

## Selling Off Public Housing

"Housing is a human right."

– *Dep't of Housing & 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

Over the past several years, our nation has been plagued by an economic crisis that for low-income communities parallels the Great Depression.<sup>1</sup> The impacts of this crisis, which began in the housing sector, have spanned the nation – affecting both rural and urban communities and traversing racial and ethnic lines.<sup>2</sup> Millions of jobs and homes have been lost and Americans are finding it harder to secure affordable housing and obtain livable wages.<sup>3</sup> The national unemployment rate is just under 10 percent,<sup>4</sup> and is much higher in communities that were already in crisis. Very low-income households, for instance, are experiencing unemployment rates that top 30 percent.<sup>5</sup> Given the bleak situation many households face, it is no surprise that foreclosure rates have surged<sup>6</sup> with local and state homeless agencies reporting as much as a 61 percent rise in homelessness.<sup>7</sup> Federal Reserve Chairman Ben Bernanke has acknowledged that our so-called recovery from the recession will take several years to ensure that ordinary Americans have access to much-needed jobs.<sup>8</sup>

In the wake of these trying times, communities are employing a myriad of tactics to deal with the economic devastation. Without housing and nowhere to go, tent cities have popped up across the nation from Seattle, Washington to Athens, Georgia.<sup>9</sup> Some housing advocacy groups, like the Take Back the Land movement, have focused attention on the plentiful supply of vacant, bank-owned, foreclosed homes by reclaiming such properties for families in need of shelter.<sup>10</sup> Other groups are bringing legal actions against the financial industry seeking restitution for potential fraudulent activities which many believe led to the current crisis,<sup>11</sup> and some are petitioning local sheriffs' offices and similar municipal bodies, requesting foreclosure forbearance.<sup>12</sup>



The crisis has been global in scope, and the international community is increasingly recognizing that the private market alone cannot provide adequate housing for everyone. During her 2009 official mission to the United States, the United Nations Special Rapporteur on the Right to Adequate Housing, Raquel Rolnik, stated, "The belief that markets will provide adequate housing for all has failed. The current crisis is a stark reminder of this reality."<sup>13</sup> She further emphasized that the framework of "housing as real estate rather than social need" is a root cause of displacement and housing insecurity."<sup>14</sup>

Few would dispute that this is a time when the federal government should be strengthening its commitment to providing adequate housing for everyone. Yet, the U.S. Department of Housing and Urban Development ("HUD") has announced a radical proposal that would jeopardize the long-term sustainability of a resource that could form part of the solution. HUD's Transforming Rental Assistance initiative ("TRA") would expand and expedite the process of privatizing the nation's public housing stock, while risking the immediate loss of 50 percent of all converted units. Such a move would allow the private interests that played a significant role in the current economic crisis to potentially have considerable control over this important public good.

Changing the funding stream of public housing to a project-based debt financing system not only threatens long-term housing security for public housing residents, it also limits opportunities for expanding this resource to the newly-impacted, while potentially placing public housing into private hands. While we recognize the challenges HUD faces in securing adequate funding for its affordable housing programs, including the public housing program, the current proposal will potentially have greater long-term, adverse impacts on communities across the country.

## History of HUD's Transforming Rental Assistance Initiative

On February 1st, 2010, HUD unveiled its Fiscal Year 2011 budget proposal, which sought to severely underfund the public housing Capital Fund in favor of its private financing initiative, TRA.<sup>15</sup> From March to May 2010, residents and their allies delivered messages of strong opposition to this proposal through letters directed at HUD and key members of Congress.<sup>16</sup> Resident leaders were also brought together by the National Housing Law Project to provide HUD with input on the proposal through community dialogues at HUD's headquarters in Washington, D.C.<sup>17</sup> During the group's April 2010 meeting in D.C., residents organized the delivery of their own letter of opposition.<sup>18</sup>

