



August 26, 2010

Honorable Shaun Donovan, Secretary
U.S. Department of Housing & Urban Development
451 Seventh Street, SW, Room 10000
Washington, DC, 20410

Re: Preservation, Enhancement and Transition of Rental Assistance Act (PETRA).

Dear Secretary Donovan:

As some Members of Congress said of PETRA: “too much, too soon.” There are many good ideas in the draft legislation. However there are many troubling aspects as well. The Department should suspend its “full court press” on PETRA, given its failure to win support from Congressional Appropriators, and work more closely with the industry groups, Members of Congress (via the Authorization process), and others to revise PETRA’s troubling provisions.

The following are some questions, ideas and comments I hope you will consider:

- 1. Questions:** (A.) The Department repeatedly cites the loss of 150,000 units of public housing over the last 15 years as a key rationale for PETRA, including the assertion that we are losing approximately 10,000 units per year (HUD PowerPoint dated 8/12/2010, slide #9). What is the source document for these figures? Precisely how many units were lost each year? (For instance, were 10,000 units lost in 2009 under the Obama administration? Providing a bar graph of units lost each year would help discern trends.) Is this a net loss figure or were some of these units replaced? My general recollection is this is older information and includes many units demolished as part of HOPE VI redevelopment plans in cities like Chicago and Atlanta. These and many other communities had support for these actions including providing replacement units such as tenant-based vouchers and mixed-income developments. I am not asserting there was one-for-one replacement in all cases, nor do I dispute that net losses have occurred.

(B.) The Department also repeatedly cites the existence of 12 or 13 separate rental assistance programs that would be streamlined and simplified under PETRA. Of course, each of these programs was created by an Act of Congress with distinct and often competing constituencies in mind. (The Sec. 811 program is allowed by statute to provide housing for “disabled only;” the Sec. 202 program is allowed by statute to provide housing for “elderly only;” public housing is prevented from discriminating in a

similar manner in its admission policies.) Is HUD really intent on seeking Congressional approval to merge all elements of these disparate programs? What is the precise game plan and timeline for the “Transition of Rental Assistance” component of PETRA? Where is the draft legislation? When will the stakeholders of the other rental assistance programs be consulted? How does the Department counter the impression that PETRA seems to saddle public housing with even more regulation while the other 11 or 12 rental assistance programs are allowed to essentially operate as is?

One senior HUD official commented recently that public housing officials just have to recognize as a “political reality” that the multifamily world will never accept all the public housing regulation (tenant protections, lease and grievance procedures, resident Board members, community service, Section 3, etc.) that would come their way if all 13 rental assistance programs were completely merged. Is this fair? What entitles that portion of the affordable housing portfolio to maintain firewalls “protecting” it from the “burdens” of the public housing regulatory world? And if the public housing regulations and protections aren’t inherently in the best interests of all low-income residents and society as a whole, then why do they exist in public housing?

2. **Alternatives to PETRA:** A viable idea is for HUD to substitute NAHRO’s voluntary conversion demonstration program for PETRA. PHADA also supports NAHRO’s voluntary conversion proposal (summary attached). I am confident HUD would find many PHAs willing to take part in such a voluntary demonstration program.
3. **H.R. 5814:** Certain aspects of Representative Frank’s public housing preservation bill (H.R. 5814) are far more appealing to PHAs than PETRA, including capital fund loan guarantees, utility cost savings, allowing the use of capital funds to create new public housing units, and grants to convert public housing units to assisted living facilities. Each one of these provisions is workable and genuinely promotes preservation of this scarce and precious housing resource. HUD should affirm its support for these provisions in H.R. 5814 and abandon competing or conflicting provisions in PETRA.
4. **The Capital Fund:** Should some form of PETRA become law, it must not be funded at the expense of the Public Housing Capital Fund. Said another way, I and many in the industry will work hard to derail PETRA if it is funded at the expense of the Capital Fund. The Department’s FY 11 budget request cutting \$500 million from the Capital Fund was an inexcusable mistake. Budgets reflect the priorities of the leader and his or her agency. Repeated and recent comments that there is no political support for more Capital Funding are as wrong as they are self-defeating and self-fulfilling. Thankfully Congressional committees rejected this outlook when they reinstated the Capital Fund to \$2.5 billion.

Several years ago Congress appropriated \$3.4 billion for the Capital Fund, its high-water mark. Then PHAs weathered eight years of the previous administration’s willful effort to eliminate the public housing program. Year after year, the Bush HUD submitted budget requests to Congress that recommended cutting the Public Housing Operating and Capital

Funds. I never expected the Obama HUD to request even lower appropriations for the Capital Fund than the Bush HUD.

