

March 19, 2010

Secretary Shaun Donovan
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

**Re: Human and Housing Rights Organizations' Opposition to HUD's
Transforming Rental Assistance Initiative (TRA) and 2011 Budget Proposal**

Dear Secretary Donovan:

As human rights and housing rights organizations working around the country, we applaud the efforts your administration has taken to address the housing crisis facing residents of public housing. We are particularly encouraged by your office's embrace of human rights and your commitment to ensuring that our national housing policy reflects its grounding principles.

As such, we are writing to express our strong objection to the Department of Housing and Urban Development's (HUD) Transforming Rental Assistance Initiative (TRA) as outlined in the 2011 budget proposal, and, in particular, the proposal's conversion of the public housing program to a project-based scheme.

As national and community-based organizations working to improve the housing conditions facing our nation's most vulnerable communities, we believe TRA fails to address the housing needs of low-income communities and falls woefully short of guaranteeing the human right to housing.

Although we appreciate the need to secure much needed funding for the public housing program, increasing the influence of private capital on our nation's public housing system would inevitably create 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 is not a sustainable solution. Consequently, we hope that you reassess HUD's current approach and consider different alternatives for addressing the needs of public housing communities.

We have outlined below our reasons for opposition to the plan.

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- 1. The proposed conversion of the public housing program to a project-based system threatens the permanence of our nation's public housing stock, and the much needed affordable housing it provides.**

Public housing is currently the only permanent, affordable housing stock in the country. It has long provided much-needed, deeply affordable housing to those most in need.

Disposition of public housing to a project-based Section 8 scheme potentially eliminates the permanent affordability and long-term availability of these units. This loss would detrimentally impact the ability of local governments to address the growing U.S. housing crisis, would destabilize entire communities, and would increase homelessness.

As currently promulgated, the Section 8 program does not supply a permanent stock of affordable housing units. Contracts between private owners and the government have time restrictions, and owners have the ability to opt-out of the program once a contract expires or prior to its expiration pursuant to certain guidelines. According to HUD's own data, "as many as 13,000 Section 8 contracts will expire by 2013, meaning 800,000 privately owned buildings could potentially be put up for sale or have the rents on their apartments raised to full market rates."¹ Hence, under any new scheme, HUD must ensure there is no loss of hard public housing units currently in use, and that those units remain at their current levels of affordability. There must also be guarantees that, during the conversion process, there is no displacement of residents, and, in instances of rehabilitation, there be phased rehabilitation and adequate, on-site relocation support and assistance. Additionally, HUD must ensure one-for-one replacement of all public housing units. This includes one-for-one replacement based on unit (bedroom) size.

Under the HUD proposal, housing authorities may be permitted to leverage public housing through mortgage-backed loans from private banks. Mortgaging public housing makes developments vulnerable to foreclosure and adds a financial burden, over time, through decades of interest payments. Additionally, HUD's plan to seek private investment for construction capital may further encroach upon the integrity of this valuable public resource. Dependence upon private capital could have dire consequences in the event of loan defaults. In order to prevent the loss of public housing to the private market, mortgage-backed loans must be FHA-insured. In addition, HUD must create a process, which is developed and overseen by residents and other key stakeholders, by which the financial health of housing authorities participating in any new program would be evaluated. This evaluative process would serve as a potential safeguard to ensuring that housing authorities with weak financial positioning do not fall victim to private interests, leaving residents vulnerable to private takeovers.

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 through government appropriation rather than risking the long-term affordability that this vital resource provides to residents and communities throughout the country.

2. The HUD proposal may lead to the loss of government control and oversight of the public housing program, negatively impacting government accountability and transparency.

¹ Madison Gray. "Low-Income Housing: Another Crisis Looming?" *Time*; New York; September 19, 2008 at <http://www.time.com/time/nation/article/0,8599,1839187,00.html>.

