

RESIDENT ENGAGEMENT GROUP

January 25, 2011

Representative Keith Ellison
1027 Longworth Building
Washington, D.C. 20515-2305
Fax 202-225-4886

Dear Congressman Ellison:

We are writing to you to provide our preliminary impressions of the Resident Housing Revitalization Act (RHRA), H.R. 6468, December 1, 2010. We are a group of residents from public housing, the voucher program, and HUD-assisted multifamily developments and their partners, who are national and local advocates committed to the preservation of affordable rental housing.

Our group, the Resident Engagement Group (REG), was formed to provide input to Secretary Donovan on the Administration's proposal to preserve public housing and other HUD multifamily developments. REG, facilitated by the National Housing Law Project (NHLP), has been meeting in telephone conference calls, on webinars and in meetings for the past year. Thirty-seven public housing tenants from this group plus their partners met with the Secretary and senior HUD staff in January 2010 to discuss HUD's proposed Transforming Rental Assistance initiative. In April, HUD held an historic and unprecedented convening with tenant representatives from the three major affordable housing programs who met with the Secretary and senior HUD staff. We have provided written comment to the Secretary on the draft versions of what was then known as the Transformation of Rental Assistance (TRA) and which has also been called the Preservation, Enhancement and Transformation of Rental Assistance (PETRA). In addition, the group has provided written and oral input to the senior HUD staff on PETRA. Throughout our discussions, we have been very concerned about the idea of mortgaging public housing. While a majority of the REG is adamantly opposed to allowing mortgage liens on public housing, the group has numerous suggestions for improving and strengthening PETRA or what is now H.R. 6468.

The issues of greatest concern to us and the focus of our comments have included resident rights and resident participation, public ownership, permanent long term affordability and resident choice. We have reviewed the newest versions of the proposal, the Discussion Draft, October 21, 2010, and RHRA (H.R. 6468) and have compared it to the Administration's original proposal, and we appreciate the changes that you have made, many of which the REG, along

with others, also identified and suggested. In particular, we note the following significant positive changes:

1. Applicant and tenant procedural rights. Tenants and applicants for certain listed housing programs will be subject to statutory procedural rights. H.R. 6468 added that a tenant may seek a review before an individual or panel of both agency action and inaction. In addition, the owner must provide specific grounds for its proposed action in the notice. The time to seek the review due to an eviction, termination of assistance or admission is extended to 30 days. A tenant's entire file must be made available to the tenant or applicant.
2. Tenant access to information. Tenants who reside in certain properties will have access to certain building information.
3. Tenant organization rights. Residents will have the right to organize without interference from the PHA or owner. H.R. 6468 added that legitimate tenant organization must operate democratically, but removed any statutory requirement for elections. Funding for resident organizations will be no less than what would have been provided for under prior funding formulas and shall be noncompetitive for legitimate tenant organizations.
4. Non discrimination. The bill emphasizes that Limited English Proficiency (LEP) obligations apply to all programs and activities regarding HUD rental housing assistance.
5. Consultation with residents. Provisions regarding consultation with residents are improved.
6. The use agreement and contract. *For converted public housing properties,* the use agreement is for an initial 30 years and shall remain in effect continuously for the duration of each extension of the rental assistance contract. The initial rental assistance contract shall be for 20 years, and subject to appropriations, the Secretary must offer to renew the contract and the owner of the property must accept such offer.
7. Maintaining public ownership. *For converted public housing properties,* in most instances, if there is a change in ownership as a result of foreclosure or sale or a transfer of the contract, the new owner must be a public entity, or if there is no capable public entity, then the property or contract may be transferred to a nonprofit, including a tenant organization.
8. Protections in the event of foreclosure. *For converted public housing properties,* in the event of foreclosure, HUD will have the first option to purchase and must exercise that option. *For all converted properties,* the Secretary must be told of the default by the mortgagee and by the owner and may take corrective action to avoid foreclosure or preserve the housing.

It is our understanding that you are interested in improving RHRA and have met with a number of groups to discuss their issues. All of us are all extremely interested in proposals to preserve public and multifamily housing. We have preliminarily identified a number of issues or

concerns in H.R. 6468 that we want to bring to your attention. Some of these issues are significant because of their impact on residents and the long term affordability of the units to be preserved; others are of importance because they seek to conform the proposal and to make it consistent throughout.