Despite clear resident opposition and rejection by Congress of its 2011 budget proposal, in May 2010, HUD published a TRA Leveraging Calculator<sup>19</sup> and rolled out its legislative proposal for TRA, the Preservation Enhancement and Transformation of Rental Assistance Act of 2010 ("PETRA").<sup>20</sup> Later that month, the House Financial Services Committee held a hearing on PETRA, during which residents and their allies raised serious concerns about the proposal, which were echoed by Chairman Barney Frank (D-MA) and Representative Maxine Waters (D-CA).<sup>21</sup> In fact, Representative Waters told HUD Secretary Shaun Donovan to "really think about some of the questions" raised by residents, and if "still interested in pursuing it, map out a time over the next two years to meet with residents. . . talk with advocates. . . and have more hearings."<sup>22</sup>

Since the hearing, HUD has continued to move forward with TRA.<sup>23</sup> Most recently, at the end of 2010, HUD found a congressional sponsor for TRA, Representative Keith Ellison (D-MN). In December, Representative Ellison introduced a lightly edited version of PETRA under a new name, the Rental Housing Revitalization Act ("RHRA").<sup>24</sup> HUD has promised that Representative Ellison will reintroduce RHRA in the 112<sup>th</sup> Congress.<sup>25</sup>

***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 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 ensuring all Americans were provided access to decent housing.<sup>26</sup> The U.S. Housing Act of 1937 demonstrated this commitment with the creation of the nation's public housing system for low-income families.<sup>27</sup> 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.

For the past seventy years, public housing has served as one of the few options available to very low-income individuals and families for stable and affordable housing.<sup>28</sup> Designed to address the shortcomings of the free market felt so acutely during the 1930s, public housing was intentionally removed from the instabilities of market forces to ensure permanent affordable housing options for those with the greatest need without regard to market conditions. Roughly 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.<sup>29</sup> Thirty-three percent of public housing residents are elderly, 41 percent are families with children and 37 percent are disabled.<sup>30</sup>



Unfortunately, in the last 30 years, public housing has faced significant funding shortfalls and suffered the disastrous consequences of flawed public policies. Since HUD's budget was slashed by 77 percent in the 1980s, public housing has never again been fully funded.<sup>31</sup> Despite the growing need cataloged by lengthy waiting lists, the chronic underfunding has led to the end of new construction, the dilapidation of public housing units, and opened the door to policies that promote demolition and privatization of the remaining units.<sup>32</sup> In particular, the HOPE VI and Choice Neighborhoods programs, of which RHRA is the next iteration, have proven to lead to large-scale family displacement and the permanent loss of over 210,000 public housing units.<sup>33</sup> Coupled with these shortcomings, HUD has created additional barriers for those trying to attain or retain public and subsidized housing through punitive, arbitrary and irrational criteria.<sup>34</sup> The resulting abusive monitoring of residents' "worthiness" of assistance has artificially shortened waiting lists and led to a "constant threat" of eviction (and often homelessness) for "violations" as simple as households having a family member temporarily stay with them.<sup>35</sup>





RHRA would overhaul the way public housing is both funded and operated and exacerbate these negative trends. It would fundamentally alter the ownership structure of public housing so that federal funds may be redirected through a system similar to the existing Section 8 project-based voucher program.<sup>36</sup> That is, federal funds would cease to be budget-based subsidies that pass through the public housing operating and capital funds; instead, they would become market-based subsidies for operating expenses, requiring owners to rely heavily on access to private financing, such as mortgages, for capital needs improvements.<sup>37</sup> While 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 ("PHAs"),<sup>38</sup> RHRA would go further, enabling HUD to seek funding to project-base additional public housing units year after year.