Under current law, conversion from public housing to project-based Section 8 must include a transfer of control, such as a change of ownership or a transfer of units through a land lease agreement between the housing authority and a nongovernment entity. Therefore, any proposed disposition or conversion would significantly increase the influence of private and for-profit development interests on public space.

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, including more stringent eligibility requirements. 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 tenant needs or the vital societal role affordable housing programs serve.

Even if HUD creates a hybrid board of ownership, which includes representation from local housing authorities and nongovernmental actors, it is unclear whether or how residents will have redress through government agencies as is currently available in public housing. Hence, any proposal would have to ensure a process whereby the government remains accountable and accessible to residents' needs and concerns.

3. Under the HUD proposal, resident participation and representation will be severely undermined.

Public housing residents are currently protected under the Federal Code of Regulations Title 24, Section 964, which provides for resident organizing rights. These organizing rights include, but are not limited to, the formation of recognized resident councils, participation in annual review processes and entitlement to specific grievance procedures.

Public housing residents subject to disposition to project-based Section 8 currently lose these protections. In the aftermath of a conversion, resident councils must be reconstituted as tenant organizations subject to Federal Code of Regulations Title 24, Section 245. Since Section 245 does not encompass the same set of rights and protections as Section 964, it is likely that residents will lose some of the safeguards and protections provided under Section 964. Additionally, since project-based Section 8 units are privately owned, there are fewer protections against evictions than in public housing.

Therefore, under any proposal, HUD must ensure that individuals and communities are able to take an active role in the decision-making that impacts their housing rights. Since project-based housing is not government-owned, federal standards of participatory decision-making do not apply. Hence, HUD must ensure that participatory protections, including but not limited to Regulation 964, remain intact under any new scheme.

4. The HUD proposal will likely exacerbate the long waiting lists currently faced by those seeking to access affordable housing programs.

In cities across the country, waitlists for public and subsidized housing have thousands of applicants, some of whom desperately wait many years for a housing unit to become available. Under the current HUD proposal, those residents seeking to opt into the Section 8 voucher program would be given priority over those already on the waiting lists.²

Similar to the Section 8 voucher program, waitlists for public housing units have tens of thousands of applicants. When public housing developments are converted to project-based Section 8, site-based lists specific to the property are created, taking the development off the public housing waitlist. Site-based lists force prospective residents to complete an application for each development. To maximize their ability to obtain housing, prospective residents are required to fill out multiple applications and be subject to approval at each project-based Section 8 development, adding more red tape to an already arduous application process.

Any HUD proposal must ensure that those currently on waitlists do not wait even longer for units they desperately need and are not forced to reapply on site specific lists.

5. Residents have little legal recourse should this proposal violate their housing rights.

HUD's current proposal is not unique. Administrations throughout the years have tried with varying degrees of success to reform the agency and its programs. Regardless of whether a reform succeeds or fails, it is the residents that ultimately bear the brunt of HUD's decision-making. After witnessing the recent mortgage crisis, it is disturbing to think that public housing, which was immune because of its fully public nature, will be exposed to the same market forces that recently caused a wave of foreclosures. Additionally, HUD administrations in the future may use TRA to further privatize the nation's public housing stock. HUD has not adequately addressed concerns that TRA could eventually mean the loss of this valuable affordable housing to market-rate housing.

Consequently, any proposal must include a resident approval process. The approval process, which would determine whether local housing authorities are able to move forward with project-basing plans, should be developed and overseen by residents and other key stakeholders. Additionally, a private right of action must be included to ensure that residents have adequate legal redress should the current proposal fail to meet the community development objectives envisioned by HUD.

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The U.S. government passed the Housing Act of 1949, in which the government pledged to realize: "as soon as feasible . . . the goal of a decent home and a suitable living

² A letter has already been sent to your office highlighting specific concerns around the Section 8 voucher program and its potential role in TRA.

environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the nation.” Additionally, international human rights instruments speak to the human right to housing. Article 25(1) of the Universal Declaration of Human Rights, which was unanimously adopted by all the member countries of the United Nations, states: “Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including ... housing ...”