I. Remove the ambiguity regarding the applicability of the streamlining rules.

- A. H.R. 6468 allows the Secretary to establish uniform policies and procedures for converted properties. The general “streamlining” authorization is set forth in the introductory paragraph preceding the provisions regarding tenant organizing rights, applicant and tenant procedural rights, and resident access to building information. (page 40) The introductory language is limited to converted properties.
- B. We believe that this language limiting the streamlining to converted properties should be removed as it confuses the intent of the subsections which in many cases intend to apply to a broader scope of properties and programs.

II. Applicant and tenant procedural rights.

- A. The applicant and tenant procedural rights are established for tenants in units converted pursuant to RHRA and voucher tenants. The TRA proposal as originally submitted by the Secretary made the protections available to other HUD assisted multifamily tenants. We urge that the applicability of this subsection of RHRA be revised and extended to those tenants.
- B. Under current law, public housing tenants have the right to request an informal resolution prior to the grievance hearing. REG wants tenants living in public housing units that are converted to maintain that right and to extend it to other HUD-assisted tenants. Such informal resolution helps with problem solving and should be retained.
- C. As noted above, we are pleased that RHRA contains a provision entitling a tenant to his or her entire tenant file when exercising procedural rights. We believe that access to the tenant file should not be limited to a situation in which the tenant is challenging agency action or inaction. We believe that a tenant should have a right to access his or her entire file for any reason, at any time and to obtain a copy free of charge. In addition, PHAs and owners should be required to give residents copies of the work sheets and forms that explain how their rents are calculated.
- D. RHRA proposes to continue the current practice of excluding from the informal review process tenants who are charged with engaging in criminal activity. We believe that every tenant should be entitled to a hearing and that the way to address allegations of criminal activity is to expedite the hearing, not bypass it completely. In addition, the provision that a tenant may be denied a hearing for

actions that threaten the “right to peaceful enjoyment of the premises by other tenants or employees of the owner or agency” should be removed as it is too broad and exempts too many tenants from the benefits of a hearing.

III. Tenant access to information.

- A. As noted above, we support the inclusion of this provision and make the following comments.
- B. This provision is limited to only certain residents, those residing in property that is subject to 24 C.F.R. § 245 (in general, HUD multifamily properties) and properties that are converted in accordance with RHRA. This provision must be extended to all HUD assisted tenants. For example, public housing tenants now are subject to asset management rules, so those units have profit and loss statements or the equivalent and public housing residents would want copies of the management reviews and subsidy contracts. In addition, there are public housing tenants in units assisted with HOPE VI funding with private owners and managers and tenants with project-based vouchers who also live in properties that may be privately owned and managed.
- C. We also believe that some or all of this information must be available generally and that resident organizations should have access to the information routinely without having to make a written request.
- D. The obligation to provide the profit and loss statement should be imposed upon the PHA or owner of the property as well as upon HUD.
- E. Physical inspection reports (RHRA, page 76) and physical needs assessments, which are conducted or held by HUD or the owner, should also be available to resident organizations upon request. In addition, HUD audit findings and recommendations should be available to the residents.
- F. The language limiting the request for information “subject to the applicability of all laws and regulations governing proprietary information, privacy rights, privileges and other established legal protection” should be removed because it will act as a bar and thereby create the possibility that none of the information would be given to the residents. At the very minimum, RHRA must affirm that the information that is listed,
 - regarding legal entities that own the property,
 - the profit and loss statement
 - the subsidy contracts,
 - management reviews and
 - balances and expenditures from the reservesis not private or privileged.

IV. Tenant organization rights.

- A. The RHRA provisions regarding tenant organizing rights are significant and we support them. We do have suggestions as to how this section may be improved.
- B. Currently H.R. 6468 limits the obligation of an owner and PHA to recognize a resident organization to legitimate tenant organizations of converted properties. We believe that all the provisions of the tenant organizing rights should be applicable to all owners of properties funded under a rental assistance program and public housing agencies administering rental assistance. An owner's or PHA's obligation to recognize a legitimate tenant organization should not be limited to legitimate tenant organizations of converted properties.
- C. RHRA provides that owners and public housing agencies (PHAs) shall "give reasonable consideration to concerns raised by legitimate tenant organizations." This language needs to be strengthened to clarify that residents "have a right to participate in fundamental decisions" regarding the property and management.
- D. RHRA encourages the formation of legitimate tenant organizations, including organizations of voucher tenants, but it does not provide any pathway to accomplish this goal. We propose that at the request of a tenant group, a nonprofit, a Resident Advisory Board (RAB) or a group of voucher tenants that is seeking to form a group or expand an existing voucher group "for the purposes of addressing issues related to policies governing payment standards, conditions of occupied units or other discretionary policies and program implementation issues," a PHA must facilitate that effort by sending out a notice to each voucher tenant informing them of the formation and/or meetings of a group of voucher tenants. In addition upon request, the PHA shall provide a meeting space for the voucher residents and/or those who are seeking to organize the voucher tenants.
- E. RHRA authorizes funding to facilitate tenants' rights to organize. The entities listed to receive such funds include tenant groups, non-profit organizations, or public entities. REG does not believe that public entities should be eligible for such funds and that it would create a conflict if public housing agencies were eligible for such funding.

