

# Housing Law Bulletin

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## Table of Contents

	Page
HUD Introduces Transformation of Rental Assistance Proposal.....	73
HUD Seeks Residents' Input on New Policies .....	76
FY 2011 HUD Budget Proposes Changes and Cuts..	79
No Significant Changes in Proposed Budget for RD Housing Programs.....	82
Homelessness Prevention and Rapid Re-Housing Program: Emerging Issues.....	84
State and Local Measures Safeguard Tenants' Rights During Foreclosure.....	87
Public Housing Disposition Case Settled with Substantial Tenant Protections.....	92
The Impact of <i>Ashcroft v. Iqbal</i> on Housing Cases ...	94
Recent Cases .....	98
Recent Housing-Related Regulations and Notices..	102



**Cover:** The Department of Housing and Urban Development Secretary (HUD) Shaun Donovan meets with residents on January 20, 2010. HUD's recent efforts to engage residents are discussed on page 75 of the *Bulletin*.

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## HUD Introduces Transformation of Rental Assistance Proposal

One of the most significant proposals in the Department of Housing and Urban Development's (HUD) budget proposal for Fiscal Year (FY) 2011 is \$350 million for HUD's Transformation of Rental Assistance (TRA) initiative.<sup>1</sup> The proposal seeks to preserve public and multifamily HUD-assisted housing, streamline rental assistance programs and promote resident mobility. This would be accomplished by converting public housing units and privately owned properties<sup>2</sup> to a single program—and a single funding stream—for long-term property-based assistance contracts. The proposal is a multiyear effort, and the first phase would focus on public housing authorities (PHAs) and public housing.

TRA would permit PHAs to raise private capital to address the immediate and long-term deferred maintenance and rehabilitation needs of the developments. The argument is that private financing is essential to preserve affordable units because Congress will not fund the \$20 billion to \$30 billion capital backlog in the public housing stock.<sup>3</sup> In addition, the Administration does not support the status quo for public housing. It argues that it will be more cost-effective to make public housing subject to market discipline. By involving private parties, public housing will have broader appeal and will be less likely to suffer from funding shortfalls in the future. It is the isolation of public housing that makes it subject to cuts in the federal budget, particularly during economic downturns.<sup>4</sup>

The Administration also argues that TRA is necessary to combine and streamline the 13 HUD programs that provide rental assistance to very low-income families, thereby reducing cost. A single TRA program also has the potential to simplify and equalize the application process for families seeking housing assistance.

<sup>1</sup>While proposing to allocate \$350 million to TRA, HUD also proposes to cut the PHA capital fund. For 2011, \$2.04 billion is proposed, which is less than the \$2.5 billion appropriated in 2010 and less than what was appropriated in 2004 and 2005. In 2009 the American Recovery and Reinvestment Act appropriated \$4 billion for the capital fund, which supplemented the annual appropriation of \$2.45 billion. 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. The proposed federal budget for 2011 is \$3.8 trillion. An additional \$2.5 billion per year for the public housing backlog would amount to only two-thirds of one-tenth of 1% of the Administration's overall proposed budget for FY 2011. See Sherwood Research Associates, *Housing News Highlights* (Feb. 5, 2010) (on file with NHLP). For the operating fund, HUD proposes \$4.83 billion, which is 100% of the operating subsidy formula and continues the 2010 budget policy to adequately fund the operating fund. These funding levels are significantly greater than the 2007 (\$3.86 billion) and 2008 (\$4.2 billion) levels.

<sup>2</sup>This includes properties that are assisted by Section 8 Moderate Rehabilitation, Rent Supplement or Rental Assistance Program.

<sup>3</sup>HUD Webcast, FY 2011 Budget: Transformation of Rental Assistance (Feb. 3, 2010), <http://portal.hud.gov/portal/page/portal/HUD/webcasts/archives>.

