth of Massachusetts.

I am testifying on behalf of the National Council of State Housing Agencies (NCSHA), a national nonprofit, nonpartisan association that represents the interests of state HFAs before Congress and the Administration. NCSHA's members are the HFAs of the 50 states, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands.

State HFAs are most widely known for their safe and sound first-time homebuyer lending programs, which have provided a reliable source of affordable mortgage money for working families over many decades in strong and weak economies. HFAs also provide low-cost multifamily financing to facilitate the development of affordable rental homes.

State HFAs administer several key federal housing programs, including tax-exempt Housing Bonds, the Low Income Housing Tax Credit (Housing Credit), HOME, vouchers, and Section 8 project-based assistance. HFAs are currently administering a number of federal housing recovery resources, including the Housing Credit Exchange Program, the Tax Credit Assistance Program, and the Administration's New Issue Bond Program Initiative.

NCSHA supports HUD's goals for TRA, including the preservation of public and assisted housing, more uniform policies and increased administrative efficiency across all HUD-funded rental assistance programs, and enhanced housing choice for assistance recipients. We appreciate HUD's willingness to confer with NCSHA and others in the affordable housing community as it developed its thinking on TRA. We believe the Department's current proposal, which it released on May 12, reflects a number of important improvements in the initiative.

We are continuing to analyze this proposal and to seek HFA reaction to it. However, we wanted to take this opportunity to raise some preliminary concerns and questions.

First, we believe it is important for Congress and the Administration to recognize the property recapitalization demands the TRA initiative will place on the Housing Credit and other federal housing resources, which are already oversubscribed. Second, it is essential that TRA permits property rents adequate to support recapitalization strategies and to provide for long-term property viability. Third, while we strongly

support the goal of resident mobility, it must not come at the expense of new incremental vouchers, as TRA proposes. Fourth, we believe that TRA should remain a limited, voluntary program until Congress can review its outcomes. Fifth, HUD needs to be more specific about the role and selection of TRA contract administrators and their relationship to administrators of HUD's Performance-Based Contract Administration (PBCA) program. Finally, Congress should create a state-administered pool of project- and tenant-based rental assistance for HFAs to coordinate with the capital resources they administer to help meet the needs of very low-income households.

TRA Will Increase Demand on Housing Credit and Other Federal Housing Resources

As TRA properties are repositioned for the future, most will require substantial commitments of federal housing capital resources to cover their rehabilitation and other development costs. Most are likely to turn to the Housing Credit, the availability of which is already oversubscribed in most states. Appreciating that the Housing Credit falls under the jurisdiction of the Ways and Means Committee, we ask that you work with the leadership of that Committee to ensure that additional Credit is provided to states to meet this increased demand. Otherwise, states will have to make difficult choices between preserving TRA developments and producing needed new rental homes.

TRA Must Provide Flexibility in Rent-Setting

We are pleased that HUD's latest TRA proposal provides project-based Section 8 assistance for most public and assisted housing developments that undergo conversion. Project-based Section 8 currently serves over 1.2 million low-income households and remains the best tool for ensuring long-term property affordability and attracting and maintaining private capital for preservation efforts.

We believe that HUD's proposal provides the Secretary the discretion to allow converted TRA properties with project-based assistance to utilize market rents and, in some cases, budget-based rents that exceed market rents. We urge Congress to make clear in the TRA legislation that the Secretary shall allow such rents, if properties demonstrate these rents are needed to support their rehabilitation and ongoing operation. This rent-setting flexibility is necessary to ensure successful TRA conversions in high-cost and low-rent areas.

We appreciate HUD's effort to preserve properties assisted by Rent Supplement, the Rental Assistance Program (RAP), and the Section 8 Moderate Rehabilitation program within TRA. We believe, however, that Chairman Frank's preservation bill,

H.R. 4868, offers more flexible and desirable rent-setting options for these properties upon conversion to new Section 8 project-based contracts. H.R. 4868 would allow these properties greater opportunity to "mark up to market" rents pursuant to the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA).

TRA's Choice Option

NCSHA strongly supports mobility as a means for creating opportunity for residents to improve their quality of life. However, we urge Congress to find a way to achieve mobility without reducing the resources available to help additional families in need of housing assistance.

As proposed, TRA would require public housing authorities (PHAs) to utilize up to one-third of their turnover vouchers as Housing Choice Vouchers (HCVs) for residents opting to move out of TRA-converted properties. This policy would allow residents of converted project-based Section 8 developments to receive priority over unassisted individuals and families who are inadequately housed and may have been waiting for help for a long time. To avoid this "zero sum game," NCSHA recommends TRA provide an increase in incremental vouchers for unassisted households adequate to offset the additional demand for rental assistance created by its mobility feature.

Second, we are concerned that the availability of HCVs to TRA residents could present risks to properties by causing investors to assume higher vacancy and turnover rates.

Finally, we encourage Congress and HUD to attempt to limit the administrative complexities that expanded mobility will create for Section 8 contract administrators. For example, currently state HFA Performance-Based Contract Administrators (PBCAs) must notify HUD if any Section 8 property owners opt out of or terminate their Section 8 contracts and work with HUD to obtain tenant-based voucher assistance for eligible residents. PBCAs coordinate with the local HUD office to identify a PHA to administer the vouchers, provide resident payment and other data to HUD, and help residents access the vouchers.

Under TRA, however, there would not be a one-time block of Section 8 resources allocated to a voucher administrator. Instead, a series of separate, unpredictable move-outs would trigger the demand for vouchers. These would be discrete, individual events that would increase significantly the administrative burden for HUD, contract administrators, and owners as a result of higher turnover and vacancy rates. We encourage the Committee to consider these consequences carefully and ask HUD to

provide more detailed information about its expectations of contract administrators in accessing HCVs for residents that exercise TRA's choice option.

TRA Should Remain Voluntary and Limited Until Congress Can Study Outcomes

NCSHA is pleased that HUD's TRA proposal relies exclusively on voluntary participation by PHAs and private owners. We urge Congress not to make participation mandatory for any parties. We believe that TRA may present some PHAs and owners with valuable opportunities to reposition their properties, but no property should be forced to convert. All owners should retain the ability to maintain and renew existing Section 8 contracts under the same terms as their current contracts provide.

HUD's TRA proposal would give the Department significant flexibility to grow the program over time. For example, HUD's legislative language authorizes it to expand the TRA initiative to include "other federal affordable housing programs, as identified by the Secretary by notice." We are concerned that this open-ended language may enable HUD to expand the program too quickly, without giving Congress and the affordable housing community a chance to review the results of its first phase. This possibility would create unnecessary uncertainty for investors and limit the private investment that TRA is trying to leverage. We urge Congress to review the outcomes of phase one, perhaps by authorizing it as a pilot program, before allowing HUD to extend the program by notice.

HUD Must Clarify the Relationship between TRA and PBCA

As HUD asks Congress for the authority to convert a portion of the public and assisted housing stock to new project-based contracts, it is puzzling to us that the Department has failed to describe what entities it expects to administer these contracts and the scope of their responsibilities. The Department also does not explain the relationship it foresees, if any, between TRA contract administrators and PBCAs.

Under different circumstances, I would expect MassHousing and many of the other state HFAs that have served ably for many years as PBCAs to look for an expanded contract administration role under TRA. However, given the uncertainty we have faced as PBCAs for the better part of two years as HUD has moved toward rebidding the PBCA work, I'm concerned that many HFAs will look at this opportunity with great caution.

Since 2000, 33 state HFAs have served as PBCAs on HUD's behalf, producing consistently outstanding results and reversing decades of poor Section 8 property

oversight and financial management by HUD. For example, MassHousing currently administers 488 PBCA contracts covering more than 40,000 rental homes. Since 2000, the Agency has achieved all performance benchmarks established by HUD, saved HUD millions of dollars by verifying all Section 8 subsidy payments, provided extensive resident service programs, and improved the appearance and operation of the developments through careful asset management.

Almost two years ago, HUD announced its plans to revise the Annual Contributions Contract (ACC) for the PBCA program and rebid all contracts by January 2011. Since that announcement, NCSHA and the state HFAs have worked closely with HUD staff to help update the ACC, drawing upon 10 years of practical experience.

Last November, the HUD Inspector General published a report criticizing HUD's oversight of the PBCA program and its failure to control costs. This report was not critical of the performance of state HFA PBCAs. Nevertheless, NCSHA and the state HFAs have worked with HUD to find ways to reduce the cost of the program and streamline the administrative process.

Despite NCSHA's efforts at collaboration, HUD presented a draft ACC in January that departs dramatically from the program principles and framework we had been discussing with HUD staff for months. These materials revealed a complete change of direction programmatically for HUD, with potentially grave consequences for the PBCA program and Section 8 project-based properties, residents, and communities.

HUD originally planned to publish a revised ACC for comment last January. To date, this document has not been released, and HUD has indicated that the delay is partly due to questions about the impact of TRA on the PBCA program. HUD has suggested that TRA may affect the scope of work for PBCAs, but has failed to provide any further explanation. Recently, HUD staff said they could not make any prediction about when HUD will publish the revised ACC and move forward with its PBCA rebid.

We believe that HUD's delays in providing information about the revised ACC and rebidding process are linked to its push for the TRA proposal, but HUD has not explained this connection. These delays have created deep uncertainty about the future of the PBCA program, which is undermining the ability of state HFAs to conduct long-term planning and budgeting and is causing some agencies to lose valuable staff members. HUD needs to provide assurance that the PBCA program will continue, as well as a realistic time frame for revising the ACC and rebidding the contracts. Furthermore, HUD must alleviate uncertainty by providing clear information about how PBCAs will be affected by TRA.

NCSHA has strongly urged HUD to create a priority for state HFAs in its PBCA rebidding process, given the state HFAs' excellent track record and the public benefits they have provided as HUD's partners. In addition to fulfilling the assigned tasks under the PBCA program, MassHousing and other HFA PBCAs have gone above and beyond those responsibilities by using other state and federal resources they administer to improve their PBCA properties and thus produce additional long-term benefits to HUD, tenants, and communities. For example, since 2000, MassHousing has recapitalized 76 PBCA developments with an aggregate $1.3 billion of low-cost debt, Housing Credit equity, and state/local soft loans. This has produced approximately $30,000 per unit of rehabilitation for these developments, creating and retaining a significant number of jobs in Massachusetts.

To date, HUD has rejected any priority or preference for state housing agencies in the PBCA rebid, so we have turned to Congress to help create a priority role. If Congress approves the TRA proposal, it seems likely that PBCAs will have greater responsibilities for overseeing a larger portfolio of properties. Consistent administration of all project-based Section 8 contracts by state HFAs would promote predictability for property owners, managers, and residents over time and across regions.

However, to attract PBCAs to the TRA work and improve the PBCA program, we recommend HUD provide PBCAs more certainty, eliminate the delays in providing additional information on the program, and return to the approach HUD and NCSHA were pursuing last year. We also encourage Congress and HUD to look to HFAs to administer the project- and tenant-based vouchers under TRA.

NCSHA is also deeply concerned about the potential implications of HUD's proposal to modify the definition of a public housing agency for the purposes of TRA to include nonprofit organizations. We are concerned that this definition could be loosely defined and allow for a private contractor seeking profits to set up a shadow nonprofit entity to handle contract administration. As with the PBCA rebid, we believe that public housing agencies, such as state HFAs, are most qualified to serve as HUD's partners because they have the public purpose mission of preserving and supporting affordable housing and will direct any program fees toward these goals. We urge the Committee to eliminate this language from the TRA proposal.

Authorize State-Administered Project- and Tenant-Based Assistance

As you consider HUD's TRA proposal, we encourage the Committee to support the allocation of new project- and tenant-based rental assistance to state HFAs to combine with state-administered Housing Credit, Housing Bond, HOME, Housing

Trust Fund, and other production resources. Allowing state HFAs more direct access to rental assistance would enable them to extend the reach of these programs to more very low-income households.

States consistently target their Housing Credit, Bond, and HOME resources to households with incomes below the programs' statutory income limits. Yet it is difficult, and sometimes impossible, to reach these households at a rent level they can afford without rental subsidies. Allocating such assistance to state HFAs would simplify the affordable housing development and preservation process because they would be a "one-stop-shop" for both operating and capital subsidies. Developers would not need to first secure rental assistance from a PHA and then secure Housing Credit, HOME, or Bond financing from the state agency.

Thank you, Mr. Chairman, and members of the Committee for the opportunity to testify today. Please let me know if NCSHA can provide any additional information.

CLPHA
making public housing work in your community

Council of Large Public Housing Authorities
455 Massachusetts Avenue, NW Suite 425
Washington, D.C. 20001-2621
Executive Director: Sunia Zaterman
phone: 202.638.1300 | fax: 202.638.2364
web: www.clpha.org

Testimony of
Mr. Paul T. Graziano
Executive Director, Housing Authority of Baltimore City and
Commissioner of Housing, City of Baltimore, Maryland
on behalf of the
Council of Large Public Housing Authorities
before the
U.S. House of Representatives
Committee on Financial Services

May 25, 2010

Chairman Frank, Ranking Member Bachus and Members of the Committee, my name is Paul Graziano. I am the Executive Director of the Housing Authority of Baltimore City (HABC), Housing Commissioner of the City of Baltimore, and a Board Member of the Council of Large Public Housing Authorities (CLPHA). CLPHA is a non-profit public interest organization whose members, located in virtually every major metropolitan area, are the largest Public Housing Authorities (PHAs) in the nation. These agencies act as both housing providers and community developers while effectively serving over one million households, managing almost half of the nation's multi-billion dollar public housing stock, and administering one quarter of the Section 8 Housing Choice Voucher program. The Housing Authority of Baltimore City was established in 1937 to provide federally-funded public housing programs and related services for Baltimore's low-income residents. HABC is the fifth largest public housing authority in the country, with more than 1,000 employees and an annual budget exceeding $350 million. The Agency serves over 10,400 households in public housing, 13,400 in the Housing Choice Voucher Program, and nearly 1,100 families under the Section 8 New Construction, Moderate and Substantial Rehabilitation Programs.

I am pleased to be here today representing CLPHA for this hearing on "The Administration's Proposal to Preserve and Transform Public and Assisted Housing: The Transforming Rental Assistance Initiative" and to offer our views on the Department of Housing and Urban Development's (HUD) legislative proposal, the "Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010" (PETRA).

The issue of preservation of public housing is one of paramount importance to CLPHA. For several years, CLPHA has been actively engaged in discussions with public housing stakeholders to develop a preservation strategy through reform of the public housing funding and regulatory system. A major goal of those discussions has been to establish a more stable and rational subsidy and program structure that gives PHAs the predictability, flexibility and additional tools needed to address the substantial backlog in public housing capital needs. Such reform was a primary focus of

the Summit on the Future of Public Housing convened by CLPHA in 2008 and the Policy Framework produced by the Summit participants.

The criteria for preservation is straightforward. As the Summit Framework called for, we seek a long-term funding structure that addresses reasonable operating costs, adequate replacement reserves and recapitalizes the portfolio by converting public housing to more adequate, reliable and flexible subsidy models. The test for any preservation legislation should be that housing authorities can effectively use these tools to secure adequate operating income and additional capital investment to ensure long term sustainability and affordability of quality housing for low income families, seniors and persons with disabilities.

We commend Secretary Donovan for his vision and commitment to preserve and expand affordable housing. To hear the HUD Secretary say that public housing is an irreplaceable public asset that must be preserved represents a turning point in this most important public policy debate. Secretary Donovan brings commitment, expertise and a willingness to take on difficult challenges. He recognizes that public housing and other rental assistance programs are overdue for reform and need to function more effectively with a corresponding infusion of resources. In preparing to craft legislation to preserve and transform public and rental assistance housing, HUD convened working groups from a broad cross section of stakeholders, often hearing conflicting advice on the programs. The Secretary is aware of the challenges posed by reforming the myriad rental assistance programs of HUD, as he recently said at a town hall meeting on PETRA, "no one would intentionally setup a system this complicated". He also understands the critical reality that to preserve and improve the affordable housing stock, we must invest more federal resources and incentivize the investment of private capital in this stock.

There are many competing demands in determining how to reform and transform affordable housing programs including HUD's own internal administrative streamlining objectives and other social policy mandates -- but for us, the most immediate and compelling objective is the preservation and improvement of the public housing stock. We are very concerned that this urgent goal may be lost in the maelstrom of transformation for the department and other housing programs. PETRA creates an overly complex approach to preservation, with a complicated financial and rent setting framework, sweeping and untested social policy mandates and burdensome administrative and regulatory requirements, some of which undermine the very goal of preservation. We are dedicated to our mission to continue to serve the needs of low income people. We do not want to put the properties or the people we serve at risk. More to the point, we favor a more slimmed down bill that focuses on preservation not on transforming HUD. In general the bill tries to do too much, too soon, with too little resources.

Affordable housing preservation cannot be done on the cheap. Based on a study commissioned by CLPHA in 2008, the replacement value of public housing stock is approximately $145 billion (not including land values). The public housing inventory is a scarce and valuable asset in which the federal government has invested considerable resources. This is an irreplaceable public asset we cannot afford to lose. Yet, we are losing public housing units every day due to chronic underfunding. Preservation requires a commitment of resources – federally appropriated funds, direct rent and capital subsidies and incentives for private capital investment.

CLPHA considers the provisions relating to the following topics among some of the more problematic aspects of PETRA—

- Rental Assistance Conversion
- Market Rents and Rent Setting
- Enforcement
- Resident Choice, Resident Mobility

Rental Assistance Conversion Authority

This section should be the core focus, purpose and entirety of the bill. However, our concerns with the authority to convert are centered around the options and opportunities for PHAs to use more reliable subsidy models to leverage private capital and in particular, the restrictions on the use of project-based vouchers (PBV) as a viable conversion option.

Unlike the earlier HUD proposal on Transforming Rental Assistance (TRA), PETRA severely circumscribes the utilization of project based vouchers as a conversion option. The proposal states that not more than 20 percent of dwelling units may be assisted with project based assistance with an exception up to 5 percent additional units for homeless individuals and families, elderly and disabled persons, or in difficult to use voucher areas and up to 40 percent of vouchers if used for public housing conversion. However, the bill proposes that PBVs be used exclusively for small developments or partially assisted properties, restricting the number of PBVs in a development to no more than 25 percent of the total units. We not only disagree with the percentage details, but we disagree with the fundamental principle of restricting the use of the project based voucher as a preservation tool. The PBV is an important, effective, straight-forward model to use for a reformed public housing structure. We believe it is an important tool and are perplexed why it is so limited and HUD has chosen to foreclose the opportunity to use it more broadly.

In recent years, a number of PHAs have been able to achieve such conversions under current law by obtaining disposition approval and replacement vouchers from HUD. Despite the administrative complications of the current method, these conversions have been attractive because historically vouchers have provided a more adequate and reliable funding stream than public housing operating and capital subsidies. Furthermore, the project-based voucher regulatory environment is more aligned with other public and private resources that are needed to accomplish public housing preservation projects. For these reasons, project-based vouchers have gained significant market acceptance as an effective redevelopment tool for PHAs and their private partners. In addition, the voucher program has generally had widespread support among housing providers and advocates for many years. For all of these reasons, CLPHA believes that the project-based voucher program, which is active and growing, is a solid foundation for a public housing conversion program and should be available to any PHA engaged in preservation efforts.

Since we are losing public housing units due to chronic underfunding, we are committed to preserving or replacing as many of these affordable units as we can. In CLPHA's view, converting public housing to a PBV program is simply a way to restructure public housing to address the capital backlog once and for all over the next several years by leveraging private investment with

appropriated federal funds and thereby establish a more sustainable and administratively efficient program for the future. We are particularly heartened by the legislative discussion draft "Public Housing Preservation and Rehabilitation Act of 2010" which would pledge the full faith and credit of the United States to a public housing loan guarantee and also authorizes a housing tax credit exchange for the rehabilitation of qualified public housing units. These are integral and critical elements to ensure the success of a public housing preservation strategy. These are important financing leveraging tools and should give strong reassurance to lenders, bondholders and other stakeholders in making funds available for public housing preservation.

CLPHA also believes PHAs should have the option to convert their public housing to long-term project-based contracts (PBC), an approach favored by PETRA. While the project based rental assistance programs (PBRA) have also been wrestling with funding and preservation issues in recent years, they are a critical part of the affordable housing inventory and, like the PBV program, are more attractive than the public housing structure in terms of funding stability and a regulatory environment that is more consistent with market principles.

Market Rents and Rent Setting

At the core of any effective preservation strategy there must be a rent setting policy that ensures the long term sustainability of the housing, including operating expenses to maintain the property, funding an adequate replacement reserve, and leveraging sufficient debt to make capital repairs. Without adequate rents the portfolio will be put at even greater risk than under the current program.

There are three principles worth highlighting:

1. Housing authorities should be treated as social entrepreneurs like any other form of owner, and given the same flexibility, resources, and responsibilities as other mission entities like non-profits.
2. Housing authority rents should be pegged to market, as part of leveling the playing field among HUD's programs so as to permit streamlining, consolidation, and consistency.
3. Before housing authority properties can be put into market competition, they need a one-time major capital injection to enable them to correct years if not decades of chronic underfunding through the current system of operating subsidy and modernization funds, in effect reparations for previous neglect.

HUD estimates that 300,000 units can be preserved through PETRA. CLPHA believes that HUD underestimates the per unit capital backlog and uses an inadequate rent setting methodology. This will not result in HUD's estimate of 300,000 units being preserved. CLPHA engaged a nationally recognized affordable housing expert to provide an analysis of the costs of conversion. CLPHA members provided actual property cost data and estimates of property capital backlogs for the analysis[1]. For each selected property, the participants provided current operating data on those properties using a standard data collection instrument. Participants are also providing estimates of

[1] The properties were self-selected, and the data was self-reported and is unaudited, so the results are not necessarily reflective of the entire portfolio. Nevertheless, our survey sample encompassed roughly 19,000 apartments in fifteen housing authorities, and we asked them to pick typical properties.

their properties' capital backlog, a concept that has to encompass the non-revenue components on public housing properties, such as community facilities and site infrastructure funded by the property, instead of being funded by the municipality as is the case for private affordable properties.

From this analysis, it is estimated that with rents set at the local area FMR, $290 million could fund the preservation of approximately 60-65,000 units. Funding at this level would produce an average of about $80,000 of rehab per unit, totaling more than $5.2 billion in renovations. Furthermore, according to our estimates, about 58 percent of the national portfolio would be able to raise sufficient debt using the FMRs to preserve the properties and cash flow. The remaining 42 percent of the portfolio would either benefit from exception rents above the FMR, or could be preserved with a combination of exception rents and other capital investments, including tax credits, bonds, and private investments.

The exception to preferring a market rent standard involves social asset properties. Social asset properties will need rents above 100 percent of FMR, and project based rents. A property is a 'social asset' if it is both serving the cause of quality affordable housing, yet has negative net operating income (NOI) if rented at market. These properties are not necessarily badly managed, and in fact most are well-managed; rather, they operate under handicaps (e.g. security services, social programs) the market competition does not. Social-asset properties also tend to be concentrated in heartland America, where foreclosures and abandonment have weakened rents in the local submarket.

No capital subsidy can make a social asset property viable; only a budget-based exception rent, property-based in perpetuity, can assure their financial health. These exception rents were an important feature in HUD's mark-to-market initiative and should be incorporated into PETRA.

The section in PETRA on "rent adjustments" may also prove problematic. The requirement for HUD to re-benchmark the rents every five years may cause underwriting difficulties. If a property was approved for debt service based upon certain rent levels, re-benchmarking to a lower amount may affect their ability to repay, or it may cause a lender to reduce their initial debt amount.

Conceptually, there are only three ways to establish rents for properties intended to be affordable long-term: 1) cost or budget based, such as the public housing operating subsidy; 2) market based, such as HUD's Fair Market Rents (FMR) or established through a market survey; or 3) an affordability formula, such as the low income housing tax credit program. After more than a decade, HUD learned some lessons about rent-setting from its mark-to-market program (M2M) that are equally applicable to a TRA initiative.

Public housing now operates with a cost or budget approach; TRA proposes to shift to a market approach. This is sensible–provided the rents are fairly set, adequate resident income subsidy is provided, and properties are given capital to renovate themselves back to market-competitive standards–but there are nevertheless some lessons to be drawn from the M2M experience.

Lesson 1: Do not combine schemes by adding budget-basing to a market rent approach. From time to time, HUD has sought to mix these approaches, usually with unfortunate results. Governments

that want to move properties from budget-basing to market rents sometimes discover that the increased rents are much higher than they thought, and that the government will be paying more than it had expected. There is thus sometimes a tendency to try capping the market rents, or having a "lesser of cost or market" or some other combination. Aside form the essential unfairness of such an approach–penalizing the better performers simply because they are better–it is particularly inappropriate in public housing authorities, which are public bodies with along-term affordability mission. Any surplus proceeds they are able to generate from a high-rent property will be redeployed elsewhere into weaker properties or expanded social services for existing residents. Moreover, 'lesser-of' rent-setting schemes invariably prove short-sighted and put properties back at risk of negative cash flow.

Lesson 2: Social assets need budget-based exception rents. Some properties will be social assets. (In mark-to-market, roughly 10 percent of all properties fell into this category.) If they are to be given an exception rent that is above market, then two conditions logically follow: (a) the assistance must be property based, not portable, and (b) a budget based rent is appropriate. TRA should incorporate an exception rent procedure, such as that used in M2M.

Enforcement

The provisions pertaining to "use agreements", "liable parties" and "violations" are unprecedented in their application to affordable housing programs due to their broad, expansive language and treatment of a "party that knowingly and materially fails to comply, or causes a failure to comply". Taken as a whole, the unintended consequence of these enforcement provisions will having a chilling effect on public housing recruitment. They will cause volunteers and other interested parties to refuse to participate on director boards, commissions, other governance bodies and public housing affiliations, since individuals—including officers, directors, agents, owners, etc.—will be held personally liable, with the imposition of civil monetary penalties, for the actions caused by another. CLPHA believes this is a clear example of overreaching in PETRA.

Resident Choice, Resident Mobility

In general, PETRA provides residents of properties converting to property based contracts the option to move using a tenant-based voucher after residing in a converted unit for 24 months. Residents in properties converting using project based vouchers would continue to be able to move with a tenant-based voucher after residing in a unit for 12 months as provided pursuant to current law. Housing authorities that administer the Housing Choice Voucher (HCV) program would be required to provide not more than one-third of their turnover tenant-based vouchers each year for resident choice. In years where additional resources are available, residents in other HUD-assisted rental assistance programs may choose to exercise the option to move using a tenant-based voucher. Not only is HUD introducing a new sweeping untested mandate, but they are also opening the door to have it available to every recipient of HUD rental assistance.

The HCV waiting lists across the country, and particularly in large metropolitan areas, are lengthy, often subjecting applicants to wait times of many years. The resident choice policy, as currently drafted, could produce the "churning" phenomenon – residents using the choice option to circumvent the long voucher waiting lists by moving into a converted public housing unit and then moving out with a voucher after two years, and in most cases earlier than current public housing

residents normally exit the program. Therefore, CLPHA believes there are major policy and operational concerns that remain unresolved resulting from this previously untested policy.

We are very concerned about the impact on the housing choice voucher waiting lists and whether resident choice is equitable to those potential residents. Because of the comparably longer voucher wait lists, a tenant could apply for residency in a converted unit after an applicant for the HCV program, and, as a result of churning, receive a voucher before that other applicant.

Another concern is the cost of resident choice, and the impact of the policy on the viability of a property. The cost of unit turnover, and the loss of subsidy during the interim is a significant portion of a property's operating expenses. While the legislation attempts to remedy this problem by providing up to 60 days of subsidy to vacant units, the lack of tenant rents—currently about 30 to 40 percent on average of a housing authority's operating income—due to resident choice threatens a property's ability to produce a positive NOI. This potential lack of NOI resulting from the resident choice policy will likely jeopardize debt financing of capital needs because financial institutions would be reluctant to lend to a property that could have such income volatility.

CLPHA believes that resident choice should be tested prior to full-scale implementation. The testing should include how mobility plays out in local markets and should emphasize creative approaches to foster resident choice. The unknown costs, and potential negative impacts on property revenue and other residents should not become national policy without proper vetting. After such vetting, any resident choice policy should provide reasonable adjustments to account for lost rental income, impacts on financing costs, additional voucher needs, and to provide accommodations so that waiting list residents are not unfairly impacted.

Rental Assistance Conversion Trust Fund

HUD has established the principle that reform, transformation and preservation of rental assistance through conversion is one of the highest objectives of the department. HUD has requested $350 million to accomplish the first phase of this initiative. Of that amount, according to the earlier TRA discussion draft, HUD proposed to make available to PHAs $50 million to "offset the one-time costs of combining HCV (housing choice voucher) program administrative functions to increase efficiency and expand locational choice; and (2) for outreach to encourage landlords in a broad range of communities to participate in the program and to provide additional services to expand families' housing choices".

PETRA, on the other hand, establishes a Rental Assistance Conversion Trust Fund and proposes to charge fees to PHAs for the privilege of converting. The fees are charged to owners "as may be necessary for payment of expenses incurred by the Secretary in connection with assessing such properties for conversion, including the costs of rental comparability studies and physical needs and financial assessments, as the Secretary may require, and in accordance with a fee schedule that shall not exceed $100,000 per property". In CLPHA's view, the imposition of fees on owners is onerous at best, punitive at worst, and siphons needed funding away from properties that can least afford it. For a proclaimed department priority, HUD should be prepared to pay the costs of its rental assistance transformation and not lay the costs on the property owners.

Closing

In closing, we prefer to see the legislation refocus on the core principles and operational framework of public housing preservation as outlined above. We strongly urge HUD to share with Congress and stakeholders the budgetary assumptions and projections that went into its calculations on the costs of conversion.

We applaud HUD for their commitment to a preservation strategy. However, more analysis and more data needs to be developed and shared so that the goal of preservation can be fully realized. CLPHA would like to thank the Committee for holding this hearing and express our commitment to continue working with Congress as we move forward on public housing preservation. We believe that through a more reasoned and data driven analysis, we can be successful in preserving, protecting and expanding affordable housing opportunities. Thank you for your consideration of our remarks.

CLPHA
making public housing work in your community

Council of Large Public Housing Authorities
455 Massachusetts Avenue, NW Suite 425
Washington, D.C. 20001-2621
Executive Director: Sunia Zaterman
phone: 202.638.1300 | fax: 202.638.2364
web: www.clpha.org

May 25, 2010 – Graziano Testimony

Appendix A

The following analysis was performed by Recap Advisors, a nationally recognized affordable housing expert —

Portfolio estimates are critical to evaluating the proposed program

The utility of any portfolio-recapitalization proposal depends entirely on whether it works for the large inventory of properties, and that is ultimately a factual and quantitative exercise. So, as HUD and the Congress consider TRA or some other form of property-based rental assistance (PBRA), we all need the best projections we can obtain as to the consequences of both a pilot and a universal program.

Projecting TRA onto the public housing inventory, using sample properties

As part of this effort, to respond promptly yet quantitatively to HUD's proposal, on short notice CLPHA convened a working group from among its members, and engaged a nationally recognized affordable housing expert to assist the working group and CLPHA in quantifying the impact. We asked working group participants, who include several of the nation's largest housing authorities, to identify properties they considered representative.

For each selected property, the participants provided current operating data using a standard data collection instrument. Participants are also providing their own estimates of their properties' capital backlog, a concept that has to encompass more than a typical physical needs assessment and include the non-revenue components on public housing properties, such as community facilities and site infrastructure funded by the property, instead of being funded by the municipality as is the case for private affordable properties.

The properties were self-selected, and the data was self-reported and is unaudited, so the results are not necessarily reflective of the entire portfolio. Nevertheless, our survey sample encompassed roughly 19,000 apartments in fifteen housing authorities, and we asked them to pick typical properties. We here report our findings in the interests of furthering the discussion.

Basic assumptions in our analysis

The purpose of TRA is to standardize HUD programs and level incentives across those programs, while preserving public housing as a national resource. In our projections, we have made the following assumptions that reflect those principles:

1. ***Rents at market, meaning 100% of FMR.*** All properties are assumed to cancel their ACC's (which provide them with operating subsidy and modernization funds) and replace the ACC with a Section 8 contract at local, market, which we assume is 100% of FMR. (We will also do sensitivity analysis using alternative rent assumptions.)
2. ***Properties retain their 'Other Income'***, which is outside the ACC.
3. ***Assistance is portable***, so that financial vacancy stabilizes at 5%.
4. ***No change in use, tenancy, or income levels.*** The properties will continue to operate as public housing, serving the poorest of the poor.
5. ***A one-time 10% increase in operating expenses***, even if there is rehab, to account for marketing and competitiveness. This is conservative but appropriate in light of the unknowns associated with a conversion.
6. ***All existing social programs continue.*** Implied by keeping operating expenses unchanged.
7. ***New financing available on FHA-insured market terms,*** which are presumed to be 5.5%, 35 years, 117% debt service coverage.
8. ***Baseline capital backlog of $40,000 per apartment***, which we think represents a decent starting point for national averages. CLPHA is doing additional research to improve the accuracy of this estimate, which is obviously critical.
9. ***Annual new replacement reserve funding of $350 per apartment per year***, a relatively low figure based on the presumption that the new financing will deal with the capital backlog, returning the property into sound and market-competitive condition prospectively.
10. ***Transaction costs of 3% of the new loan.***
11. ***No continuing dividend limitations or restrictions on refinancing***, so that post-TRA public housing authorities are placed in an equal position with their affordable and market competitors.

Estimated impact of TRA, as a pilot and as a permanent program

Assuming that the subset we have studied does in fact reflect the inventory as a whole, and using the baseline assumptions listed above, we project the consequences to HUD and to the inventory as follows.

New rents will be roughly $4,200 per apartment per year higher than current. At 100% of FMR, the new rents will $350 monthly higher than the resources public housing now receives. If we take this figure as reflective of the under-funding of public housing, and capitalize it at the assumed borrowing rate, it translates into $55,000 per apartment of value housing authorities have been deprived, which if multiplied across the entire 1,300,000 apartment inventory, represents $71.5 billion in financeable value – rehab plus equity housing authorities could use in furtherance of their mission.

The inventory divides into three groups: Viable, Sub-viable, and Social Assets. Properties are Viable if, at market rents, they can generate new debt sufficient to cover at least the baseline capital backlog (projected at $40,000 per apartment). Using that figure, and based on our portfolio sample, we find a portfolio distribution roughly as follows:

> 50-60% Viable. These properties can support at least $40,000 per apartment of rehab.
> 30-40% Sub-viable. These properties can support some rehab, but not enough.
> 5-15% Social Assets. These properties have negative Net Operating Income, and hence will need exception rents (see below).

Social asset properties will need rents above 100% of FMR, and project-based rents. A property is a 'social asset' if it is both serving the cause of quality affordable housing, yet has negative Net Operating Income if rented at market. These properties are not necessarily badly managed, and in fact most are well-managed; rather, they operate under handicaps (e.g. security services, social programs) the market competition does not. Experience in HUD's mark-to-market program a decade ago revealed that these tend to cluster in two types:

- *Rural high-rise elderly*, where the competition is unprofessional walkups, and where the public housing property is built to a higher standard, including community facilities, and operated to enhance the elderly residents' quality of life.
- *Urban family developments in difficult neighborhoods*, where the property is maintained better, and provides better security, than its conventional competition.

Social-asset properties also tend to be concentrated in heartland America, where foreclosures and abandonment have weakened rents in the local submarket.

No capital subsidy can make a social asset property viable; only a budget-based exception rent, property-based in perpetuity, can assure their financial health. These exception rents were an important feature in HUD's mark-to-market initiative and should be incorporated into TRA.

A $290 million pilot will fund 60-65,000 apartments. HUD's initial proposal is for $350 million in funding, of which $50 million is for expanding access to opportunity for recipients of HUD rental assistance and $10 million is for technical assistance, leaving $290 million available for increased subsidy. (We presume that this is intended to be an evergreen annual subsidy increase, since if it were a one-time payment it would be woefully inadequate to induce owners to participate.) At a threshold of $40,000 per apartment, the pilot will fund 60-65,000 apartments nationwide.

Even this number of apartments participating may be optimistic. Early-adopters in a voluntary pilot will be those properties that have the most potential to raise their rents, and to use the proceeds for substantial renovations.

Based on an estimated conversion of 65,000 units with average rehabilitation of $80,000 per unit, the $290,000,000 initial TRA fund could lead to $5.2 billion of renovations a multiple of 18 times.

Appendix B

Housing Authority of Baltimore City

Market Comparable Gross Rent
Samples of Mixed Population Developments

Development	Comparable Gross Rent
Allendale	$857
Bel Park	$857
Bernard Mason	$818
Brentwood	$847
Carey House	$834
Chase House	$997
Ellerslie Apartments	$837
Govans Manor	$671
Hollins House	$845
J.Van Story Branch Sr. Apts.	$896
Lakeview Tower	$837
Laurens House	$926
McCulloh Homes	$935
Monument East Apartments	$800
Primose Place	$826
Rosemont Tower	$759
Wyman House	$810

1 Bedroom FMR- $1,002

Appendix C

Housing Authority of Baltimore City

Amount of Capital for Rehabilation Generated Through PETRA Program Under Various Financing Assumptions
Sample Mixed Population Project

FMR Level	Debt Coverage	4% Tax Credit	Amount of Rehab Per Unit
100%	1.2	Yes	$52,206
110%	1.2	Yes	$62,165
100%	1.1	Yes	$57,512
110%	1.1	Yes	$69,795
135%	1.1	Yes	$80,000
110%	1.1	No	$37,205
191%	1.1	No	$80,000
Note:	Fair market rent equals $887 for a studio and $1,002 for a one-bedroom apartment.		

Written Statement

National Association of Housing and
Redevelopment Officials

Betsey Martens
Senior Vice President

Before the House Financial Services Committee

The Administration's Proposal to Preserve and Transform Public and Assisted Housing: The Transforming Rental Assistance Initiative

May 25, 2010

NAHRO
The Transforming Rental Assistance Initiative
May 25, 2010

Chairman Frank, Ranking Member Bachus, Chairwoman Waters, Ranking Member Capito, and Members of the Committee, good morning. My name is Betsey Martens, and I am the Executive Director of Boulder Housing Partners in Boulder, Colorado. I am here today in my capacity as the Senior Vice President for the National Association of Housing and Redevelopment Officials (NAHRO). On behalf of NAHRO's more than 23,000 agency and individual members, I am pleased to submit the following written testimony sharing NAHRO's views on the administration's Transforming Rental Assistance (TRA) Initiative and its Preservation, Enhancement, and Transformation of Rental Assistance (PETRA) legislative proposal.

I would like to express my appreciation to both the Committee and the administration for engaging NAHRO and other stakeholders in this important dialogue about the need to transform federal assisted housing programs. NAHRO has long advocated, as have I personally, that public housing be repositioned to align with the balance of the assisted inventory, with a long-term contract as the basis of alignment. It is monumental that we are here today considering legislation to do just that.

PETRA, if enacted as proposed, would fundamentally transform the way in which rental assistance is provided. The Department's proposal represents a massive undertaking in size and scope. For those who call public housing home, as well as for those who administer the program at the local level, the stakes could not be higher.

The fundamental premise underlying PETRA is strong and recognizes what NAHRO and others have been suggesting as the future of public housing. However, as this testimony demonstrates, despite our enthusiasm over the fact that the transformation of public housing has a placeholder in the administration's FY 2011 budget, NAHRO has serious concerns regarding the administration's proposal, which I summarize here:

Prioritizing Preservation: The preservation of the physical asset should be the first and overriding priority of any public housing conversion proposal. NAHRO believes a new conversion initiative should focus first on the need to deliver converted properties into the kind of secure, sustainable financial and operating environment that will ensure the longevity of this critically important asset. The administration's proposed TRA initiative does not sufficiently emphasize preservation over other priorities.

Options: Conversion should be a voluntary option, not an inevitable outcome of new legislation. Conversion options should be based on existing, proven programs. Furthermore, the voluntary, optional nature of conversion is ensured through a long-term commitment to the existing public housing program, which must continue to be an essential component of federal housing policy. The administration's FY 2011 budget does not reflect that long-term commitment.

Among the options that must be available to PHAs is a fully funded public housing program, supported by robust implementation of the Section 30 programs and featuring a streamlined regulatory environment, particularly for smaller agencies. NAHRO has

also developed its own voluntary public housing conversion proposal, which relies upon the existing Section 8 Project-Based Rental Assistance program. NAHRO also supports the availability of a second voluntary conversion option based on the existing Project-Based Voucher program.

Maintaining Focus: The best way to begin the work of preserving and repositioning public housing is to take a calculated and incremental first step that emphasizes above all else the financial repositioning of public housing in order to ensure preservation of the physical asset. From that platform, policymakers can then turn their attention to the related goals of enhancing resident opportunity and creating new administrative efficiencies. The introduction of additional or multiple policy initiatives at the onset risks undermining the goal of preservation. PETRA as proposed includes several collateral policy initiatives that inhibit the financial repositioning of public housing and should be avoided.

