



Selling off Public Housing: A Human Rights Analysis of HUD's New Funding Plan

“Housing is a human right.”

– *Department of Housing and Urban Development Secretary, Shaun Donovan*

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including ... housing ...”

- *Article 25, Universal Declaration of Human Rights*

Introduction

The Department of Housing and Urban Development’s (HUD) 2011 budget proposal includes an initiative that would begin the process of project-basing the nation’s public housing stock. Changing the funding stream of public housing to a project-based voucher system not only threatens the long-term housing security of public housing residents, but also potentially places the public ownership of this vital resource into private hands. While we recognize the challenges HUD faces in securing adequate funding for our affordable housing programs, including the public housing program, the current proposal will potentially have long-term, adverse impacts on public housing communities across the country. ***We, therefore, oppose the proposal as currently developed and offer suggestions that would bring HUD’s initiative in closer alignment with the human right to housing framework.***

Overview

HUD’s 2011 budget proposal includes the Transforming Rental Assistance (TRA) Initiative. Under the proposal, TRA would allocate \$350 million for the “first phase of a multi-year initiative to regionalize the Housing Choice Voucher Program and convert public housing to project-based vouchers.”¹ HUD’s intention in the first year of TRA is to project-base approximately 280,000 public housing units currently operated, managed and owned by public housing authorities.² As this is the first phase of the initiative, it is near certain that HUD will seek to project-base additional public housing units.

Public housing and project-based Section 8 rental assistance programs are important cornerstones to our national housing policy. They are designed to provide decent housing to vulnerable, low-income communities – both those who have relied on this assistance for many years and those newly impacted by our current economic downturn. Despite the vital role public housing has played for seven decades, HUD is attempting to incorporate market-based schemes to a program that was specifically designed to provide accessible housing to communities that have been shut out of or have difficulty accessing the private market.

The HUD proposal would allow housing authorities to convert their public housing units into project-based Section 8 and provide tenants the option of participating in the project-based voucher program. This theoretically would entail the creation of a new entity, currently undefined, which would be a hybrid of the current project-based voucher program and the project-based section 8 rental-assistance program.³ This raises many questions and potential dangers, including public housing switching from public to private ownership and decreasing the accountability mechanisms currently available to residents. While both the public housing and project-based Section 8 programs play important roles in housing our most vulnerable communities, both have a separate set of strengths and weaknesses and are not substitutes for each other.

Given the current economic crisis, which for many is a housing crisis, it is important for the U.S. government to strengthen its commitment to public housing, instead of potentially endangering its long-term sustainability. Consequently, this document outlines the threats implicit in the HUD proposal and evaluates those threats within a human rights framework.

What is Public Housing?

In the wake of the Great Depression, the U.S. government expressed a commitment to provide decent shelter and job opportunities for the countless Americans in desperate need of such assistance. From the 1930s to the 1970s, government policy reflected the understanding that access to safe, decent, and affordable housing is a central component to the basic ability to lead a healthy and productive life. The nation's commitment to providing low-income individuals and families with a home was codified in the U.S. Housing Act of 1937 and exemplified in several programs, including the nation's public housing system.

Public housing, as a public good, was created as one means to ensuring access to adequate housing for those with the greatest need. For the past seventy years, public housing has served as housing of last resort for families on the brink of economic collapse and devastation, providing shelter, safety and the basic necessities of life for many communities. Over 1.2 million households in the United States live in public housing, which translates into approximately 2.3 million residents living in 3,500 municipalities. Thirty-two percent of public housing residents are elderly, forty-one percent are families with children and thirty-seven percent are disabled.⁴

What is the Section 8 Program?

Apart from creating the public housing program, the U.S. government has also developed a range of other programs directed towards creating affordable housing. The largest of these programs, the Section 8 program, consists of the Housing Choice Voucher Program (HCVP) and Project-Based Voucher Program. This program provides affordable housing to 1.25 million households. Project-based Section 8 is based on a direct subsidy of rent, through a contract between the owner and the local housing authority that administers the HUD program. The subsidy is tied to a specific property and is time-limited; whereas under HCVP a family that is issued a housing voucher is responsible for finding a suitable housing unit on the private market where the owner agrees to rent under the program. A housing subsidy is paid to the landlord directly by the housing authority on behalf of the participating family.