## 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 increasing access to affordable housing on the private market. The largest of these programs, the Section 8 Housing Choice Voucher Program, was created in 1974 and consists of two types of rental assistance vouchers – tenant-based and project-based.<sup>39</sup> Project-based vouchers are tied to a small percentage of a property's available rental units for a contractually-limited amount of time;<sup>40</sup> whereas a tenant-based voucher is essentially a paper certificate, which leave a family responsible for finding a suitable affordable unit on the private market with an owner willing to rent under the program within a 60-120 day time restriction.<sup>41</sup> Over 2 million residents receive vouchers through the Section 8 program.<sup>42</sup>

The original intention of the Section 8 program was to end concentrations of poverty by promoting mixed-income communities and providing low-income families with the ability to move out of poor neighborhoods and into areas with better schools, job opportunities, and living conditions.<sup>43</sup> Despite commendable objectives, Section 8 often has failed these goals in practice. In fact, arguments have been presented that instead of creating areas of mixed-income and opportunity, Section 8 housing is actually the "tipping point" driving middle-class residents out of neighborhoods and re-concentrating low-income families where the housing market is "soft."<sup>44</sup> Additionally, residents' needs have overwhelmed the insufficiently funded program and many localities have extremely long Section 8 waiting lists (in addition to public housing waiting lists);<sup>45</sup> and, in some areas, those who do receive vouchers, as many as two-thirds have been unable to find a place to rent during the short window of time.<sup>46</sup> In such cases, these residents lose their vouchers and must go back on the waiting list. Desperate to use their vouchers under these conditions, Section 8 families often move from one economically depressed neighborhood to another where the housing market is soft and private owners are more willing to accept them.<sup>47</sup>

If enacted by Congress, RHRA would bring about changes not only to the public housing program, but also to the Section 8 program. While several of these modifications are explored in the tables below, one of the most significant changes to the Section 8 program is the creation of a new form of project-based rental assistance, project-based contracts ("PBCs").<sup>48</sup> PBCs work under subtly different rules than currently apply to the project-based voucher system; and, on the surface, the unique set of requirements appear to be intended to provide greater protection for public housing units "project-based" under RHRA. For instance, PBCs require the owners of converted public housing to accept contract extensions, which essentially prevent the owners from "opting out" of the Section 8 program and raising rents to market value.<sup>49</sup> However, PBCs provide a loophole for owners that overwhelms and renders meaningless any of these protections, which is an owner can simply switch from the PBC program to the project-based voucher program, at the discretion of the Secretary of HUD.<sup>50</sup> Once an owner has switched out of the PBC program, the protective requirements, such as the mandatory contract extensions, no longer apply.<sup>51</sup> Given how many large-scale owners and investors are involved in the Section 8 program, this could become a very common tactic.


Public housing and Section 8 voucher programs are both essential elements of a comprehensive national housing policy. Public housing provides stability, which is what many families need, and, despite some practical barriers, Section 8 vouchers allow families who are able to use them to move to opportunities in new neighborhoods. Though RHRA would affect the Section 8 programs, the consequences for the public housing system are devastating. In fact, Secretary Donovan stated that the goal of TRA for the federal government is to “not require any capital funding for public housing.”<sup>52</sup> In other words, TRA would allow for the formal disinvestment and end of the public housing program by incorporating market-based schemes in a program specifically designed to provide housing to communities that have been shut out of or have difficulty accessing the private market. In the following section, we discuss many of the grave implications of such a proposal.



## Human Rights Analysis of RHRA


Under RHRA, public housing may be converted to either project based contracts (“PBCs”) or project-based vouchers.<sup>53</sup> The tables below compare public housing, as it is today, and project-based, or converted, public housing under RHRA. While the new PBCs and project-based voucher system share a lot of common attributes, key differences in the two project-based programs are explored below where relevant. In particular, the tables will discuss the ways in which these programs fulfill or undermine central components of the human right to housing, as well as respect resident participation and the need for accountability.<sup>54</sup>

