

Frequently Asked Questions On Tenant Rights

Overview of PETRA

Today, 6 million people pay more than half their incomes for housing, and family homelessness is on the rise. But in the last 15 years, the country has lost 150,000 units from its stock of public and assisted housing through sale or demolition.

To President Obama, failing to preserve these resources for the next generations is not an option. That's why the Obama Administration has proposed the Preservation, Enhancement and Transformation of Rental Assistance Act (PETRA) – to reform America's public housing system and transform the way the Federal government provides rental assistance to more than 4.5 million of our most vulnerable families.

Having successfully worked to increase and preserve affordable housing in Chicago and New York City using a combination of public and private resources, President Obama and Secretary Donovan know we can build a better system – one that harnesses the resources of the private market without compromising the important mission of publicly-supported housing.

PETRA would bring this proven strategy for preserving affordable housing to the Federal government by enabling federal housing programs to leverage \$7 billion in other capital in the first year—and as much as \$25 billion in the years to come—giving owners of affordable housing access to the resources they need to preserve this housing into the future. Just as importantly, PETRA embodies the Obama Administration's commitment to more robust tenant protections and strong provisions that keep public housing publicly owned and affordable to the people who need it the most.

Resident Participation, Rights, and Protections

1. How does PETRA treat resident organizing and procedural rights, which currently differ between the public housing and project-based Section 8 portfolios?

The tenant rights we have today—in statute, regulations and case law—have made a real difference in the lives of people. But having 13 different sets of rights governed by 13 different programs at HUD we have today doesn't serve anyone's best interests – least of all the tenants who have to navigate them or the lawyers who advocate on their behalf.

That is why PETRA creates a platform to establish uniform standards and requirements for resident involvement and tenant rights across rental assistance programs. For public housing tenants, PETRA maintains and enhances longtime tenant rights, including the right to be involved in decisions about their housing and to procedural protections in the case of adverse actions.

Participation. To ensure tenants' voices are heard and represented, PHAs will continue to be required to include at least one assisted tenant on their governing board, on the board of directors, or commissioners.

Specifically:

1. PHA Plan requirements, including requirements concerning Resident Advisory Boards, will remain.
2. PHAs with 550 or more vouchers and remaining public housing units would continue to be subject to annual planning requirements, and residents of all

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HUD-assisted properties owned by the PHA would be eligible to participate in the planning process.

5. All PHAs, including those that convert all their public housing, would continue to be subject to the requirement to have a 5-year plan.
6. Tenants potentially subject to relocation due to rehabilitation or replacement of a property or transfer of a rental assistance contract to another property must be consulted in advance and be provided with relocation assistance.

Tenant organizations. To ensure tenants can join together to advocate for themselves and their families, PETRA will substantially strengthen the rights of recipients of HUD-funded rental assistance, including residents of converted public housing, to organize.

Specifically:

1. PHAs will be required to “give reasonable consideration” to concerns raised by “legitimate” tenant organizations concerning tenants’ living environment and the terms and conditions of their tenancy.
2. All tenants with HUD-funded rental assistance would be guaranteed the right to organize independent of owners or public housing agencies. This provision would establish uniform requirements regarding recognition of “legitimate” tenant organizations, including organizations of voucher program participants and jurisdiction-wide or area-wide organizations; and would authorize the use of a portion of rental assistance renewal funding to support tenant organizing — ensuring we have eyes and ears on the ground.

National People’s Action issued a statement recently strongly supporting the establishment of a right of public housing residents to organize independently of PHAs, as is currently the case for multifamily tenants. **Testimony at the hearing from both National People’s Action** and the **National Alliance of HUD Tenants** note their support for this provision in PETRA.

Procedural rights. To ensure applicants and tenants are treated fairly and given due process, procedural rights for applicants to and tenants of public housing converted to Section 8 assistance are maintained. Core elements of due process review that apply to all adverse actions are established: these are essentially the same as the administrative grievance procedures enjoyed by current public housing residents.

In addition, PETRA incorporates in statute more specific procedural rights for applicants than the U.S. Housing Act currently provides. Currently, denied applicants must be notified of the reasons for denial and an opportunity for an “informal hearing” with no specific procedures required. Under PETRA, applicants and tenants must be notified of ineligibility or other adverse actions, including eviction or termination of assistance, and have a right to request a review of the decision, which must be conducted by an independent person. The applicant or tenant has the right to inspect relevant documents at a reasonable time in advance, to bring a representative to the review, and to receive a written decision.

PETRA would also authorize HUD to create uniform procedural rights for all rental assistance programs, simplifying the maze of rules that now apply to PHAs operating different HUD programs. *The same rights and requirements will apply regardless of whether a PHA engages a private management company to manage a particular property, as part of a mixed finance transaction or otherwise.* In recognition of the fact that the requirement to provide procedural rights to applicants and tenants entail costs for assisted owners, PETRA specifies that HUD must consider such costs as operating costs of the

property.