Many PHAs have a proven track record of maintaining “Grade A” public housing properties with **current funding** (from their Capital Fund allocation and even more impressively, utilizing the Non-Routine Operating Budget [NROB] portion of their public housing operating budgets). These PHAs deserve credit and adequate Capital Fund appropriations for the life of the program because of this record of being diligent stewards of the public purse while making capital improvements benefitting residents.

Our PHA is in the final stages of completing a \$34 million, nine year comprehensive modernization of a 580 unit family development utilizing annual increments of our Capital Fund, NROB, and a one-time infusion of Recovery Act funding, while maintaining 99% occupancy in the development throughout the modernization work. This “HOPE VI scale” renovation occurred without the need for additional congressional appropriation over our annual Capital Fund allocation (except the one-time Recovery Act allocation) and without the need for private debt financing, while simultaneously (and literally) preserving the housing resource for existing residents, with no relocations, no need for one-for-one replacement discussions, no loss of inventory, etc.

PHAs all across the nation do this same good work with their annual allocation of Capital Funds. The present system of Capital Fund annual appropriations is not broken. It works well for many PHAs and must remain a core HUD program. A portion of the public housing inventory converted to project-based assistance under PETRA can stand alongside the remaining Conventional Public Housing program it just fine.

5. **A Way Forward on the Capital Fund:** The premise of public housing preservation supposedly undergirding PETRA becomes “Orwellian” when the Department recommends cutting the best public housing preservation tool it has, the Capital Fund. (The Capital Fund -- both the regular variety and the Recovery Act variety-- also happen to be the Department’s best “Green” and job creation offerings. In St. Paul, and around the nation, PHAs are making huge strides in improving the energy efficiency of their buildings because the Capital Fund exists. New energy saving windows, lighting, appliances, and solar assisted hot water systems have been installed using these funds.)

HUD can help restore confidence in PETRA by doing a simple thing relative to the Capital Fund: commit to seeking Congressional approval for at least the same Capital Funding on a per-unit basis that the \$2.5 billion appropriation provides. This would also be an important way for the Department to ensure no net loss of Capital Funds occurs on a per unit basis for those PHAs choosing never to convert under PETRA.

No one is asserting that \$2.5 billion annually is sufficient to handle the backlog of capital needs. However, establishing a per unit Capital Fund floor for Departmental budget requests is one way HUD can show “better faith” relative to the Capital Fund.

Submitting budget requests to Congress cutting the Capital Fund fuels speculation that the Department's end game strategy for PETRA is forced conversion of all public housing coupled with eventual zeroing out of the Capital Fund.

6. **Voluntary Conversion:** Ensuring an adequate Capital Fund for all non-converted PHAs also helps the Department prove that conversion will remain voluntary. Like many, I support conversion of some but not all the public housing inventory to a project-based model. I would actively resist efforts to convert the entire public housing portfolio.

Conversion ultimately should be a local choice, not a federal mandate. Why? For many PHAs, conversion is simply untenable. Some leveraging may work for those PHAs that are legally constituted via their state enabling laws to engage in community development and redevelopment activities, or those PHAs with the ability to create non-profit affiliates, initiate tax credit deals, levy taxes, or otherwise access multiple sources of capital to perform development and redevelopment functions. However, it is crucial for HUD to understand that not every PHA is legally empowered to do these things. Many, such as the St. Paul PHA, are restricted by their state enabling legislation to owning and managing the federally funded Public Housing and Section 8 programs, period.

In fact, I would posit that thousands of public housing units are owned by PHAs with no legal authority to create non-profit affiliates, or engage in community development or redevelopment functions, levy taxes, etc. These PHAs are especially reliant on adequate Public Housing Operating and Capital Fund appropriations.

7. **No Privatization:** Preserving public ownership of public housing needs to be affirmed before PETRA can move forward. Privatization can occur under PETRA, regardless of how much the Administration protests otherwise. Preserving public ownership of public housing is also a safety net decision -- a fiscally conservative notion.

HUD can strengthen its PETRA bill to ensure that no privatization occurs by amending the section on "Properties in Foreclosure or Bankruptcy." HUD should add clarifying language that a "successor in interest" in property being foreclosed or going bankrupt shall only/always be a public entity. Define public entity to include PHAs, CDAs, municipalities, counties, etc. Specifically preclude non-profits and private entities from ever becoming "successors in interest in such property." How can the Department ensure that privatization will never occur under PETRA absent some language to this effect? (The bill's language regarding "use agreements" surviving foreclosure and bankruptcy does not go far enough to prevent possible privatization.)