<sup>4</sup>*Id.*

The conversion of public housing units to long-term property-based contracts is intended to stem the tide of deterioration and ward off demolition. It is *not* an attempt to dispose of the public housing stock.<sup>5</sup> Upon conversion:

- Public ownership of the properties will be maintained.<sup>6</sup>
- There will be no change in who is assisted.
- Rents will remain income-based.
- Conversion will not be cause for eviction.<sup>7</sup>

Additionally, the PHA will not become the contract administrator for the properties it owns. TRA would include \$290 million to provide rental assistance and cover administrative fees for the anticipated 300,000 converted units. HUD estimates that this first phase will enable PHAs to secure \$7.5 billion in private capital.

The new property-based contracts will contain a mobility feature, which means that the resident could move out of the unit with a voucher *and* the unit would remain affordable for the next eligible tenant. This model is derived from the current project-based voucher program, which permits families to move with a voucher after one year of residency in a project-based voucher development.<sup>8</sup> The rental assistance remains with the development, and the family seeking to move goes to the top of the Housing Choice Voucher waiting list and receives the next available voucher.<sup>9</sup>

### What Properties Will HUD First Target for Conversion?

HUD has identified three types of housing that can be converted during what it calls “Phase One” of TRA. First, PHAs that have only public housing units and do not administer a voucher program may *voluntarily* convert units *subject to threshold requirements* without

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<sup>5</sup>HUD PowerPoint Presentation, FY 2011 Budget: Transformation of Rental Assistance at slide 4 (Feb. 3, 2010), <http://portal.hud.gov/portal/page/portal/HUD/webcasts/archives>.

<sup>6</sup>This is the first written reference by HUD to “public ownership” of the converted public housing units. This is a key provision that public housing tenants asked for in a January 20, 2010, meeting with HUD Secretary Shaun Donovan and senior HUD staff. This appears to be a new position for HUD and is an example of HUD responding to resident voices.

<sup>7</sup>HUD has stated that “[t]he conversion of contracts . . . shall not be grounds to evict tenants or terminate families’ rental assistance.” Public and Indian Housing, Transforming Rental Assistance, 2011 Summary Statement and Initiatives C-9, <http://hud.gov/offices/cfo/reports/2011/cjs/tra2011.pdf>. In addition, Assistant Secretary for Public and Indian Housing Sandra Henriquez and other senior HUD staff have stated that public housing tenants will go to sleep and wake up after the transformation and not notice the difference.

<sup>8</sup>24 C.F.R. § 983.260 (2009).

<sup>9</sup>§ 983.260(c).

competition.<sup>10</sup> HUD anticipates that 150,000 of the 240,000 eligible units would be converted. There are approximately 1,640 PHAs that own public housing units but do not administer a voucher program. With a few significant exceptions,<sup>11</sup> these PHAs have a small number of public housing units.

Second, PHAs that own public housing units and/or other federally assisted housing and also administer a voucher program may convert their developments to TRA only on a *competitive* basis. PHAs that agree to combine the administration of their voucher program with other agencies will be given a preference in the competition. HUD’s goal is to convert 130,000 units.

Third, private owners of rent supplement, Section 236 Rental Assistance Program and Section 8 moderate rehabilitation units will be able to convert their developments, though HUD has not yet provided details on the application process.

### What Funds Will Assist Units that Are Converted?

HUD proposes to allocate \$290 million to fill the gap in the first year to convert approximately 300,000 units. Its rent-setting procedures and underwriting guidelines “will support the goals of placing converted assets on a sustainable footing from a physical and financial standpoint and assuring that strong ownership and management are rewarded.”<sup>12</sup> HUD also says that “[b]ecause of necessary processing steps, the actual outlay impact in 2011 from converting 280,000 units of public housing to Section 8 assistance will be minimal.”<sup>13</sup>

### Changes to the Voucher Program

To increase mobility, TRA sets aside \$50 million to assist some PHAs in approximately 50 regions to expand the geographical service areas for their voucher programs. HUD recognizes that real choice can only come from access to a wide range of neighborhoods. TRA encourages PHAs to work together to create regional partnerships for voucher administration. This should help ease the administrative difficulties that voucher holders face when moving from the jurisdiction of one PHA to the jurisdiction of another.

To foster mobility, part of the \$50 million will be used to provide some PHAs with the funds for additional

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<sup>10</sup>HUD PowerPoint Presentation, *supra* note 5, at slide 16.