Adequate Resources: The preservation of converted public housing developments depends upon adequate, stable funding in combination with a rational approach to setting rents. NAHRO has serious doubts regarding the ability of the 8(n) program proposed under PETRA to provide the sustainable funding environment required for preservation. Because rents can be adjusted under PETRA at any time and with very few restrictions, and because HUD has the unilateral power to force contract extensions, NAHRO believes the proposal includes too many disincentives for participation by housing agencies, private owners, and lenders, particularly given the importance of debt service to the program.

Resident Choice Option: Although mobility is desirable and important, NAHRO is not convinced that the Department has made a compelling, evidence-based case for why applying PETRA's Resident Choice Option for units converted to project-based contracts will not complicate preservation efforts or significantly distort HCV waiting lists in unacceptable ways. We are deeply concerned that the Resident Choice Option risks transforming converted public housing units in an unintended and decidedly negative way, effectively turning converted developments into way stations for families seeking tenant-based vouchers.

Furthermore, the administration's legislative proposal appears to allow for the immediate extension of the Resident Choice Option to every low-income family in every unit "funded under a rental assistance program administered by the Secretary," regardless of whether the unit in question has undergone conversion. As private owners consider not only whether to convert but whether to renew existing contracts, an overreach in the area of mobility could ultimately lead to reductions within the affordable housing inventory, an outcome that is antithetical to preservation.

Program Administration: It is unclear whether the revised proposal addresses concerns NAHRO previously raised regarding the administration of vouchers by Performance-Based Contract Administrators (PBCAs) under PETRA's proposed 8(n)

program. NAHRO would strongly oppose any recasting of PBCAs' ten core oversight functions that gives PBCAs new authority regarding receipt of Housing Assistance Payment funds for the Housing Choice Voucher, Project-Based Voucher, Project-Based Rental Assistance, or new Project-Based Contract programs, including decisions regarding funding and contract renewals.

Regionalization: While the voluntary consolidation of Housing Choice Voucher programs and consortia, or the adoption of multi-agency portability agreements, would not be required under the terms of the legislative proposal, these regional configurations could still be given priority by HUD in evaluating applications and making awards as part of the competition for participation. By using this as grounds for qualification, NAHRO contends that regional consolidation would become a de facto requirement for participation. This would be a troubling outcome and should be avoided.

Unanswered Questions: The Department has still not provided details or clarification on key elements of the proposed program. Of primary concern to NAHRO is the lack of information on financing. The administration has requested $290 million for incremental Year 1 costs, which would be spread among 290,000 units. An average of $1,000 in incremental funding per unit could fall far short of what is needed to make up the funding difference between existing subsidies and the new subsidy forms envisioned under PETRA. NAHRO is also concerned that HUD's leveraging assumptions may be too optimistic.

A More Prudent Approach: NAHRO remains committed to working with the administration and the Congress to develop new options aimed at repositioning public housing assets to ensure the long-term preservation of this critically important component of the nation's affordable housing inventory. A simpler, more straightforward approach to voluntary conversion would be the most prudent way forward from our perspective. NAHRO's public housing conversion proposal embodies such an approach. We suggest a pilot conversion program for FY 2011 based on NAHRO's proposal.

Under NAHRO's legislative proposal, PHAs would have the option to voluntarily convert public housing projects to the existing Section 8 Project-Based Rental Assistance (PBRA) program. The option to convert public housing projects to PBRA will provide those PHAs that choose to do so with a means to recapitalize their public housing assets and preserve them for the future. NAHRO's PBRA proposal would transfer federal oversight to HUD's Office of Housing. Given the Office of Housing's less administratively burdensome regulatory environment and lenders' familiarity with the existing PBRA program, conversion under NAHRO's proposal supports long-term preservation by providing converted public housing units with a sustainable operating environment and a proven approach to leveraging assets to meet capital needs.

As this testimony demonstrates, where we have differences, we will express them and work to resolve them, and where we have alternative approaches, we will continue to promote them. With that said, when it comes to our mutually held goal of preserving the nation's public housing inventory, failure is not an option. Let there be no doubt, therefore, that NAHRO remains committed to standing shoulder to shoulder with the Department and the Committee as a partner in good faith in this critically important effort. It is in that spirit that I offer this comprehensive written statement.

PRIORITIZING PRESERVATION

NAHRO recognizes that there are many challenges facing the public housing program and many of the justifications the administration provides for its broad-reaching proposal are valid. However, NAHRO believes strongly that the preservation of the physical asset should be the first and overriding priority of any public housing conversion proposal. While the public housing in many communities, particularly small and rural ones, is in surprisingly good condition given years of chronic underfunding, much of the inventory is not. Overall, the public housing stock faces a capital needs backlog that the administration has stated is between $20 and $30 billion, an estimate NAHRO believes is conservative. This daunting backlog stems from years of insufficient capital funding, isolation from the private capital markets, and burdensome regulation. In addition, the public housing program over the years has been a target for various policy initiatives that have distracted from the goal of preserving affordable housing to meet the critical needs of low-income families, seniors, and persons with disabilities. As the Committee considers the administration's proposed approach to the conversion of public housing developments, NAHRO urges members to focus on the need to first deliver converted properties into the kind of secure, sustainable financial and operating environment that will ensure the longevity of this critically important asset.

OPTIONS

The conversion of public housing should be a voluntary option, not an inevitable outcome of new legislation. Just as important, a long-term commitment to the existing public housing program must be an essential component of federal housing policy. This is a crucial moment in the life of our nation's affordable housing programs. As stewards of much of our nation's affordable housing, Public Housing Authorities (PHAs) are ideally situated to lead efforts aimed at preserving the affordable inventory. For over 70 years PHAs have owned and managed public housing, and this housing has become an essential element of local infrastructures. In some communities, public housing has become a stressed and challenged asset and the voluntary conversion of public housing to a different form of subsidy represents a promising approach. In other communities, public housing works well and remains an effective, functional method for providing affordable housing, and there is no need or desire to convert to a different

form of rental assistance. The PHAs that serve these communities instead need additional regulatory flexibility and better access to the private markets.

NAHRO cannot support a policy proposal that contemplates the total elimination of the existing public housing program. NAHRO has consistently maintained that PHAs should have access to multiple options for the preservation and recapitalization of their public housing projects. Among the options that must be available to PHAs is a fully funded public housing program, supported by robust implementation of the Section 30 programs and featuring a streamlined regulatory environment, particularly for smaller agencies.

Efforts to preserve the existing affordable inventory will not succeed unless the administration requests and the Congress provides an appropriate level of federal investment in housing and community development programs, including the Operating and Capital Fund programs. Given the Department's recognition of a capital needs backlog in excess of $20 billion, NAHRO was deeply disappointed with the administration's FY 2011 budget request for the Capital Fund. While NAHRO and its members are deeply appreciative of the capital funding provided through the Recovery Act, a proposed 18 percent year-to-year reduction to the regular public housing Capital Fund is inappropriate in the context of new initiatives for public housing preservation. And, while conversion will provide access to resources for some properties, it is equally important that Capital Fund resources be maintained at adequate levels to meet the needs of unconverted public housing units. A cut of the magnitude proposed would threaten the long-term viability of those units remaining in the public housing program.

Regarding the regulatory environment for public housing agencies, particularly smaller agencies, NAHRO is proudly working side by side with the Public Housing Authorities Directors Association (PHADA) to advance a small-PHA reform proposal. The joint PHADA-NAHRO legislative proposal, known as the "Small Public Housing Agency Opportunity Act of 2010," is designed to usher in streamlined and cost effective oversight while freeing small agencies (defined as those with 550 or fewer combined units and vouchers as per a relevant provision in the Housing and Economic Recovery Act of 2008) and residents from intrusive and burdensome requirements.

Our joint proposal, intended to meet the administrative needs of approximately 2,700 small agencies, easily fits into the Secretary's commitment to transform HUD into a nimble, evidence-based department that continuously searches for new efficiencies. We believe that the streamlining proposal provides the administration with an opportunity to follow through on that commitment by addressing the high costs of regulatory burden on HUD's housing partners. Small PHA reform would also allow the Department to be much more strategic about the deployment of limited monitoring and oversight resources for small housing agencies, which, while they represent 80 percent of all PHAs, administer only approximately 10 percent of relevant federal housing assistance resources. NAHRO and PHADA stand ready to work with the Committee to advance this proposal.

Collectively, the range of preservation options available to all PHAs should be sufficiently flexible to allow PHAs to respond to and address locally identified needs and priorities. Indeed, PHAs' market conditions and community values are sufficiently diverse that they must have a broad variety of tools at their disposal. Furthermore, in developing these options, to the extent that it is feasible, we should look first to existing, proven programs in order to avoid unnecessary confusion and risk. With those principles in mind, NAHRO has developed its own voluntary public housing conversion proposal, which relies upon the existing Section 8 Project-Based Rental Assistance (PBRA) program. We describe this proposal in greater detail later in our testimony. We also support the availability of a second voluntary conversion option based on the existing Project-Based Voucher (PBV) program.

MAINTAINING FOCUS

NAHRO members understand better than most that there are many challenges facing the public housing inventory – from insufficient funding, to failing assets, to residents challenged by poverty. Without disregard for the many important and worthy reform goals embedded within the administration's proposal, we suggest, however, that the best way to begin the work of preserving and repositioning public housing is to take a calculated and incremental first step that emphasizes above all else the financial repositioning of public housing in order to ensure preservation of the physical asset. From that platform, we can then turn our attention to the related goals of enhancing resident opportunity and creating new administrative efficiencies. NAHRO has consistently expressed concern that the introduction of additional or multiple policy initiatives will undermine what should clearly be the most important objective of any conversion proposal: the long-term preservation of the physical asset.

While the approach included under PETRA is centered on a long-term, contract-based rental assistance option, we are concerned that the proposed program includes several collateral policy initiatives that inhibit the financial repositioning of public housing and should be avoided. In addition to the creation of a Resident Choice Option, which we discuss in greater detail below, the Department's deliberations over how to impose both tenant organization and Section 3 requirements upon converted developments are good examples of the kind of overlapping, contradictory policy goals that risk undermining PETRA's potential for successfully preserving the converted inventory.

Regarding Section 3, the program as applied within the existing public housing inventory has been, at best, uneven in its implementation over the years and its overall success in permanently raising the economic status of its intended beneficiaries has not been demonstrated. Furthermore, NAHRO fully expects that those PHAs interested in converting public housing are motivated in part by a desire to move into a regulatory environment that more closely resembles the existing multifamily regulatory

environment. Because Section 3 requirements are decidedly less burdensome under the existing PBRA program, maintaining status quo Section 3 requirements for both converted public housing developments and converted privately-owned multifamily properties makes conversion less attractive to PHAs, since PHAs will be required to shoulder additional administrative burdens without incremental subsidy. This outcome only serves to reinforce the traditional, damaging isolation of public housing from the rest of the nation's assisted housing stock, thus perpetuating one of the significant problems that any carefully considered approach to conversion should seek to resolve. Requiring an unspecified portion of the Housing Assistance Payment (HAP) to be used for these purposes would also compromise a PHA's' ability to fulfill its debt financing obligations, an important consideration given the important role that leveraging plays under TRA.

These concerns notwithstanding, we do believe there are some features of existing programs related to economic opportunity that could have parts to play within the converted inventory. For example, NAHRO supports the Department's apparent decision to make the Family Self-Sufficiency (FSS) program available to residents of converted developments. An expanded FSS program, perhaps supported by an expansion of the Office of Housing's Neighborhood Networks initiative, could be an extremely effective tool for creating economic opportunities for residents.

As discussed above, NAHRO suggests looking to the existing PBRA program as the basis for conversion rather than creating and relying upon a new and untested model burdened by requirements serving secondary policy objectives. NAHRO also has serious concerns about the Department's apparent intention to require the conversion of existing PBRA properties to the new long-term, contract-based subsidy envisioned under PETRA. Such a course of action would be, in our opinion, an overreach that would inevitably lead to reductions within the affordable housing inventory as private owners opt against renewing contracts due to concerns over the increased regulatory burdens associated with the new and unfamiliar subsidy form.

ADEQUATE RESOURCES

NAHRO recognizes the challenges posed by the current fiscal environment. However the preservation of converted public housing developments depends upon adequate, stable funding in combination with a rational approach to setting rents. As the top-line amount against which the HAP contract is structured, rents must support a standard of operation and rehabilitation comparable to that of market-rate housing, providing residents with desirable places to live that can be subjected to the "market discipline" which HUD has emphasized. Without adequate rents, PHAs simply will not be able to modernize and maintain properties as quality affordable housing. Adequate rents, therefore, are essential to the success of TRA or any other conversion proposal as a preservation tool. NAHRO is concerned that rents under PETRA will not provide

adequate subsidy to meet the project needs, and that these rents will not carry sufficient guarantees of stability to successfully leverage private investment.

As in any other project-based contract model, rents must cover not only the entirety of operating costs (including resident services), but also debt service for the full capital needs of the project and responsible replacement reserves for future needs. Therefore, a robust physical needs assessment (PNA) is the fundamental underpinning of a sustainable rent-setting mechanism. PETRA is silent on the issue of physical needs assessments, except in so much that it appears to take the authority to hire contractors to conduct the assessments away from owners of converting properties. Additionally, although PETRA provides authority for the Secretary to determine minimum physical conditions standards, it does not address the level of rehabilitation and modernization that properties may receive. NAHRO is concerned that without proper procedures and standards for this assessment, the rent-setting mechanism will not be reflective of the physical needs of the property, creating a chasm between the financial needs of the property and the subsidy's ability to meet those needs.

For PBC contracts, PETRA would allow rents up to 120 percent of market rate. However, this is a ceiling, and the legislation provides no guidance as to how rents would actually be set, instead giving HUD full discretion to provide the project with such amount as the Secretary deems sufficient. Without a clear sense of what amount of subsidy will be made available, public and private sector owners may be hesitant to participate in the program. Further adding to the financial uncertainties of the program is a provision which requires the Secretary to reevaluate the rents at least every five years, with the option of lowering them. Such a provision is antithetical to the principle of a contract, undermining any guarantee of stable funding.

We note also that Department officials have publicly stated that the administration will not request a statutory guarantee against downward pro-rations in the annual appropriation for annual PBC renewals, thereby increasing the level of uncertainty and risk inherent in this new program. These terms cast significant doubt on the ability of the proposed 8(n) program to provide the sustainable funding environment required for preservation.

Regarding the PBV conversion option provided for under PETRA, the proposed legislation provides a statutory guarantee against any downward pro-ration for PBV contracts. However, PHAs that opt for PBV conversions will be subject to downward pro-rations in their HCV programs. While it certainly makes sense to provide a statutory safeguard against downward pro-rations in the PBV conversion program, HUD's proposal could effectively force a Hobson's choice upon those PHAs that avail themselves of the PBV conversion program.

PETRA goes farther than the Department's earlier summaries of the TRA proposal in that the draft legislation requires additional "cost saving" measures within the HCV program. These measures would result in shallower rent subsidies in order for PHAs to

serve the same number of households with the amount of HAP left over after satisfying the required 100 percent pro-ration in the PBV program. These "cost saving" measures would most likely result in voucher-assisted households bearing higher income-to-rent burdens. A better approach would be to provide for a separate PBV HAP contract which guarantees 100 percent funding and no downward pro-rations nationwide, with separate HCV funding provided subject to nationwide pro-rations. With substantially improved budgeting, auditing, and validation tools for PHAs' financial information for tenant-based voucher programs, the Department has within its reach the ability to calculate and request full funding levels for both HAP and administrative fees within the tenant-based voucher programs.

Finally, according to calculations released by the Department, the allowable rents under PETRA will be insufficient for some projects to leverage the debt necessary for preservation. PETRA provides no options for these properties, placing them at risk of being lost forever from the affordable housing stock.

HUD officials have also suggested that use restrictions may outlast the subsidy contract period. To meet the needs of the project and provide a bankable subsidy contract, it is essential that the time period for the use restrictions in 8(n) match that of the HAP contract. Just as the inability of PHAs to subordinate the deed of trust has deterred lenders from investing in public housing, a use restriction that outlasts the subsidy stream would be particularly unpalatable to potential investors, jeopardizing owners' ability to recapitalize their converted properties.

Contract extensions are another significant area of concern. The Department has reserved the right to unilaterally extend contracts in perpetuity by forcing owners, as well as successors in interest, to accept extensions as part of the initial contract or contract extension. Furthermore, the Department may force PHAs that have converted units to accept extensions even if such extensions are not included in the initial contract. While NAHRO shares the Department's goal of ensuring long-term affordability, we are concerned that these provisions diminish the ability of PHAs and private owners to negotiate future rents and contract terms. Without the ability to opt out, owners lose control of the future of their properties. We suspect that owners will be wary of these provisions and may choose not to participate, thus endangering the preservation of much of the existing stock.

Lastly, the continued isolation of converted public housing units from units converted from other programs creates a hurdle to PHAs' ability to leverage their contracts. PETRA perpetuates the distinctions between public housing and other assisted properties though disparate rent-setting provisions, use restriction durations, and a refusal to permit public housing to shed many of the additional requirements that have proved so burdensome over the years. Lenders may interpret these features as a sign of the risks of lending to public housing, where funding streams have been subject to significant downward pro-rations and burdensome regulatory measures are abundant. Because access to private capital is a core component of the TRA model, continuing the

isolation of former public housing units endangers the success of the program and should be avoided.

NAHRO recognizes the challenges involved in designing appropriate rent structures that will meet the range of physical and financial needs of the public housing portfolio. However, to undertake conversion of properties without sufficient resources risks further destabilization. The Department should not make the mistake of trying to accomplish too much with too little. A smaller (but adequately funded) initial conversion program is far preferable to a larger program that risks failure.

RESIDENT CHOICE OPTION

In our March 10 comment letter addressed to the Department, NAHRO suggested that "mobility is generally desirable and important, [but] it should not be the paramount objective of public housing conversions or implemented in a manner that creates social inequity or destabilizes converted projects." When the administration first introduced the proposed TRA initiative, HUD officials promised to adopt a responsible, evidence-based approach in formulating a mobility provision. In the revised proposal first described in March, the Department expressed its desire to avoid "unduly distorting voucher waiting lists and undermining the important role vouchers play in meeting diverse community needs," and concluded that "it is not feasible to extend the existing PBV mobility policy" to properties converted to project-based contracts under TRA. NAHRO agreed with the Department's conclusion that providing a one-year exit voucher to all tenants in converted developments simply will not work.

While we acknowledge that the Department has shown a measure of flexibility regarding the mobility provision, we are not convinced that the Department has made a compelling, evidence-based case for why applying the revised Resident Choice Option for units converted to project-based contracts is any less likely to complicate preservation efforts or significantly distort HCV waiting lists. Even with a two-year waiting period, NAHRO remains deeply concerned that the Resident Choice Option risks transforming converted public housing units in an unintended and decidedly negative way, effectively turning converted developments into way stations for families seeking tenant-based vouchers. Given the demand within the program and the scarcity of new vouchers, households seeking assistance through the HCV program may quickly realize that their prospects for obtaining a voucher are significantly enhanced by residing for 24 months in a converted development.

In the absence of incremental vouchers (a fact of life in our industry that the Department has already conceded is likely to continue for the foreseeable future), transplanting a mobility component into the converted public housing inventory as described under PETRA is likely to lead to "churning" within certain converted projects, disrupting communities, destabilizing rental income, and increasing turnover costs for both the

physical asset and the HCV program. As a result, we believe that this will threaten the sense of community within the development while undermining PHAs' collective ability to leverage private capital, a major goal of the proposed initiative, in order to preserve the affordable housing asset.

In recent presentations, Department representatives have discussed their efforts to model the impact of a Resident Choice Option using data from current move rates in the multifamily stock. NAHRO is concerned that these data are not an appropriate proxy for the potential demand for vouchers that this provision would create in properties converted under PETRA as proposed. There is reason to be concerned about the potential to underestimate the impact of this provision, as evidenced by the significantly higher annual move rates in substantially or entirely assisted PBV developments, estimated at 8 to 45 percent by the Department. In addition, the supply of turnover vouchers is highly dependent on local conditions such as the level of low-income households' incomes and affordable housing market opportunities at any given time. The unpredictable and variable rate of turnover adds an additional layer of complexity to any attempts at modeling the effects of the proposed Resident Choice Option. Finally, NAHRO believes that the Department has still not devoted sufficient attention to the threat that exit vouchers pose to the preservation of converted developments, and we remain concerned that providing exit vouchers on different terms for different projects would only add complexity to the system, both for residents and administrators.

In order to ensure that future generations of low-income families will have real choices about where to live, we must seize this opportunity to first preserve the stock of existing affordable units. If the significant and growing modernization and maintenance needs of public and other affordable housing units continue to go unmet, communities around the country will experience further declines in their already limited stock of affordable housing. NAHRO also believes that the Department's implication that public housing residents are trapped in substandard conditions and need an escape route is neither factually correct nor appropriately addressed through the Resident Choice Option. The available data on physical condition show that, while it has significant and growing capital needs, most public housing is in good shape considering the funding history of the program. And in any event, the conversion process, if structured responsibly, will allow PHAs to address deferred maintenance and modernization needs. Improving the quality of the PHA-owned housing stock will create additional communities of choice for the families that PHAs serve.

NAHRO objects to the Department's assertions that *all* public housing tenants lack "hope, opportunity, and choice." This rhetoric comes uncomfortably close to dismissing the hard work that housing professionals are engaged in every day to help low-income families experience the positive life outcomes associated with access to safe, decent, and affordable housing. Furthermore, we should not lose sight of the fact that an estimated 75 percent of households eligible for housing assistance receive no assistance at all. It could certainly be argued that these households are the ones for whom choice is truly limited. In addition to the affordable unit in which they currently

reside, public housing residents have full access to tenant-based voucher waiting lists, although they do not enjoy any preference over other families who currently receive no assistance at all. PHAs are also able to offer choices for families who would be better served in a different location through transfers to other public housing sites within their communities. As such, residents of public housing have more options than those families that are eligible for assistance but are not yet receiving it.

The structure of any enhanced mobility provision under TRA will have consequences for both assisted and unassisted families. We would urge the Department to exercise caution as it contemplates extending rights to families already receiving housing assistance that are arguably superior to those of waiting list families currently without such assistance. NAHRO notes that only about one-fourth of people who are eligible for housing assistance actually receive it, that Housing Choice Voucher waiting list applicants often live with severe housing cost burdens and in substandard housing, and that waiting list applicants often wait long periods before reaching the top of the list. Before moving forward, we encourage the Department to consider carefully whether the interests of those who already have housing assistance should trump the needs of waiting list families who have no assistance at all.

Unassisted families are just as impoverished as assisted residents of hard units and typically face much higher housing cost burdens and far worse living conditions. And they too have needs to move to opportunity and for personal exigencies or preferences, which will go unmet until they are able to lease with a voucher. Conferring additional rights and benefits on those who are already affordably housed through a federally funded program in preference to those who are not raises real questions of fairness, particularly given the limited resources available. Resident choice with a defensible priority among those vying for housing assistance may be established by ensuring that residents of converted developments take full advantage of their existing right to apply for voucher assistance and maintain their position on the waiting list. Indeed, since the enactment of Quality Housing and Work Responsibility Act (QHWRA), low-income households who apply for and receive public housing assistance have been able to maintain their place on the HCV waiting list and may elect to receive voucher assistance when their names come to the top of the waiting list (see § 982.205 Waiting list: Different programs). Furthermore, NAHRO believes it would be worthwhile to examine the possibility of amending existing law to enable residents of PHA-owned PBRA developments to have the same opportunities public housing residents currently have in terms of maintaining waiting list position and eligibility for voucher assistance.

NAHRO is additionally concerned about the potential for unforeseen problems related to the use of exit vouchers. Unless current rules change, residents choosing to exercise their option for a tenant-based voucher will have to provide notice to the PHA, effectively terminating their assistance through the public housing program. Should they not be successful in leasing up in the private market, these formerly affordably housed families will find themselves with no assistance at all, and possibly even at risk of homelessness. The reasonable solution would be for housing authorities to waive

the notice provision so that households can secure new housing without risking their public housing. The delay in vacancy notification would further slow the movement of families from the waiting list into housing, and substantially erode rental income due to increased vacancy time. Creating a dynamic in which public housing developments become de facto way stations in order for low-income unassisted households to receive any housing assistance, coupled with the process of residents giving notice to move from public housing and securing a new leased unit under the HCV program, will also create disruptions in PHAs' turnover of public housing units. Creating such disruptions will add to PHAs' costs and complicate unassisted households' ability to move into public housing from homeless shelters.

It must also be noted that the PETRA discussion draft does not identify a funding source for exit vouchers for PHAs with public housing but no voucher program. Absent any proposed authorization for incremental vouchers, PETRA requires a PHA with both public housing and voucher programs to commit a share of its turnover vouchers to support the Resident Choice Option if that PHA opts to convert public housing units. NAHRO is concerned about the potential cannibalization of the HCV program to meet the needs of PETRA's mobility feature.

In addition, HUD has indicated that reallocation of PHAs' net restricted HAP assets above the level of allowable reserves (i.e. 6 percent of annual budget authority) would provide a portion of the funding required for the exit voucher feature. If such a measure is being contemplated, the Department needs to first correct its improper assessment and offset of PHAs' NRA in 2009 and 2010, a problem created largely by HUD's wholesale use of PIC data for voucher leasing and costs. NAHRO has previously communicated a number of recommendations in this area which we would be happy to share with you.

The above discussion of the Resident Choice Option assumes that the new set of mobility features will apply only to those residents of converted public housing units, a policy change which is sufficiently problematic in its own right. However, in an unexpected development, the administration's legislative proposal appears to allow for the immediate extension of the Resident Choice Option to every low-income family in every unit "funded under a rental assistance program administered by the Secretary," regardless of whether the unit in question has undergone conversion. Although the legislation does not define a "rental assistance program" for this purpose, NAHRO assumes that all unconverted public housing and privately-owned multifamily project-based units would be covered under this provision.

Department officials have pointed out that, under PETRA, the Resident Choice Option would only be extended to residents of non-converted properties "to the extent of available resources." NAHRO notes that PETRA does not define what is meant by "available resources" in this context, nor does PETRA define the process by which HUD would determine whether resources are in fact "available." These are important omissions considering that PETRA does not authorize incremental vouchers but would

allow residents exercising the Choice option to "continue to receive rental assistance that is subject to policies *comparable to those that apply to assistance under section 8(o)* concerning income, assistance, rent contribution, affordability, and other policies as the Secretary may specify by regulation" (emphasis added). In other words, residents exercising the Choice Option may receive forms of assistance other than turnover vouchers, and PETRA would appear to empower the Secretary to create through regulation what are effectively new forms of housing assistance, with the source of funding for these other forms of assistance left undefined.

If the HUD Secretary were to "activate" the Resident Choice Option for the entire HUD-assisted rental inventory, including unconverted public housing and privately-owned multifamily units, the potentially deleterious effects of PETRA's mobility provision, as described above, would be amplified exponentially. A lack of clarity regarding the mechanics of PETRA's mobility feature, particularly concerning the potential forms of housing assistance beyond turnover vouchers (and corresponding funding sources) involved, creates the potential for additional financial instability within the affordable inventory.

Consistent with our position that significant changes be voluntary, we are concerned about the effects of the imposition of the Choice Option on units administered by those owners that have not opted to convert. This is an especially important consideration given the critical role that PBRA contract extensions will continue to play in maintaining the supply of affordable rental housing. As private owners consider not only whether to convert but whether to extend existing contracts, an overreach in the area of mobility could ultimately lead to reductions within the affordable housing inventory, an outcome that is antithetical to preservation.

Department officials have stated that HUD is attempting to strike a balance between preservation and choice. Given the difficulties inherent in, and the importance HUD assigns to, striking the right balance, NAHRO is disappointed that HUD did not follow through with a previously proposed pair of FY 2010 demonstrations that, had they been conducted, would have allowed HUD to explore conversions of public housing developments to both PBV and PBRA. These demonstrations would have provided the Department and stakeholders with a better understanding of the impacts of both of these models on preservation and mobility.

NAHRO suggests that the best way to address the problems the proposed Resident Choice Option seeks to address - as well as the problems this feature may inadvertently create - is for all interested parties to work together to expand the nation's supply of affordable rental housing options by growing the hard unit inventory, especially in lower-poverty census tracts, and responding to the real need for incremental vouchers.

PROGRAM ADMINISTRATION

It is unclear whether the revised proposal addresses concerns NAHRO previously raised regarding the administration of vouchers by Performance-Based Contract Administrators (PBCAs) under the new 8(n) program. In the existing PBRA program, only HUD and the property owner are parties to the subsidy contract. PBCAs' contracts with HUD involve ten core oversight tasks to ensure compliance with statutory and regulatory program requirements, effectively allowing PBCAs to act as HUD's representatives. Currently HUD provides Section 8 rental subsidies under HAP contracts to the project owners in an amount equal to the difference between the HUD approved rent (the "Contract Rent") for a particular assisted unit and the HUD required rental contribution from eligible tenant families. NAHRO would strongly oppose any recasting of these functions that gives PBCAs new authority regarding receipt of HAP funds for the HCV, PBV, PBRA or new PBC programs, including decisions regarding funding and contract renewals. NAHRO looks forward to the currently pending PBCA contract rebid process with the hope that revisions to the Contract Administrator Handbook will provide consistency and clarity in contract oversight.

REGIONALIZATION

NAHRO appreciates the Department's reconsideration of the initial proposal's emphasis on regionalization. After reviewing the PETRA discussion draft, however, we would note that this aspect of the proposal has not changed substantially. While the voluntary consolidation of HCV programs and consortia, or the adoption of multi-agency portability agreements, would not be required under the terms of the legislative proposal, these regional configurations could still be given priority by HUD in evaluating applications and making awards as part of the competition for participation. By using this as grounds for qualification, NAHRO contends that it would become a de facto requirement for participation. PHAs would be more likely to enter into cooperative agreements with other agencies if the Department implemented Congressional directives to increase flexibility through regulatory and administrative measures, to reduce administrative burden and streamline program implementation within the HCV program. NAHRO continues to support further reform in a number of areas, including consolidated reporting for PHAs engaged in consortia (as required under QHWRA).

In implementing the administration of rental assistance under Section 8(m) for PHAs that administer the HCV program, PETRA would enable HUD to "facilitate the implementation" of regional portability agreements, consortia, and such other or additional methods of streamlining administration of vouchers and other rental assistance on an area-wide basis as the Secretary determines appropriate to promote greater efficiency in the use of resources and to increase informed resident choice and mobility;..." Currently there are statutory and regulatory underpinnings for the mobility and portability features of the HCV and PBV programs. Mobility and portability features are adequately treated under H.R. 3045, the Section Eight Voucher Reform Act of 2009

(SEVRA). Currently HUD provides Section 8 rental subsidies under HAP Contracts to PHAs that administer the HCV and PBV programs. As stated above, NAHRO continues to support further reform in a number of areas, including consolidated reporting for PHAs engaged in consortia (as required under the Quality Housing and Work Responsibility Act).

NAHRO understands and supports the need for another entity approved by the Secretary to carry out the initial inspections and rent reasonableness determinations under PBV and HCV programs for units owned by a PHA (Section 8 (o)(11). However, there are several other sections of PETRA that are ambiguous about HUD's authority to establish new authority for PHAs to "assist in the administration of such PB contract." NAHRO would strongly oppose any recasting of the HAP contract authority or other regulatory or administrative functions for PHAs beyond what is currently in SEVRA (HR 3045).

On a related subject, PETRA would modify the current provision of law under Subparagraph (B) of section 3(b)(6) of the Housing Act of 1937 that currently defines a public housing agency eligible to administer Section 8 tenant-based assistance. PETRA would open the door to the operation of federal housing programs by a large group of entities regardless of whether those entities are authorized to administer such programs under state or local law. PETRA would also remove the reference to "tenant-based" so that the aforementioned change would apply to the administration of the HCV, PBV, and new PBC programs. By eliminating all jurisdictional constraints concerning the operation of the reformed Section 8 housing programs, PETRA would overturn long-established state and local laws. Changes of this magnitude should not be undertaken lightly or without consultation with state and local governments as an incident to federal rental assistance reform.

UNANSWERED QUESTIONS

The PETRA discussion draft is in many ways a positive step forward from the initial proposal as described in February. However, the Department has still not provided details or clarification on key elements of the proposed program. Of primary concern to NAHRO is the lack of information on financing. The Department has estimated that potential units for conversion have an average of $25,000 in unmet capital needs. The Department has requested $290 million for incremental Year 1 costs, which would be spread among 290,000 units. An average of $1,000 in incremental funding per unit could fall far short of what is needed to make up the funding difference between either PBV or PBRA and public housing, not to mention address the capital needs backlog. We would appreciate assurances from the Department, by access to their conversion modeling, that the legislative proposal, in combination with the administration's FY 2011 budget request, strikes the right balance between funds appropriated and units targeted. We would note also that no information has been provided concerning how to

address the costs associated with the administration's previously announced plan to expand the FSS program, an initiative which NAHRO fully supports. PETRA also leaves unanswered questions concerning the ultimate source and adequacy of funding for relocation vouchers for residents displaced by modernization.

In addition, the Department has stated that according to its models, Year 1 incremental funding would be sufficient to leverage $7.5 billion in private investment. At a ratio of nearly 26 to 1, NAHRO believes this is an extremely optimistic prediction, and that the dialogue around financing would benefit from increased transparency and information sharing. We would also note that the matter of adequately funding replacement reserves, a key component to ensuring the sustainability of a property's financial wellbeing, has not been addressed.

NAHRO would also note that PETRA is silent on the criteria to be employed by the Secretary when selecting properties for conversion. NAHRO believes that priority should be given to owners that are able to demonstrate that the use of a project-based contract will allow them to address severe recapitalization needs in an effective manner. The Administration's proposed elimination of the proven HOPE VI program, questions regarding eligibility criteria of the unauthorized Choice Neighborhoods Initiative, and inadequate Capital Fund resources exacerbate an already strained financial situation for PHAs, particularly those with distressed units. This uncertainty over the availability of resources only serves to underscore PHAs' need for additional tools to restore and reposition their assets. To that end, NAHRO appreciates that the administration has stepped back from the somewhat arbitrary selection criteria included in the initial TRA proposal. However, NAHRO continues to believe that the recapitalization needs of a PHA should be considered independently, and not in relation to a PHA's willingness to regionalize its HCV program.

NAHRO also believes that more information is required to properly assess PETRA's treatment of portability and absorption. On numerous occasions, NAHRO has provided the Department with a detailed portability reform proposal which could be implemented through regulatory and administrative measures in a manner that preserves the robust use of this essential feature of the Section 8 voucher program, preserves the ability of agencies to serve their waiting lists, and reduces the financial barriers to portability. Specifically, NAHRO has recommended using the VMS system to facilitate absorption of inter-agency portability billings. Through a central voucher fund, NAHRO also recommends adequately funding "receiving" agencies of portability billings, particularly where interagency billings have continued for a year or longer. This would free up budget authority necessary to maintain current leasing levels at the sending agencies. Where portability billings have occurred to areas with higher per voucher costs, absorption will have a multiplier effect at "sending" agencies.

Finally, NAHRO continues to have serious concerns regarding the lack of clarity around future phases of TRA, which HUD has repeatedly described as "a multi-year effort" with "streamlining goals." As we have repeatedly made clear, NAHRO believes strongly that

the conversion of public housing should be entirely voluntary, and that those PHAs best served by remaining within the existing public housing program should be allowed to do so, supported by robust funding through the Operating and Capital Fund programs, and with increased access to private capital through properly implemented Public Housing Mortgage, Capital Fund Financing, and Operating Funding Financing Programs. Absent a sufficient understanding of the Department's plans for future phases of TRA, not to mention a clearer understanding of the depth of the administration's commitment to the existing public housing and PBRA programs going forward, supporting this proposal would be irresponsible even if we did not have the serious concerns this written testimony is intended to convey.

A MORE PRUDENT APPROACH

Perhaps the most compelling lesson from a careful study of housing policy is that broad policy reform often brings unintended consequences. While we admire the Administration's desire to "go big," history compels us to recommend a smaller, incremental step focused on responsibly repositioning public housing on a real estate platform. With the initial and most important goal accomplished, we could then work to improve the program, both for the asset and for the residents, from there.

Although we are unable to endorse the administration's legislative proposal at this time, NAHRO remains committed to working with the administration and the Congress to develop new options aimed at repositioning public housing assets to ensure the long-term preservation of this critically important component of the nation's affordable housing inventory. To that end, and if you believe it would be helpful, NAHRO would be willing to work with the Committee to develop proposed legislative language to correct what we see as the major deficiencies in PETRA as proposed. Please be aware, however, that NAHRO continues to believe that a simpler, more straightforward approach to voluntary conversion would be the most prudent way forward. We would suggest that NAHRO's public housing conversion proposal embodies such an approach.

Under NAHRO's legislative proposal, PHAs would have the option to voluntarily convert public housing projects to the existing Section 8 PBRA program. The option to convert public housing projects to PBRA will provide those PHAs who choose to do so with a means to recapitalize their public housing assets and preserve them for the future. NAHRO's PBRA proposal would transfer federal oversight to HUD's Office of Housing. Given the Office of Housing's less administratively burdensome regulatory environment and lenders' familiarity with the existing PBRA program, conversion under NAHRO's proposal supports long-term preservation by providing converted public housing units with a sustainable operating environment and a proven approach to leveraging assets to meet capital needs.

Projects would be converted in the same manner as Section 8 project-based renewals occur under section 524 of the Multifamily Assisted Reform and Affordability Act of 1997, with some modifications. At the option of the owner, rent would either be set at the level of comparable market rent for the area or by the Secretary on a budget basis that would take into account the need to provide sufficient replacement reserves to replace capital subsidy funds. Each year, rents would be adjusted by an Operating Cost Adjustment Factor or at the request of the owner on a budget basis.

Conversions would occur with or without rehabilitation. Projects requiring rehabilitation would generate funds through a combination of grant funding, tax credits and debt. As a result of the conversion, projects will have significantly increased access to these resources. Converted projects would be permitted to address both physical and market obsolescence, and incentives would be provided for greening of projects during rehabilitation. Optionally, an FHA guarantee or loan product could be made available to reduce borrower costs and allay lender fear of appropriations risk.

At the time of conversion, the Secretary would be required to release the project from the Annual Contributions Contract, deed of trust, and any other encumbrance in favor of the federal government relating to the public housing program, and property would no longer be subject to any federal law or requirement applicable solely to public housing. Once converted, each project would be funded through a minimum 20-year HAP contract and be subject to the same program structure and regulatory oversight scheme as the existing Section 8 project-based multifamily inventory. No new program would be created for operating the properties, and HUD would utilize its existing contractors to carry out oversight responsibilities.

Under NAHRO's proposal, existing tenants will remain in occupancy, and any tenant temporarily displaced by rehabilitation activities would be able to return to the property. Income targeting requirements would be the same as in public housing. Also under NAHRO's proposal, the Secretary would evaluate the PBRA conversion program based on property condition, cost, and changes, if any, to tenant characteristics. These indicators would be compared to those of public housing projects as well as those of projects converted to Project-Based Vouchers.

Keeping in mind current fiscal constraints, and with an eye on the legislative calendar, NAHRO suggests that a preferable approach to initiating the preservation of the public housing stock through voluntary conversion would be to provide for a pilot program for FY 2011. NAHRO notes that HUD itself, in its FY 2010 Congressional budget justifications related to the proposed Transformation Initiative, described the possibility of conducting a pair of demonstrations related to the repositioning of public housing assets. The first demonstration would have given PHAs an opportunity to voluntarily convert public housing projects to PBV assistance while the second would have provided an opportunity for voluntary conversion to Section 8 PBRA. By undertaking these proposed demonstrations HUD would have been able to gauge the market response and collect the evidence needed to evaluate and refine these approaches

before bringing them to scale. Although the Congress provided funding for the Transformation Initiative, HUD opted not to conduct the proposed demonstrations.

NAHRO estimates that a pilot program converting 50,000 public housing units to units assisted through PBRA would require an appropriation of approximately $100 million for FY 2011. This estimate is based on the assumption that public housing agencies would choose to convert properties located in areas where conversion to a rent based on comparable market rents would result in an increase in operating subsidy adequate to finance upfront property improvements and the ongoing funding of a sustainable operating and capital reserve. In addition to our formal conversion legislative proposal, NAHRO has developed suggested legislative language to authorize such a pilot, which we would be pleased to share with you. It is our hope that you will support this approach, and communicate your support to appropriators.

Thank you for the opportunity to testify today.