V. Consultation with residents.

- A. RHRA includes an expanded discussion of what it means to consult with residents regarding the decision to convert. (See RHRA pages 7-8) We support this addition and believe this section should additionally provide for individual notice and an opportunity to comment to each tenant residing in a property proposed for conversion or for which the owner has made a request to transfer the rental contract to a replacement property.

- B. We support the provision that any proposal to convert is a significant amendment to a PHA's plan, which triggers consultation with the RAB and the public. However after conversion, RHRA does not include converted public housing properties in the annual planning process for the PHA. Once a unit is converted, we believe it must remain subject to the PHA's annual planning process to ensure that residents have the opportunity annually to address in a timely manner issues such as admission practices, continued occupancy policies, the condition of the housing, etc. All residents should also have the opportunity to review and comment upon any changes in the lease.
- C. The conversion of a property from project-based vouchers to a property-based contract also references the PHA plan process. (RHRA page 95). That language should be conformed to be the same as a conversion (RHRA page 8) to ensure that the RAB is consulted in the event of a conversion of project-based vouchers to a property-based contract.

VI. Maintaining public ownership.

- A. We believe that the objective of RHRA must be that at every point at which a former public housing unit is threatened with loss, any transfer must be to a public entity, and if the public entity is not capable, to a nonprofit, including a tenant organization, and we believe that is the intent of RHRA. This policy should be consistently stated throughout and be improved by stating that in the event that the property is transferred to a nonprofit, a legitimate tenant organization should have the right of first refusal. For example, when a rental contract is transferred from a former public housing unit to another property, the preferred owner of that new property should be a public entity; when the option is to transfer to a nonprofit, RHRA should consistently state that the nonprofit includes a tenant organization and that a legitimate tenant organization has the right of first refusal.
- B. The situations in which a for-profit entity may purchase a former public housing development must be tightened up so as to continue public ownership and accountability. RHRA provides options for tax credit properties and PHA control. We believe that to maintain public control, the PHA must always have an option to purchase limited partnership interests after the tax compliance period expires; have an active role in property management decisions; maintain continued ownership of the land; and should comply with such other provisions that HUD may establish to ensure that the ownership interest of the PHA is maintained. (In H.R. 6468, the connecting word "or" should be replaced with an "and" and the provision regarding ownership of the land should be added.)
- C. In the event of a loss of units due to eminent domain, the purchasing entity, or HUD or the PHA should have the obligation in consultation with the residents to

immediately transfer the rental contract, use agreement and leases to another property, the preferred owner of which should be a public entity.

VII. Properties in foreclosure/bankruptcy.

- A. As noted previously, the majority of the members of REG are adamantly opposed to mortgages. Nevertheless, we would like to know why H.R. 6468 does not provide FHA insurance for the units that are converted.
- B. In addition, H.R. 6468 requires the Secretary to purchase a converted public housing property in the event of default and foreclosure. We are concerned about whether there will be funds to purchase the property and the source of those funds in the event of foreclosure. The only reference to funds to purchase is in section (22) page 37 which is the Rental Assistance Conversion Trust. The amounts referenced in section (22) would be insufficient to purchase those properties that might be foreclosed upon.

VIII. Long Term affordability.

- A. We believe that a key element to long term affordability includes a commitment to comprehensively rehabilitate the development. Thus, a required condition of conversion and the application to convert must include a reasonable plan addressing in a timely fashion the physical and financial needs of the property and to extend its useful life. There should be assurances that the materials used to rehabilitate the property are of a high quality to promote the long term affordability of the property.
- B. Another element of long term affordability includes oversight of the property and standards to ensure that the owner is capable of maintaining and managing the property.