What are the major differences between the Public Housing and Section 8 programs under a Human Rights Analysis?

The tables below compare the public housing and Section 8 programs under the human right to housing framework. In particular, the tables discuss the ways in which these programs fulfill or violate central components of the human right to housing.⁵ In addition to the central components, each program is considered with respect to resident participation and accountability.

Resident Participation

Public Housing	vs.	Section 8
<p>Under Regulation 964, federal rules allow significant resident participation. In particular, under Regulation 964, public housing residents are empowered to form resident councils and participate directly in the management of their housing development.⁶ While the protections offered by Section 964 should be strengthened, they offer an opportunity for direct participation that residents have utilized throughout the years.</p> <p>For instance, every three years residents elect a resident council, which presents residents' concerns directly to the housing authority and works with the housing authority to address these concerns. Pursuant to federal guidelines, resident councils receive funding (\$25 per year per unit) from the housing authority and work directly with the housing authority on many issues, including directly informing and participating in the annual plan process through the Resident Advisory Board.⁷</p>		<p>Since Regulation 964 does not apply to Section 8 residents, there are fewer avenues for participation available to them.⁸ For instance, there is no monetary assistance towards resident organizing in Section 8 units and no rules regarding required recognition of resident councils.</p> <p>Additionally, since these properties are often privately owned, there is less opportunity for residents to directly participate in the management of these units.</p>

Accountability

Public Housing	vs.	Section 8
<p>Public housing developments are owned by a public agency that is accountable to the American people. Consequently, residents and advocates have significant avenues to ensure accountability and seek redress when housing rights violations occur. As stewards of public property, housing authorities must follow certain guidelines and procedures, including public disclosure of their decision-making that impacts residents' right to housing. Additionally, residents and advocates can access federal decision-makers at HUD when dialogue with local housing authorities reaches an impasse.</p>		<p>Project-based Section 8 may be owned by a housing authority, with HUD field office approval. However, there is no limitation on ownership. Consequently, these units are often owned and operated by private owners who receive subsidies from the government. As such, owners may be individual landlords, for-profit or nonprofit corporations. Under the voucher system, the units are owned by private landlords.</p> <p>The absence of direct government control in this structure of ownership leaves residents without the government accountability and transparency afforded to public housing residents. In fact, given the uncertain ownership status of some buildings, residents of Section 8 units are sometimes unsure of whom to go to for redress when issues arise.</p>

Security of Tenure

Public Housing	vs.	Section 8
<p><i>Term of Residency:</i></p> <p>These units must remain as public housing for 40 years and an additional 20 years if the development has been modernized or 10 years after the receipt of operating subsidies.⁹</p> <p><i>Eviction Proceedings:</i></p> <p>Eviction proceedings for public housing residents require a formal court appearance. Resident organizations have a role in selecting the hearing panel or officer.¹⁰</p> <p><i>Disposition and Demolition:</i></p> <p>Public housing units are subject to disposition and demolition restrictions. These restrictions require HUD’s approval prior to disposition or demolition, resident participation throughout the process and relocation assistance if residents are displaced.¹¹</p>		<p><i>Term of Residency:</i></p> <p>Project-based contracts have time limits that are subject to a housing authority’s agreement with a private landlord. Thus, the project-based system does not guarantee a stock of permanent housing units. Currently, the initial term for these units is up to 15 years and a housing authority may negotiate for unlimited extension terms, subject to the availability of sufficient appropriated funds.</p> <p>Additionally, many of the project-based contracts that had 20 to 40 year terms have expired or will soon expire, allowing private owners the option to exit the government program and convert the property to a non-affordable use.¹²</p> <p><i>Eviction Proceedings:</i></p> <p>Section 8 residents are only offered an administrative hearing – they are not entitled to a formal court appearance. Their right to an administrative hearing covers limited purposes, e.g., change in rent and termination of assistance.¹³</p> <p><i>Disposition and Demolition:</i></p> <p>Project-based units are not subject to HUD’s approval for disposition or demolition. Project-based units are governed in accordance with the terms of the contract between the owner and the housing authority. Such contracts may be breached, terminated, or not renewed without any resident participation or protections.</p>