Statement To

Committee on Financial Services
United States House of Representatives

Testimony on Administration's Proposal
to Preserve and Transform Public and Assisted Housing:
The Transforming Rental Assistance Initiative

By Judy Montanez, Board Member
National Alliance of HUD Tenants
May 25, 2010

Prepared Statement of Ms. Judy Montanez
Board Member
National Alliance of HUD Tenants

Committee on Financial Services
Tuesday, May 25, 2010

On behalf of the National Alliance of HUD Tenants (NAHT), I want to thank Chairman Frank, Chairwoman Waters, Ranking Member Bachus, and members of the Subcommittee for inviting our testimony today. My name is Judy Montanez. I am here today as a tenant in project-based Section 8 housing; the Co-Chairperson of the Castleton Park Tenants Association in Staten Island, and a elected NAHT Board Member representing Region II (New York/NewJersey). I am also member of the Executive Board of the Mitchell-Lama Residents Coalition (MLRC), which represents tenants in state-assisted subsidized housing in New York, and I work closely with NAHT's New York affiliates, New York Tenants and Neighbors and the Urban Homesteading Assistance Board (UHAB).

Since 1992, the National Alliance of HUD Tenants (NAHT) has represented the 1.7 million families in privately-owned, HUD subsidized multifamily housing, including the 1.3 million families, elderly and disabled people in apartments receiving project-based Section8 assistance. NAHT is the only tenant-led, national tenants union in the US today, with voting member tenant groups and areawide coalitions in 25 states.

In April, NAHT's network of local organizers and elected tenant Board of Directors met and identified a number of concerns regarding HUD's Transforming Rental Assistance (TRA) Initiative. At HUD's Tenant Consultation on April 14, I presented ***NAHT's position paper (available at www.saveourhomes.org)*** to Secretary Donovan on behalf of HUD Multifamily tenants, including more than 20 NAHT members in the meeting. ***At the time, we indicated that NAHT could not support TRA unless these concerns were addressed in HUD's legislative proposal.*** Tenants also said that we could not support TRA unless HUD first demonstrated a serious commitment to respect tenants as partners and to enforce existing regulations against owners and PHA's who violate tenants' rights.

The NAHT Board has reviewed the Discussion Draft of the Preservation, Enhancement and Transformation of Rental Assistance (PETRA) filed by HUD. ***NAHT can support the principles of rent simplification, mobility (with increases in Voucher funding), and tenant empowerment, as discussed below. We also can support, in principle, the consolidation and simplification of 13 disparate programs into one new "funding stream"—provided this is done in the most cost effective manner, another principle which we propose be introduced to PETRA, as discussed below.***

However, while some of NAHT's concerns have been addressed in PETRA, ***regrettably the bill falls short of Administration promises*** to preserve Public Housing under public ownership with maximum affordability, to improve deteriorating stock, and replace "hard" assisted units on a one-for-one basis. ***Taken together, several provisions of the Discussion Draft could result in the permanent privatization and loss of the nation's system of Publicly Owned housing within 20 to 30 years.*** These provisions would result in more, not less, complexity in the financing and ownership of assisted housing, and would appear to cost far more to the federal government in the long term than direct financing of public housing repairs. ***Unless these fundamental problems are corrected, NAHT cannot support, and must oppose, the current Draft of PETRA.***

Although PETRA primarily focuses on Public Housing in its first year, HUD plans to convert approximately 30,000 units of Multifamily Housing that receive archaic operating subsidy programs

that preceded Section 8 (Rent Supplement and the Rental Assistance Program, or RAP), as well as Moderate Rehab Section 8, to PETRA subsidies next year. HUD then plans to expand PETRA to all HUD Multifamily Housing in subsequent years. In fact, ***Section 8 (m) would allow the conversion of any project-based Section 8 contract to PETRA, if the Secretary invites a private Multifamily owner to participate and the owner agrees.*** We share our experience from Multifamily housing both to support our brothers and sisters on the front lines in Public Housing, and to maximize protections for Multifamily tenants who will eventually be affected by the new program.

PETRA Would Needlessly Convert Public and Assisted Housing to "Expiring Use" Housing

HUD has justified PETRA as the only way to fund a reported "backlog" of $20 to $30 billion in desperately needed repairs for the nation's aging Public Housing stock. The Discussion Draft proposes to address this by inviting private lenders, investors and/or Limited Partner co-owners to raise the needed funds, financed by a new Section 8 subsidy program based on "market" subsidy principles. Developments converted to PETRA funding would receive a 30 year Use Restriction, but only a 20 year guarantee of funding. A future HUD Secretary would have the option, but would not be required, to extend this restriction another 20 years, and/or to purchase an at-risk development at the end of the use agreement, presumably at market value. Owners would not be required to seek an extension.

In effect, ***these provisions of the Discussion Draft would bring the whole nightmare of "expiring use" housing into the nation's system of Public Housing.*** The 40 year history of HUD's "expiring use" multifamily housing should raise red flags. In the late 1960's, HUD similarly built affordable low income housing by engaging private owners, lenders and Limited Partner investors to develop HUD multifamily housing. Then, as now, an Administration pursuing a "guns and butter" budget strategy opted to meet low income housing needs through long term debt payments rather than direct public housing expenditures, while paying for a costly and unpopular war.

Since then, ***HUD tenants have waged countless struggles building by building against rent increases, declining services, substandard conditions, and "expiring use" restrictions. Since 1996, private owners or HUD have removed more than 400,000 apartments from the affordable stock, and another 200,000 more are at risk as 40 year HUD mortgages mature.*** The nation's investment in these lost units has been squandered, while untold billions have been siphoned off by wealthy developers and investors. HUD and Congress should think twice before extending these risks and conflicts to Public Housing.

My own building is a good example. Castleton Park was built in 1974 with a HUD insured mortgage by a nonprofit developer. It is today a great, diverse community of 454 working and poor families, from all walks of life, with 139 of the apartments aided by the Project Based Section 8 Program. We have been fighting to stay in affordable housing since 2006. I would have been homeless many times over due to income changes if I did not live in a subsidized complex. I am now on Section 8 due to an accident that rendered me disabled. I lost my job and my pension. Many of the tenants in my complex are seniors, and disabled.

Because of today's speculative market, our "nonprofit" landlord wants to sell our development for a $14 million profit to a "predatory equity" speculator. Our owner sought HUD approval under Section 250 of the Housing Act to "prepay" the HUD insured mortgage and raise rents to facilitate this sale, which would have destroyed our affordable community. We spent hundreds of hours researching Castleton's mortgage because we could not afford a lawyer. HUD should have rejected our owner's request. Instead, we found ourselves fighting and rallying against HUD to enforce this Federal law, and begging tenants for donations to pay for the fight to keep our homes. This is unconscionable!

We did HUD's work; we had to seek out politicians to support us, in a fight that should not have ever taken place. Eventually, we persuaded HUD to reject the prepayment, but the landlord has challenged us in court. In the meantime, building conditions have plummeted while the current owner has milked the building dry. Our experience shows what could happen to a future PETRA funded development if the "public" owner tries to profiteer down the road, and can persuade HUD—as our landlord tried to do--to sign off on a market conversion.

This struggle has been a nightmare for Castleton Park, as it has been for the 400,000 families who have lost their affordable housing because HUD and Congress, 40 years ago, tried to build low income housing through a costly "devil's bargain" with private investors. ***On behalf of Multifamily HUD Tenants, we urge Congress to not make the same mistake twice.***

To avoid this problem, ***PETRA should require Owners and HUD to commit to the longest term use restriction legally allowable, bounded only by the limits of state law.*** (A close Multifamily precedent is the Title VI Preservation Program use restriction of 50 years or the useful life of the property, whichever is greater.) ***All public owners should be required to accept and/or renew Section 8 subsidy contracts as long as Congress appropriates the funds.***

Nor is the threat to affordable housing confined to the Public Housing stock. The "Release of Prior Requirements" paragraph (p. 32, lines 11-16) would appear to nullify stronger protections in *any* development which switches to PETRA funding—including, in theory, Multifamily Housing preserved, for example, under the Title VI Preservation Program, the Boston Demonstration Disposition Program, or where tenants have negotiated longer term Use Agreements with owners! This "Pandora's Box" should be closed by extending the "permanent affordability" requirement to Multifamily owners as well.

Discussion Draft Would Invite Massive Privatization of Public Housing

In earlier meetings, HUD officials promised that Public Housing would remain in public ownership. In our April position paper, we expressed concern that the TRA initiative could bring the "camel's nose" of private owners under the tent of Public Housing. ***Far from a "camel's nose," the Discussion Draft would invite a "camel herd" of private investors and lenders to fundamentally erode the nation's stock of Public Housing.***

For example, the Discussion Draft (p. 30, line 11-16) would redefine "public housing" to include a "project or unit owned by an entity in which the agency *or its officers, employees or agents* hold a significant *direct or indirect* interest and which has *among* its purposes the ownership or management of affordable housing." (Emphasis added). ***This astounding language is a recipe for privatization and unbridled corruption, on a massive scale.*** It would legalize "insider" deals by PHA officials with private investors and lenders who would have a stake in the eventual conversion of these units to market rate housing in the future—the sort of corrupt self-dealing seen in the New Orleans, Miami, Chicago and other housing authorities in recent years.

Even if this language were "cleaned up" to eliminate self-dealing and conflicts of interest by PHA officials, the Discussion Draft would effectively allow Low Income Housing Tax Credit (LIHTC) Limited Partnerships with equity investors to participate in the future ownership of PETRA units. By definition, such partnerships will dilute public ownership, accountability and control. ***Limited partner" equity investors, including traditional LIHTC investors, should not be utilized to finance the capital needs of public housing.***

Banks Could Foreclose and Convert Public Housing to Market

The Discussion Draft is also premised on attracting private lenders to meet Public Housing capital needs. Despite earlier assurances by HUD officials that TRA would subordinate private bank loans to Public Housing deed restrictions, the Discussion Draft provisions in the event of foreclosure or bankruptcy (p. 11-12) would allow the Secretary to "modify" use restrictions "if the Secretary determines the converted units are not physically viable or financially sustainable, *or if necessary to generate sufficient lender participation.*" (p. 12, line 1-5; emphasis added). Nor does the Discussion Draft require Owners to obtain Federal Housing Administration (FHA) insurance, which at least has provided some protections for Multifamily Housing tenants in the past (though HUD has allowed 100,000 foreclosed units to be converted to market housing even with this protection, since 1994).

HUD Multifamily tenants have learned some hard lessons. ***Private investors and lenders have expectations and motives fundamentally in conflict with affordable housing preservation.*** They will bargain hard for higher rents, replacement of low income with higher income tenants, and rights to convert and/or sell under certain conditions such as foreclosure, no matter what the initial intentions of PETRA. They will also seek to dilute public ownership by demanding input in "ownership" decisions such as change in management, affordability standards, repair and capital needs, and refinancing plans. ***Their influence should be reduced, not expanded, in the nation's affordable housing system.***

We also question whether private investment promised by PETRA would actually materialize, and at what cost. Just a year ago, the Tax Credit market was in collapse, and banks were not making loans under any conditions. With an uncertain economy, lenders and investors will seek even greater concessions at the expense of affordable housing as the "price" for providing private capital for repairs. Even in the best of times, Tax Credit investors siphon off from 10 to 20% of the federal tax expenditures for overhead and syndication costs.

Investors and Lenders Would Pressure HUD to Convert Public Housing

HUD tenants have also learned the hard way what can happen when powerful private interests have a stake in converting HUD housing when use restrictions expire, as in Castleton Park. Under the Discussion Draft, this will happen to PETRA developments in 30 years. ***While the current leadership of HUD may be committed to preserve at-risk housing, most HUD Secretaries since 1980 have not done so, and there is no guarantee that HUD's leadership in 30 years will stand up to institutionalized pressure from owners, investors and lenders*** seeking to "cherry pick" the most valuable developments in high market areas. To the extent that preservation at "market values" conflicts with scarce budget resources at the time, the risk that public units will be lost will only increase.

PETRA goes in exactly the wrong direction. ***Rather than privatizing Public Housing, and institutionalizing "expiring use" conflicts where none exist now, we should be seeking to expand socially-responsible ownership (to tenants, nonprofits, and public agencies) of at risk privately-owned HUD housing,*** and remove HUD housing from the ever-spiraling cost of voluntary "incentives" needed to persuade private owners to renew HUD contracts each time they expire.

At a minimum, ***private equity owners and LIHTC Limited Partners should be barred from PETRA. If private lenders are allowed, use restrictions must supercede any foreclosure or bankruptcy proceedings, in all cases, and Owners should be required to obtain insurance from the Federal Housing Administration (FHA).*** This will help reduce the risk that ownership will pass to a private lender in the event of a foreclosure caused by funding shortfalls, physical neglect or mismanagement.

PETRA should also provide for ***permanent preservation of the housing in the event of HUD foreclosure and disposition,*** by applying the related provisions of HR 4868, Chairman Frank's Preservation bill, currently before the Committee. In addition, ***Congress should also provide tenants with Third Party Beneficiary status to enable us to sue to enforce PETRA contracts***, to help HUD in its oversight mission. (Similar language has been included in Section 304 of HR 4868.)

Market-Based Rent Setting and Contract Renewal Is Excessively Costly

The Discussion Draft proposes to new project-based Section 8 "funding stream," Section 8 (n), to replace Public Housing Operating Funds and other forms of Project Based Section 8 in properties that convert to PETRA. The Discussion Draft (p. 37, line 9-15) *requires* the Secretary to establish the initial subsidy levels under Section 8 (n) *"at the level requested by the owner"* (emphasis added), but not to exceed the comparable market rent, up to 110% of the Fair Market Rent set by HUD "or such higher amount approved by the Secretary," later (p. 38, line 2-6) defined as an "exception" rent not to exceed 120% of the comparable *market* rent.

In effect, HUD would be required to make subsidy payments, as requested by owners, that will be at unrestricted "market" levels, and in some cases (depending on the owner's clout with a future HUD administration) actually in excess of actual market rents.

HUD's model here seems to be the Mark Up to Market Program (MU2M), adopted by Congress and HUD in 1999-2000 to address a growing problem of Section 8 Opt Outs in high market areas. Unlike the earlier Title VI Preservation Program, which at least required capital repairs, long-term use restrictions (50 years or the useful life of the property), and preferred sales to tenant or nonprofit owners in exchange for a big jump in Section 8 subsidy payments, MU2M has no such requirements. The only benefit in exchange for what amounts to huge subsidy windfalls to owners in high market areas is the continued preservation of low income housing for the community—less costly than building new low income housing.

In tight markets, owners have been able to extract ever spiraling subsidy payments from HUD upon each contract renewal as the price for saving affordable housing—as NAHT Board member Ricky Leung has described at Cherry Street Apartments in Manhattan, in previous testimony before the Committee. ***Guaranteeing PETRA owners "market" rate Section 8, regardless of their commitment to improve the units, is a recipe for similar unrestricted windfall profits and needlessly inflated subsidy costs.***

Base Section 8 Rents on Actual Operating and Capital Budget Costs

There is a less costly alternative. The original Project Based Section 8 Program (New Construction/Substantial Rehab Section 8) built or renovated 900,000 units between 1978-1983 using a "Budget Based," not "Market Based," rent setting method. ***Under the "Budget Based" rent approach, Section 8 contract amounts and subsidy payments are set on actual operating costs, plus debt service, and a limited profit or fee for owners—not the "market" rent, which may bear no relation to these needs.***

If, as we believe is the case, Public Housing developments converting to PETRA funding have operating costs substantially below private market rents in their communities, ***using this formula will save substantial amounts over the "market" formula in the Discussion Draft. It will also reduce the***

attractiveness of Public Housing to speculative investors and minimize "expiring use" conflicts in future.

Base Annual Adjustments on Actual Cost Increases, Not Market Rent Hikes

The Discussion Draft (p. 38, line 12-15) also provides for annual adjustments to PETRA Section 8 payments based on "change in the rents of multifamily housing." This is a disappointing step backward. When Congress passed the Multifamily Assisted Housing Reform and Affordability Act (MAHRAA) in 1998, it replaced precisely this type of inflation-based formula, called Annual Adjustment Factor (AAF), with a less costly and more rational alternative, called Operating Cost Adjustment Factor (OCAF). For a Section 8 owner with fixed debt service costs, only the operating cost portion of the annual budget is subject to inflation. Using the general AAF formula over the years, based on general inflation, had resulted in excessive windfalls to owners under earlier Section 8 programs. At the very least, ***PETRA should allow increases based on inflation in actual costs (OCAF), to bring it in line with this project-based Section 8 reform previously adopted by Congress and avoid unnecessary giveaways.***

Require Repairs and Maximize Up Front Capital Grants

Currently, there are no requirements in PETRA for HUD to require owners to make needed repairs in Public Housing in exchange for PETRA assistance. As in the MU2M program, this amounts to a giveaway of public funds with potential windfalls to owners. Unlike the MU2M program, however, there is no excuse for doing this with Public Housing units in PETRA, since owners are not yet free to "opt out" of the project-based subsidy system and do not need to be "bribed" to keep the units affordable. ***PETRA should be amended to require owners to make needed repairs, to be reviewed and approved by HUD with input and consultation by residents, as a condition of PETRA assistance.***

Similarly, ***there is no requirement in PETRA for HUD and owners to maximize capital grant sources to meet Public or Private Housing repair needs, and thereby reduce the need to take out private bank loans, which will inevitably cost more in the long run due to bank interest charges. We recommend that a section be added to this effect.*** Potential sources include Public Housing Modernization Grants (funded at $6 billion in FY 10, with a $2 billion request in FY 11); state and local grant or capital loan programs; and the LIHTC "exchange" program, which allows state agencies to convert a portion of their unused LIHTC credit allocations to capital grants, without the need for Limited Partner investors.

Coupling a provision to maximize capital grants with a Budget Based Section 8 subsidy stream under PETRA will ensure that public and private developments are preserved at the least cost to the federal government, even if PETRA utilizes private bank loans.

In the 1990's, NAHT was the first organization to propose a similar Up Front Capital Grant in the Title VI Preservation Program. Under Title VI, owners who otherwise could "prepay" their HUD subsidized mortgages were guaranteed full market value in exchange for a commitment to preserve affordability for low income residents, and initially received market-based Project Based Section 8 subsidies to secure this goal. When this proved costly, NAHT proposed, and HUD eventually adopted, a Title VI Grant program, which converted portion of Section 8 budget authority into up front grants, reducing the amount of future Section 8 outlays and saving money overall.

We propose that HUD adopt the similar principle in PETRA. Unlike Title VI, where owners were arguably already legally entitled to receive additional Section 8 at market levels, Congress is under no such constraint with Public Housing, so should use the opportunity to base PETRA Section 8 on less costly "budget based" levels.

Finally, to help ensure maximum use of cost-saving Capital Grants and ensure resources remain for Public Housing repairs in developments that are not converting to PETRA, the section which allows transfer of unused Public Housing operating and capital funds to the PETRA account (p. 32, line 7-10) should be clarified to "hold harmless" these accounts to ensure "maintenance of existing efforts" in these programs.

Budget Based Rents with Capital Grants Will Simplify HUD Programs

Proponents have justified PETRA as a means to simplify 13 diverse programs, saving administrative costs. In fact, much of the complexity and confusion in HUD's 13 programs result from complications within HUD's Multifamily Housing system. Tenants, communities and HUD itself have long been challenged with the Byzantine complexity that inevitably follows from Limited Partnership and/or tax syndication or credit agreements, multiple financing sources, and complex lending instruments. Replacing the relatively simple financial structure of Public Housing with the privatizing vision of PETRA will increase the complexity and confusion within the Public Housing program, and disempower Public Housing tenants.

NAHT supports the principle of program unification and simplification. ***Changing PETRA to a budget-based Section 8 model with a maximum of capital grants to pay for repairs will better achieve program simplicity, at a reduced cost to the federal government.*** Put another way, the simpler and more transparent financial model of the Public Housing system should be extended, via PETRA, to the entire system of HUD assisted housing.

Compare Alternatives to Fund Repair Needs

HUD has based its "market-driven" PETRA model on the assumption that There Is No Alternative to fund Public Housing repair needs other than bringing in private lenders and investors. This assumption is open to question.

Only a year ago, in FY 2010, Congress provided $6 billion for Public Housing modernization grants. An additional $2 billion has been requested for FY 2011, not counting the $350 million sought for PETRA. While we do not question the need for capital repairs in the $20 to 30 billion range in the next several years, it would seem reasonable for HUD to first assess the results (spending rates, project completion, resident hiring, etc) of the $6 billion obligated during FY 10. HUD should also complete its promised comprehensive Capital Needs Assessment of Public Housing needs, including when and where additional repair commitments are actually needed and can be realistically accomplished, before embarking on a risky program that could jeopardize the nation's Public Housing system.

In addition, HUD should produce a cost-benefit analysis that compares the costs for meeting actual repair needs (phased in as physically required and achievable under HUD's CNA) ***under three funding scenarios: 1) the market-driven PETRA proposal, paying Section 8 rents based on "comparable market" levels,*** independent of actual operating and debt service costs, and involving LIHTC investors; ***2) budget-based PETRA contracts based on actual operating and debt service costs,*** with a limited development fee; and ***3) direct capital grant sources for Public Housing repairs***

(Modernization funds, Stimulus funds, weatherization grants, state/local grants, LIHTC Exchange funds, and (for private Multifamily housing) new Preservation programs proposed in HR 4868).

It should be obvious that the cost of funding Public or Private Housing repair needs by up front capital grants is likely to be less costly than alternatives based on private lending *over the long term*, due to the additional costs of interest. Assuming Public Housing operating costs are substantially below market rents, it should be even more costly to finance PETRA using "market based" rather than "budget-based" Section 8 rent payments. If LIHTC Tax Credits are also envisioned, a cost comparison should take into account lost federal revenue from the Tax Credits and the "transaction costs" for the LIHTC program. The question is how much are the relative costs of these scenarios.

Budget Climate Can Change

We acknowledge that the "climate" for seeking additional spending for Public Housing repairs is less favorable than just a year ago, when Congress voted $6 billion for this purpose. But the budget climate can change again.

There is a precedent in Multifamily Housing. In 1996, a Republican led Congress reached a bi-partisan consensus to increase Section 8 budget authority from $4.5 to $20 billion annually, over several years, to avert a crisis of Section 8 contract terminations and mass displacement, even while Congress implemented domestic budget cuts overall. If the Administration can document its claim that Public Housing is in imminent danger of collapse without an immediate infusion of $7.5 billion for repairs, a similar consensus could emerge to utilize more cost-effective Public Housing Modernization grants, without the need to risk the future of Public Housing.

Additional Rent and Affordability Recommendations

One of PETRA's goals is to simplify rules affecting tenants by consolidating 13 rental assistance programs into one. In principle, this would empower tenants by making participation in HUD rental programs easier to understand and more transparent, provided residents' rights and benefits are maintained. .

NAHT strongly supports this objective. The Discussion Draft includes two basic principles recommended in NAHT's April memorandum: 1) Ensuring that tenants pay no more than 30% of adjusted household income, or the "ceiling" budget-based rent for their unit, whichever is less. 2) Allowing existing tenants, or new households whose incomes rise, to stay.

In particular, tenants would benefit by phasing out and consolidating archaic HUD multifamily programs such as Rent Supplement and RAP into a single type of project-based Section 8, and conforming Enhanced Section 8 Vouchers with project-based assistance. Both the Section 8 Voucher Reform Act (SEVRA), pending on the House Floor, and H.R. 4868 also contain provisions that would move in this direction.

Based on experience and precedents in Multifamily Housing, we recommend a few amendments to the rent provisions of PETRA. First, in converting to PETRA, some Public and Multifamily tenants who are currently paying less than 30% of income for rent (for example, lower or moderate income tenants capped at below-market "ceiling" rents today) could experience sharp rent increases when their units convert to a market-based PETRA contract. For these families, rent increases should be capped at no more than 10% a year until the new ceiling rent or 30% of income (whichever is greater) is reached.

Second, in cases where a PETRA owner elects to not renew an expiring PETRA contract and HUD does not exercise its right to extend or purchase the property, the Discussion Draft (p. 25, line 17) requires HUD to provide only regular Housing Choice Vouchers (Section 8 (o)) to tenants, rather than Enhanced Vouchers (Section 8 (t)) that would cover the higher "market" rent proposed under PETRA. Especially in high market areas, this would result in the forced eviction and displacement of residents. To bring this situation into conformity with similar "market" conversions in Multifamily Housing today, this provision should be changed to Section 8 (t), which not only provides a higher rent to cover the increase, but requires owners to accept the Enhanced Voucher as long as the tenant wishes to remain, the payment standard is "reasonable" and Congress votes the funds.

Besides requiring permanent affordability, NAHT recommends additional affordability protections based on the Title VI Preservation Program. For current and future tenants upon turnover, Title VI required owners to maintain at least the same income profile that existed at the time of refinancing for each property, by protecting existing tenants and filling turnover units at initial occupancy for the duration of the extended use restriction. Title VI also allowed owners to exceed this profile by renting to lower income residents in each category upon turnover. We recommend adding additional language to the "Use Restriction" section on p.24 (line 11-16) to establish these protections in PETRA.

Strengthen One for One Replacement

No exception to One for One Replacement. The Discussion Draft generally requires "One for One" Replacement of "hard" units affordable to low income families in developments converting to PETRA assistance. However, the Draft includes an "exception" to this general requirement where HUD determines that there is an "adequate supply of affordable rental housing in areas of low poverty," based on a high voucher utilization rate, wide geographical dispersal of vouchers, and a high vacancy rate. In such cases, the Draft bill would allow up to 50% of the "replacement" units to be provided through mobile Vouchers.

We recommend that this exception be dropped. The nation has already suffered an unacceptable loss of "hard" Public and Multifamily housing units through demolition, neglect and market conversion. Homelessness in endemic in virtually all regions of the country, including areas with relatively "soft" rental markets today. These market conditions can change over time. PETRA should require one for one replacement of "hard" units in all cases to provide housing for the all.

Provide for "retroactive" One for One Replacement. In addition, HUD should condition TRA or other funds with a requirement for communities to provide "retroactive" one for one replacement for "hard" PHA or HUD Multifamily low income units already lost through demolition, neglect or market conversion. The goal should be based on the maximum number of "hard" low income units provided in that community in previous years, similar to the precedent set by the recent Scott Carver decision in Miami, Florida. HUD should fully fund the costs of renovation and relocation. Congress and HUD should commit to reverse the loss of low income units by conditioning PETRA assistance on "retroactive" one-for-one replacement.

Maximize on-site and neighborhood replacement. PETRA proposes to allow owners to meet the One for One Replacement requirement off-site, as long as new housing is located within 25 miles of the original site, tenants are "consulted," new housing is near economic opportunities, and bedroom mix and fair housing requirements are met. This is insufficient protection. Under HOPE VI and Multifamily demolitions, One to One Replacement has rarely been achieved, despite years of agitation and litigation by tenants. Powerful development coalitions who covet prime land sites

occupied by Public or Multifamily Housing have torn down more than 140,000 units of Public Housing alone in the past 20 years, with fewer than 40,000 units of replacement housing built.

We urge amendment of PETRA (p. 21) to require Owner/PHA's to provide a maximum of One to One Replacement units on site wherever possible, followed by a site within the neighborhood as a second preference, and finally any site within 25 miles. Such a safeguard is needed to minimize the potential gentrification and displacement of low income residents from their community, when powerful institutions seek to acquire their land.

In Multifamily housing, NAHT members have struggled to cope with HUD's authority to "transfer" project-based Section 8 contracts from one site to another. When faced with the demolition of their deteriorated buildings near the University of Chicago, NAHT's Member Group, the Grove Parc Tenants Association, won an agreement from their owner and HUD to rebuild 300 units on site, and 200 offsite in three neighborhood locations. PETRA should build on this experience by providing residents with legislative handles to remain and rebuild in their communities, if they wish.

. Where "mixed income" redevelopment is appropriate, subject to tenant association approval, units provided for higher income households should be provided by increasing the total number of units overall. If tenants must be temporarily relocated due to renovations or demolition, new replacement units should be provided before removal of units, with phased on-site relocation, wherever feasible. Finally, PETRA should ensure that "income mixing" is not achieved at the expense of "hard" low income units in a community receiving assistance, for each income category (low, very low, and extremely low income) of tenants who occupy the building at the time of conversion.

Provide Incremental Vouchers to Make Mobility Work

The Discussion Draft proposes to allow new tenants aided by PETRA to move out of their development with a Housing Choice Voucher after two years of occupancy (one year for pre-existing tenants), while maintaining the number of units under the project-based PETRA contract. In most cities, Voucher waiting lists are very long and often closed to new applicants. PETRA proposes that 1/3 of turnover units be set aside for tenants who choose to move out of a PETRA assisted building. .

In the 1990's, NAHT opposed HUD proposals to "voucherize" the entire system of Public and Multifamily housing, in large part due to a lack of provisions to maintain project-based contracts and the housing they supported. ***NAHT is cautiously supportive of the mobility provision in PETRA, on two conditions: (1) that Congress provides annual increases in Housing Choice Vouchers to minimize unjust delays for tenants "bumped" on Voucher waiting lists by tenants moving from a PETRA building; and (2) HUD ensures that PETRA assisted buildings are not destabilized.***

This is not an idle concern. In Salem, Massachusetts, after a Rent Supplement building was converted to Enhanced Vouchers with $20 million in loans financed with Tax Credit and public subsidies, close to 50% of the tenants moved out, threatening the building with foreclosure and tenants with plummeting services. ***HUD should explain how PETRA will safeguard affordable units if too many tenants move out of a PETRA assisted building. What happens if the number of tenants who choose to move exceeds the number of available turnover Voucher units in the community?***

In many cases, factors beyond an owner/managers control can influence whether or not tenants leave a building with mobile Vouchers. Location near jobs and services, neighborhood safety, environmental hazards can all influence tenants' choices. ***There is a risk that PETRA could destabilize some well-maintained buildings under these circumstances, unfairly harming some landlords and worsening conditions for tenants less able to move.***

We are not convinced that PETRA will result in management improvements by subjecting owner/managers to "market discipline" if tenants move out of the building. In our experience, "accountability" is better achieved when people stay and organize to improve their building. In tight markets, owners of substandard housing can simply replace tenants who move out with new tenants from long waiting lists. ***HUD should be asked to explain how "accountability" and performance improve when people leave, and new tenants move in to replace them in tight markets.***

HUD Should Justify the Use of Outside Contractors to Administer PETRA

HUD has indicated that PETRA would be implement by outside contractors, not HUD staff. In the past decade, HUD has dramatically slashed agency employees, opting to "farm out" oversight to local agencies and even for-profit companies. This process has reduced transparency and added layers of complexity and confusion for the public and tenants alike.

The Committee should ask what portion of the proposed $350 million for PETRA in FY 2011 would be allocated to outside contractors to implement the program. The Committee should require HUD to provide evidence that "contracting out" is more cost effective than overseeing Section 8 contracts or converting to PETRA "in house." The Committee should also ask for HUD to provide evidence that "contracting out" has worked to empower tenants and sanction non-responsive owners.

Strengthen Resident Rights Provisions

Maintain Part 245 Right to Organize protections. The Discussion Draft includes a section that codifies key provisions of 24 CFR Part 245, the Right to Organize protections in Multifamily Housing, and extends them to Public and Voucher tenants. This is a positive feature of PETRA which should be retained. It will provide immediate protections for Voucher tenants, and should help Public Housing tenants establish independence from PHA landlords.

Provide resources to organize tenants independently of owners. The Discussion Draft (p. 6) provides only that the Secretary "may" provide PETRA funds to facilitate tenants' right to organize. This appears to many as a retreat from the current Public Housing requirement for HUD to set aside $25 per unit for resident organizations. To reassure tenants that PETRA will at least sustain existing levels of protections and resources for Tenants' Rights, ***it would be helpful to stipulate that HUD shall provide at least $25 per unit in funding for every unit aided under PETRA, for this purpose, with funds to be allocated "completely independently" of current or potential owners or PHA's either for areawide tenant support resident organizations (with a priority for tenant run organizations) and/or for direct funding of qualified resident organizations who meet standards to be determined by the Secretary.***

Support and extend individual tenants rights. NAHT recognizes that the Discussion Draft would extend, for the first time, individual rent grievance rights to Multifamily tenants. However, we understand that the Draft also *weakens* existing grievance rights currently enjoyed by Public Housing and Voucher tenants. ***NAHT fully supports the recommendations to restore and strengthen individual rent grievance rights that have been made by Public Housing and Voucher tenants and their partners,*** including right to full hearings by neutral third parties, with outside representatives and appropriate access to evidence.

Provide Access to Information and Third Party Beneficiary status to empower tenants in PETRA. NAHT has recommended Tenant Empowerment measures now included in HR 4868 to provide tenants Access to Information, Third Party Beneficiary status in HUD contracts, and Rent

Withholding rights in substandard buildings. HUD should support these measures in HR 4868, as well as in PETRA so that tenants have access to owners' plans and budgets and have the right to sue in court if owners and/or HUD fail to enforce PETRA contracts.

Build tenant confidence and trust. HUD's track record in effectively overseeing powerful corporate owners and investors in Multifamily Housing is not the best. HUD has rarely vetted speculators and operators of substandard housing, and has yet to sanction a single owner for countless egregious violations of tenants Rights to Organize.

In this regard, we appreciate that the Discussion Draft includes several sections that extend HUD's authority to assess Civil Monetary Penalties for owner violations of PETRA contracts. However, HUD has had similar authority on the books since 2000, but has rarely used it for any violation. The Discussion Draft should make assessment of these penalties mandatory, not discretionary. ***Before embarking on PETRA, HUD must also demonstrate a willingness and capacity to enforce its own rules and sanction private owners for violations of tenants rights, and to engage tenants as partners in enforcement of HUD housing standards in REAC inspections and oversight, including resources to build tenant capacity.*** NAHT has made a number of specific recommendations in this regard to the Office of Multifamily Housing, with few results to date.

Similarly, despite promises over the past year, HUD has yet to make available $10 million provided by Congress in FY 2010 for tenant outreach assistance to nonprofit resident assistance organizations; it will be at least another year before these resources are available. Nor has HUD responded to urgent requests to provide resources sooner by an Interagency Agreement with the Corporation for National Service/VISTA program, despite the unanimous bi-partisan vote of the Financial Services Committee urging HUD to do so in October 2007.

We appreciate the Committee's continued support for getting out these resources, especially the efforts of Rep. Green, Waters and Frank. We urge HUD to step up to the plate and show that it is serious about enforcement of tenants rights and empowerment before we can trust HUD to implement PETRA, even if the legislative changes outlined above are made.

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In sum, while NAHT supports many of the stated principles of PETRA and much of the Discussion Draft, there are several provisions which, taken together, could result in the massive privatization of Public Housing at a greater expense than alternatives that would better preserve affordable housing. These provisions would increase, not reduce, the complexity and confusion surrounding HUD programs. Until these provisions are changed, NAHT cannot support, and must oppose, the current Draft of PETRA.

Thank you for inviting NAHT to express these views. We are submitting, for the record, excerpts from a letter to HUD Secretary Donovan by the Housing Justice Network, a national network of more than 700 legal service housing advocates and clients, which gives an excellent analysis of the Public Ownership issues in PETRA. We are also submitting a recent article by George Lakoff from the Huffington Post about the Administration's PETRA Initiative.

Testimony of the National Leased Housing Association

Presented By Terri Preston-Koenig

Hearing on the Administration's Proposal to
Preserve and Transform Public and Assisted Housing
May 25, 2010

Committee on Financial Services
U.S. House of Representatives

My Name is Terri Preston-Koenig. I am a Principal and Director of Community Development and Affordable Housing Services for Baker Tilly Virchow Krause, a CPA and consulting firm with offices in several cities. Previously, I was with the Wisconsin Housing & Economic Development Authority as Manager, Portfolio Development and Compliance. I am presently senior vice president of the National Leased Housing Association (NLHA) on whose behalf I am presenting testimony today.

NLHA has for the last 38 years represented the interests of developers, lenders, housing managers, housing agencies and others involved in providing federally assisted rental housing. Our members are primarily involved in the Section 8 housing programs – both project-based and tenant-based, as well as the Low Income Housing Tax Credit (LIHTC) program. NLHA's members provide or administer housing for over 3 million families.

Mr. Chairman, ranking Member Bachus, and Members of the Committee, thank you for the opportunity to testify on the Administration's proposal to radically overhaul all our assisted

1900 L STREET, NW, #300 ■ WASHINGTON, DC 20036 ■ 202.785.8888 t ■ 202.785.2008 f ■ hudnlha.com

housing programs. This is far-reaching and complex legislation. It can impact the viability and preservation of 2.6 million units in HUD assisted projects, affect the tenant-based voucher program that assists about 2.2 million poor households, and adversely impact the millions of poor persons, who may be in dire circumstances because they do not have affordable housing, and who seek to obtain federal housing assistance that is in limited supply.

NLHA has worked closely with Secretary Donovan during his previous time at HUD, while he was in New York City and presently. We want to be clear that we have the utmost respect for him and believe that HUD's proposal is generally well-intended. However, we believe the "Transformation" initiative to be ill-conceived and unrealistic. We provided our thoughts to HUD back in February (as part of an industry coalition letter) that such a proposal is too broad and recommended that HUD focus on preserving public housing instead. We have attached a copy of that letter as part of our testimony.

Scope of Initiative

HUD seeks to justify its sweeping proposal by asserting that it has too many separate rental housing programs ("at least 13" it says), each with its own rules, and that they should be consolidated into fewer programs. Among the 13 programs that HUD has identified that should be eliminated as separate programs are: HOPWA (or Housing Opportunities for People with AIDS); Shelter Plus Care for homeless persons; the use by States and localities of their HOME funds for tenant-based rental assistance; Section 202 assistance for elderly persons; and Section 811 assistance for disabled persons. These programs serve distinct populations. We are unsure what "consolidation" will do for the sponsors, or more importantly the people they serve.

Also included in this list of 13, is the Section 8 project-based program, which assists families in about 1.4 million units. This program is an extremely valuable long-term resource for

providing affordable rents for poor families and it is functioning well. It is beyond our understanding why HUD would propose to convert an established program into a new program with new rules.

HUD says "don't worry"; conversion to the new program is voluntary. No owner would be required to convert. But if some owners convert and others do not, how is that streamlining if two programs replace one program? Any perceived "streamlining" could only be achieved if HUD were to induce conversion. If this proposal is enacted it would immediately destabilize the preservation of the Section 8 project-based inventory. The reason lenders and investors put their money into preservation of Section 8 projects is because they have confidence in the predictability and stability of the Section 8 project-based rules. Why should a lender make a long-term loan, on good terms, on a property with a current project-based HAP contract when there is a chance that the project will be converted to another program that has a more restrictive rent structure and has undesirable rules? And why should a Section 8 owner renew its contract if HUD makes it disadvantageous to remain under the Section 8 program even if the owner chooses not to convert to the new, less desirable program?

We urge the Committee to reduce the scope of this proposal to areas of recognized need where some good might be accomplished. The new program aimed at preserving public housing included in this legislation can provide an additional tool in helping some public housing agencies to rehabilitate and preserve their projects. The current mechanism for subsidizing operating deficits and capital repairs in public housing has not been successful in addressing the capital needs of numerous public housing properties because of insufficient appropriations. This housing is an important part of the nation's low income housing stock and should be preserved. Conversion of the public housing subsidy mechanism to one based on a rental assistance contract

like the project-based Section 8 program with a specific subsidy amount should, if the rent structure in the contract is adequate, provide for long-term viability. The new subsidy structure also should be more successful in attracting private investment for capital repairs than the current structure, particularly if equity investors come back to the marketplace. We believe that instead of promoting a large scale transformation proposal that will be rejected by current project-based Section 8 owners and which does not contribute to preservation of that stock, HUD should request funding for a pilot program to preserve public housing that will enable the input of the public housing agencies, residents, investors and communities so that a workable framework for a permanent program can be established.

Rent Supplement/RAP Conversions

Another area where the proposed legislation addresses a real need is with respect to the expiration of subsidy contracts on Section 236 and Section 221(d)(3) properties that have rent supplement or RAP (rental assistance payments). This rental assistance was a precursor to Section 8 project-based assistance and most units were converted to Loan Management Set-Aside Section 8 many years ago. The contracts that did not convert to Section 8 when provided the opportunity cannot be renewed under current law, resulting in the units being lost to the subsidized inventory unless the projects are converted to either the proposed program in the Administration's bill or to the current Section 8 programs. Legislation has been offered as part of SEVRA and the preservation bill to preserve these units as affordable housing by permitting a transfer to the current Section 8 program, a solution we prefer to the Administration's proposal. We have attached language which would accomplish the objective without creating a "new" program. HUD's proposal to convert the remaining 27,000 units of Section 8 moderate rehabilitation is not necessary. These units can be preserved by providing budget-based rents

and by permitting the projects to renew contracts for terms beyond one-year. A provision pending in the preservation bill before this Committee would provide an adequate solution for the preservation of Section 8 moderate rehabilitation properties.