IX. One-for-one replacement.

- A. RHRA is a preservation proposal. Nevertheless, it recognizes that in some situations, hard units may be demolished, and it allows that in some jurisdictions, depending upon the available data, that up to 50% of the units may be replaced with vouchers. In addition, replacement units may be developed in the neighborhood or metropolitan area up to 25 miles away.
- B. We are concerned about these provisions and would like to discuss this aspect of RHRA with you. Amongst our concerns are that hard units of affordable housing not be replaced with vouchers. H.R. 6468 should be revised to provide for one-for-one replacement of all units, *with no exception*. Residents believe that there is a need for affordable hard units and that every place where there are hard units that are affordable to the lowest income families there is a need for replacement

hard units. In addition, the bill should provide that if the units are demolished or sold, one third (1/3) of the units must be replaced on site or in the neighborhood. If more tenants want to return, then more units must be replaced on site or in the neighborhood. H.R. 6468 provides that the remaining units (those not replaced on site or in the neighborhood) may be replaced within a 25 mile radius of the original site. This standard should be more flexible in recognition that distances will have different impacts in different jurisdictions. In addition, replacement units should not be isolated and should be evaluated taking into consideration access to available public transportation, and in no event, should the replacement units be built in areas that are less desirable than the current site. The Residents acknowledge that the location of the replacement units is complex and requires more extensive conversations to address the competing objectives. Finally, the one-for-one replacement requirement should at a minimum provide for the required accessible units as provided for under the Americans with Disabilities Act and any additional units that are necessary based upon the needs of current residents or a market survey of need, whichever is greater.

X. Relocation.

- A. H.R. 6468, states that the Uniform Relocation Act applies. In the event that the move is temporary not to exceed 12-24 months the relocation assistance shall be as determined by the Secretary. We believe that any tenant who is required to move must be offered mobility counseling and housing search assistance.
- B. H.R. 6468 also provides that a relocated family has the right to return provided that the tenant has not committed a serious or repeated violation of the terms of the lease during the temporary relocation period. We support enabling tenants return. Any tenant that is denied the right to return must have the opportunity to contest that determination in accordance with Section 4 amending Section 8(m)(2)(B) Applicant and Tenant Procedural Rights. Also, to ensure that tenants are able to take advantage of the right to return, RHRA should require that financial assistance is available to assist with the cost of returning. In addition, it should be clear that a resident has the right to return at any time after completion of the project, and language providing that assurance should be in a separate paragraph.

XI. Enforcement.

- A. Tenants or applicants who reside in public housing currently have the right to bring a lawsuit against a housing authority because it is a government entity. H.R. 6468 gives HUD the power to bring a lawsuit in order to protect or enforce any right in a rental assistance contract, regulation, or statute (other than the Fair

Housing Act), but does not provide tenants and applicants with this essential enforcement tool. We believe that it is important for tenants and applicants to have a private right of action so that they could take legal action against a private third party. This would be one way to address the problem that HUD might not enforce the rights.

XII. Section 3.

- A. H.R. 6468 amends Section 3 to create new priorities for employment for both converted properties and for all public housing and other housing and community development funding. In addition, it provides that Section 3 shall continue to apply to converted properties as it applied to those properties prior to conversion. The new priorities for employment are first to those tenants who reside in the service and metropolitan area (or non metropolitan county) who receive federal rental assistance, including, public housing residents, residents of HUD-assisted properties and voucher tenants.
- B. We support extending Section 3 to tenants of other federal rental assistance programs. However, there should remain a first preference for workers receiving federal rental assistance who reside in the service area or neighborhood. Extending the first preference to any recipient of federal rental assistance who lives in the metropolitan area or non metropolitan county creates too large a geographical area. For large counties or metropolitan areas, language proposed in H.R. 6468 will mean that a tenant residing miles from the property will have a preference equal to the preference of the tenant residing in the property.
- C. Current law applies Section 3 to all public housing funds without any minimum thresholds and for funding for ongoing management and maintenance. RHRA continues that policy for converted public housing units, but does not extend those benefits to non-public housing units. To maximize the benefits of Section 3 for all converted properties, it should apply to all converted properties without any threshold dollar amounts and it should be applicable for ongoing maintenance, as well as rehabilitation and new construction.
- D. Finally, to make Section 3 a reality, there should be funds available to assist with implementation.

XIII. Resident Choice.

- A. We support resident choice. But in order to make resident choice work without disadvantaging those on the voucher waiting lists, more vouchers should be made available.