8. **The Promise of Private Capital:** The existing Public Housing program, which comprises less than 1% of all the housing supply in America, should be preserved and protected with sufficient annual appropriations and sensible oversight for the long term benefit of the people who live there. For many, betting on and advocating for sufficient Congressional appropriations (the old fashioned way) is still less risky than foraging in the private debt market.

The Department's assertions that PETRA will be a more reliable funding source, would meet capital needs of public housing developments that are in decline, and would help address the capital backlog, are not sufficiently validated to support transforming the existing funding approach. It is not self-evident that enabling owners to leverage private financing to address properties' capital needs will place participating properties on a better financial and physical footing than that which is possible under the current system of annual Capital Fund appropriations.

It's possible that an over-reliance on private financing could have the opposite effect, as properties could be placed in untenable financial and physical condition as *more* PHAs borrow *more* money for capital repairs at the same time HUD seeks less funding for the Capital Fund program to support debt retirement. Also, PHAs might be unable to access the private market at effective rates because of market responses to the current financial crisis, such as recent changes to credit and underwriting standards. Or, properties might just acquire too much debt to be sustained. By example, some properties in the existing multifamily portfolio in the Twin Cities need to be periodically repositioned because they have too much debt (as much as \$250,000 per unit). Some units have been lost as affordable housing. Does anyone think this could not happen to public housing properties converted under PETRA?

Conclusion: I continue to believe that HUD and Congress have a **permanent obligation** to maintain a viable Conventional Public Housing program fully funded with annual Operating and Capital Fund appropriations. This is part of the historical "bargain" or "social contract" Congress and HUD made with PHAs when Congress created the Public Housing program. (Public Housing is different from the other 12 rental assistance programs for all the reasons Congress continues to adorn it and only it, year after year, with special regulations as mentioned above. The Department retains all these existing regulations for public housing under PETRA while creating new "distinctions" for Public Housing relative to the multifamily portfolio, such as different standards for rent setting, and the huge topic of mobility. No one, it seems, can resist layering the Public Housing program, and only it, with more regulation and social engineering.)

The "bargain" struck between Congress/HUD and PHAs under the terms of the Housing Act of 1937 (and subsequent amendments, especially the Brooke Amendment) is this: PHAs will house low and very low-income households with the resources Congress provides, including charging rents based on tenant income versus the market value of the unit, and Congress and HUD will provide PHAs with sufficient annual operating subsidies and capital funds to cover the difference between artificially low tenant rents and actual per unit costs. There is no magic involved here. Deeply affordable housing is *only* possible if Congress provides deep subsidies to PHA's or directly to tenants. (The median income of public housing residents nationwide hovers around 22% of AMI. The median incomes of residents in tax credit deals are closer to 50% of AMI.)

At the St. Paul PHA, the average cost to operate a public housing unit is approximately \$685 per unit per month (operating and capital costs combined). Rents average about \$250 per month (based on the 30% of income formula). Therefore our PHA must receive \$435 per unit per month in HUD operating subsidy and capital subsidy to remain viable.

Congress and HUD do not keep their end of the bargain when this subsidy level is reduced, especially when Congress prevents PHAs from doing anything on the income side of the equation (adjusting rents). Don't get me wrong. Our PHA prefers to keep the historical bargain and house low-income residents. Nonetheless, Congress and HUD must continue providing adequate, predictable, and deeply subsidized funding in order for this program to "pencil out" for the PHA. It certainly does not help when HUD does not advocate strongly enough for full funding of this historical commitment. The promise of the private sector stepping in to fill the void is unproven and not without considerable risk to shared preservation goals.

A demonstration program converting a portion of the portfolio, coupled with incremental statutory changes (along the lines of H.R. 5814's capital fund loan guarantees, utility cost savings, allowing the use of capital funds to create new public housing units, etc.) makes more sense. These incremental steps also genuinely address preservation. The non-converted Conventional Public Housing portfolio should be championed and defended by HUD as job number one. Residents and other stakeholder have a right to expect nothing less from the Department.

I would like to work with you to advocate for adequate Congressional funding to preserve this crucial safety net program for the thousands of residents who rely on it for their health and safety. Thank you for considering my comments and recommendations. I would be happy to discuss them further at your convenience. Please feel free to contact me at 651-292-6172 or Jon.Gutzmann@stpha.org.

Sincerely,

Jon Gutzmann
Executive Director

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