HOUSING JUSTICE NETWORK

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Assistant Secretary Sandra Henriquez
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410
(By Fax 202-619-8478 and email Sandra.Henriquez@hud.gov)

Dear Assistant Secretary Henriquez:

On behalf of the National Low Income Housing Coalition and the Housing Justice Network, we write to follow up on your response to an issue raised during a November 16 meeting with you, Secretary Donovan, and the Board and State Partners of the National Low Income Housing Coalition. At that meeting you stated your desire to look more closely at the demolition/ disposition application review process.

This commitment echoes the Secretary's August 2009 letter to Representatives Frank and Waters in which he agreed that public housing demolition applications needed to be reviewed more closely, including reviews "through the lens of number, location and affordability of units returning to the inventory." Secretary Donovan also acknowledged "the unintended consequences demolition and disposition may have had on the lives of public housing residents in the past, as well as a decrease in the number of long-term affordable housing units that has resulted in some cases."

As part of your review of the demolition/disposition application review process, we ask that you consider amending the regulations governing public housing demolition and disposition requests found at 24 C.F.R. part 970. The regulatory changes we would like to see fall under three broad categories: increasing transparency of the demolition/disposition process through stronger resident participation requirements and other measures; requiring PHAs to provide more information in demolition/disposition applications and other pre-submission requirements; and having HUD perform more rigorous reviews of those applications.

1. Transparency & Resident Participation

This Administration has been committed to a culture of transparency. Transparency in decision making is not only a value that supports better decisions, but it is absolutely necessary if there is to be meaningful tenant input in decision-making. Regularly tenants are asked to support demolition proposals without ever seeing the application; or if the application is made available, it contains little or no information regarding current or future plans. Controversy then results as residents struggle with the PHA for details or later attempt to enforce vague understandings. To

increase transparency, we strongly urge that HUD increase tenant and public access to PHA demolition and disposition plans both through an enhanced application format (discussed below in item #2) and through the internet. Internet accessibility should require PHAs to post on both the PHA's website and a publicly accessible HUD website, complete applications, modifications, and correspondence between HUD and the PHA.

Secretary Donovan has recognized time and again that meaningful tenant involvement is fundamental in all public housing decisions. The statutory demolition/disposition approval process also recognizes the importance of tenant input. For example, 42 USC 1437p requires that tenants must participate in the application process, that proposed demolitions be included in the PHA Plan public review process, and that disposition applications include an offer to the residents to purchase the property.

Unfortunately, the regulations at 24 CFR 970.7, 970.9 *et al.* add little to provide meaning to these requirements. As a result, despite statutory requirements and a clear departmental commitment to meaningful tenant involvement, the application processing has often rendered the tenant input requirements secondary and formalistic. For example, we have seen the Special Applications Center (SAC) process applications without any prior tenant review or without any prior discussion of the plans in the PHA Plan. The deficient application is processed and approved pending only a meaningless post approval tenant review. Similarly, the PHA Plan requirement, a crucial way for engaging tenants well in advance of the actual demolition application, has been circumvented by a determination that including the demolition or disposition in the PHA Plan is not a "substantial amendment." Finally, the resident offer to purchase, 24 CFR 970.9, 970.11 *et al.* has been rendered meaningless because the regulations do not provide even the most basic support for developing a realistic resident offer.

We believe that the regulations can, and should, be strengthened to require that meaningful tenant input include tenant participation in, and consideration of, the *completed* application *prior* to its submission to the SAC, and again later if there are substantial changes to an approved application. This could be accomplished by affording residents and resident organizations a public comment period at least ninety days before the PHA submits the application to HUD. Likewise, amending the regulations to state the self-evident, that demolition of a public housing project is a *substantial amendment* to the PHA Plan would send a strong signal to any PHA tempted to discount the importance of this requirement.

Finally, HUD must give regulatory support to the *clear statutory policy* that residents be provided with a meaningful priority opportunity to purchase. This should include, for example, as much advance notice of the application as possible and the opportunity for the type of intensive due diligence that would be offered to any private purchaser, as well as other supportive measures.