### 1. Resident Participation

Before RHRA	v	After RHRA
<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.<sup>55</sup> 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 planning process through the Resident Advisory Board.<sup>56</sup></p> 		<p>Under RHRA, owners of converted property must recognize “legitimate” tenant organizations and may not interfere with “reasonable efforts” of tenants to organize. “Legitimate” is defined as meets regularly, operates democratically, represents tenants broadly, and is independent of the housing authority, owner, and management of the property.<sup>57</sup> Given existing obstacles tenants report facing in seeking to organize, the “legitimacy” requirement, without also offering remedies to tenants for inappropriate interference, is problematic at best. Currently, and inexplicably, determinations of “legitimacy” are left to the discretion of property owners or HUD, which present conflicts of interest.<sup>58</sup></p> <p>Tenant organizing funds are made available to legitimate tenant groups and non-profits, but would also allow public entities to apply for tenant organizing funds – “a singularly bad idea,”<sup>59</sup> warns the National Alliance of HUD Tenants, as the core purpose is for resident organizing to be able to independently advise and influence the public entities.</p> <p>Additionally, since these properties may be privately-owned and will inevitably involve private interests, there is less opportunity for residents to directly participate in the management of these units. RHRA comes with no safeguards or set of obligations to ensure managing rights presently held by public housing tenants are maintained. The continuation of these rights will be subject to the benevolence of the property owner.</p>




2. Accountability

Before RHRA	v	After RHRA
<p>Public housing developments are owned by a public agency, a PHA, which must be accountable to the community. Consequently, residents and advocates have formal avenues to seek redress when housing rights violations occur. As stewards of public property, PHAs must follow certain guidelines and procedures, including public disclosure of their decision-making that impacts residents’ right to housing.<sup>60</sup> Additionally, residents and advocates can access federal decision-makers at HUD when dialogue with local PHAs reach an impasse.</p> <p>Furthermore, public housing residents may access HUD and PHA records through the Freedom of Information Act.<sup>61</sup></p> 		<p>The dismantling of public ownership begins with the expansion of the definition of “public housing agency” to include nonprofit entities.<sup>62</sup> A PHA may own converted public housing; however, there is no guarantee against private ownership.</p> <p>Furthermore, converted properties would rely on private bank and equity financing, and the bill specifically references Low-Income Housing Tax Credits (LIHTCs).<sup>63</sup> In order to access LIHTCs, private equity interests <i>must</i> exist.<sup>64</sup> While RHRA offers some protection – PHAs would either have the option to buy limited partnership interests after the compliance period or play a role in property management decisions<sup>65</sup> – the loss of direct government control in this structure of ownership leaves residents without the degree of accountability and transparency presently afforded to public housing residents. In fact, because properties subject to Section 8 contracts exist in the private market, ownership can change hands quickly. Existing Section 8 tenants have been sometimes unsure of whom to go to for redress when issues arise.<sup>66</sup></p> <p>Additionally, RHRA grants tenants the right to “access building information,” however this is likely rendered ineffective by subsequent language that protects owners from divulging information that falls under proprietary or privacy laws.<sup>67</sup></p>




### 3. Security of Tenure

Before RHRA	v	After RHRA
<p><b>Term of Residency:</b> Public housing households are subject to yearly leases, which must be automatically renewed. Families may stay in public housing until they are over-income or in violation of the terms of the lease or federal regulations.<sup>68</sup></p>  <p><b>Eviction Proceedings:</b> Tenants of publicly run housing have Constitutionally guaranteed due process rights, therefore eviction proceedings for public housing residents require a fair hearing. Resident organizations have a role in selecting the hearing panel or officer.<sup>69</sup> Public housing residents also have the option of pursuing an informal settlement of a grievance.</p>		<p><b>Term of Residency:</b> Under RHRA, 50 percent of all units may be <i>immediately</i> replaced with tenant-based vouchers.<sup>72</sup> Tenant-based voucher holders may be evicted by a property owner at the end of a lease term without cause, as well as for “business and economic reasons” during the term of the lease.<sup>73</sup> Upon eviction, while voucher holders will likely retain their vouchers, they will be forced to find another suitable unit on the private market with a willing landlord within the short 60-120 day window of time.</p> <p>The remaining converted public housing is subject to leasing requirements under project-based voucher or PBC programs. While the new PBC program requires the automatic renewal of tenant leases,<sup>74</sup> the tenancy of residents under the project-based voucher system is less secure. Although property owners cannot evict these tenants during the lease’s term for business and economic reasons, an owner may refuse to renew a lease at the end of the lease’s term without cause, so long as the PHA provides the household with a tenant-based voucher.<sup>75</sup></p> <p>Additionally, at the property owner’s discretion, an indefinite amount of rental assistance provided under either project-based program may be “transferred” to other properties within 25 miles of the original housing site immediately or at any future time. An owner is only required to submit a plan to the Secretary of HUD for the relevant units’ “timely replacement.”<sup>76</sup></p> <p><b>Eviction Proceedings:</b> Owners may evict Section 8 tenants only in civil court. Section 8 tenants may seek relief from an eviction by requesting a review within 30 days of receipt of notice. Section 8 tenants do not have the option to pursue informal grievance settlements.<sup>77</sup></p>



