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Preservation, Enhancement, and Transformation of Rental Assistance (PETRA): What is it, what issues have residents raised and how has HUD responded?

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Background and Introduction

Public housing is a vital resource that is available in more than 3,500 communities nationwide. There are 1.2 million public housing units that serve vulnerable families, of whom 55% are extremely low income (at or below 30% of area median income), 32% are headed by elderly individuals, 21% by non-elderly disabled individuals and 36% who are single head of household with children. Most able residents work, as 32% of the families receive employment income.

The vast majority of the public housing units are now in good physical condition and worthy of preservation. The Center on Budget and Policy Priorities concluded that “ninety percent of developments meet or exceed housing quality standards, although most developments are more than 30 years old, and many will need rehabilitation to continue to provide decent quality homes.” Many of the most severely distressed public housing were demolished or substantially rehabilitated under the HOPE VI program, which addressed many of the housing quality problems, but displaced many residents and dramatically reduced the number of hard units available to the lowest income families. Because of the inadequate funding under prior Administrations, public housing has an estimated \$20-\$30 billion back log of capital needs. The lack of funds to maintain or repair public housing leads to the sale or demolition annually of approximately 10-15,000 units of public housing. Despite this loss of critically needed housing, there is currently insufficient political will to fund the public housing capital back log or to assure future funding of ongoing capital needs.

Some HUD assisted multifamily units such as rent supplement, Section 236 Rental Assistance Program and Section 8 Moderate Rehabilitation housing also face a funding crisis because these contracts are not renewable on terms that support leveraging needed for recapitalization and long term affordability. Owners of these units, along with the approximately 40,000 HUD assisted multifamily units owned by public housing agencies, would also be eligible to participate in the first year of PETRA.

HUD asserts that it is committed to preserving these public housing units as well as other multifamily units that serve low income families, as they meet a critical need and that it will be far less expensive and expedient to preserve this housing than to tear it down and replace it. There is also a strong consensus amongst residents and those that care about housing the lowest income families that it is important to preserve these units.

It is against this context that HUD proposed the Preservation, Enhancement, and Transformation of Rental Assistance (PETRA) Act.

What are the basic elements of PETRA?

PETRA is primarily a preservation bill, but it is also designed to address a number of other related critical issues. In its first year, it is designed to preserve for the long term approximately 280,000 units of public housing, as well as approximately 20,000 multifamily units. HUD is requesting \$350 million of which \$290 million is for PETRA, \$50 million for an initiative to improve locational outcomes for households and \$10 million for technical assistance. Participation in PETRA is voluntary, and no public housing agency or owner will be compelled to participate in the program. However, HUD anticipates that PETRA will be sufficiently desirable that most will eventually select to convert.

PETRA proposes that units would be preserved by creating long-term property-based contracts, which would allow owners to take advantage of the equity in the property to leverage private financing with mortgages. In the first year, HUD estimates that approximately \$7.5 billion would be leveraged. If the entire stock of public housing were converted, HUD further estimates that \$27 billion could be leveraged. HUD recognizes that these amounts will not be sufficient to address all the needs in general or for a particular development. To meet the greater needs, additional funds would be leveraged through the use of Low Income Tax Credits, HOME funds, housing trust funds or other sources. HUD asserts that leveraging private dollars will bring “market discipline” to the housing and that rental contracts will provide more stable funding.

Another fundamental feature of the Act is providing housing choice for all residents of units converted to PETRA by allowing tenants to move with a voucher, while maintaining the housing subsidy for the unit. (In addition, HUD is requesting as part of the transformation of rental assistance \$50 million to allocate competitively to improve locational outcomes for voucher residents.)

Streamlining the current HUD rental assistance programs, creating more uniform policies across all rental assistance programs to increase administrative efficiency, and promoting consolidation of public housing agencies are additional goals of PETRA. Each of these latter goals have the potential of benefiting tenants and applicants by reducing the complexity of the programs, which increases access to affordable housing and improves understanding of the rules that apply once housed and by increasing access to economically diverse communities. PETRA also provides that the Secretary has the discretion to apply the PETRA policies, such as the housing choice feature, applicant and tenant procedural rights and enforcement provisions, to other rental assistance programs regardless of whether the units have been converted to PETRA units.