The Transformation legislation does not merely impose new rules on projects that agree to convert to the "new" rental assistance program, but also authorizes the imposition of new, uniform rules on all existing subsidized projects whether they are "voluntarily" converted or not. In addition, the legislation authorizes HUD to impose additional new rules as they may occur to HUD, including the ability to move a successful voucher program from its current administrator to a "regional" agency. Such broad authority is unwise and will be resisted by stakeholders. HUD should limit any "changes" to the public housing projects that choose to voluntarily convert to the "new" rental assistance model.

Mobility

First and foremost among these new rules is one giving a right to residents of units assisted by HUD to move from their units with a priority to receive a tenant-based voucher or monetary assistance comparable to a voucher. Under HUD's proposed language, this right can be exercised when "available resources" exist, an undefined and unelaborated term.

As soon as this provision is enacted up to 2.6 million tenants will have a new right to move from their units with voucher assistance; PHAs administering voucher program will have new obligations; and owners will have new anticipated costs and even possible destabilization of their projects.

Who will know whether available resources exist with respect to a particular project? The legislation provides limited guidance – PHAs with voucher programs who also own converted projects or who administer contracts on converted projects must give one out of every

three turnover vouchers to a tenant who wishes to move from its subsidized unit. But this limitation applies only to a small part of the affected universe of projects and probably none for the first year.

Residents of Section 8 housing, and public housing, could claim that all turnover vouchers are available resources. Beyond that, it could be claimed that various reserve accounts in Section 8 projects, particularly residual receipts reserves that are intended to meet long term capital needs in existing Section 8 projects, are available resources. The situation would be chaotic under the language submitted by the Administration.

Even if these practical problems are corrected, resident choice is still a bad policy. "Resident choice" doesn't mean that residents wait their turn for a voucher; it means they jump to the top of the voucher list and get the next available voucher (or one out of the next three available vouchers). It is inequitable and it is unsound housing policy to extend the time a poor person, perhaps in dire circumstances, has to wait to receive a voucher because a person already receiving a subsidized rent wants to move, for example, to a new tax credit project down the street because the bathrooms look better. Even a one out of three turnover policy results in a 50 percent increase in waiting time, from say 2 years to 3 years.

Moreover, it is not administratively feasible to draw a line between resident moves that seem to have a pressing rationale from those that do not, and HUD has not proposed one. To be fair to all the residents, move requests would have to be verified and that would be difficult. Both the verification process and the line between acceptable and unacceptable move motives would create resentments among residents.

With respect to the impact of resident choice on a project, tenant turnover that is substantially in excess of normal expected turnover can have serious cost consequences for the

project. In addition, prospective lenders who believe particular projects may be subject to excessive turnover may be reluctant to make capital repair loans for those projects. If HUD believes certain projects should not be preserved it should give all the tenants vouchers and no longer subsidize the project, rather than adopting a policy of resident choice that could over time lead to the same result.

The Administration's proposal also makes other changes that could be applied to Section 8 housing that does not convert to the "new" program including tenant organization rights, applicant and tenant procedural rights, civil penalties, enforcement actions and the effect of foreclosure or bankruptcy on the continuation of a housing assistance payment contract and a use agreement. We will submit specific comments on these provisions at a later time. Again, however, we urge the Committee to limit the provisions of this bill to the conversion of public housing, where PHAs agree and it make sense. Converted public housing projects could be subject to the same rules project-based Section 8 projects are subject to today with respect to the above subject areas and thus a new set of rule variations would be avoided.

Thank you for the opportunity to testify and I would be pleased to answer any questions.

February 24, 2010

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
Suite 10000
451 7th St., SW
Washington, DC 20410

Dear Secretary Donovan:

For too many years, the resources needed for quality affordable rental housing in this country have been lacking. The intentions outlined in HUD's FY2011 budget proposal to reassert Federal leadership on rental housing is welcomed by the undersigned national housing organizations. We understand the budget constraints facing this country, but too often it is the programs that serve the nation's most vulnerable citizens that are targeted when cuts need to be made. For the most part, HUD's budget proposal represents a sincere attempt to reverse that trend. However, we do have a number of concerns that we wish to share relating to the Department's "Transformation Rental Assistance" (TRA) initiative.

HUD's plan to streamline the myriad of Federal rental assistance programs into one type of rental assistance is well-intentioned, but we believe, ill-conceived. The current project-based rental assistance programs (PBRA) provide quality rental housing to over 1.3 million households. PBRA is understood and respected by the lending and investor communities resulting in the preservation and recapitalization of thousands of aging affordable rental units. It is inconceivable to us, particularly at a time when the financial market remains extraordinarily risk averse, that HUD would propose converting PBRA to an undefined hybrid of the project-based voucher program. The project based voucher program is intentionally small and limited in scope and such properties are often difficult to finance given the risks associated with that program.

The Department indicated in briefings on its TRA proposal that the initiative was designed to support the philosophy that "tenants should be able to vote with their feet." By making such statements, we believe HUD is creating the impression that the affordable housing stock is not in good condition and therefore tenants would want to flee. In fact, the HUD-assisted portfolio is in commendable physical condition; this is supported by the high REAC scores achieved by the majority of HUD-assisted properties. Further, any major proposal to change the existing PBRA program will affect the current comfort level of lenders and investors with the program, something we can ill afford in this current financing climate. As you know, lenders and investors can be wary of the appropriations risks related to rental assistance programs. Although subject to annual

appropriations, the PBRA program contracts are long-term, a fact that has been key to the ability of project owners to leverage this funding stream in support of recapitalization loans. The project-based voucher program's contracts, as well as the program's rent structures, are not equivalent, and the lending and investment community has not accepted them for underwriting purposes as they have PBRA contracts.

Our groups support the concept of providing Public Housing Authorities the option to voluntarily convert the current funding stream for their public housing into rental assistance, but HUD should look at the success of the PBRA model instead of the voucher model for the reasons noted above. The industry stands ready to work with HUD to refine proposals previously developed by the public housing community that will achieve the goal of preserving public housing.

We commend HUD for recognizing that the inventory of rent supplement and rental assistance programs (RAP) should be converted to Section 8. However, the preference would be to convert these programs to PBRA as proposed by the House Financial Services Committee in the draft preservation bill. As for the moderate rehabilitation program, the inventory is down to fewer than 30,000 from a one time high of 125 -140,000 units and yet, HUD policy is still thwarting their preservation. The renewed ability to use Low Income Housing Tax Credits with mod rehab has presented an opportunity to recapitalize the remaining inventory. HUD's refusal to renew these contracts for more than one year (subject to annual appropriations), while proposing conversion to project-based vouchers is wasting that opportunity.

We are unable to support the TRA initiative as outlined in the FY2011 budget proposal. We encourage HUD to focus on the very urgent needs of public housing, rather than create instability and uncertainty for the successful PBRA programs. We believe that HUD, in consultation with the public housing industry, will be able to develop a range of conversion options focused primarily on the preservation of existing public housing units. Our organizations are committed to working with the Department on this important endeavor.

Sincerely,

American Association of Homes and Services for the Aging (AAHSA)
Council for Affordable and Rural Housing (CARH)
Institute of Real Estate Management (IREM)
Institute for Responsible Housing Preservation (IRHP)
National Apartment Association (NAA)
National Association of Affordable Housing Lenders (NAAHL)
National Affordable Housing Management Association (NAHMA)
National Association of Homebuilders (NAHB)
National Association of Housing and Redevelopment Officials (NAHRO)
National Leased Housing Association (NLHA)
National Multi Housing Council (NMHC)

CONVERSION OF OLD ASSISTANCE CONTRACTS - Explanation

In the 1980s HUD offered at least twice to convert rent supplement and 236 RAP contracts (rental assistance payments pursuant to which up to 20% generally of the units can receive deep subsidy payments) to section 8 loan management set-aside contracts. While many owners accepted these conversions, a significant number did not. One estimate is that about 36,000 units remain under the old programs. These contracts are getting closer to maturity, and can be preserved for longer periods through conversion to section 8. Also, the rent supplement contracts in HUD-insured projects have not been adjusted for inflation since the 1980s and therefore the funds available in the contracts can serve far fewer units that the number of units specified in the contracts.

Conversion of all contract units to section 8 will both increase the number of assisted units and permit their availability beyond their current expiration dates. The section authorizes appropriations for the section 8 loan management set-aside program, which has been unused for several years but which operated effectively in the earlier conversions. The initial term of the section 8 contract would be the remaining term of the rent supplement or RAP contract. Any time after the initial year of a converted contract, an owner could seek renewal of the contract under section 524, the section 8 renewal statute, if the contract term is extended 5 years beyond its initial term. An initial conversion under section 524 would not be feasible for some projects as it might require a rent reduction to a market level. At the end of the initial loan management set-aside contract, renewals would occur under section 524. However, at that time the section 8 rents in the projects should not be subject to a market standard since, in most cases, the HUD-insured mortgage also would have matured, and it is the HUD-insured mortgage that triggers reductions to market rent levels.

It should be recognized that the initial term of the converted contract may be extended indefinitely and is expected to in many cases, particularly if a project is transferred to a nonprofit or public purchaser

CONVERSION OF OLD ASSISTANCE CONTRACTS – Suggested Language

Notwithstanding any other provision of law and subject to the availability of appropriations, the Secretary of Housing and Urban Development shall, at the request of a project owner with a contract under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) or a contract under section 236(f)(2) of the National Housing Act (12 U.S.C. 1715-z-1), submitted within one year after the enactment of this section, convert such contract to project-based loan management assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). The loan management assistance contract shall have a term at least equal to the remaining term of the converted contract. After the initial year, a loan management assistance contract may, at the option of the project owner, be converted to a renewal contract under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), subject to the availability of appropriations, if the project owner agrees to a contract term which extends 5 years beyond the remaining term of the loan management assistance contract.

Testimony of Damaris Reyes for National People's Action before the House Financial Services Hearing on Public Housing May 25, 2010

Thank you Chairman Frank, ranking member Bachus, Congresswoman Waters, Congress Woman Velazquez, and members of the Committee for inviting me here today to speak about the legislative proposal, Preserving, Enhancing and Transforming Rental Assistance, or PETRA.

My name is Damaris Reyes. I am a public housing resident and the Executive Director of Good Old Lower East Side or GOLES in New York City. I speak to you today on behalf of National People's Action.

National People's Action (NPA) is a network of community organizations from across the country that work to advance a national economic and racial justice agenda. NPA has over 200 organizers working to unite everyday people in cities, towns, and rural communities throughout the United States. NPA also coordinates and staffs the Housing Justice Movement (HJM), an alliance of more than 30 community and tenant organizations. HJM represents thousands of residents in America's public and subsidized housing who demand a voice in their housing and a voice in decisions that will affect their lives.

I would first like to address the purpose of this proposal. The stated goal of PETRA is to streamline funding and policies for all social housing in America. The main advantage of the proposal, we are told, turn our public housing assets into leveraged properties eligible for mortgage to banks. According to HUD this is necessary because the tens of billions of capital needed to make the needed repairs to our public housing stock.

The need for repairs and maintenance on this scale is irrefutable, but it is worth taking a moment to reflect on why there is such a massive amount of money needed to make our public housing viable. It is because the current Administration, previous Administrations, and Congress as a whole have failed to act. Previous Congresses have turned their back on millions of Americans by refusing to adequately fund public housing. Previous HUD Administrations have turned their back on the very people they were suppose to serve by not requesting full funding for public and other subsidized housing programs. It is apparent that we as a country have turned our backs on struggling families, on the elderly poor and on the disabled people that live in HUD assisted housing. We are here today discussing this bill because this country has refused to live up to its responsibility to care for our nation's most vulnerable, and has starved public housing of the necessary resources.

So now we are looking to the private market to save our public assets. Make no mistake, the private market's only motivation here is profit and let us not forget that this is the same private market that just crashed our economy, took billions taxpayer funded bailouts and aren't fixing the mess they created. Is this the best answer we can come up with?

But hoping that Congress will act in the best interest of the citizens it is charged with serving hasn't worked and despite the leadership from Congresspeople like Chairman Frank, Representative Waters, Representative Velasquez and many others, this Congress is sadly no more likely that its predecessors to as a whole make the commitment to preserve our national housing assets. And sadly, despite the hope and optimism many housing advocates had for the Obama Administration to work with us in addressing this crisis, we have found that they are no different than the previous Administrations. So with no other viable option presenting itself we have to look at the proposal on the table and try to work with it. But, if we are going to take the monumental gamble of throwing ourselves on the mercy of the market it is imperative that we do it right. If we go down this road we won't easily be able to go back - we have to get it right the first time.

I must state upfront that the National People's Action Network DOES NOT support PETRA in its current form, and we are prepared to actively lobby against it. That being said, there are several areas in PETRA we feel MUST be changed and strengthened in order for us to support the bill.

There are three main areas that have to be addressed are:

We have to ensure that the affordable housing units we have now - a number that is frankly far below the number needed -stay affordable in perpetuity.

We have to ensure that the human rights and dignity of all public and subsidized housing residents are enshrined into law and not subject to individual Housing Authority interpretation.

We have to ensure that protections are in place to retain hard housing units and keep units from reverting to the private market via foreclosure and/or bankruptcy.

I. Affordability in Perpetuity

As PETRA is currently written, converting units would be subject to a 30-year use restriction with a 20-year renewable subsidy contract. It would seem that HUD has not learned anything from the current subsidized housing crisis. Thousands of units are currently bleeding out of the system as landlords who were given subsidized mortgages and tax credit financing reach the end of the contract term that kept the units affordable. The crisis has spawned many HUD task forces and prompted Chairman Barney Frank to introduce legislation aimed specifically at staunching the loss. Yet while in the middle of this, HUD proposed to make the same mistake again

by kicking the problem down the road 30 or even 40 years. That may seem like a long time now, but in 1990, 2010 also seemed very far away.

It is irresponsible for HUD and Congress to leave the backdoor open so wide to the loss of tens of thousands of affordable units by allowing units that are currently permanently affordable and turning them into units that are eminently less stable.

We have an opportunity now, in the writing of this legislation to not repeat the mistakes of the past or to, quite literally, mortgage our future. Permanent use restrictions must be included for any conversion plan for public housing. There are many ways this can be accomplished while still retaining the attractiveness of the buildings to banks to write mortgages. Permanent land use restrictions or land trust arrangements can be written into the law that would maintain the affordability in perpetuity while enabling leverage on the structures themselves.

II. Maintaining Hard Housing Units

a. Vouchers

First, let me state unequivocally that we believe that Section 8 Tenant Based Vouchers are not and should not be considered a replacement for hard affordable units of housing. Tenant based vouchers can be a good option for some families as a way to enable mobility and choice, but they should always be in addition to brick and mortar units.

Vouchers are an inherently less stable way of securing affordable housing. Vouchers can be difficult to use. In the majority of cities and states it is perfectly legal for landlords to discriminate based on source of income and refuse to rent an apartment to a family holding a voucher. Vouchers also come with hard dollar limits so they cannot be used everywhere and in some markets are extremely difficult to use in areas near jobs, quality education or adequate transportation.

PETRA proposed to allow landlords to 'voucher out' up to 50% of the hard units that were, before conversion, publicly owned and permanently affordable units. Under this plan half of the units would disappear. Likely forever. As I've outlined above, vouchers should never be considered a replacement for hard units. The reasoning given in PETRA for this potentially massive shedding of units is that there are some markets where vouchers are easy to use. HUD proposes losing 50% of the units in "areas where vouchers are easy to use" and in areas with a high vacancy rate. At no point in the proposal does HUD define what the area is or what 'high' means.

But more fundamentally, HUD should know better than any of us that markets are constantly changing. A housing market with high vacancy rates today very often becomes a hot market tomorrow. And once the units are gone, our experience is they don't come back. This proposal is seriously shortsighted and should be struck from the proposal.

b. Income Mixing

Section 5 (D) of the PETRA draft is particularly disturbing. In that section it states that properties that convert from public housing buildings to project based voucher buildings will only be allowed to retain subsidy on 40% of the units. What is the plan for the other 60% of tenants, who were, until conversion, living in stable, affordable units? This question must be answered before proceeding.

This is proposed under the section entitled "income mixing." I would like to take a moment to address this and one of HUD's other guiding philosophies in this bill, avoiding "minority concentration." The public housing development where I live and those where many of my fellow residents around the country live are vibrant communities where neighbors help each other succeed and support each other. We overwhelmingly are employed and public housing buildings, in particular those with active tenant organization, are high functioning communities. It is highly offensive to state, as these philosophies state, that only by living near someone who is white or someone of means can my family succeed. And that in order to achieve this success, my community needs to be forcibly broken up, families have to relocated away from family, friends, work and school. This is social engineering at its worst and Congress needs to understand that it has real world consequences.

c. Racial Justice Impact Assessment

One way to mitigate these effects would be to mandate a Racial Justice Impact Assessment (RJIA) on all potential conversions of properties or units and on any initiative that would potentially displace tenants.

For forty years, before undertaking any project, developers have been required by the National Environmental Policy Act to submit an Environmental Impact Statement to outline the impact such development will have on the environment. It's time that a similar process was put into place to take into account the impact development and displacement decisions have on families and communities and in particular on families of color.

An RJIA would be required as part of the planning before any demolition, disposition, or construction of new housing units and also apply to plans for using Section 8 housing vouchers. The assessment would take into account the impact of any housing decisions on communities of color in the following areas:

- Distance from centers of employment
- Availability of adequate and affordable transportation, health care, and childcare
- Availability of quality schools and educational opportunities
- The concentration of minority populations in areas where residents are likely to relocate

The results of the RJIA would be made public and would guide all housing decision-making. NPA urges Congress to include an RJIA into the authorizing language for PETRA.

III. Resident Rights

We are pleased to see that some of the recommendations we made to HUD on protecting the rights of residents at the outset of this process have been incorporated. Universal rights to organize, due process rights for most residents prior to eviction, no rescreening of residents during conversion, residents' right to representation, universal location assistance and the application of Civil Rights Act are all positive steps. There are however, several areas that can be improved.

The PETRA proposal maintains the ability of owners to evict residents for activities that occur off or on the property. There is a fundamental problem with these policies. Neither HUD nor PHA's are arms of the criminal justice system and Congress should compel them to stop behaving like they are. If a resident of public housing is convicted of a crime, the courts are empowered to handle it and do – it is not up to providers of housing to insert themselves into the process. If a member of a homeowner's family is convicted of a crime and sent to prison, we would find it outrageous and a gross miscarriage of justice if the state were to foreclose and evict the other members of the family from their home. The same holds for subsidized housing, where the policies are even more draconian. In many jurisdictions, PHA's will evict tenants and their families for an arrest prior to any proof being offered in court.

Similarly, PETRA does nothing to address the policy of refusing housing to ex-offenders. HUD has affirmed that it believes that housing is a human right, yet it maintains policies that contradict this. People who have served their debt to society have a right to rejoin their families and lead their lives. Barring ex-offenders from reunification with families and access to stable housing is not only unjust it is bad public policy. A key to keeping ex-offenders from reoffending is to ensure they have a stable home. Denying them this basic right greatly increases the risk that ex-offenders will be unable to find employment, improve their lives and stay away from the criminal justice system.

We recommend that protections be put in place to allow ex-offenders to rejoin their families and pick up their lives after exiting prison.

RJIA?

IV. Preventing the Loss of Public Assets to the Private Market

A primary goal of PETRA, as I discussed above, is to leverage our public assets on the private market to raise capital for necessary updates, maintenance and improvements. We would never consider mortgaging our national monuments or park system, but this proposal seeks to mortgage our nation's homes. If this is the road we are going down, it is essential that we put every possible safeguard in place to ensure that these assets are not forfeited to private ownership through foreclosure or bankruptcy.

The current economic crisis should stand as a sharp reminder of what can happen when the private market and its profit motivation are given free rein. As written, the PETRA proposal does not go nearly far enough to protect our assets. Instead of guarantees, the proposal sets up an unstable system where HUD can purchase (back) defaulting properties in the case of bankruptcy or foreclosure. But HUD is not compelled to buy the properties back and there is no guarantee that even if HUD wanted to buy them back that the money would be available for it to do so. This is not enough. In order to ensure that we do not lose our properties, we must require that all mortgages taken out against converted properties have FHA multi-family insurance on the first lien. Beyond that, strictures must be put in place so that FHA cannot privately market these REO's. HUD must retain its right to own the properties, or to sell them only to tenants who have organized to purchase their own homes.

Conclusion:

Over the last several months, I have been a part of a series of convening's hosted by HUD with public and subsidized residents from around the country. The stated goal of these convening's was to get resident input on PETRA. At these convening's HUD repeatedly assured residents that PETRA would result in nothing more than a new name, that nothing would change except we would have more money for improvements. HUD officials told residents that PETRA would not disrupt their communities or lead to a loss of housing units. We were told, "when you go to sleep at night it will be public housing, when you wake up in the morning it will be public housing."

Reading the PETRA proposal from HUD I saw that the HUD official left some important parts out. It seems that what she meant to say was that while you may go to sleep in public housing, but there is a nightmare coming. 60% of you tenants will be kicked out of your homes. The remaining 40% will see your numbers cut in half and sent away with vouchers to try your luck in the market. And for those of you that are left the clock is ticking towards the expiration of subsidy – assuming that mismanagement or economic conditions don't lead to a foreclosure that will pull the building out from under you.

We can do better and we call on Congress to work with us to make this proposal one that actually can work to increase capital without decreasing opportunity.

John B. Rhea
Chairman of the New York City Housing Authority
before the
House Financial Services Committee
May 25, 2010

Chairman Frank, Subcommittee Chairwoman Waters, Ranking Committee Member Bachus, Ranking Subcommittee Member Capito and Members of the Committee,

I am John Rhea, Chairman of the New York City Housing Authority (NYCHA). I want to express my appreciation for the opportunity to appear before you to discuss the Administration's Transforming Rental Assistance initiative otherwise known as the Preservation, Enhancement and Transformation of Rental Assistance Act of 2010 (PETRA).

NYCHA is the nation's first and largest housing authority. It is fitting that we are here in May. Seventy-five years ago, in May 1935, Eleanor Roosevelt opened NYCHA's *First Houses*, two years before enactment of the United States Housing Act of 1937. I am proud to report that *First Houses* is still there on New York's Lower East Side, providing decent and affordable public housing and homes to a vibrant community of 126 low-income families. Since the opening of *First Houses*, NYCHA's public housing has grown, serving over 403,000 residents.

Today, NYCHA operates over 178,500 units of public housing in 334 individual developments. The Authority also provides housing assistance through the Section 8 (Housing Choice Voucher) program to an additional 256,882 New Yorkers, in cooperation with more than 33,300 private property owners. A total of nearly 655,000 residents of our City are served by NYCHA's public housing and Section 8 programs. In fact, if the Authority were a city unto itself, it would rank 20th in population size in the United States.

NYCHA is proud not only of its enduring commitment to the long-term viability of affordable housing for current and future residents, but also for including people with special needs in our housing programs, such as seniors, persons with disabilities, formerly homeless families, victims of domestic violence and persons that are under-employed. Our public housing has remained viable for the last 75 years in large part because working families account for a large percentage (47.4%) of our households. In addition, Social Security, SSI, pension or Veteran's benefits support nearly 42% of NYCHA families.

NYCHA has consistently maintained its developments to the best extent feasible because we firmly believe these communities must be here to serve additional generations who require a helping hand. Perhaps that is a factor in the number of families on our waiting lists. The applicant list for public housing stands at nearly 131,000 families. The Section 8 waitlist, which is closed, has almost 128,000 other households waiting for a voucher to become available. There are over 1.2 million New Yorkers who face a rent burden and who meet the qualifying criteria for public housing that we are not able to assist.

NYCHA has been a powerful force and economic engine for the citizens of New York City since its inception. Federal dollars passing through the agency have a multiplier effect on the economy. NYCHA's budget is spent locally in operating programs and maintaining its properties. Through job creation, spending by vendors and suppliers, purchases of goods and services and increased consumer demand, the Authority has stabilized neighborhoods and remained permanently affordable. But perhaps of greater importance, is that by offering rents at no more than 30% of income, residents have the opportunity to enjoy equal access to jobs, civic amenities and community life.

As with prior decades in the last century, we are again in a period of dramatic and deep societal change. Soon we will have the US Census numbers and with them, hard data on what many of us know instinctively – the population is growing, aging and diversifying. As a consequence, there will be greater need for additional affordable housing. There are only two ways to meet this need and we must do both: build new housing and preserve and expand the capacity of existing stock.

Currently, public housing operates in a constricting environment of overregulation, unfunded mandates, increasing energy costs and insufficient funding to address a growing backlog of capital needs. We must have new financial and management tools if we are to continue to evolve, improve and remain committed to our core mission of serving residents by modernizing our operations and systems.

Solutions of the past will not address the challenges we face today. We face both opportunities and risks. We must join together and establish a new preservation strategy that provides sufficient funding under a predictable, stable and rational program structure, and that allows for flexibility to adopt solutions that are locally-based. What is required is a long-term funding structure that recognizes true operating costs, converting some public housing to alternative affordable housing models and access to financing instruments, such as tax credits and debt financing.

That is why I welcome HUD's Transforming Rental Assistance initiative. It represents a first step in achieving these shared goals. Working across programmatic silos, and if TRA is implemented along with other initiatives, such as Choice Neighborhoods, measures contained in SEVRA, Section 3 reform and expanding on the most successful elements of *"Moving-to- Work,"* we can have confidence that our low-income families will have a place to live and raise their families well into the future.

Secretary Shaun Donovan recognizes the challenges faced by public housing agencies to preserve our stock so as to serve a changing and diversifying population, as well as the gauntlet of programs administered by HUD, each with its own separate funding and regulatory criteria. With TRA, he has put forth a relatively modest proposal to allow for up to 300,000 units of public housing to access investments for repair, renovation and development. He has defined the objectives of TRA as streamlining policies across rental assistance programs, simplifying regulatory requirements and leveraging private funding to meet the capital needs backlog.

TRA's preservation goal mirrors New York City Mayor Michael R. Bloomberg's *New Housing Marketplace Plan* and his charge that New York City's housing agencies work together to create or preserve 165,000 affordable housing units by 2014. 100,000 units have already been created or preserved and the City is well on its way to achieving the Mayor's target.

This Authority has already undertaken two transformative initiatives with HUD assistance. The first was a voluntary conversion agreement for up to 8,400 public housing apartments to Section 8 voucher assistance of which 2,200 apartments have converted to date. The second initiative fully federalized 20,000 public housing units, leveraging ARRA funding to access an additional $300 million of public and private market funding.

I believe these experiences uniquely position NYCHA in recognizing the benefits that can be realized through PETRA, although there are areas where we have concerns and where we believe further discussion is required. NYCHA has participated in several HUD convenings and has studied the proposed PETRA legislation to determine its potential benefits and application to New York City.

Ownership
A major concern to our residents, and to NYCHA, is continuing the public ownership of public housing. That is essential and PETRA specifically authorizes continued public ownership.

Conversion / Preservation
NYCHA strongly supports PETRA's goal to preserve the nation's public housing stock, especially in light of the fact that public housing faces a growing backlog of unmet capital needs estimated between $20 billion to $30 billion nationally. NYCHA alone has a backlog of unfunded capital needs conservatively estimated by *Parsons-Brinckerhoff* as exceeding $6 billion. And although this headline number seems impossibly large, at $3,520 per unit it is a relatively modest investment I quality housing stock, especially when compared to replacement costs. Over the past several years, as a result of prorated funding and the inability to combine our funding sources, we have significantly reduced staff levels at the developments resulting in reduced or deferred maintenance at the project level that only increases our capital needs going forward.

A typical 100-unit residential property in New York has maintenance and operating standards of $6,500 per unit per year and would require $250-300 per unit per year for a replacement reserve. Older buildings would require over $400 per unit per year on-going. Buildings typically require an overhaul of heating, ventilation and elevator systems after 10 years,

At the end of 30 years, properties must be refinanced to address exterior facelifts/brickwork and roof replacements. Four of our developments are at least 70 years old; 21 developments are at least 60 years old; 64 developments are 50-59 years old and another 80 developments range between 40-49 years of age. By industry standards, NYCHA's annual allocation of capital funding is barely sufficient to cover new accruals and fails to address the Authority's backlog of capital needs.

No matter the prudence of the investment, considering the funding levels for the Public Housing Capital Fund over the past ten years together with other demands on domestic funding, we do not anticipate the Congress providing grant funding or appropriations of the magnitude required to meaningfully address the current backlog, as well as meet future public housing needs.

We agree with and very much support HUD's conclusion that the most effective available source of capital in amounts adequate to address the unmet funding needs of public housing lies in the capital and credit markets. The ability to mortgage assets allows housing authorities to capture the embedded equity in properties commensurate with low-income housing properties. Only by turning to the private markets and using all of our assets, including the physical properties and financial incentives, will housing authorities be able to preserve the national investment that has been made in public housing.

Contract Rent
The setting of contract rent is perhaps the element most critical to the program's success. To achieve its goals PETRA must provide a contract rent adequate to address annually accrued capital needs or deferred maintenance, to cover reasonable operating costs, including a management fee, to address debt service on past and future borrowings and to fund a reserve for replacement.

While NYCHA strongly supports PETRA's provision continuing *Brooke* rent levels for assisted families, we are concerned that under the draft, HUD appears to have sole authority to set contract rents or to make adjustments. Our concerns could be addressed with the clear and specific articulation of the tests and data HUD will rely on in making its determinations. Further, property-specific operating and capital information, submitted by the local housing authorities, should be given appropriate weight, in addition to other independent studies of the local rental

market, and must be fully considered in determining contract rent. Arbitrarily setting contract rents too high or too low, without programmatic input from local market dynamics will only lead to distortions and unsustainable outcomes.

PETRA requires agencies seeking conversion to complete a physical needs assessment and a rent comparability study. That is essential in determining the initial contract rent for the properties involved.

We recommend continuing to rely on FMRs as the best method currently available in establishing rents.

Funding for Social Services

One of the most distinguishing features of public housing that separates it from other housing programs is the commitment to providing a range of social services for residents. NYCHA oversees a network of over 400 community facilities that include community centers, senior centers, health care centers, day care and Head Start educational centers. These are essential in making a true difference in the lives of our residents. If one of the goals is to provide reasonable amenities to make public housing desirable and communities healthy, the cost of operating neighborhood centers and programs should be addressed through a dedicated mechanism and not embedded in the contract rent. Attempts to include these non-housing, but vital, programs in contract rent continues to place housing authorities at a disadvantage relative to other developers of assisted housing. It becomes a Hobson's Choice, asking housing authorities to choose between supporting our residents or investing in the preservation of the properties.

Additionally, NYCHA operates 12 *Naturally Occurring Retirement Communities* (NORCS). More than 35% of all public housing families in New York City are headed by seniors. We need to be able to serve that population and to provide the kinds of social services that would allow for seniors to remain in their community. Therefore, we applaud the provision in Chairman Frank's preservation bill authorizing the conversion of designated housing to assisted living.

Financing Tools

NYCHA recommends that private market leveraging be supported either by FHA insurance or a "full faith and credit" guarantee by the federal government to maximize housing authorities' ability to leverage funding at the lowest cost in the private capital markets. This would be similar to the position set out by Chairman Barney Frank in the draft of the *Public Housing Preservation and Rehabilitation Act of 2010* (PHPRA).

Tax-credits and other enhanced forms of private market financing must be made more accessible to public housing agencies. Each state's annual allocation of low-income housing tax-credits may not be sufficient and therefore incentives should be established for projects involving the preservation of public housing and multi-financed undertakings. In that regard, the Authority supports PHPRA's proposed *grants in lieu of tax credits* provision addressing the rehabilitation of qualifying public housing units.

Waivers – Increased Flexibility

The Administration's FY2011 budget proposal for TRA includes text allowing the Secretary to waive provisions of the Section 8 project-based program as well as provisions in Section 9 of the Housing Act of 1937 (other than fair housing, discrimination, labor standards and the environment), upon a finding that waivers or alternative requirements are necessary for effective conversions. NYCHA urges that this text be retained, as it provides the flexibility that may be required to make the program effective and capable of achieving its stated goals.

One-for-One Replacement of Assisted Units
NYCHA supports the basic concept behind *one-for-one replacement* - - preservation of low-income housing. . PETRA provides greater flexibility in accomplishing that goal than has been seen in other measures addressing the same issue. We support the bill's provisions on allowing replacement units off-site, within the neighborhood or within the metropolitan area taking into consideration the cost of development, fair housing standards and the need to deconcentrate poverty. However, there may be situations where one-for-one replacement may not be appropriate and we support the bill's provision on using tenant-based vouchers in limited circumstances.

However, there is a serious question as to whether housing authorities are capable of raising sufficient funds on the private market to support the costs of all replacement units. PETRA must provide sufficient authority for raising the capital necessary to accomplish the objective of one-for-one replacement. Otherwise, the requirement is only an unfunded mandate.

Right to Return – Temporary Relocation
The Authority supports PETRA's provision authorizing screening of residents who have relocated to temporary housing and seek to return to replacement housing. All members of the returning family should be subject to screening regarding their conduct during the relocation period.

Portability Factor / Funding
NYCHA supports the initiative to provide voucher assistance to families seeking to move following 24 months of residency at a property-based development. We would extend the same 24-month standard to families in units assisted with project-based vouchers.

However, we are seriously concerned with the impact of PETRA's "one-out-of-three" provision. As mentioned earlier, NYCHA's Section 8 waiting list includes nearly 128,000 households. To allow one out of every three turnover vouchers to be held in reserve for families residing in converted facilities that may one day opt to move, would be unfair to the households currently on the waiting list, seriously reducing their chance to obtain a voucher within the reasonable future.

We agree that families electing to move should be entitled to voucher assistance, but that should be drawn either from either an appropriation of incremental vouchers or from the *Tenant Protection* account. One-out-of-three is not the solution.

Employment / Job Training
We are pleased that PETRA incorporates the employment and contracting requirements of Section 3 of the Housing and Urban Development Act of 1968. There is much more that needs to be done to provide a full range of employment and job training opportunities for qualified residents. Towards that objective, NYCHA supports the basic goals of Rep. Velázquez' *Earnings and Living Opportunities Act* reforming the Section 3 program.

Moreover, the *Resident Opportunity and Supportive Services* (ROSS), Section 34, 42 USC §1437z-6, authorizes a full range of job training and employment opportunities. If Congress, HUD and housing authorities are serious about resident employment, it is time for ROSS to no longer be a mere set-aside within the Capital account, but rather to be separately funded at $1 billion, with the vast majority going to job training and resident employment initiatives.

Discrimination – Source of Funding
NYCHA supports PETRA's provision creating a federal right that bars discrimination based on an applicant's or resident's source of funding. New York has a similar provision in the City's

Administrative Code and it has successfully removed a barrier obstructing the ability of voucher holders to find decent and affordable housing.

Resident Organizing
Central to our success is to have a strong, healthy and active resident body. We are pleased that PETRA maintains the basic recognition of the right of residents to organize and to be formally recognized. The bill also continues the provision for financing resident organizing efforts and NYCHA strongly supports those provisions as well.

Flexibility Now
Recognizing that TRA is a multi-year program that is not currently authorized and that the current public housing and Section 8 programs will continue for years to come, NYCHA urges the Congress to immediately provide housing authorities with the flexibility needed to administer programs in their portfolio, including:

- Full fungibility between capital, operating and Section 8 funding.
- Allow housing authorities with excess cash flow to use these funds to cover debt, address capital needs or to meet operating expenses across their entire portfolio.

- Removing the Section 8 unit cap provision as it affects the tenant-based voucher program. The voucher program is already a budget-based program and administrating agencies can not spend more than the dollars allocated. The unit cap is administratively unnecessary and limits the number of families that can be assisted within budgetary limits. In the FY2011 Budget, the Administration calls for dropping the unit cap.

- NYCHA is very much interested in the concept of regionalization. NYCHA administers vouchers within the same metropolitan jurisdiction as our sister agency, the New York City Department of Housing, Preservation and Development (HPD). An additional voucher program within the City is administered by the New York State Division of Housing and Community Renewal (DHCR). NYCHA encourages coordination amongst the three agencies and seeks the restoration of the ability to move vouchers and associated funding within the three programs to serve residents in the same metropolitan area while achieving the highest levels of voucher utilization.

Thank you again for the opportunity to address these important measures. I welcome such questions as you may have.

Statement of

Mark Taylor

Executive Director

Charleston-Kanawha Housing Authority, Charleston, West Virginia

Before the House Financial Services Committee

United States House of Representatives

May 25, 2010

"The Administration's Proposal to Preserve and Transform Public and Assisted Housing: The Transforming Rental Assistance Initiative"

Chairman Frank, Ranking Member Bachus, Chairwoman Waters, Ranking Member Capito, members of the Committee, my name is Mark Taylor. I am the Executive Director of the Charleston-Kanawha Housing Authority located in Charleston, West Virginia. I am honored to be here today to present our views regarding the administration's Transforming Rental Assistance proposal, commonly referred to as TRA. I want to begin by sincerely thanking my representative, Congresswoman Shelley Moore Capito, for the opportunity to testify before the Committee on this very important and ambitious proposal, which, from my vantage point, if authorized, would have a profound and lasting impact for housing authorities like mine. I applaud you for holding this hearing and for allowing not only myself but my fellow panelists the opportunity to present our views. I acknowledge the commendable effort that has been made by the Department to inform and gather comments on this proposal, though there remain a number of unanswered questions. I believe this hearing will begin to address some of those questions.

About the Charleston-Kanawha Housing Authority

The Charleston and Kanawha Housing Authorities officially reorganized and began operations as the Charleston-Kanawha Housing Authority in August of 2006. Individually, both authorities have provided decent, safe and sanitary housing for low- and moderate-income families for more than 70 years. Today Charleston-Kanawha Housing Authority is the largest assisted housing agency in the state of West Virginia. We provide housing assistance to more than 4,400 families within our operating jurisdiction. We offer public housing and Section 8 housing assistance for families and seniors. Under our public housing program we manage eight family communities, four high-rise communities and various scattered site developments throughout Kanawha County, which combined serve more than 2,000 residents. Under our Section 8 program, we manage over 2,900 rental assistance vouchers. There are at present over 200 on our waiting list for public housing, and some 2,000 on our waiting list for Section 8.

To begin my statement, I would like to make a few brief comments about the conversion discussion we are now having.

The Preservation Imperative

In my opinion, implementation of the administration's TRA proposal as currently presented could significantly affect the operations of my authority, the long-term preservation of my inventory, and our continuing ability to serve low-income families in our jurisdiction. With this in mind, I suggest you carefully examine this proposal given its depth, complexity and the uncertainty surrounding many of its aspects. I do agree, however, with the concerns the Secretary and many others have raised regarding the

long-term preservation of our existing affordable housing inventory. As the Secretary has said, "now is the time" to focus on the long-term financial and physical viability of our public and assisted housing inventories.

With this in mind, in my own community we are currently changing the face of public housing by redeveloping our three oldest communities, Orchard Manor, Washington Manor and Littlepage Terrace, which are all more than 50 years old. This is being done using a blend of private and public financial resources including low income housing tax credits, leveraging 1/3 of our capital funds and private loans. This is being completed in multiple phases and will result in the replacement of 500 units with a mix of public housing and project-based homes. We estimate our modernization needs for preserving our nine remaining public housing communities to be as much as $84 million over the next 20 years.

I greatly appreciate the efforts of this Committee in making additional Capital Fund dollars available through the Recovery Act and the 2010 appropriation—dollars that have greatly assisted my authority in our efforts to preserve public housing by making them more viable in the community in which we operate. As an example, we are in the process of using our ARRA funding to convert 40 efficiency units in an elderly/disabled high-rise into more desirable and marketable one-bedroom units. I am aware, however, that this funding was made available primarily to address current difficulties in our economy and was otherwise tied to the uncertainties of the appropriations process.

Agencies like mine, whose mission it is to address the affordable housing needs of low- and very low-income families, seniors and the disabled, know that in order to effectively carry out that mission over time, it will be critical to have a variety of tools necessary to preserve our current stock and also to produce new affordable units. I believe the discussion on conversion we are now having can move us in the right direction in this regard, and for that I am grateful.

The Voluntary Nature of any Conversion Should be Maintained

The conversion of public housing should be a *voluntary option*. For over 70 years, PHAs like mine have owned and managed public housing, and this housing has become an essential element of local infrastructures. In some communities, the voluntary conversion of public housing to a different form of subsidy may represent both a practical and a promising approach. At my housing authority, I believe the conversion to project-based assistance would likely succeed for our smaller developments (50-100 units), which are less than 30 years old and have more modern design and features. At these sites, securing modest financing for modernization upgrades would be relatively simple. In other communities, I believe we need to appreciate the fact that public housing has been and should remain an effective, functional method for providing

affordable housing, and the need or desire to convert to a different form of rental assistance is simply not applicable. Again, from my experience in Charleston, larger (100 plus unit) developments that are older than 40 years, with outdated designs, are not viable without either major redevelopment or consistent modernization funding as provided through the Capital Fund Program. We have been very fortunate in our timing, and the resources available to us to have redeveloped our aging developments. This option may not, however, be available to all housing agencies as capital becomes harder to obtain and the ability to construct complex financial deals may be beyond their expertise or resources.