<sup>11</sup>For example, the Housing Authority of Hawaii has 5,373 public housing units, the Housing Authority of Puerto Rico has 54,084 and the Housing Authority of the Virgin Islands has 3,284. Other PHAs that do not administer a voucher program but have a number of public housing units include Hempstead, New York (1,309 units), Trenton, New Jersey (1,843), Sacramento City, California (1,843) and Athens, Georgia (1,255).

<sup>12</sup>Public and Indian Housing, *supra* note 7, at C-2.

<sup>13</sup>It is anticipated that 20,000 non-public housing units will be converted.

services for residents to understand the voucher process, provide housing search assistance, and improve outreach to landlords in a broad range of communities to encourage them to participate.

## Evaluating the Proposal

There are a number of positive aspects to the TRA proposal. First, the Administration is focusing on public housing, recognizing that it is of value and worth preserving, that the need to take action to preserve it is urgent and that the status quo will result in the continuing loss of units. Second, it is important that HUD is seeking the input of residents, as well as other interested parties, including PHAs and academics, regarding the viability of the plan that it proposes.<sup>14</sup> Third, HUD is recognizing that there are essential tenant protections that should be preserved, including that there should be no eviction due to any conversion, that any TRA units must have rent based on income that is affordable to extremely low-income families, and that public housing and residents of other federally assisted housing should have the opportunity to move out of assisted housing and continue to receive housing assistance. To ensure that mobility is more than an aspiration, HUD is proposing that funds be appropriated to expand the local administration of the voucher program to cover larger geographical areas, to attract more landlords to participate in the program and to provide mobility counseling.

However, the full scope of TRA is not known, as HUD is continuing to release the details. Because the proposal is not fully developed, there are many unanswered questions. These are summarized below.

### Tenant Rights

Of great concern to public housing residents is the question of what tenant protections will be available in TRA-funded units. HUD has stated that under TRA “essential resident protections” will continue<sup>15</sup> and that HUD staff will “draft authorizing legislation that will combine best features of project-based vouchers and the project-based section 8 policies.”<sup>16</sup> Residents seek more assurances, since retention of beneficial public housing policies has not been mentioned. Public housing residents want to retain the best of public housing and eliminate policies that do not benefit<sup>17</sup> residents. Those policies that public housing residents want to retain include:

- A commitment to an informal hearing for applicants who are denied.
- The right to be evicted only for good cause.<sup>18</sup>
- The right to a grievance procedure prior to eviction and to address other tenant complaints about PHA action or inaction.
- The right to organize and be recognized by a PHA in accordance with 24 C.F.R. part 964.
- The right to know about and comment on policies that pertain to public housing as is now available through the PHA plan process.

### Preventing the Loss of Public Housing Units

There are concerns about the preservation of this housing for the long term. For example, what will happen if TRA allows for the leveraging of funds, the property is mortgaged and there is a subsequent default and/or foreclosure? HUD has stated that it anticipates that the mortgages will be FHA-insured and that steps will be taken to reduce the chance of default and foreclosure to a point that the threat will be “di minimus.”<sup>19</sup> But no details have been provided as to what safeguards will be put in place to ensure that the risk is in fact minimal.<sup>20</sup> Also, there are many very small PHAs that will be able to convert to TRA on a noncompetitive, voluntary basis. Will these PHAs have the expertise to leverage the financing without threatening the long-term affordability of the housing?

### Sufficiency of the Funds

There are concerns about whether \$2.9 billion is sufficient to permit the conversion of 300,000 units and provide for their rehabilitation. HUD has stated that it wants to “place participating properties on a sustainable financial and physical footing.”<sup>21</sup> But to date, HUD is not requiring that converted units be rehabilitated. Residents have noted that any conversion of public housing must be conditioned on a plan and financing package for the complete renovation of the developments and a long-term capital plan for the developments. Unless this is a condition of TRA, the objective of preserving the housing will not be realized.

The HUD 2011 budget provides for nearly \$10,000 per unit for the voucher program and only \$7,000 per unit for public housing. TRA would provide an additional

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<sup>14</sup>For additional information regarding HUD’s efforts to seek residents’ input, see article starting on page 76 of this issue of the *Bulletin*.