Accessibility

Public Housing	vs.	Section 8
<p>HUD has minimum residency requirements for occupancy in public housing. Local housing authorities may, but are not required to, adopt additional local preferences, such as for working families and homeless individuals. Thus, the criteria for residency in public housing can vary from locality to locality.</p>		<p>Since Section 8 units may not be directly operated by the government, residency requirements are often subject to the preferences of individual owners. Such requirements may include, but are not limited to, background criminal, drug conviction and/or credit checks.</p>

Location

Public Housing	vs.	Section 8
<p>Many public housing developments are home to families and neighbors that have developed tight-knit communities over years, if not decades. While some public housing developments are located in low opportunity areas, many are located in healthy, productive environments near city centers that provide significant public infrastructure. Academic research and studies have examined the long-term impacts on health and other social factors when such communities are disrupted and residents are displaced.¹⁴</p>		<p>Section 8 units are often in areas just low in opportunity as some public housing developments.¹⁵ An underlying assumption in HUD's proposal is that by project-basing public housing and offering vouchers, residents will gain increased mobility, leading to a de-concentration of poverty and greater opportunities.¹⁶ While we acknowledge the merits of increased mobility, HUD's approach does not adequately address the existing limitations on Section 8 residents' mobility.</p> <p>In particular, fair housing advocates have long argued that practices such as source of income discrimination and limited assistance to families (including mobility counseling) in the Section 8 program significantly undermine the success this increased mobility is meant to achieve.¹⁷</p>

Affordability¹⁸

Public Housing	vs.	Section 8
<p><i>Individual Affordability:</i></p> <p>Current funding for public housing maintains that residents pay 30% of their adjusted income for rent and utilities after certain income deductions.</p> <p><i>Long-term Affordability:</i></p> <p>Public housing must remain public housing for 40 years (or longer for units that have been modernized or received operating subsidies).¹⁹</p> <p><i>Income Increases</i></p> <p>In public housing, the local housing authority has discretion to apply certain income deductions. For example, earned income disregard is possible for a four-year period for all working adults in a household.²⁰ In addition, a public housing authority may set an income cap on household income, but is not required to do so. Thus, residents do not automatically lose their right to public housing if their income increases. Instead, the family may have to pay a flat rent equal to the market rent.²¹ If the household income should decrease, the family can get the rent reduced.</p>		<p><i>Individual Affordability:</i></p> <p>Current funding for Section 8 maintains that residents pay 30% of their adjusted income for rent and utilities after certain income deductions.</p> <p><i>Long-term Affordability:</i></p> <p>Presently, project-based units can only enter into 15 year contracts.²² Should these units then “convert” to market rate or even "tax credit" levels at the end of 15 years, Section 8 residents and local communities may be faced with an extreme affordable housing crisis.</p> <p><i>Income Increases</i></p> <p>In project-based Section 8, currently the earned income disregard only applies to disabled family members who are working.²³ Therefore, project-based residents could lose their housing subsidy should their income increase.</p>

Recommendations

In order for HUD’s proposal to come closer to fulfilling the human right to housing, several key concepts must be incorporated.

- **Ensuring the Right to Participation**

Under any project-basing plan, HUD must ensure that individuals and communities are able to take an active role in the decision-making that impacts their housing rights. Since project-based housing is not government-owned, federal standards of participatory decision-making do not apply. Hence, HUD must ensure that participa-

tory protections, including but not limited to Regulation 964, remain intact under any new scheme.