Mr. Chairman, I am concerned about a proposal, however well intentioned, that contemplates the phased elimination of the existing public housing program as we know it. Housing authorities must continue to have access to multiple options for the preservation and recapitalization of their existing public housing projects. However, I also believe that we must be able to ensure a fully funded public housing program, strong implementation of the Capital Fund programs, and a streamlined regulatory environment (particularly for smaller agencies) where PHAs do not voluntarily choose to convert.

Flexibility to Meet Local Needs and Circumstances

In terms of your efforts to create a feasible conversion tool, I believe housing authorities should have a range of options to allow us to address the specific needs and priorities of our communities. The Secretary has talked about the inherent problems of having as many as 13 different rental assistance programs, including public housing, and the problems that having 13 different sets of program requirements inevitably bring about. While I can't necessarily argue against the merits of program uniformity and consolidation as a practical matter, at the local level I want to be able to make decisions and use appropriate resources that best meet needs in the three counties that I represent.

While I have only limited information regarding the proposed 8(n) program, I am concerned about the receptivity of the marketplace, most especially the lending community, to this new form of assistance, especially given a number of secondary policy objectives 8(n) would impose. Imposing Section 3 requirements upon converted developments is a good example of an overlapping policy goal that could otherwise jeopardize TRA's potential for success. Mr. Chairman, I suspect that agencies interested in converting public housing will be primarily motivated by a desire to move into a regulatory environment that more closely resembles the existing privately-owned multifamily regulatory environment. In my own case, relief from the cost of managing and monitoring Section 3 and community service requirements would be incentive to convert my public housing units. Likewise, in our redevelopment efforts working with

lenders, the restrictions placed upon us as a public entity, such as having to follow prevailing wage requirements, represent a constraint that private owners largely do not face.

With these general thoughts in mind, I would like to discuss a few specific issues that jump out at me in my reading of the administration's proposal and the legislative language accompanying that proposal, which you now have before you.

Mobility/Choice

First let me turn to the "Resident Choice" feature proposed in HUD's draft legislative language. As I understand it, residents living in the converted 8(n) properties, and potentially *all* public housing and rental assistance properties, could access a Housing Choice Voucher after 24 months of residency. PHAs that convert would be required to set aside every third turnover voucher to serve those households that may choose to exercise this option.

My immediate concern is that this feature essentially allows those clients who are already receiving housing assistance to jump the voucher waiting list and receive 1 out of every 3 vouchers that become available, which in our housing authority's case would be approximately 150 vouchers annually. In my area our voucher waiting list currently has 2,000 families waiting for assistance, with the average wait being 12-18 months. Unfortunately, under this proposal 150 fewer unassisted families per year would receive assistance.

Besides questions of fairness, I believe the "choice" feature is unnecessary for residents of our community. Public housing residents of the Charleston-Kanawha Housing Authority most certainly have choice. Approximately 25 percent of our residents choose to leave their units annually. They also have a right to receive public housing assistance while maintaining a place on the voucher waiting list and can elect to receive a voucher when their names come to the top of the list. In FY 2010, for example, about 66 of our public housing residents were provided the opportunity to receive a voucher. Additionally, we offer families living in public housing the opportunity to be better served in a different location through transfers to other public housing sites. As such, residents of our public housing are no more constrained in their housing choices than are other low-income families, and they certainly have significantly more choices than those families who are eligible for assistance but are not yet receiving it.

In my opinion, the "Resident Choice" feature could potentially add confusion to the already challenging task of managing the housing choice voucher waiting list. In addition, it could also intensify turnover pressures on developments subject to the "Resident Choice" requirements. For Charleston-Kanawha Housing Authority, the "choice" feature is a solution in search of a problem that does not exist, and could

unravel a system that I believe serves the low-income residents of our community very well.

Regionalization

As I have followed the administration's proposal, I have noted the continued emphasis on the regionalization of the Housing Choice Voucher program. While the voluntary consolidation of HCV programs and consortia or the adoption of multi-agency portability agreements would not be *required* under the most current TRA proposal, regional configurations would still be given priority in evaluating conversion applications. By using this as grounds for qualification, I am concerned that this will eventually become a requirement for participation. I believe the decision to enter into a regional agreement should be left to local authorities based on local considerations. I think that PHAs—including my own—would be more likely to enter into cooperative agreements with other agencies if the Department implemented statutory language that increased flexibility through regulatory and administrative measures. To emphasize a point I made earlier, I believe that participation in any conversion program should be voluntary and based on the preservation needs of the property.

Many Unanswered Questions

Mr. Chairman, as important as this discussion on conversion has become over the last several weeks, and although there have been noteworthy efforts by the Department to solicit input from stakeholders on TRA, there are still many unanswered questions. Authorities like mine will need more information on the practicality, cost and financial feasibility surrounding this proposal if it becomes law—information that we would need to take to our Boards of Commissioners and others before making the decision to convert. I would like to raise a few of those questions now for the Committee's consideration:

First, it is my understanding that the Department's proposal will be phased in over the next several years. Assuming this remains a voluntary program, what can those who do not convert expect? For example, will the Department continue to request Capital Fund resources sufficient to address the ongoing modernization needs for those who do not convert? I must say that the $500 million cut in the Capital Fund in the Department's FY 2011 budget, coupled with a $350 million request for TRA, does give me pause and raises a concern about how remaining public housing units will actually fare—especially those more costly to convert above the Department's per unit estimate or those in the situations where it may be very difficult to secure private financing.

Second, with regard to the "Resident Choice" feature, who will administer the set aside pool of "Resident Choice" vouchers? For housing authorities that do not administer housing choice vouchers but are required to exercise the "Resident Choice" option,

where will they obtain exit vouchers? Will the vouchers that serve my community be reduced in order to accommodate communities without vouchers or communities that have longer waiting lists due to the "choice" option? The draft bill unfortunately does not answer these critical questions.

Third, given our housing authority's current redevelopment efforts, there seems to be no consideration for those housing authorities who have currently obligated their capital funds for preservation efforts under the Capital Fund Financing Program. At present the Charleston-Kanawha Housing Authority, for example, has committed over $600,000 annually for the next twenty years to finance our redevelopment activities. What plans are there to address the needs of housing authorities in my position?

Fourth, the bill requires one-for-one replacement of units, which would make many mixed-finance deals in our community impossible. I believe this requirement could severely restrict our financial options to preserve and revitalize our outdated housing stock, though our intent is to maintain our baseline of approximately 1,500 public housing units over the multiple phases of redevelopment. Under our current redevelopment plan, it was our understanding that we would receive replacement housing factor funds; will these funds be available in the future under TRA?

Fifth, I wonder how the lenders will respond to a new and untested program such as TRA. For example, what might the underwriting criteria be? Commercial real estate in general is difficult to finance today, and I would assume a TRA-type loan product would most likely hit some market resistance unless a type of credit enhancement structure is part of the transaction. I would also expect underwriting criteria to be very project-driven and would most likely require higher vacancy factors and turnover costs based on the proposed structure of the TRA model. The depth of the market, i.e. market feasibility, location, strength of management, attractiveness of the product relative to the competition, and other factors, will all be crucial to the long-term preservation of the housing.

Conclusion

Mr. Chairman, this Committee has been engaged in difficult, but much needed, work necessary to preserve our nation's affordable housing inventory. My colleague, Fred Purnell from Wilmington, Delaware, was given the opportunity just a few weeks ago to discuss the One for One Replacement and Tenant Protection Act of 2010 and the Public Housing Preservation Act of 2010 that both Chairwoman Waters and you have authored. Today it has been my pleasure to discuss with you the administration's PETRA legislation. Members of this committee are to be complimented for having raised the importance of maintaining our existing inventory of public and assisted housing to a new and rather unprecedented level of review. We are now living through

times that have intensified pressures on the federal budget and our economy as a whole. There is a temptation in times like these to be bold and to try new approaches. In the world of public housing, TRA is an ambitious attempt to sustain our nation's public housing inventory and, like this Committee, the administration is to be applauded for being bold—particularly when we are aware that the existing order needs fresh thinking.

The revised TRA proposal, although in many ways a positive step forward from the initial proposal, does not provide details or clarification on key elements that authorities like mine need to know in order to make rational judgments as to the utility of this approach in their areas of jurisdiction. I have highlighted several issues and concerns that are of immediate importance to us in Charleston. There are other issues that time does not permit me to cover—most importantly the issue of financing, including the adequacy of proposed rent levels, the cost to address unmet modernization needs, and the ability to leverage sufficient private capital.

Mr. Chairman, I would ask this committee to take a careful approach to advancing legislation of this magnitude and complexity. To the maximum extent possible, I would rely on proven programs to underpin this effort rather than wade into uncharted waters. I know the public housing program and I know the Section 8 project based rental assistance program. Lenders and other key groups in my community are also familiar with these programs. I feel at this point in our conversion discussion, that it would be far more prudent to rely on what we know and what has been tested in the market.

Finally, should you choose to advance conversion legislation in this Congress, I would suggest a limited approach in the nature of a "pilot" that can be assessed and modified later based on hands-on administration in a variety of markets. In addition to enabling at a later point a more all-encompassing approach based on real time experience and analysis, a "pilot" approach would be less costly now in these otherwise difficult days of constrained budgets.

This concludes my statement. I am happy to answer any questions you may have of me, and I, along with my staff in Charleston, stand ready to assist the members of this committee in any way you deem appropriate. Thank you for your time and attention.

May 3, 2010

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Sent Via Facsimile (202) 708-2476
and Regular Mail

Dear Secretary Donovan:

The Housing Justice Network is an informal association of more than 700 housing legal services, housing advocacy and tenant organizations. We write to provide you with our collective feedback to date regarding the Transformation of Rental Assistance (TRA) initiative, as proposed in the President's FY2011 budget, and as more fully described by HUD officials at events and trainings over the course of the past few months.[1]

We greatly appreciate your career-spanning efforts and sincere commitment to the realization of our important national housing goals, particularly with respect to the preservation of affordable housing.

While we share the ultimate goal of placing our public and assisted housing on secure financial footing, this letter outlines recommendations that we feel are critical to incorporate into the TRA program, particularly focusing on: 1) public ownership; 2) one-for-one replacement; 3) application and admissions; 4) tenant participation; and 5) tenant mobility.[2]

I. Public Ownership

With respect to the public housing stock, HUD has stated repeatedly that public ownership will be maintained for buildings that undergo a conversion through the TRA program.[3] However, we

[1] While there is diversity of opinion within the HJN membership regarding the TRA program, and every member may not subscribe to every statement in this letter, it reflects our joint input after multiple collaborative discussions.
[2] The absence of reference to other issues relevant to the TRA program should not be interpreted as indifference, but rather in many cases reflects the fact that prior feedback which we support has already been conveyed to HUD. For example, residents who participated in the Resident Empowerment Initiative meeting with HUD on April 13-14 provided HUD with suggestions on the fair hearing process that HJN members had developed, and emailed the specific language to Sara Bouchard of TAG Associates.
[3] *See, e.g.*, Investing in People and Places: HUD's FY2011 Budget, Stakeholder Briefing on the Transformation of Rental Assistance, PowerPoint Slides, p.2 (February 9, 2010) (stating, "For converted public housing properties, public ownership will be retained."); *see also* Major Features of HUD's FY2011 Budget Proposal on Transforming Rental Assistance (TRA): TRA Discussion Draft, p.3 (March 31, 2010) (stating, "Public housing agencies would

remain concerned that the TRA program in fact may substantially increase the likelihood that public ownership, and the associated public accountability, will be lost either immediately or in the long run due to a variety of heightened risks, including: foreclosure risk, equity investment risk, expiring use risk and appropriations risk.

Foreclosure Risk

The TRA program proposes to address the estimated $20 to $30 billion capital backlog in public housing by leveraging debt from the private market. This undoubtedly introduces a new risk to the world of public housing, namely the potential risk of default by the borrower and foreclosure by the lender.

The primary reason that foreclosure is a concern is that the borrowing contemplated by the TRA program can only be repaid if annual Congressional appropriations are increased and sustained for at least the term of the debt. This substantially enhances the potential harm of future Congressional underfunding (see "Appropriations Risk" section).

HUD has responded to this concern in part by arguing that future underfunding of the public housing stock, if it occurs, would be a problem regardless of whether funds are channeled through the TRA program or through the traditional Capital and Operating Funds.

This argument does not entirely address the concern. It is true that, for example, the experience of agencies receiving less than 90 cents for every dollar they were due under the Operating Fund formula in many recent years has posed a threat to the continued long-term viability of the stock.[4] However, it is also equally true that underfunding, *coupled* with the granting of a security interest to a third-party with the right to sell off the property in the event of default, exacerbates that threat.

Furthermore, Congressional underfunding is only one of the factors that might lead to foreclosure. A variety of other factors, such as financial mismanagement or neglect, while always a threat, would increase the risk of loss of public ownership where a third-party can foreclose on the property.

For these reasons, **the TRA program must require FHA insurance for any debt secured by public housing.** This will help mitigate the risk that a program designed to place public housing on more secure financial footing has the unintended consequence of forfeiting ownership to a private financial institution.[5]

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retain ownership of the converted properties currently in their portfolios and could continue to develop, own and operate additional affordable housing in line with their mission.").

[4] *See* Douglas Rice & Barbara Sard, Center on Budget and Policy Priorities, *Decade of Neglect Has Weakened Federal Low-Income Housing Programs: New Resources Required to Meet Growing Needs*, p.15 (February 24, 2009) (stating that "operating funding has fallen below the formula amount for six consecutive years, and for each of the past four years, agencies have received less than 90 cents for every dollar they are due under the formula.").

[5] Furthermore, HUD should establish rules to make sure that developments are only mortgaged when necessary. For some low-need properties, it may be sufficient to use ongoing subsidies to build replacement reserves to address renovation needs in the future. Likewise, for moderate-need properties, it may be possible to use an approach like

The potential loss of public ownership, however, is not the only threat posed by foreclosure risk. The possibility of foreclosure also threatens to wipe away the use restrictions relating to critical requirements such as rent limits, eligibility limits and tenant rights. If the mortgage is recorded in superior position to the use restrictions, then foreclosure would inevitably result in a loss of these requirements.

Thus, **the TRA program must also require that the use restrictions be recorded in superior position to any mortgages placed on public housing.** This will ensure that even if a property goes through the foreclosure process, tenants will be guaranteed the same rights pre- and post-foreclosure.

Concerns have been raised that this latter requirement would unduly limit the amount of debt public housing could leverage from lenders who would be reluctant to accept a subordinate security interest in the property. However, this concern should be somewhat alleviated by the FHA insurance requirement—a lender should have little concern with respect to recouping its investment if every dollar loaned is insured by the federal government.

A final concern of many HJN members is that even with FHA insurance and superior use restrictions in place, the TRA program will require a steadfast commitment to preservation from HUD in the event of foreclosure.[6] However, past experience with troubled properties in the privately-owned, HUD-assisted context has demonstrated that even the dictates of federal multifamily mortgage foreclosure law have not prevented the attrition of critical use restrictions and termination of Section 8 contracts upon foreclosure.

This reality has unfortunately carried through to the present day, in which advocates around the country trying to preserve affordability and tenant protections too often continue to find themselves engaged in adversarial positions *against* rather than *in partnership* with HUD.

Given this reality, **a proposal for a new preservation program like the TRA, should be accompanied by an equally rigorous effort to evaluate HUD's current preservation practices.**[7] Advocates are extremely eager to engage in dialogue with HUD staff and to provide input with respect to these practices.

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the current Capital Fund Financing Program, which pledges a portion of future subsidies for debt payment, but does not actually mortgage the property.

[6] Assuming the FHA insurance recommendation is adopted, one critical role that HUD will play in the event of foreclosure is in facilitating the transfer to the subsequent owner via post-foreclosure sale. The TRA proposal has not specified, however, whether public ownership would be required or advantaged at such a sale, or what the performance standard requirements of such purchasers would be. This information is necessary to make a complete evaluation of the program.

[7] One example would be an examination of the process by which HUD addresses mismanagement of multifamily projects, pursuing effective policies short of foreclosure and HAP contract termination. Another example would be to reevaluate the deficient form use agreements which are commonly used to replace regulatory agreements at foreclosure or upon Section 250 prepayments.

Equity Investment Risk

Another threat posed by the TRA program is the risk associated with equity investment. HUD has made clear that even with respect to public housing, capital needs in part may be addressed through the use of low-income housing tax credits.[8]

Using tax credits with public housing poses an even more immediate risk to public ownership than private debt. As we know, the traditional low income housing tax credit program requires partnering with a private, for-profit entity that is able to make use of the tax credits. Thus, any public housing project that utilized tax credits presumably would be transferred to a new entity not wholly owned or controlled by the public.

This is of utmost concern. The realities of the tax credit program demonstrate that the general statement that "public ownership will be retained" requires a significantly more nuanced analysis.

The need for tax credits has been justified on the basis that for some projects with particularly significant capital needs, the ability to leverage debt will simply not generate adequate funds. While this may be true, tax credits are not the only solution.

A 2008 article by the Center on Budget and Policy Priorities suggested combining debt financing with direct up-front grants to address the public housing capital backlog.[9] Similarly, a recent article published in the National Housing Law Project's Housing Law Bulletin points out that the entire public housing backlog could be addressed within ten years with only two-thirds of one-tenth of a percent of the FY2011 budget.[10]

This is not to deny current economic and political realities. The President has announced a freeze on domestic discretionary funding. Public concern continues to increase with respect to the growing federal debt. Despite the $4 billion included in the stimulus package for the Public

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[8] *See, e.g.*, Remarks of Secretary Shaun Donovan, National Housing Law Project National Conference for Housing Justice Network, Washington Court Hotel, Washington, D.C., (March 8, 2010), *available at* http://portal.hud.gov/portal/page/portal/HUD/press/speeches_remarks_statements/2010/Speech_03082010 (stating, "Further, while it may be somewhat new for public housing to meet its capital needs through tax credits and private debt, this is how new housing has been financed for decades . . . .").

[9] *See* Barbara Sard & Will Fischer, Center on Budget and Policy Priorities, *Preserving Safe, High Quality Public Housing Should Be a Priority of Federal Housing Policy* (revised October 8, 2008). The article states, "Congress could provide preservation funds to address existing capital needs in two main ways. It could give qualifying agencies direct, up-front grants to renovate public housing developments. Alternatively, it could allow agencies to borrow the needed funds . . . . Overall, debt financing would be somewhat less efficient, because lenders would charge agencies interest rates substantially above those the federal government pays on its debts. . . . The amount of the required cushion would be lower if the loan carried federal insurance. . . . The total existing capital need is so large . . . that Congress is unlikely to provide enough up-front funding to eliminate the backlog even over several years. Consequently, debt financing will have to address much of the backlog. *Because up-front grants are more efficient, however, it will make sense to use grants to address capital needs to the extent that sufficient appropriations can be obtained.*" *Id.* at 24-25.

[10] *See* NHLP, *HUD Introduces Transformation of Rental Assistance Proposal*, 40 HOUS. L. BULL. 73 (Mar. 2010) (stating, "It would take only an additional $2.5 billion per year in capital funds to fully eliminate the public housing capital backlog within 10 years . . . [which] would amount to only two-thirds of one-tenth of 1% of the Administration's overall proposed budget for FY 2011.") (citing Sherwood Research Associates).

Housing Capital Fund, Congress is unlikely to appropriate funds necessary to address the entire backlog in the near future.

However, the use of traditional tax credits simply is not essential to achieving the purposes of the TRA program. The ability to combine some level of direct grants with private debt is not unimaginable in the next few years.[11] Furthermore, other innovative proposals have been suggested, such as an extension or adaptation of the successful tax credit exchange program in a manner that allows public agencies to utilize tax credits without the need for a private partner. **These kinds of innovative solutions should be incorporated into the TRA program.**

A variety of mechanisms have been suggested to ameliorate the concerns that traditional tax credits introduce into the equation: long-term land leases from the public agency to the tax credit ownership entity; robust agency and community participation on the board of the tax credit ownership entity; rights to purchase at the end of the compliance period or rights of first refusal upon other sale.

While all steps in the right direction, our experience is that none of these mechanisms would sufficiently guard against the risk of loss of public ownership and public accountability. For HUD to stand by the statement that "public ownership will be retained," **the TRA program should not use traditional tax credits to address the capital needs of public housing.**[12]

Expiring Use Risk

A third potential risk is introduced through the conversion from the traditional public housing funding streams to project-based Section 8 or project-based voucher type funding streams.[13] There is no need to recount the now decades-long struggle to protect the privately-owned, HUD-assisted stock from attrition due to the expiration of use restrictions and rental subsidies.

In order to avoid repeating this same struggle with the public housing stock, we feel strongly that **all public housing owners must be required to renew the Section 8 subsidy for so long as the federal government makes appropriations available.**

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[11] Given the much greater efficiency of direct grants as compared to private debt or tax credits, due in part to transaction costs and increased costs of capital, a government concerned with rising national debt and fiscal responsibility should at least consider incorporating some up-front grants.

[12] The need for tax credits with respect to the TRA program has been described as likely to affect a relatively minor portion of the public housing stock. That being the case, perhaps a separate program that does not impact the vast majority of public housing should be explored to address projects with the most significant need. This would prevent against the exception swallowing the rule.

[13] Note that HUD has stated that it intends to align the basic policies of these two types of property-based rental assistance. Any such alignment should ensure that with respect to over-housed tenants, the project-based Section 8 rules are adopted, allowing residents to remain in their homes until an appropriately-sized unit becomes available. Furthermore, the program should ensure that any rule changes do not result in the ability of TRA-converting owners to push heightened utility costs onto tenants.

Furthermore, HUD has asked for feedback regarding the appropriate length of the Section 8 contract and use restrictions, and specifically has asked "How would a longer use agreement [beyond 20 years] impact a property and, in particular, the ability to raise private capital?"[14]

We believe that this frames the question backwards. The critical use restrictions, including rent limits, eligibility limits and vital tenant protections are of core importance to public housing. The length of these restrictions should not be weighed against the ability to leverage private capital. We should not view public housing converted through the TRA program as a process by which we rent these protections for a certain limited time period.

Rather, **the TRA program should require that the use restrictions recorded on converting properties be of the longest term legally allowable, bounded only by the limits of applicable state law.**[15] We should then determine the amount of private debt we can leverage with such long-term restrictions in place.

Furthermore, the standard use agreement recorded against public housing properties must be drafted carefully and with an opportunity for public input to ensure that all of the important restrictions currently applicable to public housing are incorporated. And finally, a strong third-party enforcement mechanism is critical, as the use restrictions are only as good as their ability to be enforced and residents are often in the best position to assert their own rights.

Appropriations Risk

Our final concern as to the potential for the TRA program to increase the likelihood of lost public ownership is with respect to appropriations risk. As stated above, the risk of Congress underfunding public housing no doubt exists regardless of the TRA program. However, it is possible that this program may in fact increase that risk and heighten the resulting harm.

The FY2011 budget proposal requested $290 million to cover the supplemental cost of assistance for an estimated 300,000 converted units and administrative fees.[16] HUD estimates that with these funds it will be able to leverage $7.5 billion.[17] This figure is roughly one-third of the total estimated capital backlog. Thus, presumably to address the entire backlog, three times that amount, or $870 million, would actually be necessary to leverage the required funds. If it turns out that the $7.5 billion figure is overly optimistic as many are concerned may be the case, then the annual increase in appropriations could grow even higher.

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[14] *See* Major Features of HUD's FY2011 Budget Proposal on Transforming Rental Assistance (TRA), *supra* note 3. Note that since the mid-1980s, the enormous effort and expense involved with preserving the privately-owned, HUD-assisted stock flows directly from use restrictions of only 20 years. Even projects with 40-year use restrictions are becoming a major preservation issue around the country, as evidenced by the mounting maturing mortgages problem.

[15] Note that it has not been uncommon for HOPE VI funded public housing replacement projects to be built on land leased for 60-90 years, with the lease including a public housing use requirement.

[16] *See* Investing in People and Places, *supra* note 3, at 4. This is out of a total $350 million request, including $50 million for resident mobility and upfront costs of improving the Housing Choice Voucher program, and an additional $10 million for technical assistance and evaluation. *Id.*

[17] *Id.*

Furthermore, in order to support the new annual debt load, these increased appropriations would need to be maintained every year. By allowing agencies to borrow against public housing, the TRA program thus creates a somewhat rigid situation in which any increase in federal funding must be sustained consistently for the term of the loan.

There is no question that HJN would welcome an increase in federal funding for public housing. However, one can only assume that the more expensive the TRA program ultimately costs, the greater threat there is that a future Congress at some point may even temporarily reduce funding, thus leading to the harmful consequences discussed under the "Foreclosure Risk" section.

Affordable housing advocates have been unable to accurately assess theses risks given a lack of information. In order to be able to make an informed judgment about the TRA program, **HUD needs to provide advocates with its financial projections and the basis upon which they are constructed.**[18] Without such information, it is difficult to assess whether or not the risk of loss under the TRA program outweighs the risks inherent in the current public housing program.

II. One-for-One Replacement

We commend and fully support HUD's proposal to require one-for-one hard replacement units in the TRA program, but object to HUD's proposed exception to this requirement. We construe HUD's proposed exception to be applicable to any community where: (i) the private rental market has an excess supply of units with rents that meet the Housing Choice Voucher Program ("HCVP") requirements and (ii) HCVP participants are generally successful in using their vouchers.

HUD can best meet the housing needs of very low-income families and individuals by maintaining or achieving an appropriate mix of project-based subsidized units and tenant-based rental subsidies. Tenant-based rental subsidies offer mobility. Project-based subsidized units offer stable tenancies, and are especially helpful for elderly persons, persons with a disability and large families. Within the TRA context, project-based subsidized replacement units are also an essential tool for providing the tenants of the replaced units, who wish to remain in a project-based subsidized unit either in the same neighborhood or elsewhere in the housing market, with the opportunity to do so.

Given HUD's existing inventory, this appropriate mix between project-based subsidized units and tenant-based rental subsidies can be achieved only with a TRA requirement for one-for-one hard replacement units, without exception.

HUD's proposed exception to the one-for-one hard replacement unit policy is flawed in two fundamental respects. First, because of the widespread soft rental markets, its criteria are met in most of the country, especially outside the East and West coasts. Therefore, it would eliminate

[18] Similarly, in order to assess the true risk that Congressional underfunding would lead to default and foreclosure, it would be extremely helpful to have general information regarding what the TRA program underwriting standards would be, such as requirements regarding reserves and excess cash flows, as well as expected operating budgets under the TRA program as compared to the current public housing program.

the requirement for one-for-one hard replacement units in most of the country. Second, its criteria are unrelated to whether a community has a need to maintain or expand its inventory of project-based subsidized units.

If any exception were appropriate, it would be based on a community's excess supply of project-based subsidized units, throughout its jurisdiction(s). However, since those circumstances rarely exist, an exception based on this criterion seems unnecessary.

III. Application and Admissions

The consolidation—and hoped for simplification–of several HUD programs demands a corresponding consolidation of application processes and rules.

HUD has expressed the hope that residents of public and multifamily housing will go to sleep one night and wake up the next morning in TRA developments without experiencing any difference—a seamless transformation. But for applicants, the transformation *should* result in a considerable and noticeable change—there *should* be a difference. TRA can and should provide the opportunity for a rationalization of the fragmented and difficult process of finding, applying to and gaining admission to affordable, rental-assisted housing. **TRA should bring a simpler, fairer and more user-friendly application and admissions process.**

In many areas of the country, applying for federal rental housing resources is a daunting task. Families hoping to maximize their chances of finding decent housing they can afford must apply to scores of programs and developments in the area. They must first figure out where the public housing, multifamily housing and voucher agencies are located; which waiting lists are open; how long the wait might be; if appropriate size units are available; what documentation and verification is required and more. If they succeed in identifying the housing in the region they wish to live in, typically families must then submit separate applications to the public housing programs, voucher programs and multifamily developments, each with its own admissions rules, preferences and documentation requirements.

Some of these programs demand in-person applications, while others have lists that have been closed for months or years. Some allow minimal initial applications to get on a list, while others demand complete and detailed applications with all documentation support. Most employ residency preferences, some have employment preferences and very few utilize needs-based preferences. Each program may demand separate verification of eligibility and preferences.

In short, finding and applying for federally-assisted housing resources can be a full-time, confusing, frustrating job for the families who need the housing the most.

TRA opens the door to a more unified, accessible and rational system. First, **this is the opportunity for HUD to require some form of public registry of rental assistance housing** in a region that would allow eligible households to know where the housing was, the features of the housing, what units are available and how to apply. Second, **there should be some merger of aspects of the application process.** With just these two innovations, federally-assisted housing

would be more open to all needy households—not just those that happen to live nearby to the developments or the PHA.

We recognize that some federal housing is tailored to discrete populations. But at least within broad categories (e.g. family housing, elderly housing and housing for people with disabilities) combining application policies and making unit information more available would streamline the process and align with the hoped-for streamlining of the programs themselves.

Features of a more open application system might include:

- Implementation of a single initial preliminary application form for all federal rental assistance in a region, regardless of the location of the housing, type of assistance (tenant-based or project-based), identity of owner/manager, etc.;

- Applications should be widely available in a variety of ways (electronically, by phone, in-person, by fax, by mail);

- Applicants should be required to submit only one set of supporting documents, verifications, references, and so on for all federally-assisted housing in a region (or at least all TRA housing);

- Required in-person applications should be prohibited and standardized lottery procedures used; and

- Site-based waiting lists and local preferences should be prohibited or disfavored. (To the extent that these features are retained, they should be strictly monitored and audited to ensure that required procedures are followed, that site-based waiting lists and/or local preferences do not have a disparate impact and that applicants who work in a locality are treated equally with applicants who live in a locality.)

We agree with HUD that it is time to move the current structure of numerous and duplicative PHAs toward regional administration of tenant-based vouchers through consolidation of programs or formation of consortia. In the short term, complex and burdensome portability procedures are a barrier to housing choice and should be streamlined.

But the ultimate goal should not be just to streamline portability within a region, but to replace it with a seamless process of regional administration that allows voucher holders to lease housing and move freely within a region.

We recognize that these suggestions are very broad and many details must be thought through. For example, HUD must assure that merged application systems do not undermine laws protecting victims of domestic violence, that applications are available to applicants with limited English ability and that housing managers with open and progressive admissions policies are not required to cut back on those policies due to regionalization.

IV. Tenant Participation

At HJN's conference earlier this year, you recognized that government funding for organizing tenants was money well spent because it was the advice of tenants that helped save dozens of multifamily buildings in New York City. As you reflected, you stated:

> *That experience reaffirmed for me that housing policy is not about rules and regulations. It's not about bricks and mortar.*
>
> *It's about people.*[19]

Because we need to save thousands of buildings, we need thousands of resident leaders at the local level who can participate effectively.

On April 13 and 14 of this year, HUD held a historic convening of public housing, multifamily housing and voucher residents. A number of HJN members attended the convening and also participated in small groups on resident participation. What follows are recommendations from HJN members that build on the concerns, ideas and questions that residents raised during the convening, focusing on: 1) strengthening HUD enforcement; 2) providing funding for independent tenant organizations; 3) building independent and informed tenant organizations; 4) incorporating the best features of rental assistance programs; and 5) improving HUD's communication systems.

Strengthening HUD Enforcement

At the convening, residents spoke about how difficult it is to move forward with a new program when HUD enforcement has been lacking. They spoke about the runaround they face when they have a problem, from regional HUD to national HUD and back to regional HUD. We need to stop the runaround. Residents want to see HUD enforce its current regulations.

We realize that HUD is looking internally, developing a strategic plan and thinking through what decisions should be made at the regional and national levels. We urge HUD to:

- Develop, with the advice of residents, a clear process to enforce 24 C.F.R. Part 964, 24 C.F.R. Part 245 and 24 C.F.R. Part 903, as well as other regulations, and issue a formal notice clarifying the enforcement process;

- Strengthen proactive enforcement strategies and ask residents what strategies they would suggest. For example, one resident spoke about how helpful it was to have HUD field staff monitoring both PHAs and residents councils to make sure that MOUs are being signed, that residents have trainings, that residents are involved in planning and capital improvement processes and that both PHAs and resident councils are doing what they should be doing;

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[19] Remarks of Secretary Shaun Donovan, *supra* note 8.

- Establish a tenant complaint hotline or ombudsperson at regional field offices. The hotline number should be widely distributed, along with a policy for how the complaints will be addressed, including a timeline;

- Provide opportunities for residents to meet with HUD regional staff who will be responsible for handling enforcement-related calls, communications and complaints, perhaps through regional convenings of public housing, multifamily housing and Section 8 voucher residents and their partners;

- Ensure that HUD conducts regular, "hands-on" oversight so that investigations and subsequent HUD enforcement actions are not only complaint driven, but that problems can be solved before a complaint is filed; and

- HUD audits and reviews should include assessing violations of tenant organizing rights and other tenant protections. On the multifamily side, there are regular management reviews done for HUD by agencies such as housing finance agencies. These reviews should include whether there is an active resident organization and what its role is. Interviews with the organization's leaders should also be incorporated into such reviews.

Providing Funding to Build and Sustain Local and Independent Tenant Organizations

As HUD has recognized, funding for resident participation is essential. In public housing, the funding model has consisted of dedicated yearly funding available directly to resident organizations that are working on the inside of their communities. In multifamily housing, competitive funding has been available to outside organizations that supply tenants with organizing assistance. For Section 8 voucher holders, there have been no funds, nor any right to organize.

In the TRA program, HUD has proposed to extend the right to organize to all, but has proposed only a competitive funding process. We propose the following recommendations:

- HUD should recognize that a range of support is needed to organize the unorganized, to build a group and to sustain it. That support must come from both the inside and the outside;

- There should be a dedicated stream of funding in TRA that mirrors the $25/unit funds for resident participation. These funds should go *directly to resident organizations* to enable them to sustain resident involvement locally;

- In addition to preserving the per unit stream of funding that goes directly to resident groups, there should be a competitive grant process, as was available to multifamily tenants, for outside partners to provide organizing and organizational capacity building support to the unorganized to ensure that residents can form independent tenant organizations. This is critical to building resident involvement, especially where tenants fear retaliation;

- Both per unit funds and access to competitive funding should be available to all residents, including Section 8 voucher residents, jurisdiction-wide resident councils and resident advisory boards;

- HUD should discuss with voucher residents what mechanisms there should be to provide them with funding and organizing support. The resident advisory board structure may provide one vehicle;

- To ensure that tenant groups are independent and because in some situations housing authorities block resident organizations from accessing tenant participation funding, better systems need to be developed to distribute per unit funds. We urge HUD to work with residents to develop a fair, impartial and accountable system;

- HUD should explore with residents how to support a national resident leadership training program that will enable partner organizations to provide resources and supervision for residents to become VISTA or AmeriCorps members so that they can work in their community while earning an educational benefit. Past experience has shown that this can help tenants develop skills and give resident groups organizing support, as well as bringing resources into communities; and

- The Resident Opportunity and Self Sufficiency (ROSS) program should be funded and it should support capacity building for resident organizations as it once did.

Building Independent and Informed Tenant Organizations

We agree with HUD that any new program should explicitly give all tenants, including voucher holders, a right to organize independent of owners and PHAs. To this end, we recommend that:

- This right should be statutory;

- Resident groups must be able to have independent technical assistance to help them review, understand and have input into the conversion process. For example, assistance may be needed to understand the terms of new use agreements. Residents may need independent advice on capital improvements, energy efficiency strategies and other bricks and mortar issues. We urge HUD to create a dedicated stream of funding out of the $10 million for technical assistance for TRA for residents to choose independent technical assistance. This should include resident groups providing technical assistance to other resident groups from different locations and jurisdictions. There should be similar technical assistance funding available for other proposals and programs that affect residents and what their future housing may look like (such as Choice Neighborhoods);

- HUD should explore with residents and partners how to create a more transparent and accountable recognition process so that groups are truly independent (i.e. so that PHAs are not controlling which groups are recognized and which are not). For example, PHA staff should have no role in selecting or nominating candidates, operating or overseeing resident

elections, facilitating or otherwise leading tenant association meetings or monitoring participation;

- Resident associations must be free of management interference. Associations must have the right to deny PHA staff or management from attending meetings. Management may not attend tenant meetings unless invited. Independent meeting space must be provided and associations given free access for meetings; and

- TRA should make it clear that residents and partners *have a right to information* about the conversion process.

Bringing Together the Best of the Rental Assistance Programs

TRA seeks to bring together different programs, experiences and models of tenant empowerment and organizing. At the convening, residents began to learn from one another about how different rules, funding and organizing models are working in their communities and housing developments. More discussion is needed with residents and among residents to reflect on what is working and what is not working. We urge HUD to take the best from public and subsidized housing regulations and include:

- Independence from PHA/management as provided in 24 C.F.R. Part 245;

- A set amount of guaranteed funding of resident organizations as provided in 24 C.F.R. Part 964;

- Resident rights to information, distributed as provided in 24 C.F.R. Part 245;

- Ability to fund independent technical assistance;

- Separate funding for services or social programs; and

- Funding to "organize the unorganized" (eligible non-profits can get funding to help organize resident organizations) as provided in 24 C.F.R. Part 245.

Improving HUD's Communication Systems with Residents

HUD has started an important process of communicating with public housing, multifamily and Section 8 voucher residents. We urge HUD to:

- Continue to provide webinars that enable residents across the country to receive information from HUD and allow them and their partners to submit questions;

- Support face-to-face yearly national resident convenings with HUD and build residents' connection to regional HUD offices by hosting regional convenings;

- Work in partnership with resident leadership to collaboratively set the agenda and the format of such meetings;

- Support an independent national communication vehicle, with a resident advisory committee, to keep residents informed and to build public awareness about what residents are doing to protect their communities. For example, support the development of an e-newsletter, with print companion materials. There may also be ways to facilitate building regional or local communication and networking channels; and

- Develop, with residents and partners, a best practices guide to inspire residents across the country about the impact that strong resident organizations are having in terms of revitalizing their housing and providing support, jobs and resources for people in their community (such as educational partnerships with universities, partnerships with food banks to develop farmers markets, resident-led peer training models and well-designed buildings).

HJN believes that all HUD programs—current and new—must build strong local resident groups because they are an essential ingredient to building sustainable communities.

V. Tenant Mobility

Finally, the tenant mobility feature of the Transforming Rental Assistance program is the most innovative aspect of the new program. For the first time, families residing in public housing and HUD multifamily housing will have a choice to move to a unit, neighborhood or school district that best meets the needs of their families without being required to give up their housing assistance.

To ensure that this feature of the program is implemented successfully, we offer several recommendations and responses to the latest HUD proposal draft, focusing on: 1) waiting period for eligibility; 2) allocation of portable vouchers; 3) mobility assistance and landlord recruitment; 4) increasing voucher rents and other mobility incentives; 5) portability and inter-jurisdictional issues; 6) protecting tenants; and 7) ensuring PHA and landlord compliance.

Waiting Period for Eligibility

We understand the concerns that have been raised about potential distortions of the voucher waitlist in areas where Section 8 vouchers are more popular than the existing stock of PHA public housing units. HUD's proposed two-year waiting period for new residents is a sensible response to this concern, and will make it less likely that families apply to public housing simply to get access to a voucher.

At the same time, **it is essential that HUD clarify that current residents (at the time of conversion) will not be subject to any such "waiting period."** These families have already been living in public housing, and did not apply for public housing as a means of obtaining a

portable voucher.[20] Similarly, jurisdictions that have a "one year waiting period" before new voucher recipients are permitted to port out of the jurisdiction should be required to waive this rule for TRA voucher recipients.

Allocation of Portable Vouchers

In every part of the country, there is a pressing need for more vouchers and **we urge HUD and Congress to appropriate an allocation of vouchers for TRA and mobility.**

Until there is such an appropriation, HUD's suggestion to allocate one out of three turnover vouchers to TRA tenant mobility is a reasonable approach to balancing the rights of families on the voucher waitlist and families residing in public housing. The rights of both groups of tenants need to be protected—in order to be eligible for TRA, the PHA must commit to making sufficient vouchers available for this purpose through turnover, and it must also demonstrate that it will not be in a position to terminate existing voucher holders because of budget shortfalls.