<sup>15</sup>HUD PowerPoint Presentation, *supra* note 5, at slide 8.

<sup>16</sup>*Id.* at slide 19.

<sup>17</sup>Residents want to see the elimination of the community service requirement (24 C.F.R. 960, subpart F) and arbitrary and rigid no-trespass rules, which ban invited family and friends from visiting residents.

<sup>18</sup>Residents want to see a modification of the one-strike rule so as to avoid the eviction of innocent family members and to permit others a second chance prior to eviction.

<sup>19</sup>See HUD Webcast, *supra* note 3.

<sup>20</sup>HUD has stated that a PHA must meet “threshold requirements” to be able to voluntarily convert public housing, but there has been no explanation of what those thresholds must be. See HUD PowerPoint Presentation, *supra* note 5, at slide 16.

<sup>21</sup>*Id.* at slide 9.

\$1,000, raising questions about the sufficiency of the funds. A partial answer may be that the PHAs that would be converting during the first phase of the TRA—those with no voucher program—are from areas with low Fair Market Rents. If so, the question remains as to whether these PHAs will be able to leverage the dollars that HUD believes may be leveraged, \$7.5 billion or approximately \$25,000 per unit.

### **Mobility**

There are several questions regarding TRA's potential impact on resident mobility. It is unclear how PHAs that do not administer a voucher program will be able to provide mobility. It is also unclear how voucher waiting lists will be managed to allow residents in converted units to move with a voucher. Finally, more information is needed regarding the steps that are planned to protect and minimize the waiting period for those families on the voucher waiting list.

### **Local Involvement by Residents**

HUD is seeking resident input on TRA, and residents are responding. Residents are also seeking to have input on any local decisions to convert public housing to a new funding stream. It is unclear whether such decisions will be a required component of the PHA annual plan. Guidance is needed as to how PHAs will notify resident councils, seek their opinions and respond to any resident comments.

HUD has also stated that it wants to engage residents and empower them. Yet HUD's proposed FY 2011 budget eliminated the Resident Opportunities and Self-Sufficiency (ROSS) Program, which was a potential source of funds for resident participation and also provided for tenant services and self-sufficiency programs.<sup>22</sup> More information is needed as to how HUD intends to meet its objective of engaging and empowering residents. ■

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<sup>22</sup>There was no real justification for the elimination of funds, other than encouraging PHAs to use operating subsidy funds for self-sufficiency activities and noting that since 2008, ROSS grants had been used for service coordinators, whose role is to leverage resources in the community.

## **HUD Seeks Residents' Input on New Policies**

As part of its Transforming Rental Assistance (TRA) initiative, the Department of Housing and Urban Development (HUD) is proposing to change the manner in which the low-income housing programs are funded, as discussed in detail in the article starting on page 73 of this issue of the *Bulletin*. HUD currently provides deep rental assistance to more than 4.3 million households through 13 different programs administered by three different divisions within HUD—Public and Indian Housing (PIH), Multifamily Housing, and Community Planning and Development (CPD). The three major programs are vouchers, public housing and project-based Section 8. One of HUD's reasons for transforming rental assistance is that there are some unjustifiable differences among the programs. For example, there are differences among the rules for setting rents, owner incentives, characteristics of contracts, family income requirements, target groups to be served, the local agencies (if any) that administer the programs, tenant mobility, physical condition standards for the units, and access to private capital for maintenance, upkeep and renovation.

In discussing federal rental assistance, HUD has set forth some broad principles. According to HUD, rental assistance should:

- be simple to use and administer;
- be flexible in that it may be either tenant-based or project-based;
- assure resident choice/resident mobility;
- reduce the number of families with worst-case housing needs;
- provide affordability for extremely low-income families;
- promote deconcentration of race and/or poverty for people and places.
- create opportunities to leverage capital for improving the quality of the housing; and
- help residents achieve self-sufficiency.

### **HUD Efforts to Engage Residents**

Because HUD is considering significant changes to low-income housing, it organized three meetings—one in October involving public housing, another in November for the voucher program and the third in January regarding project-based Section 8. In each instance, these meetings were held with the housing industry, and included a few academics and advocates. At the October public