- **Maintaining Accessibility and Accountability**

Project-based developments are often owned by private actors with little to no accountability mechanisms. Even if HUD creates a hybrid board of ownership, which includes representation from local housing authorities and nongovernmental actors, it is not guaranteed that residents will have redress to government as is currently available in public housing. Hence, any proposal would have to ensure a process whereby the government remains accountable and accessible to residents' needs and concerns.

- **Safeguarding Affordability**

It is likely that converting public housing to the project-based system will create a complex web of individual owners and private capital interests. The result is a conflict between profit-driven interests and the basic need for affordable, decent housing. This is particularly relevant if housing authorities are able to access capital through the private market.²⁴ Hence, under any new scheme, owners must remain committed to keeping the units affordable. In order to prevent the loss of public housing to the private market, HUD needs a process by which the financial health of housing authorities participating in any new program would be evaluated. This evaluative process would serve as a potential safeguard to ensuring that housing authorities with weak financial positioning do not fall victim to private interests, leaving residents vulnerable to private takeovers.

- **Protecting Security of Tenure**

Residents should possess a degree of security of tenure that guarantees protection against forced evictions, harassment, and other threats, including predatory redevelopment and displacement. While project-based rental assistance programs have much to be commended for, unlike public housing, they are based on contracts that may be terminated after some years, at the option of landlords. HUD is required to provide vouchers to residents that face such displacement, but the long-term affordability of the unit itself is lost and the community permanently loses affordable housing. Consequently, under any new scheme, HUD must ensure that private owners guarantee the long-term (40 years' minimum) affordability of these units. Additionally, there must be guarantees that during the conversion process there is no displacement of residents, and, in instances of rehabilitation, there be phased rehabilitation and adequate, on-site relocation support and assistance.

- **Creating a Private Right of Action**

HUD's current proposal is not unique in that HUD administrations throughout the years have tried with varying degrees of success to reform the agency and its programs. Regardless of whether a reform succeeds or fails, it is the residents that ulti-

mately bear the brunt of HUD decision-making. Consequently, any proposal must include a private right of action to ensure that residents have adequate redress should the current proposal fail to meet the community development objectives envisioned by HUD.

Conclusion

Given the significant funding short-falls facing public housing, we understand HUD's interest in finding alternative sources of supporting the nation's public housing program.²⁵ Yet, the project-based Section 8 program varies significantly from the public housing program, and any policy to convert public housing to project-based housing must first address and resolve the limitations of the project-based system. Converting to project-based Section 8 should not simply be a measure to access a different funding stream. We, therefore, caution HUD on replacing an imperfect system with something that could be far worse.

Public housing has undergone significant policy changes in the past decades— some with disastrous results²⁶— which at the time appeared prudent to decision-makers. Many of these policy changes were untested before implementation. We understand that a few jurisdictions have already eliminated their public housing programs and converted to a project-based system.²⁷ ***Consequently, before there is any significant change to the federal public housing program, we request that an impact study be conducted in jurisdictions that have eliminated their public housing that details the specific ways low-income communities have fared since the change.***

There is an intrinsic value to public housing continuing to be owned and operated by the U.S. government. Public housing is a public good available to anyone in need of this vital resource. As our national economy continues to slip and more and more Americans face uncertain futures in this jobless recovery,²⁸ federal officials should be seeking ways to expand our affordable housing programs, including public housing, not eliminate them. For decades the question has been raised, "Who will own our public spaces?" From public schools to our national parks, ordinary Americans have responded with a resounding "No!" to the encroachment of private capital on public interests. Public housing is no different. Therefore, resident groups, as members of the Campaign to Restore National Housing Rights and the Housing Justice Movement, speak with a unified voice in rejecting any policy that would bring private interests to unduly control and manipulate this scarce and essential resource.

Endnotes

¹ Office of Management and Budget. *Budget Proposal of the U.S. Government: Fiscal Year 2011*. <http://www.whitehouse.gov/omb/budget/fy2011/assets/housing.pdf>.

² Department of Housing and Urban Development. *Public and Indian Housing, Transforming Rental Assistance: 2011 Summary Statement and Initiatives*. <http://www.hud.gov/offices/cfo/reports/2011/cjs/tra2011.pdf>.