How HUD obtained resident input on PETRA

In the process of developing the PETRA proposal, HUD consulted with the low-income housing industry as well as with low-income housing advocates and other interested parties. Reminded by residents that it did not initially include residents in this process, the HUD Secretary asked NHLP to identify a representative group of public housing and voucher tenants and their partners. NHLP received funding from Rockefeller and MacArthur Foundations to assist with this process. NHLP convened multiple calls with the residents and their partners (nearly 2 dozen over a 9 month period), conducted webinars on public housing and voucher issues and PETRA and facilitated telephone conference calls with residents and HUD staff. The Secretary subsequently met twice with the identified residents, once with the public housing residents and once with public housing, voucher and multifamily residents. (The meeting with HUD and residents from the three major programs was a first,

never before had representatives from the three programs met together with HUD.) Senior HUD staff recently participated in another webinar with residents and their partners and an additional meeting with the Secretary is planned. In addition, HUD has continued to meet to seek their input with other national and local groups composed of residents or that represent residents.

HUD initially issued a Major Features of Transforming Rental Assistance on March 31, 2010. Residents and their advocates responded to this document. The HUD draft bill, dated May 11, 2010, dealt with some of those concerns but many issues remained unaddressed. Residents and their advocates continued their critique of PETRA on the proposed bill. As of the date of this document, it is apparent that HUD is listening to residents, but HUD's response is not clear and there remain many unresolved critical issues. Below is a list of key resident concerns with the stated PETRA position, the residents' responses and HUD's interim reaction, which has not been finally confirmed and memorialized.

What are the key concerns that residents raised and how has HUD responded?

Long Term Affordability: Residents are concerned about the long term affordability of public housing. They want the housing preserved for future generations for the longest possible time. HUD also says it is committed to long term affordability. PETRA provides that units must be subject to a 30-year use restriction and renewable rental assistance contracts for up to 20 year periods. If the unit was formerly public housing, the owner must agree to accept an extension "absent compelling reasons determined by the Secretary." For other types of HUD assisted housing, the requirement to accept an extension of the contract is discretionary.

When residents and advocates found these protections insufficient, HUD countered that they would not object to a longer use agreement and agreed to a clarification that the rental assistance contracts could be extended repeatedly. HUD did not agree that owners of non-public housing could be required to accept repeated offers to extend the rental contract. These latter agreements are not in writing.

Protection in the event of foreclosure: Many residents in our group object to the idea of public housing having private debt, and many others want to prohibit it. A primary reason for the objection is the perceived potential of foreclosure and subsequent loss of the units.

PETRA provides in the event of foreclosure or bankruptcy the units shall remain subject to the rental assistance contract, as extended, the lease and any use agreement. However, HUD may modify this requirement if the units are not physically viable or financially sustainable or if necessary to get lender participation. If this determination is made, the contract may be transferred to other properties.

Residents and advocates have argued that these provisions are inadequate, as they give too much discretion to HUD, do not provide sufficient detail on how foreclosure could be avoided, and fail to require FHA insurance. HUD has subsequently stated that it "will have the authority to review loan terms" so as to avoid predatory lending situations and excessive interest rates. Additionally, HUD has proposed that in the event of a default, the lender must notify HUD, so that it may make payments directly to the lender from the funds available under the rental assistance contract. In the event of foreclosure, HUD will have the first option to purchase and the ability to transfer the property to a public agency or mission driven non profit or resident controlled organization. Concerns remain because these provisions are not in writing or are not currently required.

Public ownership: Residents want public housing to remain publically owned. HUD agrees with this goal. However, PETRA does not require continued public ownership and defines public ownership to include not only units owned by a public housing agency but also those “owned by an entity in which the public housing agency or its officers, employees or agents own a significant direct or indirect interest and which has among its purposes the ownership of affordable housing.” Residents believe that this definition is too broad and want to restrict public ownership to ownership by the public entity.

Resident rights, including the right to organize: From the beginning, HUD told residents that PETRA conversions would not adversely affect them and that they would go to bed and wake up in the same unit with the same rights. PETRA provides for a number of significant resident rights, including,

- rent set at 30 percent of family income,
- admissions which target the lowest income applicants,
- good cause eviction during the tenancy, including no evictions due to conversion,
- no rescreening due to conversion,
- procedural rights, such as a review of agency action,
- the right to return if displaced,
- the right to organize and for a legitimate organization to be recognized, and
- funding to promote resident organizing rights.