- B. We also believe that resident choice must be meaningful and that residents who voluntarily decide to move should be offered mobility counseling and housing search assistance.

XIV. LEP.

- A. The nondiscrimination language in Section 5, (n)(6)(A)(vii) (page 73) should be the same as the language in Section 4 (m)(2)(C). The LEP reference should be contained in both sections.

We are pleased that you are interested in preserving public housing and other forms of HUD-assisted housing. Preservation of these units is a very important national issue that must be kept at the forefront. We all agree that the stock of affordable HUD-assisted housing, especially public housing, is a valuable resource that should be adequately financed and preserved for future generations.

We hope that these comments are helpful. We would like to discuss these comments with you and your staff. Please contact Catherine Bishop, at cbishop@nhlp.org or at 415-546-7000 ext 3105 so that we may arrange a convenient time to discuss RHRA and these proposed changes.

Submitted by the Resident Engagement Group

[Attached is a list of those who have signed on to the letter]

Cc Secretary Shaun Donovan
Assistant Secretary Sandra Henriquez
Deputy Assistant Secretary Carol Galante
Representative Emanuel Cleaver, MO
Representative Donna F. Edwards, MD
Representative Al Green, TX
Representative James A. Himes, CT

Signatories to Letter to Keith Ellison, January 25, 2011

Cora Hayes, Resident Public Housing, Richmond VA

Delorise Calhoun, Public Housing Resident, Cincinnati OH

Leonard Williams, Public Housing Resident, Buffalo NY

Western New York Public Housing Network

Martha Weatherspoon, Public Housing Resident, Clarksville, TN

Aquarius Vann-Ghasri, Public Housing Resident, Washington, DC

Valerie Buchand, Public Housing Resident Commissioner, Sarasota, FL

Peggy Santos, Public Housing Resident, Dorchester, MA

RAB Boston Housing Authority, including

Ruth Barkley, Public Housing resident

Curtis Brown, Public Housing Resident (Elderly/Disabled Units)

Lorraine Brown, Voucher Participant

Jeanne Burke-Patterson, Public Housing Resident (Elderly/Disabled Units)

Julia Butler, Public Housing Resident

Frank Christmas, Section 8-Mod Rehab Resident

Phyllis Corbitt, Public Housing Resident

Alice Fonseca, Voucher Participant

Jung Wing Lee, Voucher Participant

William Miller, Voucher Participant

Jean Pierre, Public Housing Resident

Brion Rock, Public Housing Resident

Ronald Shepard, Public Housing Resident (Elderly/Disabled Units)

Diane Wignall, Voucher Participant

Edna Willrich, Voucher Participant

Chuck Elsesser, Partner, Miami, FL

Cynthia Wiggins, New Orleans

Erik Crawford, Public Housing Resident, Davidson/Site, 166 Resident Association, Bronx, NY

Rhenea Keyes, Voucher Participant, Vacaville, CA

Leslie Simon-Plumlee, Partner on behalf of Disabled Voucher Participant, Santa Cruz, CA

Brenda Harvey, Voucher Participant, Dallas, TX

Delores Morris, Voucher Participant, Brooklyn, NY

George Gould, Partner, Philadelphia, PA

Sheila Davis, Voucher Participant, Burnsville, MN

Zoe Cox, Public Housing Resident, Cleveland, TN

Susan Floerchinger, Voucher Participant, Bozeman, MT

Iris Bradford, (Voucher Participant) President Sunset Tenant Organization, Baltimore, MD

Matt Gerard, Public Housing Resident, President Minneapolis Highrise Representative Council (MHRC)

Telissa Dowling, member of Hudson County Alliance to End Homelessness, NJ

Stephanie Mingo, Public Housing Resident, New Orleans, LA

John Zirker, Public Housing Resident, Nashville, TN

Doug Morrison, Public Housing Resident, Tenant Commissioner, Seattle, WA

Tracey Goodrich, Partner for Voucher Participant, Minneapolis, NM

Margaret Long, Voucher Participant, Cincinnati, OH

Martha Allen, President of the Public Housing Resident Council, Kansas City, MO

National Alliance of HUD Tenants (NAHT)

Mo George, Partner, New York City, NY

Agnes Rivera, Public Housing Resident, New York City, NY

Julie Griggs, Voucher Participant, Largo, FL

Willie Mae Bennett-Fripp, Partner, Committee for Boston Public Housing, Inc.

Asia Coney, Public Housing Resident Leader, Public and Assisted Housing Representative, Philadelphia, PA