In PHAs with a high demand for TRA portable vouchers, it is important to supplement these resources, as HUD suggests, with additional vouchers from a national pool (or from supplemental voucher appropriations in future years). In geographic areas where demand for portable vouchers significantly outpaces supply, and supplemental vouchers cannot fill the demand, PHAs may wish to develop a system to prioritize families seeking assistance—if this is the case, HUD should place limits on PHA discretion, and ensure that any such system supports HUD policy goals.[21]

Need for Mobility Assistance and Landlord Recruitment

For the TRA program to succeed in creating new choices for residents, it is not enough to simply give families a voucher and an option to move. Longstanding experience in the general voucher program, buttressed by the recent experience of public housing relocation, has shown that without hands-on housing counseling, landlord recruitment, housing search assistance and post-move orientation, a package of services often termed "mobility assistance", many families are quickly drawn into segregated Section 8 submarkets.

Families need to be shown actual apartments in low poverty communities with high quality schools. They need information about those communities. In some cases, they need preparation to be able to navigate these more selective private rental markets successfully. Successful housing mobility programs also include active landlord recruitment, security deposit assistance and post-move counseling to ensure that families make (and retain) a successful move.

These programs must be supported by a substantial allocation of the $50 million in TRA funds set aside to "expand access to opportunity." To avoid reconcentration of low-income

[20] We also agree with HUD's suggestion of a one-year waiting period for new residents of non-public housing properties holding project-based vouchers under Section 8(o)(13).

[21] For example, HUD may wish to give special priority to families with elementary school aged children moving to a new school district, families who need to move because of job location or families that already have pending transfer requests for health or safety reasons.

families in moderate poverty, inner suburban neighborhoods, it is also important to geographically target the landlord outreach process to ensure the maximum number of units for families in truly high opportunity communities.

While all families who receive a voucher through TRA can benefit from financial literacy and other services that prepare them for the complexities of the voucher program and the private market, limited housing search assistance and landlord recruitment resources should be targeted to families that express interest in making non-traditional moves—as HUD research suggests, families who prefer to remain in higher poverty neighborhoods do not need assistance in finding a landlord willing to accept their voucher.

Increasing Voucher Rents and Other Incentives to Encourage Mobility

Section 8 rent structures will also need to be addressed for this new program to succeed in offering real choice. In many metro areas, a large majority of rental units in safer neighborhoods with better schools are above the regional Fair Market Rent and thus off limits to Section 8 families. Until HUD addresses the discriminatory system for setting FMRs, or opens up the process for obtaining exception rents in higher opportunity areas, housing choices will continue to be limited to lower-income, more racially-segregated communities and neighborhoods.

But FMR reform alone is necessary but not sufficient to enable improved locational outcomes for voucher holders given the budgetary incentives now existing in the voucher program for PHAs to curtail moves to higher opportunity areas as a cost-cutting measure. To incentivize PHAs to facilitate better locational outcomes, **PHAs should also receive an Administrative Fee bonus tied to the number of TRA related vouchers actually used in high opportunity areas, and conversely a SEMAP penalty if the pattern of usage mirrors existing patterns of HCV concentration.** HUD should also prioritize TRA program grants for jurisdictions and states that have adopted laws prohibiting discrimination against Housing Choice Voucher holders.

Dealing with Portability and Related Inter-Jurisdictional Issues

The arcane voucher portability system is already a barrier to mobility in the regular Section 8 program, and it will need to be addressed for the TRA program to be successful. HUD's most recent proposal would encourage consolidation among voucher programs in a region. Where consolidation is not feasible or is resisted, another approach would be to allow non-governmental entities (NGOs) to administer TRA vouchers on a regional basis, while also providing housing counseling and search assistance.

At a minimum, **HUD should require a seamless process of mandatory absorption by receiving PHAs of vouchers used by families moving from TRA properties.**[22] For PHAs that do not have their own Section 8 voucher program, applicants should be required to demonstrate that the PHA(s) that administer vouchers in the area where the TRA project is located (or neighboring PHAs in the rare case where a TRA project is located in an area not served by any voucher program), have committed to release vouchers to TRA families.

[22] Under no circumstances should PHAs be permitted to deny TRA voucher holders the right to make portability or within-the-jurisdiction moves to higher cost areas as a cost cutting measure.

Protecting Tenants during the Mobility Process

We can envision a number of scenarios where families seeking to move become enmeshed in bureaucratic "Catch-22s". **The final legislation should make clear that families should not lose any of their current tenure rights when they elect to move, and that HUD should draft regulations to protect these rights.** For example, if a family is unable to locate a new unit within the designated Section 8 voucher search period, they should retain their right to stay in their current unit, and they should also be able to continue to search for a unit—receiving a portable voucher if and when such a unit becomes available. Similarly, a family should not lose their place on any other waiting lists for vouchers or assisted housing simply because they have applied for a TRA voucher.[23]

Ensuring PHA and Landlord Compliance

As HUD is well aware, non-enforceable rights are meaningless, and HUD lacks the monitoring and enforcement resources to do the job on its own. Moreover, under the MTW demonstration, HUD is no longer involved in close oversight of participating PHAs, including many of the larger PHAs serving the cities where a significant share of public and assisted housing residents live.

If one goal of this new program is to give long term public housing residents new rights, then **the proposed bill must confer such rights on tenants by carefully and explicitly giving families the right to enforce their rights in courts—either through an express right of action or through clearly stated personal rights intended to confer an implied right of action**. Such a provision would *not* lead to a proliferation of litigation—its primary function would be to give tenants bargaining power in an otherwise unequal relationship with the PHA. But it would make residents' new rights real in a way that distant HUD oversight cannot.

To address private market discrimination, the new program should also include funding for fair housing testing and enforcement in jurisdictions receiving TRA funds.

Conclusion

We would end by reiterating our deep gratitude for your efforts toward strengthening our nation's rental assistance programs and, as you put it at our Housing Justice Network conference, "putting HUD-assisted rental housing on a strong foundation for decades to come."[24]

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[23] For example, LIHTC units often provide a desirable and suitable alternative and are obligated to accept vouchers. However, LIHTC units typically have long waiting lists that would preclude public housing families opting to covert from being able to use a subsidy in an LIHTC unit because the search window is unlikely to be timed so that it will coincide with their name getting to the top of the admissions list. We would encourage HUD to build in a mechanism that would allow the PHA household to time the voucher issuance to the availability of a LIHTC or other suitable HUD multifamily unit or other form of suitable housing.

[24] Remarks of Secretary Shaun Donovan, *supra* note 8.

We look forward to future engagement with you regarding the TRA program and would kindly request that you contact Peter Iskin, Managing Attorney of the Housing Unit at the Legal Aid Society of Cleveland, 1223 West Sixth St., Cleveland, OH, 44113, (216) 861-5654 (peter.iskin@lasclev.org), with any response. We would also greatly welcome the opportunity for representatives of HJN to meet with you to further discuss the issues raised in this letter.

Sincerely,

Housing Justice Network

Cc: Interested public housing, multifamily housing and Section 8 voucher residents
Barbara Sard, Senior Advisor for Rental Assistance
Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing
Carol Galante, Deputy Assistant Secretary for Multifamily Housing

Written testimony, submitted to the House Committee on Financial Services regarding full committee hearing on "The Administration's Proposal to Preserve and Transform Public and Assisted Housing: The Transforming Rental Assistance Initiative"; May 25, 2010

Re: Urban academics scholars in opposition to the proposed Transforming Rental Assistance Initiative and the Preservation, Enhancement, and Transforming Rental Assistance Act of 2010

As academics and researchers of urban policy and planning committed to equality and social justice, we strongly oppose the Obama Administration and Department of Housing and Urban Development's Transforming Rental Assistance (TRA) initiative, and its legislative proposal, the Preservation, Enhancement, and Transforming Rental Assistance Act of 2010 (PETRA). This opposition is based on a critical analysis of the drafted PETRA legislation in relation to the department's year long promotion of TRA. The solution TRA presents is debt financing through the conversion of 280,000 public housing units to Section 8 contracts. That is, to leverage $7 billion by mortgaging 25% of all remaining public housing units. As a multi-year initiative, Secretary Donovan states that the goal of TRA for the Federal Government is to "not require any capital funding for public housing in a separate account."[1] In other words, formal divestment and the end of public housing that residents have called home for over seven decades.

Public housing is real estate, that is all it is...it needs to perform the way the rest of the world does in real estate, so we can maximize what we can do with it. ~ Sandra Henriquez, Assistant Secretary for Public and Indian Housing

After forty years of decreases and eliminations to social spending, TRA represents the latest attempt to remove safety nets long ensured as collective public goods. Fundamentally, TRA does not enable more funding for the existing public housing program. Instead, TRA opens up public housing as a new source to feed the addiction to credit. Under the banner of preservation, public housing ceases to be public as it passes into the cradle of debt and leverage with its future mortgaged off to banks for profit in the hands of private interests. As such, TRA, like the preceding shifts in federal assistance to Section 8, is not meant to truly help poor households and individuals but a means of getting the federal government out of the low-income affordable housing business.

This testimony analyzes the false premises, problematic characterizations, and misplaced priorities of TRA. This testimony begins by emphasizing the significant differences between TRA as a"signature initiative" presented by high-level officials and the specific authorizations sought in the PETRA legislation. The remainder of this testimony will detail the potential and likely disastrous implications of TRA and PETRA.

Socio-economic change and housing affordability since the 1970s

While first implemented in 1937, approximately half of the public housing stock was constructed by the newly formed HUD between 1965 and the 1973 "moratorium". The breakdown of legitimacy for the production of affordable housing coincides with a generalized crisis in the market system not dissimilar from our current situation. In response to that crisis, federally assisted rental policy shifted to subsidizing rent in the private market through vouchers. Instituted in 1974, the multiple varieties of Section 8 have grown to provide approximately three times the number of

1 Donovan, S. March 2010. Response to questions from Senator Murray, Senate Appropriations Subcommittee on Transportation, Housing and Related Agencies.

remaining public housing units. Despite the expansion of vouchers, the vast majority of low-income tenants then, as today, live in non-federally assisted or private units. In 1970 there were 130 affordable units for every 100 low-income household whereas today there only are 38 units. For low-income tenants, 1978 marks the tipping point to greater need than to supply while very low-income households reached that point in 1970 and by 1978 the shortfall ballooned to 1.8 million units.

It is not a coincidence that access to affordable housing diminished for federally assisted and private market housing during the recessionary 1970s. The economic system that emerged post-crisis (and recently crashed) achieved growth and distributed wealth in far more unequal terms. The role of banks and financial industries increased through deregulations and the extension of credit to non-traditional borrowers. As real wages stagnated or declined for everyone but the super-wealthy and the use of credit became increasingly important not only for financial industries but for leveraging household consumption and homeownership.[2] Following a model of asset management and further engaging mixed financing, since 1995 HUD has authorized the demolition of approximately 165,000 units of public housing following congressional removal of one-for-one replacement. In parallel, 360,000 units of federally assisted housing units, particularly project-based Section 8, have been lost primarily due to private owners opt-out.[3] Today, HUD reports that 335,000 project-based section 8 units are up for renewal during the coming year.[4] More Section 8 units were gained and lost during a shorter period of time compared to longevity of public housing. While PETRA introduces additional aspects to Section 8, the huge losses indicate the instability and risk to the long term affordability of privately owned and operated rental assistance.

TRA is a re-branding of Bush's FY03/04 plan to mortgage and project-base public housing

Put simply, the TRA "signature initiative" of the Obama Administration's HUD is a more extreme version of George W. Bush's twice rejected "Public Housing Reinvestment Initiative" (PHRI). Other examples exist,[5] but the parallels between Obama's Transforming Rental Assistance and Bush's Public Housing Reinvestment Initiative are more than happy accident. In FY03 and 04, the Bush Administration's HUD submitted PHRI as part of the budget and both times they were rejected. PHRI sought to enact the same framework TRA is currently pushing: using private financing to rehabilitate properties though mortgages, the argument that without private-sector money PHAs will be unable to address the capital improvement backlog, an emphasis on market discipline through "asset management" principles, the conversion of public housing to project-based voucher subsidies with use agreement matching the previous public housing project, and even the opportunity for residents to move after living in a converted development for only one year (rather than 2 with TRA).[6] An important difference is the slightly more modest scale of operation limited to leveraging $500 million in 2003 and $1.7 billion in 2004 during the first year.

Ultimately, the conceptual differences between TRA and PHRI are minimal to non-existent. What distinguishes the two proposals are the untold sums Obama's HUD has spent on promotional outreach, interactive webcasts, stakeholder discussions and powerpoint presentations. Nevertheless, after months on the road and countless interactions, the core of Bush's PHRI remain intact in TRA.

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2 Harvey, D. 2010. *The Enigma of Capitalism*. London: Profile Books.

3 Rice, D. and Sard, B. 2009. *Decade of Neglect has Weakened Federal Low-Income Housing Programs*. CBPP p. 17.

4 Galante, C. March 24, 2010. Testimony on the "Housing Preservation and Tenant Protection Act of 2010"

5 Bill Clinton's 1996 *Blueprint for Reinventing HUD* proposed to transform public housing into what was then tenant-based certificates, moving it away from all project based and existing subsidies for operating and capital costs. The Blueprint legitimizes these changes in the name of streamlining operations. In 1997 bills in both houses of Congress sought to eliminate HUD: one proposal for public housing included conversion to vouchers in the name of choice and mobility while the other advocated block grants to increase competition and efficiency (S. 1145, H.R. 2198).

6 http://www.hud.gov/offices/cfo/reports/04estimates/phcf.pdf

Several congressional members were present during the two PHRI proposals and delivered incisive comments and questions that are more relevant now than ever. These points particularly emphasized objects to the privatization of a public good and the risk associated with mortgages and foreclosure. Given the recent market collapse and subsequent bailouts it's even more evident that there is no such thing as "market discipline"; that the private market has always relied upon the public and Federal Government for its existence; and that ultimately it is the market, banks and lending agencies that need to be disciplined, not the public housing residents.

Processes of privatizing public housing: mainstream housing market

HUD officials have repeatedly claimed over the past year that TRA does not privatize public housing.[7] Treating privatization as a thing rather than a process, this oft repeated statement could only be true if an exceedingly broad definition exists. Indeed, the PETRA legislation provides that PHA owned is to "include a project or unit owned by an entity in which the agency or its officers, employees or agents hold a significant direct or indirect interest and which has among its purposes the ownership or management of affordable housing." [8(m)(2)M(2)] Nowhere in PETRA is "indirect interest" defined however, the TRA's budget website's FAQs indicates that a "third-party management company" could be hired should the PHA choose. Additionally, when considered against the standards established by a Congressional Research Service Report on the matter, the PETRA legislation more than exceeds the multiple minimal standards.[8] It is clear that TRA includes a multitude of privatizations including ownership structure, management policies and funding streams that removes public protections and these will be considered in later testimony due to space.

Mortgaging public housing, its lack of regulation and PETRA's foreclosure protections

Neither TRA presentations nor PETRA specify the mechanisms for debt-financing $7 billion from the $290 million requested in the budget. Provided the centrality of private equity and investment in the TRA initiative, this oversight is particularly glaring. HUD's failure to disclose significant details on the legislative authorization, the structuring of tax-credits, mortgages or other financing mechanisms underscores the minimal transparency affected during the TRA process.

Provided that there is no new debt-financing authorization in PETRA's suggests HUD intends to mobilize an existing but under or unused legislation. Through the Capital Fund Financing Program (CFFP), PHAs are able to borrow against the future allocation of their capital fund to leverage modernization funds. To date, 3.6 billion dollars have been approved for 136 projects since 2000.[9] Nevertheless, there is no discussion of the CFFP as a mechanism to address the unmet capital backlog in TRA presumably because it operates under the capital fund which is set to be eliminated.

An obscure but likely candidate is the Public Housing Mortgage Program (PHMP). Approved in 1998 but only used 6 times since, PHMP authorizes "a public housing agency to mortgage or otherwise grant a security interest in any public housing project or other property of the public housing agency."[42 USC 1437 30(a)] Furthermore, "no action taken under this section shall result in any liability to the Federal Government."[30(c)]. In November 2009, a notice for comment was released that ended in January 2010 soliciting comments "from interested parties to inform [HUD's]

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7 Transforming Rental Assistance: A Presentation on the Future of Rental Assistance Programs. April 2010, p. 24

8 Kosar, K. 2006. *Privatization and the Federal Government: An Introduction.* Congressional Research Service Report for Congress; Privatization as "the use of the private sector in the provision of a good or service, the components of which include financing, operations (supplying, production, delivery), and quality control." Of the three components, quality control in the form of "physical inspection of properties" [8(n)7(a)] is the only role HUD maintains while encouraging private financing to the point of denying public funds and allowing PHA's to contract third parties.

9 http://www.hud.gov/offices/pih/programs/ph/capfund/cffp/chroncffplist.xls

efforts to structure a program"[10] It seems likely that the PHMP or an updated version (that replaces the DOT with TRA's HAP etc.) would be used at the mechanism for TRA. Unlike the CFFP which is limited a percentage of annual appropriation, the PHMP can be secured against the property. Currently public housing is run at a loss so there is no surplus capital to pay debt services but the conversion to Section 8 through TRA would enable PHMP to function due to the larger subsidy.

If the PHMP, used only a few times, is the mechanism for leveraging $7 billion from 280,000 public housing units in the first year, is seems to me that Secretary Donovan has gone too big in his call to "Go big or go home."[11] Furthermore, PETRA essentially fails to specify any mortgage regulation. Specifically, PETRA does not place a cap on the interest rate for a PHA's loan nor is there any no provision prohibiting the loan's bundling or securitization, keeping it out of the into the secondary mortgage market.

Failure to address the backlog of capital needs improvements

Estimates of the capital improvement backlog used in TRA presentations are based on decade old data,[12] a general concern expressed by the House Appropriations Committee last year.[13] The new Capital Needs Assessment will not be finished in October.[14] In the face of these uncertainties, senior HUD officials have testified to Congress with a figure that "may exceed $20 billion", $26.4 billion, and the more common refrain of $20-30 billion.[15] The lack of a definitive inventory, unspecified debt mechanisms place the reported $7 billion leverage figure in the realm of speculation.

More problematic, PETRA establishes no provision to prioritize properties in need of significant capital improvement, the same issue raised in the rejection of Bush's FY03 HUD proposal.[16] Properties eligible for conversion need only demonstrate that they will "promote the rehabilitation, energy-efficiency, and long term-financial and physical sustainability of properties" [8(m)(2)(i)]. The ability to "promote" "rehabilitation" bears no necessary relation to a project's backlog. Provided that banks lend against both the ability to maintain debt service payments and the quality of a property's asset, lenders are far more likely to extend debt to properties already in good physical condition. The properties with the greatest need are liable to be locked out or to borrow at a reduced volume. Therefore, as drafted, PETRA neither encourages nor provides mechanisms for the funding properties with significant capital backlogs. Moreover, the FY11 Capital Fund budget request is 18% lower FY10, the smallest since becoming a specific line-item in 1996. Recognizing that $4 billion stimulus dollars went to capital improvement, a real commitment to addressing unmet capital improvements would not then shirk the appropriation for public housing capital funds.

Conclusion

This testimony highlights several major concerns we have with PETRA. However, many more exist. We understand HUD's mission to provide decent housing for the many in our country in who lack safe and affordable shelter. TRA and PETRA do not represent a way forward. We believe that if this proposal is implemented, it will produce far more hardship and suffering on poor and low income communities than it alleviates.

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10 http://www.hud.gov/offices/pih/programs/ph/capfund/prop-phmp-notice.pdf n.p.

11 Webcast from hud.gov, May 19, 2010

12 Abt Associates Inc. 2000. Capital Needs of the Public Housing Stock in 1998: Formula Capital Study;

13 House Report 111-128: DOT, HUD and Related Agencies Appropriations Bill, 2010

14 PHADA, Dec. 2009 "Capital Backlog Study Moves Forward", *Advocate* 24(20): 1,7.

15 Donovan before Senate Committee on Banking, Housing and Urban Affairs "may exceed $20 billion" 4/15/10, Henriquez's verbal testimony before House Subcommittee on Housing and Community Opportunity, 4/28/10

16 Senate Report 108-143. Departments of VA, HUD and Independent Agencies Appropriations Bill

We, therefore, oppose this legislation.

Sincerely,

Amanda Huron
The Graduate Center at The City University of New York

Michael Brown
University of Washington

Gabriella Y. Carolini
Rutgers University

Nicholas M. Dahmann
University of Southern California

David Featherstone
University of Glasgow

James Fraser
Vanderbilt University

David Harvey
The Graduate Center at The City University of New York

Kim Hopper
Mailman School of Public Health at Columbia University

Peter Hossler
University of Georgia

Paul Kirkness
The University of Edinburgh

Bob Lake
Rutgers University

Jackie Leavitt
University of California - Los Angeles

Mark Naison
Fordham University

Kathe Newman
Rutgers University

Peter Marcuse
Columbia University

Laura Pulido
University of Southern California

Mark Purcell
University of Washington

René Francisco Poitevin
Gallatin School, New York University

Tom Slater
The University of Edinburgh

Testimony of Chicago Housing and Human Rights Organizations'
Opposition to HUD's proposed
Preservation, Enhancement, and Transforming Rental Assistance Act of 2010
presented to
the House Committee on Financial Services Hearing on
"The Administration's Proposal to Preserve and Transform Public and Assisted Housing:
The Transforming Rental Assistance Initiative"

May 25, 2010

As public and other subsidized housing tenants and community-based organizations working to improve the housing conditions facing low-income communities in Chicago, we believe the proposed Preservation, Enhancement, and Transforming Rental Assistance Act of 2010 (PETRA) falls woefully short of guaranteeing or strengthening the human right to housing. We have outlined below our reasons for opposition and submit them for your consideration and response.

Our opposition is based on our review and analysis of the proposed legislation recently released to the public. However, our opposition is also grounded in our real experiences with past programs of the U.S. Department of Housing and Urban Development (HUD) and the reality that the mainstream housing market simply does not come anywhere close to meeting the needs of low-income residents in Chicago. This is clearly demonstrated based on the massive displacement that has occurred as a result of the demolition of Chicago's public housing stock.

For example, many of us organized against HOPE VI projects in our community because we could foresee the displacement and devastation we eventually experienced in the quest to "improve" our communities by removing us. Many of us have tried to use Section 8 vouchers, only to find ourselves encountering greedy landlords who take advantage of the program with no real accountability or ending up living in homes far away from our original communities.

While some public housing is certainly in need of major improvements, it still remains the most stable and affordable housing available to low-income families among all affordable housing programs. It is crucial for our children, grandchildren and communities as a whole that public housing is maintained and improved through public investment, ownership and operation by the government to ensure permanence and accountability. Public housing is our home and the foundation of our community, not something to be treated as a commodity to be leveraged and traded by banks in the private market.

We oppose PETRA for the following specific reasons:

1. **The proposed conversion of the public housing program to a property or project-based system poses a serious threat to the permanence of our nation's public housing stock, and the much needed affordable housing it provides.**

Public housing is currently the only permanently affordable housing stock in the country and has long provided much-needed, deeply affordable housing to those most in need. Conversion of public housing to a property-based or project-based voucher subsidy potentially eliminates the permanent affordability and long-term availability these units represent. Thirty-year use agreements are not sufficient, as we have seen over the past 10 years as 15 to 25 year contracts have expired on hundreds of thousands of units, resulting in mass displacement. This change would significantly impact localities' ability to address the growing U.S. housing crisis, which has deepened as a result of the current economic downturn.

Under PETRA, housing authorities are permitted to leverage public housing properties as collateral for private loans issued by banks. Dependence upon private capital could have dire consequences in the event of bankruptcy or loan defaults, basically removing the responsibility of funding for public housing from the government. Additionally, if capital investment is provided by the private market, it essentially guarantees that those public housing developments most in need of rehabilitation will be unable to qualify for the loans – leaving that crucial housing stock to deteriorate and at risk of demolition.

Ultimately, if the goal of HUD's proposal is to improve conditions in public housing – a mission we fully support – as has been stated by various HUD officials, we implore you to advocate for adequate funding of the public housing program rather than risking the long-term affordability to residents and surrounding communities that this vital public resource represents.

2. **PETRA may lead to the loss of government control and oversight of the public housing program, negatively impacting government accountability and transparency.**

Although we understand the long-term need to secure adequate funding for the public housing program, increasing the influence of private capital on our nation's public housing system creates a conflict between profit driven interests and the needs of low-income residents. Additionally, as we have witnessed in this current economic downturn, over-dependence on private investment capital for the development and maintenance of our national housing system can have dire consequences.

When housing authorities relinquish control over their public housing, it is unclear what mechanism, if any, is in place for residents to seek redress for issues and conflicts with private development companies. In Chicago, for example, residents of demolished public housing developments must contend with private development companies overseeing the mixed income developments. These private developers have imposed tighter restrictions on residents since taking control of the property, including a more stringent eligibility

requirement. As these developments are no longer managed by the housing authority, residents must try to negotiate with a private company that is operating under a private market model with little to no regard for the important societal role affordable housing programs serve.

While PETRA allows the properties to remain publicly owned and operated after "transformation," it does not mandate it, thereby creating a high likelihood that Housing Authorities will continue the process of ending public housing as we have known it.

3. **Residents face reductions of tenant rights and have little legal recourse should this proposal violate their housing rights.**

PETRA is not unique in that HUD administrations throughout the years have tried with varying degrees of success to reform the agency and its programs, and erode its investment and commitment to public housing as a crucial piece of meeting the nation's housing needs. Regardless of whether a reform succeeds or fails, it is the residents that have ultimately borne the brunt of HUD decision-making.

While PETRA does attempt to protect some tenant rights and eliminate some of the problems of past programs, many potential problems remain. These problems include: the use of tenant-based vouchers as a "solution" when contracts expire guarantees future displacement and potential homelessness; the lack of obligation for long-term public ownership and associated government accountability; current disposition processes and protections under Section 18 are eliminated; the goal of deconcentrating poverty remains, which is what has contributed to mass demolition and displacement; and demolition protections are lacking, including sufficient relocation benefits, right to return, and one-for-one replacement on the original site.

Given our experiences with similar past programs, and the outlined problems with PETRA, it is highly likely that housing rights will be violated, communities will lose deeply affordable housing stock and other problems will arise. Applying a new, untested program to 25% of the nation's public housing stock immediately creates huge concerns and risks for tenants. Yet, if this legislation is passed, tenants will have very limited recourse to address problems. Once public housing undergoes disposition or conversion, experience has shown it is lost forever.

We, therefore, urge this committee to oppose PETRA. Public housing provides a vital resource for low-income residents and is a crucial part of ensuring last resort housing for all our citizens. Our nation and human rights principles have long recognized the importance of guaranteeing to every citizen the right to housing. Therefore, we call on your leadership in ensuring that PETRA does not move forward and instead that new proposals based on increased public investment and full protections for tenants and our housing stock be returned to this committee for consideration.

Submitted by:

Anti Eviction Campaign
Chicago Independent Human Rights Council
People for Community Recovery
Southside Together Organizing for Power

Responses of the New York City Housing Authority
to
Questions Posed by the House Financial Services Committee

Preservation Enhancement and Transformation of Rental Assistance Act of 2010

May 25, 2010

1. Describe the current state of public and HUD-assisted housing stock.

   NYCHA Response: NYCHA owns and operates over 178,500 federally assisted public housing apartments and has an unfunded back log of capital needs estimated by Parsons-Brinckerhoff as exceeding $6 billion. The New York City Housing Authority ("NYCHA" or "the Authority") appreciates the $423 million in capital assistance provided under the Recovery Act, and the annual allocation of assistance it has received under the Capital Fund program. But the task before us is far greater than the funding that is currently available.

   In the interim, pending PETRA's enactment and implementation, we require the full fungibility of our three funding streams (operating, capital and Section 8) to the same extent as accorded to more than 30 other public housing agencies, in addition to using our assets to leverage private financial markets, the reservation of a portion of each State's annual allocation of low income housing tax credits for the development or preservation of public housing and federal guarantees to support our financings.

2. Describe what criteria should be used to determine priority for conversion of public and HUD-assisted housing properties to project-based assistance under the discussion draft.

   NYCHA Response: All allocations should be voluntary. First priority should go to public housing that lack federal subsidies. Second priority should be allocated competitively using criteria such as the physical condition of the property and whether the agency operates Section 8. NYCHA supports the draft's proposal to fund the PETRA at $350 million during each of FY2011 through FY2015.

3. Describe the various challenges faced by public housing agencies and the owners of assisted housing in preserving or rehabilitating public or assisted housing. How would this discussion draft impact those challenges?

NYCHA Response: Grants under the Public Housing Capital Fund are inadequate to address the existing backlog of capital needs. If capital needs are not addressed, our ability to properly maintain the public housing stock is directly impeded increasing our day-to-day operating costs. Our buildings deteriorate and the frequency of basic repairs increases. Residents rightfully complain and public housing agencies, especially those denied full fungibility of their funding streams, are fiscally unable to undertake work that is necessary to be addressed.

For example, NYCHA operates 3323 elevators. In its 2009-14 capital plan, the Authority will rehab 863 elevators at 98 developments at a cost of $309 million. But we lack the funds for replacement of an additional 645 elevators at 50 developments estimated at a cost of $230m.

A further example relates to brickwork. Of 2604 buildings, there are 850 buildings with facade conditions that require repair and erection of sidewalk sheds. The sheds alone are estimated to cost $25 million.

4. Comment on the rent setting and contract renewal policies outlined in the discussion draft. What impact, if any, could the draft have on public housing agencies' or HUD-assisted owners' ability to leverage additional funds for preservation and/or rehabilitation of affordable housing?

   NYCHA Response: We agree with HUD that the only realistic source to address that need is by leveraging our assets to obtain private market funding. We also ask that States be required to set-aside a reasonable portion of their annual allocation of low-income housing tax credits to address undertakings involving public housing, similar to the grants in lieu of tax credits proposal now before the Committee. Additionally, we seek a federal "full, faith and credit" guarantee for private market financings involving the preservation or development of public housing.

5. Describe the extent to which current public and HUD-assisted tenant's rents would change under the discussion draft. If enacted, by how much would rents (total tenant payments plus operating costs) in public and HUD-assisted be expected to rise?

   NYCHA Response: Under the draft, residents would continue to pay *Brooke* rents, set at 30% of the family's adjusted gross income, as provided under Section 3 of the United States Housing Act of 1937. Public housing residents with incomes between 50% to 80% of area median income should be allowed to continue to pay 30% of their adjusted income toward rent. Eligibility for such units should more like public housing than Section 8 in order to attract families with incomes between 50-80% of area median. We

suggest the approach taken by SEVRA, HR 3045 RH, at Section 4(b) with regard to residents with incomes exceeding 80% of area median.

6. Comment on the bankruptcy and foreclosure provisions in the discussion draft. Are there additional measures the Committee should consider to prevent converted public and HUD-assisted units which are leveraged?

   NYCHA Response: NYCHA believes the proposed provisions of the discussion draft would continue to retain the effectiveness of the rental assistance agreement and the use agreement should the properties become the subject of a foreclosure or bankruptcy proceeding. As mentioned earlier, a federal *full, faith and credit* guarantee would greatly assist in assuring that the issue posed would not arise.

7. Comment on the discussion draft's resident choice feature. What, if any, impact could resident mobility have on households currently waiting for assistance? What, if any, impact could resident mobility have on the preservation of public or assisted housing?

   NYCHA Response: Under the draft, one out of every three vouchers that come available through turnover would be held by HUD to provide the portability option for households wishing to relocate following two years in occupancy. We assume the one-out-of-three proposal would not include the turnover of special purpose vouchers, such as those involving the VASH or Family Unification programs.

   NYCHA does not support the draft's one-out-of-three proposal. NYCHA has 128,000 households on its current Section 8 waiting list. The draft's proposal would seriously delay the ability of these families to obtain Section 8 rental assistance. A better approach would be to fund the proposed portability option by a separate appropriation or to draw portability assistance from the tenant protection account.

8. Comment on the policy issues the Committee should consider with respect to tenant rights and protections in public and assisted housing that are converted. How would the discussion draft impact those rights and protections?

   NYCHA Response: NYCHA believes the draft provides full and adequate tenant protections as outlined below.

   Residents of public and assisted housing retain the right to organize and to have their organizations gain formal recognition. Their organizations are eligible for funding to facilitate their organizing efforts. The right to organize extends to both public and assisted housing residents.

Those who would reside are assured procedural due process as applicants for housing and in adverse actions as well.

A new federal law would prohibit discriminatory actions based on an individual's receipt of Section 8 assistance.

Public ownership of converted properties is assured by the draft and long term use of such properties by low-income families is assured by the use agreements that should be filed of record. Proposed statutory provisions would protect and the use and rental assistance agreements during any bankruptcy and foreclosure proceeding.

If enacted, families in residence at the time of conversion will not be subject to re-screening or termination of assistance.

One-for-one replacement of demolished or disposed of housing is guaranteed by the draft's provisions.

9. In your experience, would different types of affordable housing (public or HUD-assisted) benefit from certain types or features of property-based assistance? What impact could the assistance provided in the discussion draft have on the needs of different property types?

   NYCHA Response:
   NYCHA believes that long term project-based assistance would secure the public housing program and make available the capital dollars that are not presently accessible but are necessary to secure the future of public housing by leveraging capital assistance from private equity markets. Our annual allocation of capital fund assistance is unable to address the current backlog of capital needs. Unless we are able to tap the private financial markets, with appropriate funding guarantees, we will continue to see the loss of public housing units from the national inventory.

10. In your experience, what affordability protections and/or requirements are needed to preserve properties converted under the draft as well as the current affordable housing stock?

    NYCHA Response: Relative to the current public housing stock, we urge Congress to immediately allow full fungibility of operating, capital and Section 8 funding streams.

    Relative to the Section 8 program, we strongly recommend the elimination of the unit cap. The voucher program is already budget-based and administrating agencies are unable to spend more than the dollars annually allocated. The cap is administratively unnecessary and limits the number of families that can be assisted within budgetary limits.

May 25, 2010

Written testimony of Los Angeles Housing and Human Rights organizations, submitted to the House Committee on Financial Services regarding full committee hearing on "The Administration's Proposal to Preserve and Transform Public and Assisted Housing: The Transforming Rental Assistance Initiative"

Re: Los Angeles housing and human rights organizations' opposition to HUD's proposed Preservation, Enhancement, and Transforming Rental Assistance Act of 2010

As public and other subsidized housing tenants and community-based organizations working to improve the housing conditions facing low-income communities in Los Angeles, we believe the proposed Preservation, Enhancement, and Transforming Rental Assistance Act of 2010 (PETRA) falls woefully short of guaranteeing or strengthening the human right to housing. We have outlined below our reasons for opposition and submit them for your consideration and response.

Our opposition is based on our review and analysis of the proposed legislation recently released to the public. However, our opposition is also grounded in our real experiences with past programs of the U.S. Department of Housing and Urban Development (HUD) and the reality that the mainstream housing market simply does not come anywhere close to meeting the needs of low-income residents in Los Angeles. This is clearly demonstrated based on Los Angeles being home to the nation's largest homeless population and a recent study showing that almost 60% of tenants are rent-burdened.

For example, many of us organized against HOPE VI projects in our community because we could foresee the displacement and social devastation we eventually experienced in the quest to "improve" our communities by removing us. Many of us have tried to use Section 8 vouchers, only to find ourselves turning them back in to the Housing Authority because we couldn't find housing or ending up living in homes far away from our original communities. Additionally, many of us have lived in Project-Based Section 8 buildings, only to find ourselves displaced because the contract expired and there was nothing HUD could do to intervene in private property rights, others have lived in newly privatized segregated developments losing our federally protected rights to organize and victims of discrimination due to our status as subsidized tenants .

While some public housing is certainly in need of major improvements, it still remains the most stable and affordable housing available to low-income families among all affordable housing programs. It is crucial for our children, grandchildren and communities as a whole that public housing is maintained and improved through public investment, ownership and operation by the government to ensure permanence and accountability. Public housing is our home and the foundation of our community, not something to be treated as a commodity to be leveraged and traded by banks in the private market.

We oppose PETRA for the following specific reasons:

1. The proposed conversion of the public housing program to a property or project-based system poses a serious threat to the permanence of our nation's public housing stock, and the much needed affordable housing it provides.

Public housing is currently the only permanently affordable housing stock in the country and has long provided much-needed, deeply affordable housing to those most in need. Conversion of public housing to a property-based or project-based voucher subsidy potentially eliminates the permanent affordability and long-term availability these units represent. Thirty-year use agreements are not sufficient, as we have seen over the past 10 years as 15 to 25 year contracts have expired on hundreds of thousands of units, resulting in mass displacement. This change would significantly impact localities' ability to address the growing U.S. housing crisis, which has deepened as a result of the current economic downturn.

Under PETRA, housing authorities are permitted to leverage public housing properties as collateral for private loans issued by banks. Dependence upon private capital could have dire consequences in the event of bankruptcy or loan defaults, basically removing the responsibility of funding for public housing from the government. Additionally, if capital investment is provided by the private market, it essentially guarantees that those public housing developments most in need of rehabilitation will be unable to qualify for the loans – leaving that crucial housing stock to deteriorate and at risk of demolition.

Ultimately, if the goal of HUD's proposal is to improve conditions in public housing – a mission we fully support – as has been stated by various HUD officials, we implore you to advocate for adequate funding of the public housing program rather than risking the long-term affordability to residents and surrounding communities that this vital public resource represents.

2. PETRA may lead to the loss of government control and oversight of the public housing program, negatively impacting government accountability and transparency, and further eroding tenants' rights in these developments.

Although we understand the long-term need to secure adequate funding for the public housing program, increasing the influence of private capital on our nation's public housing system creates a conflict between profit driven interests and the needs of low-income residents. Additionally, as we have witnessed in this current economic downturn, over-dependence on private investment capital for the development and maintenance of our national housing system can have dire consequences.

When housing authorities relinquish control over their public housing, it is unclear what mechanism, if any, is in place for residents to seek redress for issues and conflicts with private development companies. In Los Angeles, for example, the Pueblo Del Sol Public Housing Community is currently under a 55 year land lease to a private developer which maintains the property, sets property rules and collects residents' portion of the rent, as well as the government subsidies. The private developer has imposed tighter restrictions on residents since taking control of the property without informing them of their rights to

form a tenant organization, or to formal and informal hearings, and implementing a more stringent eligibility requirement. Later as tenants tried to address these issues, the management tried to organize its own residents' organization controlled by the developer's staff. As the development is no longer managed by the housing authority, residents must try to negotiate with a private company that is operating under a private market model which violates their federally protected rights, with little to no regard for the important societal role affordable housing programs serve.

While PETRA allows the properties to remain publicly owned and operated after "transformation," it does not mandate it. Additionally, in the case of public-private "partnerships," there is no guarantee that the public entity will oppose its private partner on management decisions given that the private partner controls the finances to maintain and build new development. The lack of public ownership and oversight of private partners create a high likelihood that Housing Authorities will continue the process of ending public housing as we have known it.

3. Residents face reductions of tenant rights and have little legal recourse should this proposal violate their housing rights.

PETRA is not unique in that HUD administrations throughout the years have tried with varying degrees of success to reform the agency and its programs, and erode its investment and commitment to public housing as a crucial piece of meeting the nation's housing needs. Regardless of whether a reform succeeds or fails, it is the residents that have ultimately borne the brunt of HUD decision-making.

While PETRA does attempt to protect some tenant rights and eliminate some of the problems of past programs, many potential problems remain. These problems include: the use of tenant-based vouchers as a "solution" when contracts expire guarantees future displacement and potential homelessness; the lack of obligation for long-term public ownership and associated government accountability; current disposition processes and protections under Section 18 are eliminated; the ineffective, unbalanced dependency of the public agency on its private partners; the goal of deconcentrating poverty remains, which is what has contributed to mass demolition and displacement; and demolition protections are lacking, including sufficient relocation benefits, right to return, and one-for-one replacement on the original site.

Given our experiences with similar past programs, and the outlined problems with PETRA, it is highly likely that housing rights will be violated, communities will lose deeply affordable housing stock, and private, for-profit developers will be enriched, robbing the public of its resources. Other problems will likely arise. Applying a new, untested program to 25% of the nation's public housing stock immediately is a shock therapy that creates huge concerns and risks for tenants. Yet, if this legislation is passed, tenants will have very limited recourse to address problems. Once public housing undergoes disposition or conversion, experience has shown it is lost forever.

We, therefore, urge this committee to oppose PETRA. Public housing provides a vital resource for low-income residents and is a crucial part of ensuring last resort housing for all our citizens. Our nation and international human rights principles and protocols signed by it have long recognized the importance of guaranteeing to every citizen the

right to housing. Therefore, we call on your leadership in ensuring that PETRA does not move forward in violation of these protocols and values. Instead we ask that new proposals based on increased public investment and full protections for tenants and our housing stock be returned to this committee for consideration.