2. Additional Requirements For and Timing of Submission of Applications

As set forth in the prior section, meaningful resident involvement is only possible if the demolition/disposition application contains sufficient information for residents to make an informed decision on whether or not to support the application. Currently, clearly defective applications are accepted and processed, at times lacking resident input or prior PHA Plan involvement, and the defects are permitted to be remedied *ad hoc* and after the fact. Nowhere does the statute require or even permit the processing of an obviously defective application.

The demolition/disposition regulations should clarify that HUD will only process complete applications and that HUD must return incomplete applications to the PHA. Similarly, if the application substantially changes either before or after final approval, the process, including particularly tenant input, should begin again on the revised application.

To help residents (and HUD) evaluate demolition/disposition proposals, HUD should require the PHA to include additional information in the application. For example, the demolition/ disposition application should be required to include: (1) plans for reuse of the site on a short- and long-term basis; (2) plans for replacement units, if any, including size, number, location and affordability of replacement units, and any priorities or preferences for displaced tenants; (3) the number of Section 8 housing vouchers the PHA plans to request for relocation; (4) a description of any previous demolitions or proposed future demolitions by the same PHA; and (5) an analysis of any discriminatory impact (using the protected classes contained in the Fair Housing Act) that the activity may have on residents, waiting list applicants, and the eligible low income community if all or a substantial part of the units are disposed of or demolished and the residents displaced, together with a plan for mitigating any adverse impact. Finally, the PHA should be required to include in its application any written comments received from residents and/or resident organizations, and the PHA's written response to those comments.

In addition, HUD must clarify and enforce the requirement in 42 USC 1437p and 24 CFR 970.25(a) that PHAs may not begin shutting down public housing and relocating residents prior to approval of a demolition or disposition application. On a number of occasions PHAs have begun relocating tenants without receiving any demolition or disposition approval from HUD. This process effectively forecloses tenant input, indicating to the residents that their input is irrelevant. Ultimately it makes the eventual approval of the demolition or disposition a foregone conclusion, as it is extremely unlikely that HUD would require a PHA to reopen and restore an abandoned (and possibly vandalized) public housing structure. Nor should HUD permit, much less advise, the relocation of entire public housing projects as a "consolidation" without HUD approval. 24 CFR 970.25. HUD must provide more specificity regarding the meaning of "consolidation" and limit the situations in which it is applicable. Indeed, it would greatly improve the process were HUD to require that it be notified, and that there be tenant participation and PHA Plan notification before any "consolidation" relocations.

3. More Rigorous HUD Review of Applications

We propose four areas where HUD should more rigorously review demolition and disposition applications: compliance with civil rights requirements, obsolescence, relocation, and Section 3.

a. Compliance with Civil Rights Requirements: Independent of 42 USC 1437p, HUD has an overriding obligation to comply with Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, including the duty to affirmatively further fair housing. Also pursuant to Executive Order 12898, HUD must "identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations . . . ." There is probably no area among HUD programs that has more civil rights implications than the demolition or disposition of public housing. Demolitions and dispositions frequently result in the involuntary relocation of entire minority communities. In addition, such activity can

perpetuate or increase racial segregation if there is no plan to assist affected minority households to find housing in new communities of their choice.

We believe that the aforementioned civil rights laws and executive order require HUD to conduct a more intensive review of demolition/disposition applications. That review should be performed by HUD's FHEO division and should include: 1) a description and analysis of the impact of the proposed demolition and/or disposition on the supply, location, availability and affordability of housing for racial and ethnic minorities, persons with disabilities, female-headed households, families with children, and to the extent relevant, other groups protected by the Fair Housing Act; 2) identification of any potentially discriminatory effects; and 3) to the extent discriminatory effects are identified, a description of less discriminatory alternatives and any concrete steps that the PHA could take to avoid, minimize, or mitigate the potentially discriminatory effects. After completing this review, FHEO should determine that the demolition or disposition application complies with the aforementioned civil rights requirements and certify that the proposed demolition or disposition and the accompanying relocation, as well as any planned replacement housing, will mitigate any discriminatory impacts, affirmatively further fair housing, and further the economic and educational opportunities of the residents.

