

Frank and Waters Renew Their Call for Moratorium on Public Housing Demolition and Disposition

Congressman Barney Frank (D-MA), chair of the House Committee on Financial Services, and Congresswoman Maxine Waters (D-CA), chair of the House Subcommittee on Housing and Community Opportunity, have asked the Obama administration to act to preserve public housing. The latest effort in their ongoing campaign is a letter urging Department of Housing and Urban Development (HUD) Secretary Sean Donovan to “impose a one-year moratorium on the approval of applications for the demolition or disposition of public housing units.”¹ The letter also emphasizes that public housing represents the federal government’s commitment to house the nation’s most vulnerable populations and that the private sector cannot make this commitment.² Mr. Frank and Ms. Waters wrote a similar letter in August 2008 opposing HUD’s policy of cooperating with housing authorities’ demolition and disposition requests and arguing that the result has been a “loss of public housing units [which] has now reached epic proportions.”³

Background

The loss of public housing units stems in part from the debate regarding the relative merits of “hard” public housing units, which are owned and operated by public housing authorities (PHAs), versus the relative merits of tenant-based assistance. Some of the arguments against hard units are no longer true or are true only in limited situations. These criticisms include claims that hard units are more expensive than tenant-based assistance, they are often located in neighborhoods that are racially and economically impacted, and they are often in disrepair. The

¹Letter from Barney Frank, Chair of the House Committee on Financial Services, and Maxine Waters, Chair of the House Subcommittee on Housing and Community Opportunity, to Shaun Donovan, Secretary of the Department of Housing and Urban Development (June 15, 2009), <http://www.nlihc.org/doc/Frank-Waters-Letter-to-Donovan-6-15-09-Moratorium.pdf> [hereinafter June 15, 2009 Letter].

²*Id.*

³Letter from Barney Frank, Chair of the House Committee on Financial Services, and Maxine Waters, Chair of the House Subcommittee on Housing and Community Opportunity, to Steve Preston, Secretary of the Department of Housing and Urban Development (Aug. 13, 2008), <http://www.nlihc.org/doc/Waters-Frank-Preston-8.13.08.pdf> [hereinafter Aug. 13, 2008, Letter]. The Center on Budget and Policy Priorities (CBPP) concludes that between 1995 and 2008, approximately 170,000 units of public housing have been lost and not replaced. BARBARA SARD & WILL FISCHER, CTR. ON BUDGET & POLICY PRIORITIES, PRESERVING SAFE, HIGH QUALITY PUBLIC HOUSING SHOULD BE A PRIORITY OF FEDERAL HOUSING POLICY (2008) 8.

reality is that replacing public housing units with vouchers would increase federal costs and that many units are no longer located in “extreme poverty” neighborhoods.⁴ Moreover, public housing is often the best option for families who have difficulty utilizing tenant-based assistance, especially the elderly and disabled in high-cost areas. Although there are some “problem” developments that may not warrant preservation, these developments are the exception, not the rule.⁵ Further, there are some drawbacks to tenant-based assistance.⁶ Some landlords view the voucher program as creating added paperwork and obligations, without providing additional subsidies to cover those costs. Many voucher tenants encounter landlords who avoid renting to them and, in the worst cases, overtly state that they are not welcome.⁷ There are also situations in which entire communities seek to exclude voucher tenants.⁸ Because of the complexities of replacement housing, the increased need for affordable housing due to the economic crisis, the current condition of much of the public housing stock,⁹ and the problems with voucher use, the moratorium on approval of all demolitions and dispositions of public housing is justified.

In 1983, Congress adopted Section 18 of the United States Housing Act, which limited HUD’s authority to approve an application for demolition or disposition.¹⁰ In 1988, Congress added language requiring PHAs to provide one-for-one replacement of units in cases of demolition or disposition.¹¹ In 1995, Congress suspended the one-for-one replacement requirement¹² and permanently repealed it in 1998,¹³ setting the stage for communities to jettison hard units while, in most cases, providing much of the replacement housing through the use of tenant-based assistance.

In the decade after the repeal of the one-for-one replacement rule, federal spending on low-income housing dropped dramatically.¹⁴ Also, since the 1980s, no

significant numbers of public housing units have been built. Decreases in both operating and capital funds forced (or perhaps excused) PHAs to search for ways to demolish or dispose of properties they could not afford to repair or operate. The loss of affordable housing was exacerbated in 2006 by HUD’s position that replacement tenant-based assistance, known as tenant protection vouchers, need only be provided for units that were occupied at the time of the demolition or disposition application.¹⁵ This policy institutionalized the loss of units resulting from significantly reduced and inadequate federal funding and harmed communities where PHAs allowed large numbers of units to become or remain empty in the run-up to demolition or disposition. Congress responded to this new HUD policy by stating in consecutive appropriations acts that HUD must provide tenant protection vouchers for all units occupied within twenty-four months of the demolition or disposition request.¹⁶