Submitted by:

Comunidad Presente
2707 Pico Blvd.
Los Angeles, CA 90006
(323) 730-7266
Co-Directors: Davin Corona and Thelmy Perez

Los Angeles Community Action Network
530 S. Main Street
Los Angeles, CA 90013
(213) 228-0024
Co-Directors: Becky Dennison and Pete White

Union de Vecinos
346 S. Gless Ave.
Los Angeles, CA 90033
(323) 908-3454
Co-Directors: Elizabeth Blaney and Leonardo Vilchis

May 24, 2010

This is the print preview: Back to normal view »

George Lakoff

Author and Professor of Cognitive Science and Linguistics at UC Berkeley

Posted: May 21, 2010 12:53 PM

HUD Is Trying to Privatize and Mortgage Off All of America's Public Housing

The Obama Administration's move to the right is about to give conservatives a victory they could not have anticipated, even under Bush. HUD, under Obama, submitted legislation called PETRA to Congress that would result in the privatization of all public housing in America.

The new owners would charge ten percent above market rates to impoverished tenants, money that would be mostly paid by the US government (you and me, the taxpayers). To maintain the property, the new owners would take out a mortgage for building repair and maintenance (like a home equity loan), with no cap on interest rates.

With rents set above market rates, the mortgage risk would be attractive to banks. Either they make a huge profit on the mortgages paid for by the government. Or if the government lowers what it will pay for rents, the property goes into foreclosure. The banks get it and can sell it off to developers.

Sooner or later, the housing budget will be cut back and such foreclosures will happen. The structure of the proposal and the realities of Washington make it a virtual certainty.

The banks and developers make a fortune, with the taxpayers paying for it. The public loses its public housing property. The impoverished tenants lose their apartments, or have their rents go way up if they are forced into the private market. Homelessness increases. Government gets smaller. The banks and developers win. It is a Bank Bonanza! The poor and the public lose.

And a precedent is set. The government can privatize any public property: Schools, libraries, national parks, federal buildings -- just as has begun to happen in California, where the right-wing governor has started to auction off state property and has even suggested selling off the Supreme Court building.

The rich will get richer, the poor and public get poorer. And the very idea of the public good withers.

This is central to the conservative dream, in which there is no public good -- only private goods. And it is a nightmare for democracy.

The irony is that it is happening under the Obama administration. Barack Obama, running for office, gave perhaps the best and clearest characterization of what democracy is about. Democracy, he has said, is based on empathy -- on citizens caring about and for each other. That is why we have principles like freedom and fairness for everyone. It is why social responsibility is necessary. The monstrous alternative is

having a society where no one cares about or for anyone else.

HUD, under the Obama administration, is about to take a giant step toward that monstrous society.

Here is a quote from the PETRA bill. It's intent is to:

provide the opportunity for public housing agencies and private owners to convert from current forms of rental assistance under a variety of programs to long-term, property-based contracts that will enhance market-based discipline and enable owners to sustain operations and leverage private financing to address immediate and long-term capital needs and implement energy-efficiency improvements.

Along the way, tenants' rights will be trampled, since tenants could not longer seek redress from the government through their public officials -- because the government would no longer own the buildings.

Stop PETRA. This is urgent. There is a hearing next Tuesday, May 25, before the House Financial Services Committee and the Subcommittee on Housing, organized by Rep. Maxine Waters. Phone: 202-225-2201. Fax: 202-225-7854.

Click here to write to the committee.

Write to your Congressperson now.

If you want to sign a petition, click here.

Here is a letter from the National Association of HUD Tenants.

Here is an informational website, with letters, background information, and alternative proposals.

And do what you can to get the word out. This requires a national discussion.

George Lakoff is the author of The Political Mind and Don't Think of an Elephant! He is Goldman Distinguished Professor of Cognitive Science and Linguistics at the University of California, Berkeley.

Massachusetts Union of Public Housing Tenants
784 Washington Street, Suite 504
Dorchester, MA 02124
(617) 825-9750 Office (617)822-0238 fax
mpublichou@aol.com email www.massunion.org website

Statement To
Committee on Financial Services
United States House of Representatives

Testimony on Administration's Proposal to Preserve
and Transform Public and Assisted Housing:
The Transforming Rental Assistance Initiative

Hearing May 25, 2010

Dear Chairman Frank and Members of the Committee:

The Massachusetts Union of Public Housing Tenants wants to thank you for the opportunity to provide your Committee with testimony on HUD's new proposal, the Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010 (PETRA). MUPHT is a non-profit statewide tenant group whose board is made up of public housing residents elected by public housing residents from across the state.

What follows are some of our core preliminary concerns and questions about PETRA.

Preservation Is the Priority
MUPHT agrees with HUD that preservation of public and assisted housing should be HUD's, and this country's, top priority. We commend HUD for working to develop an immediate way to raise the money that is needed to preserve public housing instead of allowing it to further decline and face demolition and displacement.

- But PETRA goes beyond preservation. In search of needed capital dollars, HUD is proposing a monumental shift in converting public housing to mixed-finance, mixed-income with an array of private partners—banks, lenders, private equity investors.
- What will this new approach cost in the long run? Can Congress work with the Congressional Budget Office to study how much it would cost in direct operating and capital expenditures to support our current stock of public housing and how much it will cost Congress over the long-term to support the conversion of public housing to a public-private partnership and pay back lenders and private partners the interest and equity guaranteed to them?
- Is PETRA going to be more expensive way to rehabilitate public housing than simply providing capital grants?

- Can Congress renew the $4 billion in capital stimulus funds for the next five years and address the $20 billion backlog without having to compromise the "public ownership' of public housing and create complicated financing systems that only technical assistance and soft costs can buy.
- MUPHT cannot make this shift unless we are assured and understand that our housing, built with public funds, will be held in public ownership for future generations.
- We would like to continue to explore with Congress and HUD vehicles that we can all be assured will preserve public housing for the long-term. We are not yet satisfied that PETRA accomplishes this.

Keeping Public Housing Public
PETRA states that the Secretary "may" consider a project or unit owned by a PHA to include one owned by an entity for which the PHA or its agents own a significant interest and which has among it purpose the ownership or management of affordable housing.

- Having learned more from residents in multifamily housing about their experiences with private investors, MUPHT feels that ownership under PETRA should be restricted to publicly controlled entities to ensure ongoing affordability.

- MUPHT continues to be concerned about long-term affordability where there is an initial 20-year rental assistance contract and a 30-year use agreement.

    - How does this take the lessons we have learned with the loss of multifamily housing when use agreements expired?

    - While HUD "may" extend a 20-year contract for up to 20 years and an owner must agree to such extensions, absent compelling reasons as determined by HUD, <u>what will compelling reasons not to renew a contract be</u>? We have heard it might be that if a neighborhood changes HUD could agree not to renew the contract. Our neighborhoods have gone through tremendous changes and disinvestment and we would still advocate that our developments be preserved. What other reasons might be compelling?

    - Would residents be consulted by HUD on the renewal of a contract?

    - What happens after the 30-year use agreement expires? Why is there only a 30-year use agreement in PETRA? Some HOPE VI public housing replacement projects have been built on land leased for 60-90 years, with the lease including a "public housing use" requirement.

    - PETRA must require that use restrictions be recorded in a superior way to any mortgage placed on public housing. This will ensure that if a property has been mortgaged and foreclosed upon, that tenants will be guaranteed the same rights pre- and post foreclosure and that <u>housing will remain in the public domain</u>.

Long Term Costs
Continued affordability under PETRA relies on the willingness of future Congresses to continue to pay market-based rents for many more subsidy contracts than it already is and to pay for-profit owners for accumulated equity.

- We have begun to hear from HUD the debate over the different approaches to market-based rent-setting for purposes of establishing how much subsidy a development may receive from HUD and that that formula may not be enough to support the capital repairs necessary. HUD has stated that it could be an extra $1-$2 billion dollars that is needed.

- HUD says that PETRA has the potential to bring in $7.5 billion in additional capital in the first phase. It would be helpful to understand more about where these dollars come from because there are different ramifications with different private partners and different protections will need to be lined up to protect the use of the property as public housing for the long-term.

    - How much of the private capital does HUD estimate is mortgage money? How much of this capital does HUD estimate is from private equity investors?

One for One Replacement

- MUPHT opposes loosing any units of public housing for very low-income residents and substituting any of these units for affordable housing for moderate income residents. PETRA should clearly provide one-for-one replacement, without exception
- PETRA does not claim to provide a solution to housing that is severely distressed or in need of major capital repairs. How much of the public housing stock does HUD estimate is not appropriate for PETRA? What will happen to public housing that is severely distressed and what will happen to the residents who call this housing home?

Tenant Participation Funding and Tenants Rights
HUD stated that it wanted to bring together the best of all the programs in terms of tenants' rights.

In terms of tenant organizing, PETRA provides that all public housing residents, Section 8 voucher holders, and multifamily residents have a right to organize. We applaud HUD for extending the right to organize to Section 8 voucher holders. But Mass. Union urges Congress to ensure that tenant participation protections that residents worked hard to develop that are embodied in 24 CFR 964 are preserved. While we understand that there will be a regulatory process, we are still concerned that we will loose these protections.

MUPHT also wants to ensure that PETRA provides tenants with tenant protections through the grievance and lease processes. There should be both an informal and formal grievance process that gives residents the right to solve problems before they get to court. Tenants should be able to grieve both inaction and action by a PHA that harms us.

Finally, in terms of tenant participation funding, in public housing, the model has been dedicated funding of $25 per unit every year. In multifamily housing, competitive funding has been available to outside organizations that supply tenants with organizing assistance. There are two different models of organizing and both should be supported. MUPHT opposes having only a competitive grant system. This will mean that some tenant groups or emerging groups get funding and others do not. MUPHT feels strongly that PETRA must provide a dedicated stream of funding that maintains the $25/unit allotment for recognized groups.

We thank you for your work to protect our housing and our rights and look forward to working with the Committee to ensure that the investment that Congress has made and will hopefully continue to make will be preserved for the public for the long term.

On Behalf of the MUPHT Board
Chairman William King

Ethel Peggy Santos

Ethel "Peggy" Santos, Board Member

Testimony of New Orleans Housing and Human Rights Organizations'
Opposition to HUD's proposed
Preservation, Enhancement, and Transforming Rental Assistance Act (PETRA) of 2010
presented to
the House Committee on Financial Services Hearing on
"The Administration's Proposal to Preserve and Transform Public and Assisted Housing:
The Transforming Rental Assistance Initiative"

May 25, 2010

As public and other subsidized housing tenants and community-based organizations working to improve the housing conditions facing low-income communities in New Orleans, we believe the proposed Preservation, Enhancement, and Transforming Rental Assistance Act of 2010 (PETRA) falls woefully short of guaranteeing or strengthening the human right to housing. We have outlined below our reasons for opposition and submit them for your consideration and response.

Our opposition is based on our review and analysis of the proposed legislation recently released to the public. However, our opposition is also grounded in our real experiences with past programs of the U.S. Department of Housing and Urban Development (HUD) and the reality that the mainstream housing market simply does not come anywhere close to meeting the needs of low-income residents in New Orleans. This is clearly demonstrated based on New Orleans' homeless rate doubling since Hurricane Katrina and the subsequent demolition of public housing.

For example, many of us organized against HOPE VI projects in our community because we could foresee the displacement and devastation we eventually experienced in the quest to "improve" our communities by removing us. Many of us have tried to use Section 8 vouchers, only to find ourselves encountering greedy landlords who take advantage of the program with no real accountability or ending up living in homes far away from our original communities.

While some public housing is certainly in need of major improvements, it still remains the most stable and affordable housing available to low-income families among all affordable housing programs. It is crucial for our children, grandchildren and communities as a whole that public housing is maintained and improved through public investment, ownership and operation by the government to ensure permanence and accountability. Public housing is our home and the foundation of our community, not something to be treated as a commodity to be leveraged and traded by banks in the private market.

We oppose PETRA for the following specific reasons:

1. **The proposed conversion of the public housing program to a property or project-based system poses a serious threat to the permanence of our nation's public housing stock, and the much needed affordable housing it provides.**

Public housing is currently the only permanently affordable housing stock in the country and has long provided much-needed, deeply affordable housing to those most in need. Conversion of public housing to a property-based or project-based voucher subsidy potentially eliminates the permanent affordability and long-term availability these units represent. Thirty-year use agreements are not sufficient, as we have seen over the past 10 years as 15 to 25 year contracts have expired on hundreds of thousands of units, resulting in mass displacement. This change would significantly impact localities' ability to address the growing U.S. housing crisis, which has deepened as a result of the current economic downturn.

Under PETRA, housing authorities are permitted to leverage public housing properties as collateral for private loans issued by banks. Dependence upon private capital could have dire consequences in the event of bankruptcy or loan defaults, basically removing the responsibility of funding for public housing from the government. Additionally, if capital investment is provided by the private market, it essentially guarantees that those public housing developments most in need of rehabilitation will be unable to qualify for the loans – leaving that crucial housing stock to deteriorate and at risk of demolition.

Ultimately, if the goal of HUD's proposal is to improve conditions in public housing – a mission we fully support – as has been stated by various HUD officials, we implore you to advocate for adequate funding of the public housing program rather than risking the long-term affordability to residents and surrounding communities that this vital public resource represents.

2. **PETRA may lead to the loss of government control and oversight of the public housing program, negatively impacting government accountability and transparency.**

Although we understand the long-term need to secure adequate funding for the public housing program, increasing the influence of private capital on our nation's public housing system creates a conflict between profit driven interests and the needs of low-income residents. Additionally, as we have witnessed in this current economic downturn, over-dependence on private investment capital for the development and maintenance of our national housing system can have dire consequences.

When housing authorities relinquish control over their public housing, it is unclear what mechanism, if any, is in place for residents to seek redress for issues and conflicts with private development companies. In New Orleans, for example, residents of the former St. Bernard development have had to content with Columbia Residential, the private development company overseeing the mixed income development. This private developer has imposed tighter restrictions on residents since taking control of the

property, including a more stringent eligibility requirement. As the development is no longer managed by the housing authority, residents must try to negotiate with a private company that is operating under a private market model with little to no regard for the important societal role affordable housing programs serve.

While PETRA allows the properties to remain publicly owned and operated after "transformation," it does not mandate it, thereby creating a high likelihood that Housing Authorities will continue the process of ending public housing as we have known it.

3. Residents face reductions of tenant rights and have little legal recourse should this proposal violate their housing rights.

PETRA is not unique in that HUD administrations throughout the years have tried with varying degrees of success to reform the agency and its programs, and erode its investment and commitment to public housing as a crucial piece of meeting the nation's housing needs. Regardless of whether a reform succeeds or fails, it is the residents that have ultimately borne the brunt of HUD decision-making.

While PETRA does attempt to protect some tenant rights and eliminate some of the problems of past programs, many potential problems remain. These problems include: the use of tenant-based vouchers as a "solution" when contracts expire guarantees future displacement and potential homelessness; the lack of obligation for long-term public ownership and associated government accountability; current disposition processes and protections under Section 18 are eliminated; the goal of deconcentrating poverty remains, which is what has contributed to mass demolition and displacement; and demolition protections are lacking, including sufficient relocation benefits, right to return, and one-for-one replacement on the original site.

Given our experiences with similar past programs, and the outlined problems with PETRA, it is highly likely that housing rights will be violated, communities will lose deeply affordable housing stock and other problems will arise. Applying a new, untested program to 25% of the nation's public housing stock immediately creates huge concerns and risks for tenants. Yet, if this legislation is passed, tenants will have very limited recourse to address problems. Once public housing undergoes disposition or conversion, experience has shown it is lost forever.

We, therefore, urge this committee to oppose PETRA. Public housing provides a vital resource for low-income residents and is a crucial part of ensuring last resort housing for all our citizens. Our nation and human rights principles have long recognized the importance of guaranteeing to every citizen the right to housing. Therefore, we call on your leadership in ensuring that PETRA does not move forward and instead that new proposals based on increased public investment and full protections for tenants and our housing stock be returned to this committee for consideration.

Submitted by:

C3 Hands Off Iberville

May Day New Orleans
Survivors Village

727 15th Street NW, 6th Floor
Washington, DC 20005
(202)662-1530 (202)393-1973 fax
www.nlihc.org

Initial Comments to the
House Committee on Financial Services
on The Administration's Proposal to Preserve and Transform Public and Assisted Housing: The Transforming Rental Assistance Initiative

May 25, 2010

The National Low Income Housing Coalition is pleased to submit these initial comments to HUD's Preservation, Enhancement, and Transformation of Rental Assistance (PETRA) proposal. We support the goals of PETRA: preserving public and assisted housing, enhancing housing choice for public housing and other project-based tenants, increasing administrative efficiency, and creating more uniform policies across all HUD-funded rental assistance programs. NLIHC will be developing a set of more thorough comments on the PETRA proposal in the coming weeks.

NLIHC's members include non-profit housing providers, homeless service providers, fair housing organizations, state and local housing coalitions, public housing agencies, private developers and property owners, housing researchers, local and state government agencies, faith-based organizations, residents of public and assisted housing and their organizations, and concerned citizens. We do not represent any sector of the housing industry. Rather, NLIHC works only on behalf of and with low income people who need safe, decent, and affordable homes, especially those with the most serious housing problems, including people without homes. NLIHC is funded entirely with private contributions.

Chronic underfunding has led to a more than $22 billion backlog in public housing capital repair needs. Through the $4 billion from the American Reinvestment and Recovery Act and the FY10 appropriations bill, Congress has made strides to address this backlog but it is clear that new tools, and new resources, will be needed. The nation's almost 1.2 million units of public housing are a tremendous resource that should be preserved to the greatest extent possible.

According to HUD's March 31 Resident Characteristics Report, at least 55% of public housing households have incomes below 30% of area median and at least another 17% have incomes below 50% of their area median. The average annual income for a public housing household in the United States is $13,414. This is precisely the population for which there is a significant shortage of affordable and available rental housing in the private market place.

727 15th Street NW, 6th Floor
Washington, DC 20005
(202)662-1530 (202)393-1973 fax
www.nlihc.org

NLIHC has been alarmed by the loss of public housing units over the last several years. Today, public housing agencies have a variety of ways to get out of the public housing business, including through demolition, disposition, conversion to vouchers, shifting of resources to tenant-based vouchers under Moving to Work agreements, and HOPE VI. All told, the nation has lost more than 165,000 units of public housing over the last 15 years. Meanwhile, public housing's capital needs continue to grow at a pace unmatched by the political wherewithal to address them. The status quo of policies and resources devoted to public housing are insufficient to carry public housing into the future we believe it deserves. PETRA may well represent a way to achieve financial and physical sustainability of these resources, but NLIHC urges a variety of changes to HUD's proposal.

At its core, HUD's first phase of PETRA is about bringing private resources to public housing. Private resources could be public housing's savior or its greatest enemy. NLIHC urges Congress to be conservative in embracing the use of private resources in public housing, protective of the massive federal investment that is public housing, and responsive to the tenants who today call public housing home, and tenants in the future, who will rely on this important housing resource.

Positive Aspects of PETRA

The PETRA proposal continues to rely on the Brooke standard to measure affordability. Here, each household is assured a rent it can afford, no matter their income. The Brooke standard is the bedrock of providing truly affordable housing to tenants.

The proposal also brings a resident choice option to the public housing and project-based tenants covered by conversion to the new rental subsidy, and potentially to other HUD tenants should resources allow. NLIHC welcomes this proposal and is pleased with the possibility that the HUD Secretary could incentivize more regional voucher consortia to administer vouchers. Together, these efforts could bring great benefits to tenants.

Preservation of the Public Housing Stock

The "P" in PETRA stands for "preserve." More should be done in PETRA to ensure the preservation not just of some units, but of all units of public housing. Certainly, some units will need to be replaced and the project-based subsidy shifted to another property, but every community in the nation has affordable housing needs and every community would be served well by a strong commitment to one-for-one replacement of every public housing unit converted to a new rental subsidy stream in PETRA.

727 15th Street NW, 6th Floor
Washington, DC 20005
(202)662-1530 (202)393-1973 fax
www.nlihc.org

Unfortunately, the proposal's one-for-one replacement guidelines, must be read in a way that could cause the loss of up to 50% of the public housing units converted under PETRA. As NLIHC has stated in our comments on HUD's Choice Neighborhoods Initiative (see attached), which has a similar one-for-one replacement requirement as is proposed in PETRA, the proposed one-for-one guidelines are insufficient to protect communities from a significant loss of much-needed public housing. If the unsubsidized but affordable stock is there but is vacant, then replacement housing should take the form of project-based vouchers.

Tenant-based vouchers are not an adequate replacement for hard units. Vouchers can be more expensive for tenants, tenants can be more easily screened out of market rate housing than public housing, and having a voucher does not mean that tenants will be able to live in communities of their choosing. One of HUD's summaries of PETRA states that HUD anticipated that less than 10% of the units would really be replaced with vouchers vs. hard units. If that is the case, then the statute should place a cap on the percentage of units that could be the exception to a one-for-one requirement. As written, the proposal requires a one-for-two requirement, not a very good deal for a nation with historic shortages of affordable housing, especially for the households with extremely low incomes served by public housing.

NLIHC also recommends extending the use restrictions on units converted to the new rental subsidy to be "in perpetuity." The proposal recommends a 30 year use restriction for converted public housing. This is grossly insufficient. If Congress provides additional funding to pay for increased rental subsidies, the nation's investment in this stock rises. With even more federal investment on the line, it seems that owners should be shepherding these units for future generations, not banking on profits from privatizing it in 30 years.

If the decision is made to retain a shorter contract period, NLIHC recommends that HUD be required to offer contract extensions and the owner be required to accept them. Under the proposal, owners would have to accept contract extensions if offered by HUD, but HUD is not required to to offer these extensions It is of course critical that contract rents be sufficient to maintain the properties, and they be adjusted frequently enough to preserve these units. Contract rents should be based on each property's costs, not just by average local market costs.

727 15th Street NW, 6th Floor
Washington, DC 20005
(202)662-1530 (202)393-1973 fax
www.nlihc.org

For tenants of converted properties, the proposal would provide vouchers to tenants in the event of the non-renewal or non-extension of a contract beyond the term of the lease agreement. While much of this impact could be assuaged by NLIHC's recommendations above on use agreements and contracts, such tenants should minimally receive enhance vouchers, rather than tenant-based vouchers.

Should the property fall into foreclosure or bankruptcy, the proposal does provide for the Secretary to transfer rental assistance contracts to other properties. NLIHC believes another option is to provide Federal Housing Administration insurance behind these properties and protect the nation's investment in their future.

Required Investment
The proposal opens public housing up to new resources. NLIHC recommends that the proposal be amended to require the Secretary only approve applications for conversion that have demonstrated physical needs and that there be requirements to actually use the new resources for the physical preservation of the properties.

Protections for Tenants
The proposal clearly states that existing tenants "shall not be subject to rescreening or termination of assistance or eviction from the unit because of the conversion." But, the proposal goes on to say that each property-based contract shall "provide that the screening and selection of families be a function of the owner" and that pre-conversion families "shall be given an absolute preference for selection for placement in the unit proposed to be assisted, if the family is otherwise eligible for assistance." NLIHC reads these two passages and infers that tenants cannot be evicted because their unit will be converted, but they could be screened after the conversion to see if they are "otherwise eligible for assistance." Of course, we hope we are inferring incorrectly and that pre-conversion tenants will have a right to stay, a right to move, and a right to benefit from the new investment in their housing without additional screening or new eligibility requirements.

Resident Participation in Conversion
NLIHC appreciated the clarity with which the proposal declares conversion to be a significant amendment to a housing agency's PHA plan and, therefore, all of the requirements of resident consultation of the PHA plan process would apply to an agency's wish to participate in PETRA. NLIHC recommends that improvements and expansion to the use of PHA plans be included in any public housing conversion proposal. Congress passed legislation in 2008 that effectively exempts 75% of the

727 15th Street NW, 6th Floor
Washington, DC 20005
(202)662-1530 (202)393-1973 fax
www.nlihc.org

nation's housing agencies from participating in most of the plans' requirements. And, starting in 2006, HUD began streamlining the template used by housing agencies to complete their plans.

But, HUD drastically streamlined the PHA plan template in 2008, reducing this overview tool from a helpful 41-page, easy to access electronic guide, to a mere page and a half form, making it much more difficult for residents and the public to know what the law requires and what has changed at the PHA over the previous year. The new PHA plan template makes it more difficult for residents and others to understand the PHA Plan process, engage in it, and have access to information associated with the 18 statutorily required PHA plan components. And, the template no longer includes the description of the process for electing residents to the PHA Board or the list of Resident Advisory Board Members or residents on the PHA Board.

If Congress acts on PETRA, the PHA plan should be renewed and included in this proposal so that tenants have input prior to conversion, during the conversion process, and as long as HUD has resources in the property.

HUD Streamlining
The proposal would give the Secretary considerable discretion to streamline HUD's rental assistance programs, whether or not the properties participation in conversion to a new form of rental assistance. Regarding the Secretary's ability to promote "informed choice among housing opportunities" has been a hallmark of HUD's proposal. NLIHC strongly supports this facet of the proposal but recommends this housing choice option be coupled with an authorization of new vouchers to make this plan a reality for public housing tenants and also not lengthen the already excruciating waits of those on voucher waiting lists.

The proposal would also give the HUD Secretary the ability to implement various changes to tenants' rights to organize. The changes would mostly be in line with current regulatory requirements at 24 CFR Part 245, regarding the right to organize in HUD multifamily housing properties. NLIHC believes that these changes could be helpful to public housing tenants while codifying good regulations. However, public housing tenants could lose valuable resources to actually maximize the use of these new organizing provisions because the proposal only stipulates that a portion of the funds "may be allocated to facilitate tenants' rights to organize."

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Washington, DC 20005
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Today, HUD provides residents, through the housing agency, with $25 per unit per year for tenant organizations. NLIHC recommends that at least the same relative amount of resources be dedicated to tenant organizations in all HUD programs should the Secretary be given such streamlining authority. HUD has also noted that any such funds might be distributed by competition. If that is the case, then the likely ones to receive funding may be the ones who need it the least. But, if the funds are to be independent of the housing agency, as they should be, then HUD would need some mechanism to distribute such resources. NLIHC looks forward to hearing others' views on this and appreciates the Committee's commitment to strong resident participation requirements.

NLIHC looks forward to working with the Committee, Congress, and HUD on how best to preserve public housing. We believe there are lots of ways the proposal could be improved, but only one way to preserve public housing: figure out a way to get enough money into these units so they are sustainable in ways affordable to extremely low income people.

CONGRESSIONAL TESTIMONY ON THE PRESERVATION, ENHANCEMENT, AND RENTAL ACT OF 2010 (PETRA)

I would like to thank the subcommittee on Housing and Community Opportunity of the House Committee of Financial Services for this opportunity to submit written testimony concerning the pending PETRA legislation into the Congressional Record. My name is John Derek Norvell and I live in Public Housing in New York City, to be specific Abraham Lincoln Houses in Harlem. In fact I live across the street from the residences of Congressman Charles Rangel of the 15th Congressional District. I belong to three organizations the Concerned Citizens of Greater Harlem, the Campaign to restore national Housing Rights, and the New York City Public Housing Resident's Alliance. I also work for the New York State Division of Human Rights where I investigate discrimination complaints in housing and employment and arrange settlements if possible, according to the directives of HUD in housing cases.

I was invited to meet with HUD secretary Shaun Donovan along with many other public housing and section eight residents as well as housing activists on January 20th of this year where we were asked input on HUD's new funding stream initiative , Transfer rental assistance (TRA) which is the object of the PETRA legislation. At that meeting we emphasized the preservation of tenant rights and protections, the importance of resident participation in decisions made concerning their housing, oversight, transparency, and the protection of tenant organizing. In April of this year the HUD secretary invited Section Eight residents to the same type of meeting..

One can appreciate HUD's preparation of PETRA legislation from a fiscal point of view, however federal subsidized housing is not solely about real estate, but about people. In a time of housing foreclosures subsidized housing is the only national safety net that exists for low and moderately low income individuals. Our organizations fought hard to get the preservation of public housing added to the political platform of both parties during the recent presidential election. We were successful with the Democrats and public housing residents came out in record numbers to support the election of Barack Hussein Obama.
The proposed PETRA legislation falls short of being a coherent housing policy that protects and preserves the homes of subsidized housing residents. There are too many vague sections of the bill that are insufficient in protecting the rights of residents, too many provisions that are left to the discretion of the secretary alone without any input from residents concerning their own self determination. In its present form many of us residents feel that without an accompanying Resident Bill of Rights, this proposed legislation will begin the slow but sure final destruction of subsidized housing.. Most ominous is the subsection entitled " PROPERTIES IN FORECLOSURE OR BANKRUPCY" of SECTION 3, (vii), pages 11-12, in which it will be the discretion of the Secretary "to modify the requirement that owners shall remain subject to the contract, leases, extensions, and use agreement obligations of rental assistance if the Secretary determines the converted housing units are not financially sustainable or feels that it is necessary in order to generate sufficient lender participation to transfer the contract to one or more other properties." This clause is a recipe for displacement and demolition.

We are also troubled with the involvement of private institutions such as banks and other financial institutions having third party security interests including the right to sell off the property in case of default. If Congress decides not to vote on appropriations for public properties in debt as was a similar case senario last year when section 8 voucher holders in New York City found that their vouchers were worthless; or a bank becomes to big and fails under proposed financial reform legislation, the residents will become home less victims. We therefore propose that guarantees to resident protections such as FHA insurance be included in the Bill

The proposed legislation also suggests that there are resident tenant protections through resident advisory boards even stating in Section 8 (m)(2) that PHAs must carry forward the requirement that there be resident membership on a PHA Board. In New York the resident advisory board is not part of the executive Board of the New York City Public Housing Authority. The resident advisory board carries out its activities at the behest of the Council of Resident Organizations Presidents who are elected by the Resident presidents themselves to be chapter chairs; there is no input or direct participation in that selective process by the residents at all. Therefore there is no way for residents to have a say in their future regarding the provisions of this PETRA legislation, at least not in New York City.

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There are also two sets of regulations that govern the rights of Section 8 residents as opposed to public housing residents, respectfully the 24 C.F.R. Part 245 for the former and the 24 C.F.R. Part 964 for the latter. We suggest the integration of both regulations based upon the preservation of resident's Constitutional, Civil, and Human Rights including the total eradication of anti thirteenth and fourteenth amendment forced Community service requirements and anti- family trespass laws. Section Eight residents do not have forced community service although a House member, Rep. Gerlach in the past wanted to extend these unconstitutional requirements to these subsidized residents as well. We residents demand the right to mark up the PETRA legislation just as any other lobbyist group in our own protective self interests to prevent those Congressional members hostile to subsidized housing like Sen. Vitter from wrecking havoc with a flawed bill as he did with a markup to retain community service legislation last year.

We also ask that there be resident trained commissioner with oversight concerning resident protections to be appointed over PHA's and Property Owners within the auspices of HUD. These officials shall not be solely bound by HUD but by A Tenant Bill of Rights directive to audit PHAs and owners in terms of tenant protections. We also demand a Civil Gideon so that legal advocates and guardian ad-litems will be available to residents facing eviction hearings and housing court procedures free of charge to the residents.

We also demand that these hearings concerning PETRA be opened up to extend to public housing and section eight residents on the future of subsidized housing before Housing Committees in the House and Senate. Why are residents denied the same rights to political expression and democratic transparency of legislative processes that are afforded to the rich and powerful? As things stand now, having a Congressional hearing that consists of HUD officials alone gives a false and distorted picture that all subsidized residents are unanimously backing the proposed PETRA legislation.. Nothing could be farther from the truth. There are so many issues that this proposed legislation does not address that this small testimony for the Congressional record in the interests of time cannot fully address, hence the need to expand hearings and

carefully scrutinize this proposed legislation in order to address what is lacking. If there is an included Resident Bill of Rights, an FHA insurance to protect residents from the effects of default, true portability of Section Eight vouchers by providing more appropriations for vouchers (a major concerns for cities like New York), alternatives to a deadly shortfall in Congressional appropriations concerning rental assistance, and a more coherent and transparent housing policy on the part of the Executive Branch we will support revised PETRA legislation as a means to achieve the needed revenue for capital, maintenance, and other costs. Long live subsidized housing and resident's rights in the United States.

John Derek Norvell
Concerned Citizens of Greater Harlem

Davidson/Site 166 Resident Association Inc.
A New York City Housing Authority's Development
From the Office of Erik Crawford, President
818 Home Street, Unit 2Y
Bronx, New York 10459
347-577-6288 Tel
347-577-6289 Fax
Erikcrawford2009@live.com

May 24, 2010

Written Testimony for the House Subcommittee on Housing and Community Opportunity
Hearing on legislation titled "Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010"

My name is Erik Crawford. I am 31 years old. I was born and raised in public housing. As a resident and resident leader of the New York City Housing Authority and a resident who was part of both Resident Convening Meetings and all the Conference Calls, I write the following to this committee's regarding my opposition to HUD's PETRA Proposal.

Housing Urban Development (HUD) is trying to Privatize and Mortgage off all of America's Public Housing with legislation called PETRA to Congress that would result in the privatization of all public housing in America.

As a resident leader from New York City Public Housing, the largest Public Housing in America, who met with Secretary Donovan and senior staff at HUD regarding TRA back in January and in April, I feel used by HUD to push their agenda. I believe all residents and partners in attendance were clear about preserving public housing, keeping it public and securing all residents rights and protections as it exist today.

With this type of proposal and if approve the new owners would charge 10% above market rates to impoverished residents, money that would be mostly paid by the United States government (you and me, the taxpayers). This proposal will be attractive to banks that will make huge profit on the mortgages and low income individuals and families like me will be forced out and homeless. I am shock that this type of proposal is coming out of the Obama's Administration.

Despite popular opinions public housing is home to millions of individuals and families. Moving forward with this type of legislation will lead to foreclosures, lose of homes to millions of low-income families and more importantly the lost of public housing. I ask for the full committee's support to reject this plan until it secure public housing and the rights of public housing residents as we know it TODAY!

Thank you for your attention and look forward to your support. On behalf of 500,000 thousands individuals in New York City!

Public Housing Authorities Directors Association

511 Capitol Court, NE, Washington, DC 20002-4937

phone: 202-546-5445 fax: 202-546-2280 www.phada.org

PHADA Testimony on HUD's Preservation, Enhancement and Transformation of Rental Assistance (PETRA) Legislation

House Financial Services Committee

May 25, 2010

Chairman Frank, Ranking Member Bachus and Members of the Committee, PHADA, the Public Housing Authorities Directors Association, appreciates the opportunity to submit testimony on HUD's Preservation, Enhancement and Transformation of Rental Assistance (PETRA) proposed legislation. PHADA's 1900 members consist of housing authorities ranging from the smallest to the largest, both urban and rural, from all sections of the country.

As you know, the public housing program has experienced a net loss of 150,000 units over the past two decades. In many cases, the loss of these units was caused by funding levels that were insufficient to maintain them in decent, safe and sanitary condition. Secretary Donovan conservatively estimates that there is a $20 billion capital fund backlog in public housing.

It is clear that there are properties in the public housing portfolio that require more financial resources than are currently available to them in order to be sustainable for the foreseeable future. In addition, it is also clear that Congress appropriates considerably larger sums on a per unit basis for other affordable housing programs. For instance in HUD's 2011 budget, the cost of a tenant-based section 8 voucher is approximately $9000 per unit, while the cost of a public housing unit is approximately $6000 per unit. In other words, a voucher cost $3000 or 50 percent more than a public housing unit.

It is the combination of these two facts that has led PHADA to support the conversion of some public housing to a funding stream similar to that of section 8 properties. The principles that PHADA supports in such a conversion are 1) preservation of at risk properties 2) adequate funding to sustain the properties into the future 3) opening up opportunities for leveraging private resources and 4) simplifying the regulatory system. It is in the context of these principles that PHADA offers comments on HUD's PETRA proposal.

The findings of the act help explain HUD's purposes. They first acknowledge the "substantial unmet capital needs" of the public housing stock. They then address HUD's other purposes by saying the current rental assistance structure "makes it more difficult for families in need to access HUD programs," while the number of administrative entities create "many barriers to eligible low-income families." Furthermore, the number of entities and their "geographical limits...impede fair access to scarce resources, resulting in waiting times that vary substantially and often with other adverse impacts." Finally, the "administrative geography and current

program rules" restrict the ability "to decrease concentrations of poor and minority families or to expand opportunities to live in mixed-income sustainable neighborhoods." In effect, without citing any evidence, HUD states that the current system (with 4200 HAs) makes it hard to access HUD programs; these numbers create barriers and inequities with unequal waiting times; and that they stand in the way of decreasing concentrations of poor and minority families.

With this negative portrayal of the delivery structure of rental assistance and no apparent consideration of the fact that this 70 year old framework has successfully grown and changed to now assist 4.6 million families, HUD moves to the bill's purposes. The first, and the one with which PHADA agrees, is to "preserve affordable housing opportunities for the long term."

The second is to "enhance housing choice for residents", which means to provide choice for the first time to residents of place based assistance and to provide more information, opportunities and administrative ease to housing choice voucher participants that already have it. This testimony will explain why PHADA does not endorse the second, making resident choice a program requirement.

Third is to streamline and improve "the delivery...of rental assistance" which appears to refer to consolidation of small HAs and regionalization of Section 8 programs. As PHADA believes that there is neither evidence to support the concept that these will streamline and improve rental assistance, nor that it is intuitively obvious that creating larger bureaucracies can accomplish this purpose, PHADA opposes risking the current successful delivery of rental assistance to more than 3 million families by these program changes.

1. **The Conversion Must Be Voluntary Rather than Mandatory**

Although PETRA in 2011 is designed to be voluntary, the Department has made it clear that it intends in a multiyear process to have all place based assisted housing merge into a single program. This long term goal implies that at some point conversion to TRA will become mandatory.

As mentioned, PHADA supports conversion for properties that are at risk of being lost to the public housing program, a condition that only exists for a subset of public housing properties. Many of PHADA's members will have scant interest in converting to a new funding system, because they are operating relatively well under the current one. Despite the advantages that may accrue to at-risk properties from leveraging private capital, it has to be acknowledged that borrowing money incurs a risk. Despite the best intentions of HUD, Congress and housing authority management, there may come a time when it will be impossible to repay these loans and properties will be foreclosed upon. Agencies that neither need nor want to incur these risks should not be forced into such a system.

PHADA believes that alongside PETRA other tools to improve and sustain the public housing portfolio should be made available. These include the effective and proven Moving-to-Work program, whose expansion is part of the SEVRA legislation, and the transformative HOPE VI program that has revitalized public housing, neighborhoods and cities across the country over the past two decades. In addition, PHADA supports robust operating and capital fund appropriations similar to levels that were reached in 2001, which in today's dollars would mean a $4 billion capital fund allocation, rather than HUD's $2 billion, an $800 million HOPE VI program, rather

than its disappearance, as well as a Drug Elimination Program that was funded at $310 million in 2001, but has since been left unfunded.

For many small housing authorities, reform is the most pressing issue, since a 50 unit housing authority has to operate under most of the same regulations as a 180,000 unit one. Finally, initiatives, such as the Chairman's "Preservation and Rehabilitation Act of 2010" provide other innovative ways of enhancing financial resources without additional federal costs. Thus, PHADA's vision of preserving public housing is a program with multiple tools to service very different properties, communities and areas of the country.

In terms of creating uniform policies, PHADA believes this bill gives the Department far too much discretion in changing program policies and procedures. The bill should focus on converting a portion of public housing to an alternate funding structure and delete the numerous references allowing HUD to apply specific provisions to "other rental assistance programs funded by the Secretary," as in section 3(m)(1)(A)(i)(I) on resident choice, or adopt "additional methods" without identifying them, as in section 3(m)(1)(A)(v)(I) on regionalizing the Section 8 program. Any changes the Department wishes to make to "rental assistance programs funded by the Secretary" through this vague language should be spelled out and put in a separate bill.

2) Preservation Must Be the Purpose of PETRA

There are two important facts about conversion, the first being that it entails some risk and the second that it costs money. Therefore, it should be applied to the properties that need it the most to be able to continue to provide decent housing for low-income families into the future. It should neither potentially endanger properties not as much in need nor spend scarce federal dollars to promote other, extraneous policy ideas, such as consolidating small housing authorities, regionalization of the Section 8 program, or providing resident choice, especially as these policies in themselves may pose a threat to the preservation of the properties.

The bill does identify rehabilitation as the first priority, but it then proceeds to list deconcentrating poverty and increasing administrative efficiency as the next two. These two represent the Department's desire to mandate resident choice and regionalize the section 8 program. They have nothing to do with preserving the at risk properties, and as they will only dilute the purpose of the legislation they should not be considered in selecting properties for this program.

3) Resident Choice/Mobility Should Not Be a Requirement of PETRA

This bill has more far-reaching language concerning resident choice than has previously been announced. In HUD's discussion draft, the Department stated that residents of converted property would have resident choice. In this bill, though, resident choice is extended to every resident of a rental assistance program administered by the Secretary. Below is the language in the bill.

