

# HUD Determines 180 Public Housing Units Ineligible for Demolition\*

The Department of Housing and Urban Development (HUD) declined to approve a proposal by the Woonsocket Housing Authority (WHA) to demolish 180 of the Rhode Island city's family public housing units.<sup>1</sup> The proposed demolition would eliminate units at the city's two family housing projects, and would reduce the city's stock of public family housing by one-third.<sup>2</sup> In a letter, HUD requested that WHA submit additional documentation and respond to fair housing concerns.

HUD's letter stated that the units are not currently eligible for demolition under the federal regulations because, according to its inspections, rehabilitation would be cost-effective. Inspections were conducted by the HUD Special Applications Center (SAC) and the HUD Real Estate Assessment Center (REAC), and WHA submitted a report regarding its physical needs assessment.<sup>3</sup> HUD inspectors estimated that the cost of rehabilitation of the units would be 44.7% of the total development cost at one site, and 23.84% at the other.<sup>4</sup> Units are not considered "obsolete as to physical condition," and thus eligible for demolition under the federal regulations,<sup>5</sup> unless the cost of rehabilitation is at least 57.14% of the total development cost for non-elevator buildings.<sup>6</sup>

HUD also considered other data to determine whether certifications by WHA were consistent with that data.<sup>7</sup> HUD noted that approximately a year earlier, it approved WHA's application to dispose of 51 units and use some of the proceeds of the sale to rehabilitate and upgrade units at the two sites now proposed for demolition.<sup>8</sup> HUD asked

whether WHA used the proceeds of the disposition for those developments and, if so, how the proceeds were used. In addition, HUD reviewed the 2009 Woonsocket Public Housing Agency Plan, which reported high levels of need for affordable housing and a substantial waitlist for public housing family units.<sup>9</sup> In response to this information, HUD asked WHA for information regarding the status of its waitlist.<sup>10</sup>

HUD's letter echoed several concerns raised in comments submitted by Rhode Island Legal Services (RILS) on behalf of public housing residents and community groups.<sup>11</sup> The comments urged HUD to deny the demolition request because of inadequate consultation with residents and community groups and concerns that the demolition would violate the Fair Housing Act.<sup>12</sup> HUD cited WHA's failure to adequately consult with residents and requested descriptions and documentation of how consultation with residents took place.<sup>13</sup> The comments asserted that Spanish-speaking residents were excluded from participating in the meetings because of inadequate translation and interpretation services, and that few residents attended the meetings because they were held at inconvenient locations.<sup>14</sup> HUD requested that WHA provide documentation to show that translation services and interpreters were provided at one of the sites. HUD also requested sign-in sheets to demonstrate how many residents attended the meetings.<sup>15</sup>

HUD also considered fair housing concerns similar to those raised in the advocates' comments. The comments described the history of Woonsocket's recently announced policy to reduce the number of affordable units in the city. The comments noted that the policy focuses on family units, which primarily house minority families, and excludes elderly and disabled units, which primarily house Caucasian residents.<sup>16</sup> Specifically, Woonsocket's family public housing is occupied by 62% minority residents, while elderly and disabled public housing within the city is occupied by 92% non-Hispanic white residents.<sup>17</sup> The comments alleged that demolition of the family housing, but not the elderly and disabled public housing units, would have a disproportionate impact on racial minorities.<sup>18</sup> To emphasize the importance of these fair housing issues, HUD requested that WHA explain what alternatives it considered to avoid such a substantial

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<sup>1</sup>Letter from Ainars Rodins, HUD Office of Public Housing, Special Applications Center, to Robert Kulik, Executive Director of the Woonsocket Housing Authority (July 9, 2010), <http://nhlp.org/resourcecenter?tid=38> [hereinafter HUD Letter].

<sup>2</sup>Comments on Proposed Demolition of Family Public Housing Units in Woonsocket RI, Submitted to the HUD Office of Fair Housing/Equal Opportunity by Steven Fischbach of RI Legal Services (Apr. 28, 2010) [hereinafter Comments], <http://nhlp.org/resourcecenter?tid=38>. This figure does not include 51 units of scattered-site family housing in Woonsocket that HUD already approved for disposal.

<sup>3</sup>See Physical Needs Assessment Comprehensive Grant Program, HUD Form 52832 (10/96). This form is filled out by a public housing agency (PHA) for every development eligible for the comprehensive grant program (CGP). It is part of the PHA's comprehensive plan in the first year of participation in the CGP and must be revised every sixth year when a complete revision of the physical needs assessment is required.

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

<sup>5</sup>24 C.F.R. § 970.15 (2010).

<sup>6</sup>HUD Letter, *supra* note 1, at 1.

<sup>7</sup>*Id.* at 3; 42 U.S.C. § 1437p(b)(1) (2010); 24 C.F.R. § 970.29 (2010).

<sup>8</sup>HUD Letter, *supra* note 1, at 3.

<sup>9</sup>*Id.* at 4; 24 C.F.R. § 970.29 (HUD will disapprove an application if HUD determines that any certification made by the PHA is clearly inconsistent with the PHA plan.)

<sup>10</sup>HUD Letter, *supra* note 1, at 3-4.

<sup>11</sup>*Id.* at 2-4.

<sup>12</sup>Comments, *supra* note 2, at 2-5, 11.

<sup>13</sup>HUD Letter, *supra* note 1, at 2.

<sup>14</sup>Comments, *supra* note 2, at 11.