Recent Correspondence with HUD

In 2007, recognizing the need to address statutes and departmental practices that allowed and even encouraged the demolition or disposition of thousands of public housing units, the Committee on Financial Services requested that the National Low Income Housing Coalition (NLIHC), the Housing Justice Network (HJN) and the National Training and Information Center (NTIC) submit comments on Sections 18,¹⁷ 22¹⁸ and 33¹⁹ of the United States Housing Act. Section 18 provides that the HUD Secretary shall approve a demolition application if the PHA certifies that the property is physically and fiscally obsolete or too expensive to maintain, or a disposition application if retention is not in the best interest of the residents or the agency.²⁰ Section 22 allows PHAs to convert voluntarily a development or portion thereof to tenant-based assistance. Section 33 requires a mandatory conversion of public housing units so that they are no longer funded as public housing and the tenants receive tenant-based assistance.

HJN, NTIC and NLIHC sent a letter to the committee on January 22, 2008. They called for mandatory one-for-one replacement of demolished or disposed of public housing. They requested a guaranteed right of return for displaced residents to counter the permanent displacement of families who did not satisfy onerous move-in requirements of newly renovated or constructed developments. They explained the need for a uniform standard

⁴See SARD & FISCHER, *supra* note 3, at 6, 17.

⁵*Id.* at 19.

⁶Despite these drawbacks, it is important to note that many families prefer vouchers and are able to use them successfully, especially if they are provided with housing counseling.

⁷Three states and a number of cities across the country have laws prohibiting discrimination based upon “source of income.” For more information, see NHLP, *Courts Consider Landlord Defenses to Source of Income Laws*, 38 HOUS. L. BULL. 239 (2008).

⁸William Lee, *Welch, Davis Working On Bill To Disperse Section 8 Renters*, SOUTHTOWN STAR, June 25, 2009, <http://www.southtownstar.com/news/1638812,062509section8.article>.

⁹Much of the public housing stock is currently in good condition. See SARD & FISCHER, *supra* note 3, at 2, 6-10.

¹⁰Pub. L. No. 98-181, § 214, 97 Stat. 1153 (1983).

¹¹Pub. L. No. 100-242, 101 Stat. 1815 (1988).

¹²See Pub. L. No. 104-19, § 1002(a), 109 Stat. 194, 235 (July 27, 1995).

¹³Pub. L. No. 105-276, Tit. V, § 531, 112 Stat. 2461, 2570 (Oct. 21, 1998), codified at 42 U.S.C.A. § 1437p (Westlaw June 22, 2009); see also NHLP, HUD HOUSING PROGRAMS: TENANTS’ RIGHTS § 15.2 (3ded. 2004).

¹⁴DOUGLAS RICE & BARBARA SARD, CTR. ON BUDGET & POLICY PRIORITIES, DECADE OF NEGLECT HAS WEAKENED FEDERAL LOW-INCOME HOUSING PROGRAMS (2009), <http://www.cbpp.org/cms/index.cfm?fa=view&id=2691>.

¹⁵See NHLP, *New HUD Relocation and Replacement Voucher Policy for Public Housing Demolition and Disposition*, 37 HOUS. L. BULL. 77 (2007).

¹⁶See, e.g., Omnibus Appropriations Act, 2009, Pub. L. No. 111-8 (Mar. 10, 2009) (formerly H.R. 1105), Tenant Based Assistance.

¹⁷42 U.S.C.A. § 1437(p) (Westlaw June 22, 2009).

¹⁸§ 1437(t).

¹⁹§ 1437z-5.

²⁰§ 1437p(a)(1)(A).

for demolition or disposition. Further, they argued for a non-discriminatory and adequate relocation process that is enforceable by residents and for tenant participation in the decision-making process.²¹

Subsequently, advocates pressed members of Congress to request information from HUD regarding public housing. For example, advocates sought information regarding the number of units lost, the characteristics of those units, the number of units replaced, the income levels for eligibility and rents charged (rent affordability) for any replacement units. In addition, advocates requested information about the status of families who were displaced by demolition or disposition.

Mr. Frank and Ms. Waters maintain that “vouchers are not a substitute for the permanent replacement of hard public housing units, which represent a permanent commitment to providing affordable housing and services within a community.”

On June 4, 2008, Mr. Frank and Ms. Waters wrote to then-Acting HUD Secretary Roy A. Bernardi seeking data on the number of demolition or disposition applications submitted, approved and pending since 2000, the number and location of affected units, the identities of the responsible housing authorities, and the number and location of rebuilt units affordable to extremely low- and very-low income people.²² Mr. Frank and Ms. Waters also asked for the yearly average number of applications and units that were approved for demolition or disposition and the percentage of rejected applications. Additionally, they requested information regarding the type of housing or subsidy received by displaced residents, the occupancy rates since 2000 of the properties approved for demolition or disposition, and the unmet capital needs of the developments for which demolition or disposition had been approved.