> Section 3 (m)(A)(i) RESIDENT CHOICE—The Secretary shall promote informed choice regarding housing opportunities by participants in rental assistance programs administered by the Secretary by providing, to the extent of available resources, that---

(I) Each low-income family lawfully residing in a unit converted under subsection (m)(2) or, to the extent of available resources, otherwise funded under a rental assistance program administered by the Secretary, may move at any time after residing in the property for a period of not less than 24 months, or such other period as determined by the Secretary..."

The language continues by saying that an agency administering a converted property "shall make available to eligible families...not more than one-third of the vouchers that become available each year as a result of turnover."

Thus, residents of converted properties have the right to move after 24 months by being given one-third of the agency's turnover vouchers. The Secretary has discretion to change the 24 month period, though, for instance, by reducing it to the 12 month period provided in the project-based voucher program.

Residents of all other rental assistance programs, including the remainder of public housing and the multifamily program properties also have the right to move "to the extent of available resources." The meaning of this phrase is ambiguous, but it is certainly plausible that there could be many circumstances in which the Department would determine that available resources existed. Conceived most simply, if HUD believes that available resources currently exist to provide residents in converted properties 1/3rd of the turnover vouchers, it would be logical that 1/3rd of turnover vouchers would also be considered available in agencies which did not have any converted properties. Similarly, if, in an agency with a large number of vouchers, the residents of the converted properties did not use 1/3rd of the turnover vouchers, it would be logical to say that the unused ones would be available to residents of other properties.

In other words, there are numerous scenarios in which the Department could determine that agencies had available resources to provide resident choice to their public housing residents. It seems clear that HUD's long term vision is to extend resident choice to all public housing residents, and it seems possible that, within the parameters of this language, this vision can begin to be enacted.

PHADA does not oppose resident choice, and it supports the use of the project based voucher model, which incorporates resident choice, as an option for housing authorities wishing to convert. In weighing the pros and cons, however, PHADA does not believe that there is a convincing argument to mandate resident choice.

On the pro side, some public housing residents will be given vouchers that they would not otherwise be eligible for to move to apartments in the private sector. On the con side, though, any voucher given to a public housing resident means that a person on the Section 8 waiting list will be deprived of one, while the waiting period on the Section 8 waiting list will increase by 50 percent, since one out of three vouchers will be given to public housing residents. There will also be public housing residents who applied for housing after applicants on the Section 8 waiting list who are given their vouchers before them.

There will be a disparate effect on public housing residents' actual ability to move, depending on whether or not their housing authority has a high voucher/public housing ratio or not. For instance Los Angeles and Buffalo have somewhat similar numbers of public housing units (the

two average 5500), but Los Angeles has 45,000 vouchers while Buffalo has 402. In reality, therefore, public housing residents in L.A. will have resident choice, but those in Buffalo will not. Furthermore, it is possible that HAs will have to give up their own vouchers to service agencies with none, further punishing Section 8 waiting list applicants.

With the Section 8 waiting list increasingly blocked, applicants may move into public housing for the sole purpose of becoming eligible for a voucher, causing the phenomenon of churning and detracting from the sense of community. The extra turnover will be an additional cost. If significant numbers of residents choose to move, vacancies may exceed an agency's ability to turn units around, leading to vandalism, deterioration and possibly abandonment of the property. Since some of the converted properties will be 60 year old ones in central cities, it is probable that there will be cases where significant numbers decide to port out, especially if HUD is providing additional resources to offer mobility counseling to residents. This potential deterioration will be an impediment to lenders, driving up borrowing costs.

Even without resident choice, public housing residents wanting to move can put themselves on the Section 8 waiting list and be given a voucher just as expeditiously, but not at a faster rate, as everyone else who is applying for vouchers. They already have the same ability to leave their public housing units as all other low-income people have to leave their housing. Thus, weighing the pros and cons in a cost benefit analysis shows that the benefits are relatively modest and come at a cost of harming other low-income families and the properties that the program is trying to preserve. Based on this analysis, PHADA does not support resident choice as a requirement in PETRA.

4) **Regionalization of Section 8 Programs**

Since enhancing resident choice and deconcentrating poverty are goals of this legislation, one of the methods the Department believes can accomplish these goals is regionalizing the Section 8 program. In other words, the Department believes that an area-wide Section 8 program would be more likely to improve residents' lives by providing them opportunities to live in low-poverty areas. The Department continues to foster these goals despite the fact that its Moving to Opportunity (MTO) experiment failed to show any improvement in earnings, education or employment among public housing residents who moved to low-poverty neighborhoods. In addition, there is no compelling evidence that a regional housing program would be more efficient administratively or even promote mobility more efficiently.

The bill authorizes the Secretary to facilitate the implementation of regional housing authorities. It reads in Section 3 (m)(1)(A)(v)(I) that the Secretary may

> Facilitate the implementation, by public housing agencies that administer tenant-based voucher programs under section 8(o), of regional portability agreements, consortia, and such other or additional methods of streamlining administration of vouchers and other rental assistance on an area-wide basis as the Secretary determines appropriate to promote greater efficiency in the use of resources and to increase informed resident choice and mobility.

Thus, the Act would authorize the Secretary to facilitate the implementation of any additional method, including regionalizing the Section 8 program to promote efficiency and mobility. It is

not exactly clear what the Secretary would do under this authorizing language to accomplish this goal, but clearly HUD has numerous mechanisms that allow it to facilitate the implementation of regional housing authorities. Given the findings in the bill—that the number of administrative entities creates barriers, impedes fair access and limits the ability to deconcentrate poverty—HUD's intention to reduce the number of "administrative entities" seems obvious. PHADA believes this language gives the Secretary too much discretion in the pursuit of goals whose utility has not only yet to be demonstrated but which could harm the successful delivery of assistance to 3 million public housing and tenant-based voucher families. Therefore, it should be removed.

5) **PETRA Should Be Phased in Systematically**

The concept of conversion of some public housing properties is largely untested and quite complex. For instance, Barbara Sard and Will Fischer wrote in an October 8, 2008 paper for the Center on Budget and Policy Priorities, "It would not be advisable to allow unlimited conversion of public housing to project-based vouchers immediately—which could result in hundreds of thousands of units moving from one program to the other—since this approach for public housing is largely untested."

There are numerous variables that will determine whether or not this approach is viable, and if it is where it is most effective. In terms of the properties themselves, there are many different kinds of public housing developments. Some are family, some elderly. They can be located in central cities, suburbs or rural communities. They range in age from over 70 years old to brand new, and in size from scattered site to thousands of units, with physical conditions that can vary enormously. They can be in high or low cost markets and they can have had extensive relationships with lenders or they might never have approached the private capital market before.

Similarly, there are numerous variations in terms of program design, including rent-setting, type and term of contract, use restrictions and regulatory framework. Program decisions, for all of these various types of properties, need to be tried and tested. PHADA believes that while hundreds of thousands of public housing units may eventually benefit from PETRA, it should be phased in systematically. This method would enable HUD to evaluate the different types of conversion concepts at the many different kinds of settings that exist in public housing. With this information, the Department could then target the most promising candidate properties with the most effective program designs.

6) **Conversion Requires the Infusion of Additional Funding Rather than Taking Money from the Capital Fund**

The idea behind conversion is that the preservation of some properties will require additional funding, with the observation that the cost of a tenant-based voucher is $3000 per year more than a public housing unit. Therefore, it seems particularly ironic that the 2011 HUD budget could call for the conversion of 300,000 units at the same time that the total amount of public housing funding was reduced from the 2010 level.

Even with the ARRA funding, Secretary Donovan estimates conservatively that public housing has a $20 billion backlog. The study on which this number is based estimates that $2400 per unit in today's costs is needed each year to keep up with repairs after a property has been fully

modernized, but HUD's 2011 capital fund budget has been reduced by $456 million and only provides $1700 per unit. Thus, the 900,000 units that do not convert will fall another $630 million behind their capital repair needs in 2011.

PHADA does not support HUD starting a new program that may help some public housing properties, while at the same time essentially taking the money from the other 3/4s of the portfolio, accelerating its decline. The reality is that HUD cannot accomplish the goals of PETRA—the preservation of public housing—by reducing funding. Additional appropriations, that are genuinely incremental to a fully funded capital fund for non-converting properties, will be needed.

The bill also authorizes the funds to be used for numerous purposes other than preserving the properties, including "promotion of tenant organizing rights and resident mobility (including of participants in the tenant-based voucher program under section 8 (o), ...efforts to affirmatively further fair housing and expenses of combining administrative components of local programs under section 8 (o))..." HUD has set aside $50 million or 14 percent of the $350 million for these purposes. PHADA believes these purposes are an improper use of these scarce resources and, as an example, does not understand why funding should be taken out of a program to preserve public housing to assist participants in the housing choice voucher program to organize.

7) PETRA's Programmatic Details

a) *The Contract*—Public housing has been in awkward position because it is prohibited by statute from collecting enough money in rents to sustain the properties. Thus, it is dependent on the federal government to make up the difference. Unfortunately, though, there is no statutory or contractual requirement on the federal government's part to make these payments, the result of which has been underfunding, deterioration and loss of units. PETRA properties need a genuine contractual relationship with the federal government, which would allow them certain contractual rights if the federal government fails to uphold its obligations.

b) *Rent setting*—Rent setting is critical in determining whether or not there will be sufficient revenue to sustain the properties over time. PHADA recommends allowing properties to have the option of either market or budget based rents. The bill ostensibly permits this option, but then rescinds it by saying that the Secretary can determine a lower rent "if such lower rent is sufficient to meet the financial and physical sustainability needs of the property." In essence, that language gives HUD the right to determine what the rents should be regardless of the market.

HUD seems to want it both ways. It wants to impose market discipline, but it does not want to provide a market rent. It wants to create a single program, but it wants a different rent setting structure for public housing. It is hard to imagine, too, that there will be very many public housing properties whose market rents will be significantly higher than their budget based rents. Finally, it should be remembered that HUD will be deciding which properties are admitted to the program. The authority to disregard the market gives the Department too much leeway and runs the risk of setting the rents at levels that are likely to accomplish just the opposite of what is intended—risking the long term sustainability of the property.

In the instances that budget based rents are used, they must include adequate amounts to cover operating costs, cash flow, debt service and an annual accrual amount to continue to pay for capital repairs as they occur in the future.

c) *Regulations*—Converted PETRA properties are moving into an environment, similar to project-based Section 8 assistance, in which they will be partnering with private capital to provide housing assistance to low-income families. The project-based assistance regulatory system has proven itself effective as the framework for this partnership, delivering affordable housing in an environment satisfactory to lenders. PHADA supports applying the project-based assistance regulatory framework to PETRA.

Deviations from this framework, such as the inclusion of Section 3 requirements, may upset the delicate balance that has been developed over the four decades of the project-based assistance program which gives lenders confidence that their loans are safe. Section 3's intentions are laudable, but it is wishful thinking to believe that there will be no cost to a requirement that 1/3rd of all hires be recipients of assisted housing or low or very-low residents of the metropolitan area.

d) *Physical Needs Assessments*—Much of the success of PETRA will depend on the standard to which properties are modernized. Repairing a 60 year old public housing property to an "as is" standard is not a viable approach if these properties are to continue to provide decent housing for decades to come. HUD must adopt a more comprehensive "market based" standard that will assure public housing residents that they live in properties competitive with 21st century norms.

e) *One for One Replacement*— The bill requires one for one replacement, without any mention of funding for this task. Requiring one for one replacement with no funding is a recipe for freezing existing structures in place, which is beneficial neither to the residents or the communities they live in. PHADA believes any one for one requirement should be contingent on available funding.

Tenant-based vouchers are not permitted to be considered replacement units, except under very strict circumstances that the Department has said apply to less than 10 percent of public housing units. Not permitting vouchers seems particularly ironic in a bill whose second purpose is to "enhance housing choice for residents." No assisted housing program provides more opportunities for choice than tenant-based vouchers, so it is difficult to understand why a bill whose purpose is to enhance choice would require rebuilding units on the existing site or in another permanent location in favor of providing vouchers.

PHADA has long supported the use of tenant-based vouchers as eligible replacement units. This bill allows their use for 50 percent of the units under very stringent conditions, including an 80 percent success rate within 120 days of issuance over the past two years, a high vacancy rate, and a widespread geographic dispersal of vouchers.

One really needs to ask why there would be such conditions. For existing residents who needed to move, arrangements can be made to ensure that all receive comparable replacement housing, so voucher success rate should not be an issue. Voucher success rate is similarly not an issue for applicants on the voucher waiting list. These families want vouchers, and the more an agency has the better for them.

Families on the public housing waiting list might be slightly impacted, but the relevant factor is the relationship of the number of units demolished to the number of remaining units. If the demolished units only make up a small portion of remaining units, (imagine tearing down 100 of New York City's 180,000 units) then the waiting list would only be impacted very slightly, certainly far less than the effect on the Section 8 waiting list of the bill's requirement that one out of three turnover vouchers must be given to public housing residents.

With virtually unfettered ability to move where they want within program guidelines, as well as the ability to pay up to 40 percent of their income for their apartments, voucher holders have mobility options that simply are not available to public housing residents, even if replacement housing is built in low-poverty and low-minority neighborhoods. Choice in the voucher program is the gold standard, and tenant-based vouchers ought to be welcomed as one for one replacement.

f) *Project Based Vouchers*—PHADA supports the use of the project based voucher model as an option for properties converting to PETRA, beyond the size and percentage restrictions in the bill language. Provision should be made to allow 100 percent of the units in a property to be project-based vouchers. This model has certain differences from project-based assistance, including the availability of resident choice, using a rent reasonableness standard for rent setting and a different regulatory framework. PHADA believes agencies should have as many options as possible to account for local differences, and the strengths and weaknesses of each can be determined during the systematic phase in period.

g) *Definition of "Housing Authority"*—The bill changes the definition of "housing authority" to make it easier for the Department to name a non-profit organization a housing authority. A housing authority may now be "any State, county, municipality, or other governmental entity or public body, or an agency or instrumentality of such an entity, and a nonprofit entity…" HUD does not state the purpose of this change explicitly, but seen in the context of the bill's findings that claim there are too many "administrative entities" and the language allowing the Secretary to facilitate the implementation of regional housing authorities to increase mobility, it is not far-fetched to consider that this change is made for the purpose of naming a nonprofit organization as a regional administrator of the Section 8 program.

h) *Administrative Fee for Project Based Vouchers*—When a property converts using the project based voucher program, there are administrative responsibilities associated with the vouchers. The bill gives the Secretary authority to establish a fee, without any further discussion. PHADA believes it would be more appropriate for the Secretary to develop a fee in collaboration with stakeholders, such as housing authorities, and then receive Congressional authorization.

In conclusion, PHADA supports a voluntary program prioritizing the conversion of properties in the public housing portfolio at risk of being lost, using either a project based assistance or project based voucher model at the HA's option, with adequate, additional, incremental funding. Properties remaining in the public housing portfolio should continue to receive the full complement of operating and capital funds and be able to take advantage of other models, such as MTW, small PHA reform, HOPE VI, and the "PHA Preservation and Rehabilitation act of 2010." Thank you for the opportunity of offering this testimony.

Testimony of Rod Solomon

on

"The Administration's Proposal to Preserve and Transform Public and Assisted Housing:

The Transforming Rental Assistance Initiative"

Housing Committee on Financial Services

May 25, 2010

Mr. Chairman, Ranking Member Bachus, Committee Members, thank you for holding this important hearing and allowing me to provide testimony on the Administration's Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010 (PETRA). I have thirty years' experience trying to improve public housing conditions, as an executive with two very large public housing authorities (PHAs), Deputy Assistant Secretary for policy in HUD's Office of Public and Indian Housing, and now an attorney with Hawkins Delafield & Wood assisting PHAs and their partners. For the past seven years I have written an annual report for the *Journal of Housing and Community Development* on investments to preserve the public housing stock. In 2008, I chaired the "Investments "Committee" of the stakeholders' "Public Housing Summit".

The proposed legislation is critical to public housing preservation, because it would provide a mechanism for substantially addressing a $20-30 billion backlog in public housing capital needs. That backlog translates directly into substandard conditions and loss of this valuable resource. Because I consider PETRA's potential to help preserve the public housing stock to be its fundamental potential contribution, I will direct my comments to that aspect of the legislation.

Most basically, PETRA recognizes that capital funding through the annual appropriations process is not going to be sufficient to timely renovate and sustain this stock, and that a new approach is needed. The inclusion of $4 billion for public housing capital improvements in the American Reinvestment and Recovery Act last year was a major step forward, but one that is unlikely to be repeated regularly. Annual appropriations for the public housing Capital Fund and related programs typically have been in the $2.5 billion range--not enough to make great strides toward reducing the backlog, while also meeting new annual capital needs as developments age.

By providing a means of financing improvements to the public housing stock on an individual development basis, PETRA has the potential to expand preservation efforts greatly within realistic annual appropriations constraints. The Administration's estimate that even its initial proposal would leverage approximately $7.5 billion indicates the initiative's broad potential scale. Moreover, placement of public housing properties under individual long-term subsidy contracts with required capital replacement reserves, similar to current project-based section 8 contracts, promises to provide additional long-term funding stability.

At the same time, PETRA appropriately makes PHAs' participation in the initiative voluntary. Initial appropriations constraints require a voluntary approach. PHAs' diverse stock configurations, capital needs, local opportunities and local market conditions, including the extent to which renovations could be financed within local rent levels, dictate that public housing financing efforts will have diverse characteristics. Experience is needed in both HUD and PHA administration, as well as the response of lenders and tax credit investors. This argues for legislation that does not unnecessarily narrow options and allows the initiative to evolve. Both the current project-based assistance and project-based voucher programs can serve as model platforms for effective preservation efforts, and should be broadly available for this purpose. The proposed absolute limitation on percentage of project-based voucher units subsidized could be eliminated, at least for relatively small sites.

The ability for PHAs to finance the necessary capital improvements under this legislation depends substantially upon HUD's authority to set or regulate contract rent levels. The proposed limits in PETRA are relatively generous, but even they will not allow the necessary financing to

fully address capital needs for a significant number of units. Thus, the new law should encourage leveraging of additional funds. Priority for participation in the program should be given to PHAs that successfully leverage such funds; such a priority, in turn, would encourage other funders to participate in public housing preservation. PHAs also should be able to use public housing capital funds on hand at the time of conversion for renovations; the legislation should facilitate that flexibility.

PETRA does not propose a credit enhancement mechanism, and thus implicitly assumes that financing will be adequate through a mix of loans, bonds, and use of current FHA insurance programs such as section 221(d)(3) or section 221(d)(4). Some previous public housing financing proposals have included new credit enhancement mechanisms. If the financing effort is not to commence with such a mechanism, the need for such a mechanism should be examined closely as PETRA begins to be implemented.

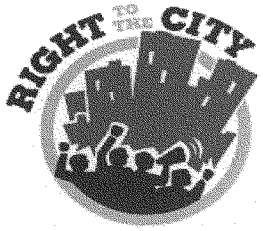
The Administration has emphasized the goal of increased housing choices for subsidized tenants. The relationship to preservation is the hope that allowing residents to "vote with their feet" by moving with vouchers would provide a measure of market discipline and thus encourage sound development operations and better housing conditions. Any such effect, however, would be mitigated to an extent by the presence of waiting list families readily available to replace tenants who move. This circumstance reduces the potential market discipline impact of the proposal.

In addition to these basic issues, the following potential improvements merit consideration:

- Continuation of local cooperation agreements that now provide for delivery of local public services and payments in lieu of taxes with respect to public housing properties;
- Transitional flexibility to allow relief for current public housing residents in limited situations where their rents otherwise would increase as a result of the transition to Section 8;
- Assurance that any cash flow limitations that may be adopted by HUD recognize the public purpose of PHAs and thus are at least as flexible for PHAs as for private owners;
- Requirement that HUD renew Section 8 contracts except in narrowly defined circumstances where there are no funds, no remaining local needs, or the specific properties are no longer suitable for use as low-income housing.

There are several other matters where HUD's intent is clear, but the language could use further clarifying. The language to assure that the expectations of lenders and bondholders who provided credit under the current Capital Fund Financing Program and other public housing lending initiatives are not compromised with respect to outstanding loans and bonds, and that HUD will meet its obligations under these contracts, is one example.

The need for additional investment in our public housing stock is urgent. I urge that Congress make the necessary legislative improvements and complete the efforts needed so that this critical public housing preservation initiative can begin.



WRITTEN STATEMENT OF THE RIGHT TO THE CITY ALLIANCE SUBMITTED TO THE HOUSE FINANCIAL SERVICES COMMITTEE
May 25, 2010

The Right to the City Alliance (RTTC) is grateful for the opportunity to submit this statement in conjunction with today's hearing on the draft legislation proposed by the U.S. Department of Housing and Urban Development (HUD), the *Preservation, Enhancement and Transformation of Rental Assistance Act of 2010* (PETRA). RTTC has serious concerns about many of the provisions contained in PETRA. We believe that, if passed, this legislation will threaten the availability and accessibility of permanently affordable housing stock for low-income people in this country. We also believe that PETRA fails to address the severe need for affordable housing and will mirror housing policies, such as HOPE VI, that have negatively impacted low-income, working people and have dismantled communities across the country.

RTTC is a grassroots coalition that emerged in 2007 as a unified response to gentrification, calling for a halt to displacement of low-income people (disproportionately people of color, LBGTQ, and youth of color) from their historic neighborhoods.
Last week, RTTC released a groundbreaking report, *We Call These Projects Home: Solving the Housing Crisis from the Ground Up*, which documents the crisis created by decades of public housing policies that prioritize privatization and the deconcentration of poverty over investment in low-income communities. Through our comprehensive research involving hundreds of public housing residents from around the country, we found that public housing is one of the only options available to low-income people for secure, stable, and permanently affordable housing, and that government policies should be guided by preserving, strengthening, and expanding the existing public housing system. The report can be found at: www.righttothecity.org.

Based on the findings in our report, and our experience as grassroots groups working with public housing residents in New York, New Orleans, Miami, D.C., San Francisco, Oakland, and Los Angeles, we have three specific concerns with PETRA.

First, we are concerned about PETRA's proposal to privatize public housing. HUD has justified this direction by claiming that leveraging private financing is the only way to fund the $20 billion needed to maintain and repair the existing public housing stock. But there are ways to infuse public investment to meet this need. Specifically, Congress can

reauthorize the $4 billion funding for public housing from the American Recovery and Reinvestment Act (ARRA) for five more years. We have evidence directly from residents that what works is to keep public housing public. Measures such as HOPE VI and leveraging private investments for HUD multifamily housing have demonstrated the problems that arise once affordable housing is privatized, problems such as reduced transparency and lack of resident control or right to organize.

A related concern to the privatization proposal is the provision that would convert public housing, which is now permanently and deeply affordable, into long-term, property-based contracts that can expire after 20 or 30 years. The need for permanent affordable housing in this country is stark. As documented in RTTC's recent report, nation-wide extremely low-income renters comprise about 25 percent of all renters; nearly 9 out of 10 of these extremely low-income renters pay more than 30 percent of their income toward rent; and nine million renters compete for only 6.2 million homes they can afford. Moreover, the public housing waitlists in cities studied in the report show the desperate need for public housing: Miami has approximately 59,000 applicants on their public housing waitlist; New York City has approximately 131,00l; San Francisco has over 24,000.

These statistics show that we need more permanently affordable housing, but PETRA offers the opposite direction. As we have seen through housing programs such as Mitchell-Lama in New York City, long-term is not the same as permanent, and programs with contract limits will ultimately leave low-income people out in the cold. Furthermore, once contracts expire, the units of affordable housing can be lost forever. PETRA would give vouchers to residents who lose their housing due to non-renewal of a contract at the end of the use agreement. Our research has shown that people face a myriad of challenges when trying to use vouchers in the private market, including discrimination that prevents the ability to use the voucher in the first instance, and paying for additional expenses such as security deposits and utilities if they find housing. Providing vouchers can be a supplement to an affordable housing plan, but it cannot be an absolute replacement for permanently affordable hard units.

RTTC's second concern is with PETRA's mixed-income mandate, *i.e.* the requirement that not more than twenty five dwellings, or twenty-five percent of the dwelling units in any project, be project-based vouchers. This is the "mixed-income" model we have seen implemented predominantly through the HOPE VI program for almost two decades, and we know that this model means that the interests of private developers and the higher income residents prevail at the detriment of low-income residents. For example, the small fraction of public housing residents who were able to return to the River Garden HOPE VI redeveloped site in New Orleans report regular harassment by the management company (who use the police to this end), and stringent rules that make them feel like prisoners in their own homes.

We also know that prioritizing the goal of "mixing" incomes over the goal of ensuring an adequate supply of hard units of public housing means a severe reduction in affordable housing. Where is the guarantee in PETRA that the remaining 75 percent will be built? As we have seen in cities such as New Orleans and Miami, residents are torn from

their homes and communities and wait for years (in Miami, 11 years and counting) for replacement housing to be built. This proposed requirement reveals PETRA for what it is: the expansion of the HOPE VI program, a program that has dramatically failed low-income communities.

RTTC's third concern is with the limitations of the one-for-one replacement provision. In the first instance, the one-for-one replacement should be retroactive, since our research shows that under HOPE VI alone there has been an overall loss of about 150,000 public housing units. Moreover, we are concerned about the requirement that off-site replacement housing be located outside "areas of minority concentration or in areas of extreme poverty." This requirement disregards the vital importance of community. As vividly documented in the RTTC report, decades of these "deconcentration" driven policies have broken up established community networks. The deconcentration theory posits that poor communities should be dispersed, while RTTC believes that what is needed is government-guaranteed and resident-controlled investment in low-income communities.

The proposal to convert government-owned public housing units into mixed-income housing that will be controlled by private developers, and to replace public housing with project-based voucher units that are subject to only a 20- or 30-year contract term takes us in the absolute wrong direction. Over the last decade, we have repeatedly seen in cities across the country how similar policies such as HOPE VI have imposed hardships on families, destroyed communities, and reduced the amount of housing available for low-income people. We fear PETRA will do the same and will deal the final blow to public housing, a resource that remains desperately needed.

RTTC urges Congress to take measures to preserve, strengthen, and expand the existing public housing system. Such actions should include: immediately restoring full funding to the Public Housing Operating Fund by authorizing a five-year extension for the funds provided by the economic stimulus act; amending the Quality Housing and Work Responsibility Act (QHWRA) so that there are no barriers to constructing new public housing units; passing the *Together We Care Act* (HR 4224) to create jobs and increase access to services for public housing residents; fully funding resident participation activities; converting into law Part 964 of Title 24 in the Code of Federal Regulations which allows residents to organize at both the development and jurisdictional levels, and places responsibilities on Public Housing Authorities to ensure that the resident participation system is functional.

Attached are testimonials from some of the public housing residents who participated in the RTTC report, and whose lived experience supports the concerns and recommendations outlined in this statement.

Thank you.

Testimony on the Need for Public Housing
Lorraine Knox, Public Housing Leader
Right to the City Alliance

My name is Lorraine Knox and I have lived in New York City public housing for over 40 years. I am a member of Community Voices Heard and a leader in our campaign to preserve public housing. Community Voices Heard is a member of the Right to the City Alliance. I am here today to tell you that there is a strong need for public housing nationwide.

I need public housing because it is affordable for me and it allows me to live. It allows me to pay my bills and buy food, clothing and all of the things I need to live a decent life. People may think that it isn't a decent life, but it is a decent life for me because I can't go out and afford one of those luxury condos that they are building in my neighborhood. If it wasn't for public housing then I would probably be on the streets or in the shelter.

Public housing is affordable for me. It is stable and I don't have to worry about them hiking up my rent. I work over 5 jobs in order to make $20,000 a year. I work on the weekend and during the week and sometimes 3 jobs in one day. Some of my work is seasonal. Some of my jobs are first come first serve. If I don't get the job then I get less income. When I get less income it is harder to pay rent. Public housing is good because they go by my income and my rent gets adjusted to whatever income I have. Without public housing I would sink. It's hard out there – the rents are way too high.

I know people, like Emma Harris, who have been on the waiting list for public housing for like a decade. This is a disgrace! People are in shelters, and others are on the street. They can't get public housing and are still on the waiting list. We need more public housing for all the families in these shelters and on the streets.

Congress and HUD should meet the needs for low-income families. They need to fix up public housing so that it is more than livable. They need to build more public housing for all of the people on the waiting lists, in the shelters and on the streets. Public housing is a right for all cultures and people. Thank you for listening.

Testimony on the Need for Public Housing
Emma Harris, Public Housing Leader
Right to the City Alliance

My name is Emma Harris and I have lived in San Francisco for over 50 years. I am member of POWERand the Right to the City. I am here to tell you that there is a need for public housing.

I spent 10 years on the wait list for public housing before I was able to move into my home last year. I wanted to move into housing because I could not afford to rent an apartment in San Francisco on my own. I applied for public housing in 1998.

I am on disability and I am longer able to work. During the ten years I waited for public housing I lived in an SRO Hotel. I lived in a room barely bigger than my twin size bed. I shared a bathroom down the hall with other residents. I did not have a kitchen or refrigerator. I had to eat at the soup kitchens and other low-income food programs in the City. My health got real bad during these years. My legs swelled up and some days it was really hard to walk. Sometimes I got depressed and I didn't want to see anyone at all.

In 2008, I finally made it to the top of the waitlist. I couldn't believe it. I was so excited to finally be able to cook my own Thanksgiving dinner. I invited my sister to my house. I hadn't cooked food in so long. Now it is so good to be able to cook and eat healthy food. My health is getting better. Most of all I am so happy to have a place that I call home.

I know there are thousands of other people just like me who are still waiting to get into housing. The real question is – what can we do to meet the needs of the people so that all people can have a place to call home?

Testimony on the Need for Public Housing
Yvonne Stratford, Public Housing Leader
Right to the City Alliance

My name is Yvonne Stratford. I am a member of Miami Workers Center and LIFFT (Low-Income Families Fighting Together) in Miami Florida. I have been a public housing resident for 23 years and I am a leader in the Justice for Scott campaign.

Scott Carver Homes was a project with 850 units. They may have needed a little facelift, but those buildings were strong – whenever there was a hurricane people ran to the projects because they knew they would be safe. If there is a hurricane today, where would we go?

But Scott was more than strong buildings; Scott was a strong community and a home. I raised two of my children in Scott. And though I was a single mother, I had good neighbors – I had a village to support me. When I was at work they would watch my kids and I knew they would keep them out of trouble. And if my children stepped out of line, my community was there to help me keep them in check.

So when HOPE VI came along and demolished those 850 units, they didn't just demolish the buildings. They demolished my home. They ripped apart my community. Those neighbors were my friends. And when they lost their homes some of them died. And some of them I lost contact with, I don't know where they are.

We need to stop this. We need to stop the demolition of Public Housing. It's a waste of our money to tear down perfectly good housing. And it's a crime the way our communities are being destroyed. Thank You.

May 25, 2010

Chairman Barney Frank
House Financial Services Committee
U.S. House of Representatives
2252 Rayburn House Office Building
Washington, DC 20515

Chairman Spencer Bachus
House Financial Services Committee
U.S. House of Representatives
2246 Rayburn House Office Building
Washington, DC 20515
warren.tryon@mail.house.gov

Dear Chairman Frank and Ranking Member Bachus,

We are writing to urge the Financial Services Committee to maintain the important housing mobility and choice elements in the Transforming Rental Assistance draft bill released by the Department of Housing and Urban Development (HUD) on May 12, 2010. We believe such provisions are necessary because of HUD's responsibility to affirmatively further fair housing and remove barriers to residential segregation.

Much of the publicity and comment concerning this bill has focused on the importance of retaining public ownership, protecting resident rights, and guaranteeing long term preservation of low income housing units. We strongly support these goals, along with the National Low Income Housing Coalition, the Housing Justice Network, and other housing advocacy groups. More specifically, we support the comments in the letter sent to Secretary Donovan by the Housing Justice Network on May 3, 2010 and the statement of the National Low Income Housing Coalition on May 19, 2010.

As fair housing advocates, we particularly recognize the importance of the mobility provisions of this program. They would give residents of public housing and other HUD assisted housing an opportunity to voluntarily move to new neighborhoods and communities without losing their housing subsidy and without jeopardizing the subsidy that would continue to be attached to the unit. This principle of fair housing choice is innovative, and should not be weakened or abandoned. Indeed, we believe that the housing mobility elements of the bill should be strengthened so that those families who do decide to move receive active mobility assistance to choose from a wider range of neighborhoods and schools. The May 3 Housing Justice Network letter attached hereto discusses these recommendations in more detail at pp. 14-17 and we urge your consideration of them.

Under the Fair Housing Act, the federal government, through all of the relevant programs of all of its agencies, must use its resources to take positive steps to break down the barriers of residential segregation and promote equal housing opportunity for all. The term used in the Act is "affirmatively furthering fair housing," as set out in Section 808(d) of the Fair Housing Act:

> All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) *in a manner affirmatively to further the purposes of this subchapter* and shall cooperate with the Secretary [of Housing and Urban Development] to further such purposes. (*emphasis added*)

It is critical that HUD programs prioritize this commitment. In plain language, "affirmatively furthering fair housing" includes eliminating discrimination as well as the proactive promotion of healthy neighborhoods and geographic opportunity for all people. In the context of public housing, this means both preserving existing public housing in improved neighborhoods, and giving low income families real choices. This new bill – if it can guarantee long-term public ownership and control – has the potential to do both.

Thank you for the opportunity to share these views with the Committee. We firmly believe that the housing, mobility and choice elements of the Transforming Rental Assistance bill are central to ensuring equal housing opportunities for all. Should you have additional questions, feel free to contact any of our respective organizations. Thank you!

Sincerely,

/s/ Tanya Clay House

Tanya Clay House, Director of Public Policy
Joseph D. Rich, Director for Fair Housing Project
Lawyers' Committee for Civil Rights under Law
1401 New York Ave. NW, Suite 400
Washington DC 20005
jrich@lawyerscommittee.org

Philip Tegeler
President/Executive Director
Poverty & Race Research Action Council
Washington, DC

Shanna Smith
President & CEO
National Fair Housing Alliance
Washington, DC

May 24, 2010

The Honorable Barney Frank
Chairman
House Financial Services Committee
2129 House Rayburn Building
Washington, DC 20515

Dear Chairman Frank:

As the Financial Services Committee prepares to examine the proposed Preservation, Enhancement and Transformation of Rental Assistance Act of 2010 (PETRA), we are writing to inform the Committee that we have grave concerns about this legislation.

In February, our organizations informed HUD of our serious concerns with the transformation of rental assistance proposed in the Department's FY 2011 budget. As we noted in the attached letter to Secretary Donovan, the project-based Section 8 program is understood by the lending community, and it has functioned well in meeting the needs of low income families. We have been seriously concerned that discussions about merging project-based Section 8 into HUD's new hybrid rental assistance program will destabilize the known project-based Section 8 program in the financial markets. We have remained actively engaged with the Department as it sought stakeholder feedback on the transformation proposal. Unfortunately, the resulting PETRA legislation not only failed to address our initial concerns, but also prompted several new objections.

PETRA would authorize HUD to convert its rental assistance programs into three forms of rental assistance: Housing Choice Vouchers, a revised project-based voucher program, and a new hybrid property-based rental assistance program that includes a mobility option for tenants. Although the budget proposal focuses on public housing and orphan rental assistance programs, mod rehab, rent supplement and RAP, PETRA expands coverage to convert all Section 8 and "other affordable housing programs as identified by the Secretary by notice" to the new hybrid rental assistance. We believe the current project-based Section 8 program is generally working well. Our members believe there are no incentives for project-based Section 8 properties to convert to the new assistance, and no efficiencies to be achieved through the conversion. Furthermore, the bill proposes sweeping new authority for HUD to streamline policies and procedures across ***all of its rental assistance programs—not just within the new conversion programs.*** We believe this authority will result in costly, new administrative burdens which will inappropriately alter the existing contacts non-converting owners have with HUD.

Public housing, mod-rehab, rent supp and RAP units are important resources which should be preserved as affordable housing. We strongly urge HUD to continue engaging the public housing community to develop workable recapitalization and preservation strategies. On the other hand, the RAP and Rent Supp units could be easily and efficiently preserved by allowing owners to convert the units to the current project-based Section 8 program. We welcome the opportunity to work with HUD and Congress to ensure these units are preserved; however, we do not support the approach proposed in PETRA.

Thank you for considering our comments on this matter.

Sincerely,

American Association of Homes and Services for the Aging
Council for Affordable and Rural Housing
Institute of Real Estate Management
Institute for Responsible Housing Preservation
National Affordable Housing Management Association
National Apartment Association
National Association of Home Builders
National Leased Housing Association
National Multi Housing Council

cc: The Honorable Spencer Bachus
The Honorable Maxine Waters
The Honorable Shelly Moore Capito
The Honorable Shaun Donovan

Attachment

February 24, 2010

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
Suite 10000
451 7th St., SW
Washington, DC 20410

Dear Secretary Donovan:

For too many years, the resources needed for quality affordable rental housing in this country have been lacking. The intentions outlined in HUD's FY2011 budget proposal to reassert Federal leadership on rental housing is welcomed by the undersigned national housing organizations. We understand the budget constraints facing this country, but too often it is the programs that serve the nation's most vulnerable citizens that are targeted when cuts need to be made. For the most part, HUD's budget proposal represents a sincere attempt to reverse that trend. However, we do have a number of concerns that we wish to share relating to the Department's "Transformation Rental Assistance" (TRA) initiative.

HUD's plan to streamline the myriad of Federal rental assistance programs into one type of rental assistance is well-intentioned, but we believe, ill-conceived. The current project-based rental assistance programs (PBRA) provide quality rental housing to over 1.3 million households. PBRA is understood and respected by the lending and investor communities resulting in the preservation and recapitalization of thousands of aging affordable rental units. It is inconceivable to us, particularly at a time when the financial market remains extraordinarily risk averse, that HUD would propose converting PBRA to an undefined hybrid of the project-based voucher program. The project based voucher program is intentionally small and limited in scope and such properties are often difficult to finance given the risks associated with that program.

The Department indicated in briefings on its TRA proposal that the initiative was designed to support the philosophy that "tenants should be able to vote with their feet." By making such statements, we believe HUD is creating the impression that the affordable housing stock is not in good condition and therefore tenants would want to flee. In fact, the HUD-assisted portfolio is in commendable physical condition; this is supported by the high REAC scores achieved by the majority of HUD-assisted properties. Further, any major proposal to change the existing PBRA program will affect the current comfort level of lenders and investors with the program, something we can ill afford in this current financing climate. As you know, lenders and investors can be wary of the appropriations risks related to rental assistance programs. Although subject to annual

appropriations, the PBRA program contracts are long-term, a fact that has been key to the ability of project owners to leverage this funding stream in support of recapitalization loans. The project-based voucher program's contracts, as well as the program's rent structures, are not equivalent, and the lending and investment community has not accepted them for underwriting purposes as they have PBRA contracts.

Our groups support the concept of providing Public Housing Authorities the option to voluntarily convert the current funding stream for their public housing into rental assistance, but HUD should look at the success of the PBRA model instead of the voucher model for the reasons noted above. The industry stands ready to work with HUD to refine proposals previously developed by the public housing community that will achieve the goal of preserving public housing.

We commend HUD for recognizing that the inventory of rent supplement and rental assistance programs (RAP) should be converted to Section 8. However, the preference would be to convert these programs to PBRA as proposed by the House Financial Services Committee in the draft preservation bill. As for the moderate rehabilitation program, the inventory is down to fewer than 30,000 from a one time high of 125 -140,000 units and yet, HUD policy is still thwarting their preservation. The renewed ability to use Low Income Housing Tax Credits with mod rehab has presented an opportunity to recapitalize the remaining inventory. HUD's refusal to renew these contracts for more than one year (subject to annual appropriations), while proposing conversion to project-based vouchers is wasting that opportunity.

We are unable to support the TRA initiative as outlined in the FY2011 budget proposal. We encourage HUD to focus on the very urgent needs of public housing, rather than create instability and uncertainty for the successful PBRA programs. We believe that HUD, in consultation with the public housing industry, will be able to develop a range of conversion options focused primarily on the preservation of existing public housing units. Our organizations are committed to working with the Department on this important endeavor.

Sincerely,

American Association of Homes and Services for the Aging (AAHSA)
Council for Affordable and Rural Housing (CARH)
Institute of Real Estate Management (IREM)
Institute for Responsible Housing Preservation (IRHP)
National Apartment Association (NAA)
National Association of Affordable Housing Lenders (NAAHL)
National Affordable Housing Management Association (NAHMA)
National Association of Homebuilders (NAHB)
National Association of Housing and Redevelopment Officials (NAHRO)
National Leased Housing Association (NLHA)
National Multi Housing Council (NMHC)

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