³ As the proposal has not yet been released, residents and advocates are unclear as to how this proposal will work and how the ownership of public housing facilities will be affected.

⁴ Center for Budget and Policy Priorities. *Introduction to Public Housing*. <http://www.cbpp.org/files/policybasics-housing.pdf>.

⁵ The seven components to the Human Right to Adequate Housing are: *security of tenure, accessibility, affordability, habitability, availability of services, location, and cultural adequacy*. United Nations, Office of the High Commissioner for Human Rights. *The Right to Adequate Housing, General Comment 4*. <http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument>.

⁶ See 24 CFR 964.1 et seq; 24 CFR 966.1 et seq.

⁷ See 24 CFR 964, Subpart B, et seq; 42 USC 1437c(1) et seq.

⁸ 24 CFR 245.5 et seq gives Section 8 residents the right to organize and to establish a tenant organization to address issues “related to their living environment” such as terms and conditions of tenancy and activities related to housing and community development. This does not include funding for resident organizing, which is included in Regulation 964. Despite the lack of federally recognized participation for Section 8 residents, many have formed their own, independent bodies that voice their collective concerns. One such organization, the National Alliance of HUD Tenants, represents the concerns of Section 8 residents at the national level.

⁹ See 42 USC 1437c(a)(1); 42 USC 1437g(d)(3).

¹⁰ See 24 CFR 966, Subpart B.

¹¹ See 42 USC 1437p.

¹² Gray, Madison. “Low-Income Housing: Another Crisis Looming?” *Time*. <http://www.time.com/time/nation/article/0,8599,1839187,00.html>.

It should be noted that the Section Eight Voucher Reform Act (SEVRA) is set to be introduced, which may give some housing authorities the ability to impose time limits and work requirements on public housing residents and voucher holders. See National Low Income Housing Coalition. “Testimony of Linda M. Couch, Deputy Director of the National Low Income Housing Coalition presented to the Housing and Community Opportunity Subcommittee, Financial Services Committee, United States House of Representatives June 4, 2009.” <http://www.nlihc.org/doc/NLIHC-SEVRA-June-2009.pdf>.

¹³ See 24 CFR 982.555.

¹⁴ Fullilove, Dr. Mindy. *Root Shock: Tearing Up City Neighborhoods Hurts America, and What We Can Do About It*. New York: Ballantine, 2004. See Also Guzman, Carolina and Rajiv Bhatia, Program on Health Equity and Sustainability, San Francisco Department of Public Health with Chris Durazo, South Market Community Action Network. *Anticipated Effects of Residential Displacement on Health: Results from Qualitative Research*. http://www.sfpbes.org/publications/reports/Trinity_Focus_Groups.pdf.

¹⁵ National Housing Institute. “Section 8 Is Broken.” <http://www.nhi.org/online/issues/127/section8.html>.

¹⁶ HUD has stated that residents in this new, hybrid program would be given priority when seeking to opt into the Section 8 voucher program. As there are already significant waiting lists across the country for Section 8 vouchers, the current proposal would severely undermine accessibility for those currently on waiting lists. The 2004 Hunger and Homelessness Survey by the U.S. Mayors Conference states that the average wait for Section 8 vouchers was 35 months, See <http://usmayors.org/hungersurvey/2004/online/online/HungerAndHomelessnessReport2004.pdf>.

See Also Gorenstein, Dan. “Section 8 Shortfall Leaves Thousands Waiting.” *National Public Radio*. <http://www.npr.org/templates/story/story.php?storyId=112080752>.

¹⁷ Lehe, Katherine. “Courts Consider Landlord Defense to Source of Income Law.” National Housing Law Project. http://www.nhlp.org/files/03%20NHLP_Bull_NovDec08_source%20of%20income%20defense.pdf See Also Fountain, John W. “Suit Says Chicago Housing Renewal Plan Perpetuates Segregation.” *New York Times*. <http://www.nytimes.com/2003/01/24/us/suit-says-chicago-housing-renewal-plan-perpetuates-segregation.html?pagewanted=1>.