2. What if PHAs/owners try to undermine tenant organizations by evicting leaders or refuse to recognize legitimate tenant organizations? What recourse do tenants have?

PETRA creates a strong standard that owners of assisted properties (including PHAs), and PHAs administering rental assistance, “shall not impede the reasonable efforts of tenants to organize or of tenant organization to represent their members.” (p. 5). HUD will go through notice and comment rulemaking to flesh out these requirements, to ensure that owners clearly understand their responsibilities and tenants are aware of their protections and rights.

3. Public housing residents currently have protections that are embedded in regulation. Would PETRA change these protections?

PETRA makes procedural rights for tenants of public housing converted to Section 8 assistance as strong than rights under the current public housing provisions of the US Housing Act – and for applicants, these protections are even stronger. Core elements of due process review that apply to all adverse actions are established: these are essentially the same as the administrative grievance procedures enjoyed by current public housing residents.

It is true that in a few respects HUD's regulations create stronger rights for residents than the US Housing Act does. HUD has historically broadly interpreted its authority with respect to protecting tenant rights, and will continue to do so.

Grievance rights under 966. 24 C.F.R. Part 966 implements the administrative grievance procedure required by section 6(k) of the 1937 Act. In several respects these regulations establish requirements for PHAs with regard to public housing tenants that are more extensive than procedural requirements for any other HUD-assisted tenants.

For example, PHAs are required to conduct 2-step review procedures for public housing tenants, with a pre-hearing informal conference required as a first step. (Tenants subject to eviction also have a further right to a hearing in court under their state's landlord-tenant law.) PHAs that have found such informal dispute resolution procedures an efficient way to resolve problems are likely to continue them. We are not aware of any evidence that would prove that the benefit of such additional proceedings outweighs their costs as a general matter, and thus concluded that the current regulatory requirements should not be incorporated in statute.

In other respects, the public housing regulations create burdens for tenants that do not exist in the Section 8 programs. Unlike the policies that apply in the **tenant-based** and project-based section 8 programs, HUD rules require public housing tenants contesting the amount they are required to pay for rent to deposit the full amount the PHA claims is due in an escrow account in order to pursue an administrative review. (24 CFR 966.55(e).) This is often a hardship for tenants¹.

A goal of PETRA is to move all our rental assistance programs to a uniform, strong set of procedural protections for applicants and tenants. This uniformity will itself create efficiencies for PHAs and owners that administer multiple HUD programs, as well as for tenant advocacy groups and tenant representatives that work with tenants in various HUD programs. PETRA provides authority to extend procedural protections by regulation to other rental assistance programs.

Some have asked whether part 966 procedures apply to “PHA action or failure to act,” and that a “failure to act” is not covered by PETRA. It's important to note that sec. 6(k), the statutory authority for part 966, does not specifically address

“failure to act” either, but this element was included administratively as a reasonable aspect of an adverse action subject to grievance procedures in the rulemaking that implemented section 6(k) at part 966. HUD fully intends to continue this reasonable approach in implementing PETRA.

Tenant opportunity to comment on lease provisions under 966. Similar to the “failure to act” as an adverse action provision in part 966, the tenant opportunity to comment on lease provisions is not specifically included in statutory language, but is a long-standing regulatory requirement first implemented in 1975 in the predecessor rule to part 966. PETRA specifies that tenant organizations have the right to address issues related to the terms and conditions of tenancies — which are primarily incorporated in the lease. As such, PETRA would ensure that tenant organizations have a statutory right to comment on lease provisions — rather than the regulatory right that exists today.

In addition, HUD would by regulation continue the long-standing requirement also to consult with unorganized tenants at a property concerning lease provisions in its implementation of leases utilized under PETRA in accordance with Section 8(m)(2)(J)(iv).

The treatment of Resident Management Corporations. The U.S. Housing Act requires HUD to “encourage” the formation of resident management corporations for individual public housing properties. This provision was adopted decades ago as one strategy to improve the management of public housing, before HUD adopted strong policies to inspect properties, review the adequacy of management performance, and most recently review financial management through the transition to asset management. With the shift to project-based rental assistance contracts making the ownership and management of these properties more like other affordable housing, it is no longer necessary for HUD to affirmatively seek to establish resident management corporations for individual properties. Where resident management of properties exists, the RMC is performing well and the PHA wishes to continue to have a resident organization in the role of a management agent, subject to the same performance standards and requirements otherwise applicable to management agents, HUD would support the continuation of such arrangements.