Residents’ multiple concerns are with the critical details of these provisions. By way of example, there are concerns, that

- the “no rescreening” prohibition should also apply at the time the resident accepts a voucher,
- any exception to the right to return should be strictly limited,
- public housing residents currently have significant grievance procedure rights and the review of agency action is less robust, and
- the standards for allocating the resident organizing funding.

HUD appears to agree on the issue of no rescreening of voucher tenants, wants to engage more on the issues of the allocation of the funding, and is considering changes to the provisions regarding the review of agency action. HUD’s position on returning residents is not clear, and none of the proposed changes are available in writing.

One for one replacement of hard units: Residents have always held that there should be no loss of hard units due to PETRA. HUD agrees with that policy with two exceptions. The first exception is for de minimis loss of units. The second exception may result for a jurisdiction in a loss of one-half of the hard units, which would be replaced with vouchers. Such a loss of units may occur where there is an adequate supply of affordable rental housing in low poverty areas as demonstrated with data, including a showing that,

- 80 percent of the vouchers issued in the last 24 months leased up within 120 days,
- the existing voucher holders are widely distributed, and
- there is a relatively high vacancy rate of units with rents that do not exceed the payment standard.

“HUD estimates that no more than 137,000 units of public housing, nationwide (10% of the total stock) are eligible for this second exception.” Residents strongly object to any loss of units, especially a loss of up to one-half of the affected units in a particular jurisdiction, because there is no jurisdiction where affordable housing units are not needed and such a loss is inconsistent with the objective of PETRA, which is to preserve units.

Housing choice: PETRA states that residents may move from a PETRA unit with a voucher. Residents may only move after two years and the number of available vouchers may not exceed one-third of the turnover vouchers of the administering public housing agency. Residents urge HUD to request more vouchers so that a family in a PETRA unit who wants to move will not adversely affect applicants on the voucher waiting list. HUD is considering reducing the two-year wait time prior to moving, unless the owner agrees to rehabilitate the public housing development. Another aspect of the transformation of rental assistance includes a competitive program to improve locational outcomes for households receiving rental assistance and to encourage the administrative consolidation of the voucher program.

Enforcement: PETRA authorizes the Secretary to sue for money damages and other relief to enforce any right conferred on the Secretary. Residents consider essential their ability to enforce individually or collectively those statutory provisions that create individual resident rights or residents’ rights to organize and be recognized. They also want a user-friendly administrative process to raise issues with HUD that involve their tenancies or program policy. Without such rights to obtain redress, the policies and objectives of PETRA are achievable only when the owner or public housing agency is committed and agrees to comply. Residents believe that PETRA will only be successful if residents may seek redress in court for the failure to comply.

Cost: Of the \$350 million requested, HUD is proposing \$290 million for the first year of PETRA, for which it anticipates that up to 300,000 units will be assisted and speculates that converting the entire public housing stock will cost \$1.26 billion annually above the 2011 requested funding levels of operating subsidies of \$4.829 billion and capital fund of \$2.044 billion. To be sufficient, the funding must cover the cost of the annual rental assistance contracts. It is unclear how that will happen. PETRA provides that the rent for the PETRA units (not the tenant’s share) may be set at up to 110 percent of the fair market rent. Fair market rents in many jurisdictions are \$500/month (\$6000/year) or more above the current public housing rents. Residents and housing advocates, as well as public housing agencies are concerned that the funding proposed by HUD is insufficient and that the problem of underfunding of public housing will persist.

More information is available regarding PETRA

HUD website

[http://portal.hud.gov/portal/page/portal/HUD/fy2011budget/signature_initiatives/transforming_rental_assistance/documents/;](http://portal.hud.gov/portal/page/portal/HUD/fy2011budget/signature_initiatives/transforming_rental_assistance/documents/)

National Low Income Housing Coalition website <http://www.nlihc.org/template/page.cfm?id=262>

National Housing Law Project Website, <http://www.nhlp.org/node/1333>, and

Center on Budget Policy and Priorities, <http://www.cbpp.org/files/3-16-10hou.pdf>