Before RHRA	v	After RHRA
<p><b>Disposition and Demolition:</b> 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.<sup>70</sup></p> 		<p><b>Disposition and Demolition:</b> RHRA provides limited protections against the loss of converted public housing through sale. Though an owner must first offer HUD the option to purchase the property or assign another entity the right to purchase before selling it to a third party, HUD's right is waived if it fails to act.<sup>78</sup> It is unclear how HUD would raise sufficient funds to act on its right to purchase. Furthermore, this right to purchase does not apply if HUD decides the sale "preserve[s] affordability."<sup>79</sup></p> <p>RHRA ties additional disposition limitations to the use agreement. For instance, sale to a for-profit entity is allowed so long as the Low-Income Housing Tax Credit is used.<sup>80</sup> Yet, while the use agreement is extended with each extension of the rental assistance contract, it is unclear what happens to the agreement if an owner opts to switch programs, e.g. from PBC to project-based vouchers.</p> <p>In sum, the preservation of converted stock would be subject to the discretion of future administrations. Since 1994, HUD's track record, even with Federal Housing Administration ("FHA") insurance, has been poor<sup>81</sup> and, when combined with the conflicts of interest and profit-driven pressures that arise by involving private bank and equity interests, raises particular concerns. This is especially true if the PHA does not exercise its option to buy limited partnership interests after the compliance period.<sup>82</sup></p>
<p><b>Foreclosure:</b> Public housing is funded through direct grants;<sup>71</sup> thus, public housing units cannot be lost through foreclosure.</p>		<p><b>Foreclosure and Bankruptcy:</b> Converted public housing is not protected from foreclosure or bankruptcy in the first place, e.g. no interest rate caps, issuance of bonds, or other up-front protections. Yet, once converted public housing is in foreclosure or bankruptcy, RHRA requires HUD to exercise its option to purchase the property.<sup>83</sup> Again, however, it is unclear how HUD will raise sufficient funds to exercise this option.</p> <p>Additionally, all successors of interest in a property are required to assume contract obligations with the PHA, HUD and tenants. None of this applies, however, if HUD decides the property is not "physically viable," in which case, HUD may (or may not) "transfer" assistance to another property.<sup>84</sup></p>

## 4. Accessibility

Before RHRA	v	After RHRA
<p>HUD has minimum requirements for occupancy in public housing based on income and citizenship. Local PHAs may check a household's references and deny admission to certain tenants determined to have a detrimental effect on other tenants. A PHA may, but is not required to, adopt local preferences for working families and homeless individuals.<sup>85</sup> Thus, the criteria for residency in public housing can vary from locality to locality, but is publicly established.</p> 		<p>Admission to Section 8 units is determined by individual owners, who may consider factors beyond the minimum requirements in public housing, such as a tenant's credit history.</p> <p>Furthermore, Section 8 tenants may face additional barriers to access, such as security deposit requirements. There have been instances where public housing residents (who qualified for residency under the public housing program) were evicted once their units were converted to project-based units as a result of new residency requirements.<sup>86</sup> While RHRA provides that tenants living in units at the time of conversion cannot be denied re-occupancy after rehabilitation, there is no identical provision for future tenants.<sup>87</sup> Furthermore, it is not clear how this declaration will be reconciled with RHRA's earlier declaration of the owner's right to replace units off-site or with tenant-based vouchers.</p> <p>Public housing residents already have the right to apply for Section 8 vouchers. Yet, to enable "mobility," RHRA directs 1/3 of all available vouchers to public housing tenants without making provisions for the creation of additional vouchers,<sup>88</sup> essentially allowing public housing residents to jump to the front of voucher waiting lists. Arguably, this could distort waiting lists and make applying for converted public housing the only feasible way to access these vouchers.<sup>89</sup></p>