<sup>15</sup>HUD Letter, *supra* note 1, at 2.

<sup>16</sup>Comments, *supra* note 2, at 6-10.

<sup>17</sup>HUD Letter, *supra* note 1, at 4.

<sup>18</sup>*Id.* at 3.

demolition of family housing.<sup>19</sup> Further, HUD questioned whether the demolition request may have been motivated by Woonsocket's recently announced policy to reduce the amount of affordable housing in the city.<sup>20</sup>

Finally, HUD noted that it would not waive WHA's obligation to repay its modernization debt associated with the developments. It is likely that HUD did not waive the requirement because WHA issued bonds under the capital fund financing projects that it is currently repaying.<sup>21</sup> A waiver would have required the money to be repaid out of funds WHA otherwise has through its capital fund allocation, to the detriment of the rest of its public housing inventory.

### WHA's Response to HUD's Letter

WHA responded to HUD's letter by raising the following arguments:

- While there is a need for affordable housing, because of the soft housing market in Woonsocket,<sup>22</sup> "the private sector can, with proper program administration provide quality housing choices that better comply with national fair housing goal[s] and best [sic] access to employment opportunities for low income households."<sup>23</sup> In other words, WHA's position is that in its housing market, vouchers are a better method of providing affordable housing than public housing.
- WHA states that its public housing units are aging, that it does not have the funds necessary to keep the housing stock viable, and that it needs more resources than provided by the capital fund program.<sup>24</sup>
- WHA stated that it has considered alternative funding sources, such as low-income housing tax credits,

<sup>19</sup>*Id.* at 5.

<sup>20</sup>HUD Letter, *supra* note 1, at 4. The city's affordable housing policy is published in the Draft Comprehensive Plan Five-Year Update, available on the City of Woonsocket website, <http://www.ci.woonsocket.ri.us>.

<sup>21</sup>See Use of Public Housing Capital Funds for Financing Activities-Final Rule, 75 Fed. Reg. 65,198 (Oct. 21, 2010).

<sup>22</sup>Letter from Robert Kulik, Executive Director of Woonsocket Housing Authority to Ainars Rodins, Director, HUD Special Application Center (SEC) (Sept. 30, 2010) (speculates that the population of Woonsocket has declined or has not increased in the past 10 years); see also letter from Leo Fontaine, Mayor of Woonsocket (Apr. 20, 2010) (supporting the WHA application to demolish "housing complexes," stating that there is a 5% residential vacancy rate and stating that the proposal will "help stabilize the value of our smaller multi-family units, arguably the hardest-hit assets effected [sic] by the real estate downturn").

<sup>23</sup>Response to Questions Posed by the Regional Office of Fair Housing and Equal Opportunity, which is an attachment to Letter from Robert Kulik, *supra* note 22. In addition, WHA makes an argument that the failure to maintain the housing "runs the risk of stigmatizing" its occupants. *Id.*

<sup>24</sup>*Id.* The Mayor of Woonsocket made statements about the isolation of the developments and the burden on the city created by "the frequency and volume of public safety calls." Letter from Leo Fontaine, *supra* note 22.

HOPE VI and Choice Neighborhoods financing, and it claims that these sources will not meet its needs.<sup>25</sup>

- WHA voluntarily withdrew its demolition application for one of the developments, Morin Heights, on May 3, 2010, less than six months after it submitted the application. Morin Heights is the only development for which capital fund financing project proceeds were used.<sup>26</sup>
- WHA stated that it did not have copies of the comments submitted by those objecting to the application.

### Conclusion

While WHA public housing residents have won the first round, WHA is continuing its efforts to obtain permission to demolish 144 family housing units at Veterans Memorial Development, the remaining site included in its original demolition application. In a letter to HUD, WHA stated that it would submit additional information to support its application.<sup>27</sup> WHA may believe that its demolition application ultimately will be successful, as HUD's letter was not an outright denial.

In any event, it is significant that HUD has taken fair housing and resident consultation issues seriously, considered other data available to it and asked a series of follow-up questions in making the determination not to approve the demolition application.<sup>28</sup> The fair housing issues are complex and factually intensive. It is not certain whether HUD's action is part of a trend or whether HUD will continue to seek relevant information.

HUD Secretary Shaun Donovan has stated that HUD will "review more closely the decisions that will be made regarding approval of any demolition and disposition."<sup>29</sup> He has also stated that "such action needs to be viewed through the lens of the number, location, and affordability of units returned to the inventory." He has acknowledged the unintended consequences of demolition and disposition on families and the decrease in the number of long-term affordable units in the community. This is the first time that it has come to the National Housing Law Project's attention that HUD has engaged in such an intensive review of an application for demolition and denied such an application. Advocates hope that this is the beginning of a trend of more rigorous review by HUD. ■

<sup>25</sup>*Id.*

<sup>26</sup>See letter from Robert Kulik, *supra* note 22, at 2.

<sup>27</sup>*Id.*

<sup>28</sup>Although HUD apparently considered data that was available to it, advocates should not rely upon HUD to act upon its own initiative. Instead, advocates should notify HUD of the length of public housing waitlists, if appropriate, and should request copies of Real Estate Assessment Center inspections and other property inspections to determine whether they are helpful.

<sup>29</sup>Letter from Shaun Donovan to Congressman Frank and Congresswoman Waters (Aug. 7, 2009), <http://nhlp.org/resourcecenter?tid=38>.