4. Will PETRA change the requirements with respect to income-targeting for converted properties?

Of all the things about our public housing system that need to change, one thing that should not change is who it helps. That’s why PETRA would extend the targeting requirements that now apply to public housing (40 percent of new admissions each year must be extremely low-income households) to public housing properties that convert to project-based contracts under the new Section 8(n). In other words, the requirement that once applied at the agency level will apply at the property level. This requirement also will be embedded in the use agreement that will be put into place upon conversion. The same requirements apply to Multifamily properties that convert to project-based contracts under Section 8(n). These are a somewhat streamlined version of the policies that now apply to project-based Section 8 properties, eliminating the distinction between properties that were originally developed before or after 1981. Income-targeting for properties that convert to project-based voucher contracts is the same as under the current PBV program. Admissions to these properties are part of the overall requirement that at least 75 percent of the new admissions to a PHA’s housing voucher program must be extremely low-income households.

5. Does PETRA guarantee funding for tenant organizing?

Of the funding requested for FY11, the Secretary would be authorized among other things to allocate funds to promote tenant organizing rights. Going forward,

PETRA specifies that a portion of funds made available for the renewal of rental assistance contracts may be allocated to facilitate tenant organizing, subject to terms and conditions established by HUD. It is a priority for HUD to support and encourage independent, effective tenant organizations. We plan to consult further with assisted tenants and others to inform the policy on funding of tenant organizations.

6. Will public housing tenants' Section 3 rights be protected under PETRA?

Yes. PETRA specifies that the same Section 3 requirements that applied to public housing pre-conversion would apply post-conversion. PETRA also clarifies that first priority for Section 3 hiring and contracting would go to recipients of federal rental assistance.

7. Will public housing tenants be subjected to rescreening as a result of conversion? What if they are relocated during the rehabilitation of a converted property?

No. PETRA is clear that any tenant residing in a unit at the time of conversion will not be subject to eviction or rescreening and that households relocated during rehabilitation will have a right to return.

8. Will TRA change how much a resident will pay in rent?

No. "Brooke" requirements will remain in place, with residents paying 30 percent of adjusted income for rent, not to exceed the market rent for the unit.

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

9. Will resident participation be required before owners convert?

Yes – and during the conversion process as well. All owners will be required to notify residents of their intent to convert. Public housing agencies will be required to treat conversion as a "significant amendment" to their annual plan, which brings with it a requirement to consult with the Resident Advisory Board. PHAs will also continue to be required to have at least one tenant on their board.

10. How would HUD protect TRA residents in the event of a foreclosure?

As we emerge from our ongoing housing crisis, some fear that allowing public housing properties to tap their accumulated equity value to meet their capital needs might put these affordable resources in jeopardy.

To be clear: foreclosures should happen *very* rarely – far less frequently than publicly-owned units are lost today. Nevertheless, PETRA contains an unprecedented combination of policies to minimize the risk of foreclosures, bankruptcy or owner malfeasance – putting in place strengthened tenant protections and requiring that the property continue to operate like public housing, with all leases, contracts, and use agreements remaining in effect and binding.

Specifically, in addition to the private sector asset management that will come with leveraging debt or equity, most converted properties will be required to submit annual financial statements to HUD and will be subject to regular

monitoring of their physical and financial condition through HUD contractors, potentially the performance-based contract administrators (PBCAs). Only the small share of properties that convert to project-based voucher contracts will not be subject to such HUD oversight because HUD is not a party to such contracts.

Before a property enters foreclosure, HUD will have authority under PETRA to transfer the rental assistance to another property (or properties) that can house the tenants, and the threat of such a transfer is likely to be a strong incentive for owners to bring properties into compliance or to sell them to a mission-oriented entity. HUD also has the authority to condition receipt of cash flow upon owner compliance with physical, financial, and other program requirements — another strong incentive.

If despite this new set of tools a lender does foreclose on a mortgaged property or a PHA/owner declares bankruptcy, PETRA provides that the Section 8 contract, tenants' leases and the use agreement either remain in place, as they do in the case of most multifamily assisted properties today, or are transferred to another property. This provision in PETRA, because it is statutory, would control over usual procedures in bankruptcy.

¹ There are two other areas in which part 966 goes beyond the USHA to create unique rights for public housing tenants that do not exist for other HUD-assisted tenants, including tenants receiving voucher assistance from a PHA. - 966.55(c) to consult with resident organizations about the appointment of a hearing officer or panel; and - 966.56(b)(4) to confront and cross-examine “all witnesses upon whose testimony or information” the PHA relies, which goes beyond section 6(k), which requires only that a tenant be allowed to ask questions of witnesses that are present. Under the regulation, a tenant could seek to exclude documents that are not supported by live testimony, much like a formal court hearing.

U.S. Department of Housing and Urban Development
451 7th Street S.W., Washington, DC 20410
Telephone: (202) 708-1112 TTY: (202) 708-1455
[Find the address of the HUD office near you](#)