



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

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.

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

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.**

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.

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 these 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;

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

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 convert 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@lascleve.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