b. Obsolescence: Fundamental to any demolition application review is consideration of the feasibility of the preservation and rehabilitation alternative strategy. The statute, 42 USC 1437p(a)(1)(A), provides only a general definition of obsolescence and no measure for determining the "cost effectiveness" of a modification program. Prior to 2006 the regulation's test of obsolescence (i.e., whether a reasonable program of modifications is cost-effective to maintain and prolong the useful life of a development) required that the cost of rehabilitation and modernization exceed 90 percent of HUD's total development cost (TDC). Given the importance of preserving the existing public housing stock, we believe this provided a reasonable standard for comparing the cost of new construction with the cost of rehabilitation.

In 2006 that standard was reduced to the current standard of 62.5 percent of TDC for elevator structures or 57.14 percent of TDC for all other types of structures. 24 CFR 970.15(a)(2). This new standard effectively rendered the test for obsolescence meaningless and barred PHAs from pursuing preservation strategies. Any reasonable program of modernization for forty-year old buildings will often exceed the new lower standard—while still being less than the prior 90 percent standard. Simply restoring the prior 90 percent standard would enable PHAs to meaningfully consider the feasibility of alternatives to demolition and the overall result in cost savings, and would significantly increase the ability of the SAC to realistically scrutinize the cost of modifications so as to preserve public housing that is safe and sound and has remaining useful life.

c. Relocation: Other than stating that the Uniform Relocation Act (URA) does not apply, the statute, at 42 USC 1437p(a)(4), provides only a general outline of mandatory relocation requirements and fails to reference a related obligation of HUD to minimize displacement (Pub. L. No. 95-557, § 902). The general relocation requirements closely resemble the general requirements of the URA and demand regulatory specification. However, the HUD regulations, at 24 CFR 970.21, do little more than repeat the general commands of the statute. A fully fleshed out, universally applicable set of relocation guidelines is the minimum owed to these vulnerable families, often involuntarily uprooted from long established housing and communities. It should not be acceptable that in one PHA families are simply moved to other public housing units in equally distressed developments, while in others they are provided with a

voucher and told to leave, and yet in another they are provided with housing choices, extensive relocation, the right to return, fair housing counseling, and compensation. Yet the current regulations provide little guidance.

We believe that the regulation, 24 CFR 970.21, should specifically require that tenants be offered the choice of a tenant protection voucher at the time of relocation since PHAs are eligible to receive a tenant protection voucher for each occupied unit approved for demolition. The regulation should incorporate the counseling required by the URA, as well as mobility counseling. We believe at a minimum the regulations should require the PHA to include comprehensive housing search assistance for households receiving voucher assistance, including showing available units in neighborhoods with high performing schools and low concentrations of poverty. In addition, the residents must be assured that their total housing cost will not increase through the use of vouchers. This may require supplementation of their rent subsidy for a period of time to account for unreimbursed utility expenses. In addition, families should be compensated for out of pocket moving costs including security deposits, application fees, etc. Finally, if replacement housing is provided, all displaced tenants should have the right to return.

d. Section 3 Economic Opportunities for low and very low income families: Unemployment is at historically high levels, and is most severe amongst the lowest income workers. This Administration has demonstrated a commitment to addressing unemployment. The demolition, disposition and reconstruction of public housing provides significant opportunities for jobs for the lowest income individuals, as well as contracts for businesses owned by the lowest income individuals. Despite the fact that Section 3 is applicable to demolition and activities arising from demolition, the current demolition/disposition regulations do not mention Section 3. This disconnect should be addressed. HUD should review any application for demolition (and reconstruction, if applicable) to determine how the PHA plans to maximize employment opportunities for Section 3 individuals. Ideally, the application would set forth numbers and job classifications for the anticipated jobs and the dollar amounts that will be set aside for contracting opportunities for Section 3 businesses generated by the proposed activity.

We thank you for this opportunity to continue our dialogue concerning this issue. We would welcome the opportunity to further describe our suggestions. Please contact Catherine Bishop at cbishop@nhlp.org or 415-546-7000 ext. 3105 for any follow up questions.

Sincerely,

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