¹⁸ In the public housing program, housing authorities must target extremely low-income persons for at least 40% of new public housing residents. See 24 CFR 960.202b; USC 1437n(a) In the Section 8 program, a housing authority must target 75% of its Section 8 allocation for extremely low-income households, the 75% requirement is a *combination* of the project-based and Section 8 voucher programs See 24 CFR 983.251(c)(6). Thus, a housing authority could conceivably target higher income levels for project-based units.

¹⁹ See 42 USC 1437g(d)(3); 42 USC 1437c(a)(1).

²⁰ See 24 CFR 960.225(b)(3).

²¹ See 24 CFR 960.261.

²² See 42 USC 1437f(o)(13)(F-G).

²³ See 24 CFR 5.617.

²⁴ With respect to the 2011 budget proposal, HUD has discussed the possibility of allowing housing authorities to “leverage” their properties as collateral for private loans. Department of Housing and Urban Development. *Public and Indian Housing, Transforming Rental Assistance: 2011 Summary Statement and Initiatives*. www.hud.gov/offices/cfo/reports/2011/cjs/tra2011.pdf Consequently, in the event of default, public housing developments could become the assets of private lending institutions – allowing them to utilize the properties as they see fit, including converting them to non-affordable properties that would greatly impact long-term affordability for residents and surrounding communities.

²⁵ Beginning in 2003, Congress did not fully fund the operating fund for the public housing program. This resulted in a funding drop of as low as 83.4% in 2007 and 88.42% in 2009. In 2010, it will be nearly fully funded at \$ 4.78 billion. See Department of Housing and Urban Development. *Operating Fund Annual Report Calendar Year 2009*. Feb 24 2010. www.hud.gov/offices/pih/programs/ph/am/of/opfund-report-09.pdf See Also Center for Budget and Policy Priorities. “Update on 2010 Funding for Housing Vouchers and Other HUD Programs.” www.cbpp.org/files/2010-housing-funding.pdf However, due to the historical under-funding of the program, many housing authorities have used their capital funds to pay for ongoing maintenance. Hefler, Jan and Jennifer Lin. “A boost for local public housing.” *Philadelphia Inquirer*. http://www.philly.com/philly/classifieds/real_estate/20090301_Local_public_housing_set_for_aid_boon.html See Also Riviera, Ray. “A History of Problems, in a Time of Dwindling Budgets.” *New York Times*. <http://www.nytimes.com/2008/08/20/nyregion/20elevators.html>.

Although there has been underfunding of the Section 8 program, its funding has been more reliable. Fischer, William, Douglas Rice and Barbara Sard. “HUD Budget Contains Major Funding Shortfalls.” Center for Budget and Policy Priorities. <http://www.cbpp.org/cms/?fa=view&id=128>.

²⁶ Celimli, Isil and Sudhir Venkatesh. “Tearing Down the Community.” National Housing Institute. <http://www.nhi.org/online/issues/138/chicago.html>.

²⁷ Weisberg, Lori. “Affordable Rent Plan Approved by Council.” *San Diego Union Tribune*. <http://legacy.signonsandiego.com/news/business/20080611-9999-1b1housing.html> See Also Weisberg, Lori. “Very-low income housing hard to find, study says.” *San Diego Union Tribune*. <http://www.signonsandiego.com/news/2009/dec/01/very-low-income-housing-hard-find-study-shows/>.

²⁸ Goodman, Peter S. “Millions of Unemployed Face Years Without Jobs” *New York Times*. <http://www.nytimes.com/2010/02/21/business/economy/21unemployed.html?emc=eta1> See Also Healy, Jack and Catherine Rampell. “Bernanke Says Recovery Is at Least a Year Away.” *New York Times*. <http://www.nytimes.com/2009/02/25/business/economy/25econ.html?8br>.

Joint Publication
Campaign to Restore National Housing Rights and Housing Justice Movement

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