We urge your office to give serious consideration to the issues raised in this letter. 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 HUD’s decision-making does not undermine the intrinsic value of public housing being owned and operated by the government and compromise the human rights principles your office has embraced.

We look forward to working with you and your staff as you work towards making the public housing system stronger and preserving our nation’s affordable housing programs.

Sincerely,

National Organizations

Advancement Project
Campaign to Restore National Housing Rights
Center for Constitutional Rights
Housing Justice Movement
National Alliance of HUD Tenants
National Economic and Social Rights Initiative
Nation People’s Action
Peabody Watch
Poverty Initiative
Right to the City (RTTC) – HUD Working Group
US Human Rights Network
Western Regional Advocacy Project

Community Groups

California

Beyond Shelter – Los Angeles, CA
Coalition LA – Los Angeles, CA
Coalition on Homelessness – San Francisco, CA
Data Center – Oakland, CA
Lamp Community – Los Angeles, CA
Los Angeles Coalition to End Hunger and Homelessness – Los Angeles, CA

Los Angeles Community Action Network (LACAN) – Los Angeles, CA
People Organized for Westside Renewal (POWER) – Los Angeles, CA
People Organized to Win Employment Rights (POWER) - San Francisco, CA
Union de Vecinos – Los Angeles, CA

Illinois

Cabrini Green Local Advisory Council – Chicago, IL
Chicago Anti Eviction Campaign – Chicago, IL
Coalition to Protect Public Housing – Chicago, IL
Jewish Council on Urban Affairs – Chicago, IL
Lakeside Action Coalition – Chicago, IL
Lawndale Alliance - Chicago, IL
People for Community Recovery – Chicago, IL

Louisiana

Mayday New Orleans – New Orleans
Survivors Village – New Orleans, LA

Massachusetts

Alliance to Develop Power (ADP) – Statewide, MA

Minnesota

Minnesota Chapter of the National Lawyers Guild – Minneapolis, MN
Minnesota Tenants Union – Minneapolis, MN
Northside Neighbors for Justice – Minneapolis, MN

New York

Coalition to Save Harlem – New York, NY
Concerned Citizens of Greater Harlem – New York, NY
Community Voices Heard – New York, NY
Families United for Racial & Economic Equality (FUREE) – New York, NY
Good Old Lower East Side (GOLES) – New York, NY
Housing is a Human Right – New York, NY
Jews for Racial and Economic Justice – New York, NY
May 1st Coalition for Worker & Immigrant Rights – New York, NY
New York City AIDS Housing Network (NYCAHN) – New York, NY
New York Solidarity Coalition with Katrina & Rita Survivors – New York, NY
Picture the Homeless – New York, NY

Ohio

Communities United For Action (CUFA) – Cincinnati, OH

Oregon

Street Roots – Portland, Oregon

Pennsylvania

Northeast Pennsylvania Organizing Center – Wilkes Barre, PA

Virginia

Residents of Public Housing in Richmond Against Mass Eviction – Richmond, VA

Washington, DC

Organizing Neighborhood Equity (ONE DC) – Washington, DC

Academia

René Francisco Poitevin, New York University

David Harvey, Graduate Center of the City University of New York

Gilda Haas, University of California – Los Angeles

Jacqueline Leavitt, University of California – Los Angeles

Peter Marcuse, Columbia University

Mark D. Naison, Fordham University

David Wagner, University of Southern Maine

International Organizations

Centre on Housing Rights and Evictions – Geneva, Switzerland

International Alliance of Inhabitants – Genoa, Italy

Priority Areas – The Church of Scotland – Edinburgh, Scotland

Popular Action Front of Action on Urban Planning – Montreal, Canada

No-Vox International Solidarity Network – Paris, France