²¹Letter from NLIHC, HJN & NTIC to Barney Frank, Chair of the House Committee on Financial Services, and Maxine Waters, Chair of the House Subcommittee on Housing and Community Opportunity (Jan. 22, 2008) (on file with NHLP).

²²Letter from Barney Frank, Chair of the House Committee on Financial Services, and Maxine Waters, Chair of the House Subcommittee on Housing and Community Opportunity, to Roy Bernardi, Acting Secretary of the Department of Housing and Urban Development (June 4, 2008) (on file with NHLP).

In July 2008, HUD responded that since 2000, 1466 applications had been approved, allowing demolition or disposition of 99,032 units. With regard to replacement housing, 33,006 public housing units were created, 18,986 tax credit affordable units were created, 9326 mixed-income units (the latter two categories not separated by level of affordability) were constructed and 64,210 Housing Choice Vouchers (HCVs) were issued. Eighty-nine demolition applications were then pending, representing 16,672 units of public housing. From 2000 through 2008, HUD approved 162 applications per year, representing 11,000 units per year. According to the letter, HUD’s “model for replacement housing [including the issuance of large numbers of HCVs] provides a one-for-one replacement of public housing units demolished or disposed of... while creating more housing options for families beyond the traditional public housing stock.”²³

By letter of August 13, 2008, Ms. Waters and Mr. Frank called upon then-Secretary Steve Preston “to immediately cease approval of all demolition and disposition applications until legislation is enacted to reform this program.”²⁴ They noted that HUD’s data reflected a loss of more than 60% of demolished or disposed of public housing units. The letter also noted that HUD continued to approve PHAs’ applications, that public housing serves “our most vulnerable populations, including the elderly and disabled” and that vouchers do not compensate families for the loss of hard units attached to a community.

The prior administration refused to accede to the moratorium request. On September 9, 2008, Secretary Preston wrote to Mr. Frank that while approval was not automatic, HUD was required by Section 18 to review applications. The Secretary gave examples of situations in which the insertion of vouchers in place of hard units had resulted in an increase in the number of assisted units, and supported vouchers as a vehicle for enabling families to transition out of public housing.²⁵

While recognizing HCVs as “an important component of our national affordable housing policy,” in their most recent letter Mr. Frank and Ms. Waters maintain that “vouchers are not a substitute for the permanent replacement of hard public housing units, which represent a

²³Letter from Mark A. Studdert, Gen. Deputy Assistant Sec. for Cong. & Intergovernmental Relations, to Barney Frank, Chair of the House Committee on Financial Services, and Maxine Waters, Chair of the House Subcommittee on Housing and Community Opportunity (July 2, 2008) (on file with NHLP).

²⁴See Aug. 13, 2008, Letter, *supra* note 3; see also: CTR. ON BUDGET & POLICY PRIORITIES, POLICY BASICS: INTRODUCTION TO PUBLIC HOUSING (2008), <http://www.cbpp.org/cms/index.cfm?fa=view&id=2528>.

²⁵Preston Says HUD Must Consider Demolition, Disposition Applications, Effectively Rules Out Moratorium, 36 HOUS. & DEV. REP. 582 (Sept. 29, 2008).

permanent commitment to providing affordable housing and services within a community.”²⁶ They assert that the \$4 billion allocated through the American Recovery and Reinvestment Act of 2009 (ARRA)²⁷ for public housing capital funds “signals a renewed commitment to funding and preserving our public housing stock.”²⁸

Conclusion

The \$4 billion in capital fund investments in ARRA²⁹ and other stimulus funds represent a down payment on the public housing capital improvement backlog, which is estimated to be between \$22 billion and \$32 billion.³⁰ Accordingly, it is time to revisit HUD’s continuing deference to PHAs’ certifications that their public housing is obsolete as to physical condition and cannot be returned to useful life under any cost-effective plan.³¹ Housing residents and advocates should consider supporting the efforts of Mr. Frank and Ms. Waters to obtain a moratorium. ■

²⁶June 15, 2009 Letter, *supra* note 1.

²⁷Pub. L. No. 111-5, 123 Stat. 115, 214 (Feb. 17, 2009).

²⁸June 15, 2009 Letter, *supra* note 1.

²⁹Pub. L. No. 111-5, 123 Stat. 115, 214 (Feb. 17, 2009).

³⁰*See* SARD & FISCHER, *supra* note 3.

³¹42 U.S.C.A. § 1437p (Westlaw June 22, 2009).