5. Location

Before RHRA	v	After RHRA
Many public housing developments are home to families that have developed tight-knit communities over years if not decades. While some public housing developments are located in high crime areas with limited opportunities, many are located in healthy, productive environments near city centers that provide significant public infrastructure. Academic research and studies have documented the significant long-term and adverse impacts on health and other social factors when such communities are disrupted and residents are displaced. <sup>90</sup>		<p>Section 8 units are often in areas just as high in crime and limited opportunities as some public housing developments.<sup>91</sup> In fact, crime rates in public housing generally have been lower than in nearby economically-similar neighborhoods.</p> <p>An underlining 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 for residents.<sup>92</sup> While we acknowledge the merits of increased mobility, HUD’s approach does not adequately address the existing limitations on Section 8 residents’ mobility. 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.<sup>93</sup></p>



## 6. Affordability<sup>94</sup>

Before RHRA	v	After RHRA
<p><b>Individual Affordability:</b> Current funding for public housing maintains that residents pay 30% of their adjusted income for rent and utilities.<sup>95</sup></p> <p><b>Income Increases:</b> In public housing, the local PHA 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.<sup>97</sup> In addition, a PHA 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.<sup>98</sup> If the household income should decrease, the family can get the rent reduced.</p> <p><b>Long-term Affordability:</b> Public housing must remain 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.<sup>96</sup></p>		<p><b>Individual Affordability:</b> Funding for Section 8, currently, as well as under RHRA, maintains that residents pay 30% of their adjusted income for rent.<sup>99</sup> If the cost of utilities is not included in the rent, Section 8 tenants may also obtain a utility allowance based on a calculation of reasonable consumption of an energy efficient household.<sup>100</sup></p> <p><b>Income Increases:</b> Under the project-based voucher system, the earned income disregard only applies to disabled family members who are working.<sup>107</sup> Under RHRA, project-based tenants with increased income can stay in the unit and pay the market rent.<sup>108</sup></p> <p><b>Long-term Affordability:</b> Converted public housing contracts are subject to an initial term of 20 years and a 30-year use restriction.<sup>101</sup> Under both project-based programs, the PHA is required to offer a contract extension, unless the property is "obsolete" due to its physical condition, location, or "other factors" that cannot be fixed with available resources, making it "unsuitable" as low-income housing. However, only under the PBC program is it mandatory for a property owner to accept the extension offer.<sup>102</sup> That is, these owners may opt out of the project-based voucher program and convert rentals to market rates.</p> <p>Historically, project-based vouchers have not guaranteed a stock of permanent affordable housing units.<sup>103</sup> Many project-based voucher contracts that had 20 to 40 year terms are currently being renewed on one-year contracts. Many more have expired or will soon expire. In fact, nearly 900,000 units are set to expire in the next 5 years.<sup>104</sup> This allows owners the option to exit the government affordable housing program and convert the property to a more profitable, non-affordable use.<sup>105</sup> Should these units "convert" to market rate or even "tax credit" levels at the end of the contract, Section 8 tenants and local communities may be faced with an extreme affordable housing crisis.<sup>106</sup></p>

## Recommendations

Public housing must remain publicly-owned and -operated and the Section 8 programs should be strengthened to ensure a process whereby the government remains accountable and accessible to residents' needs and concerns. In order for the U.S. government to come closer to fulfilling the human right to housing, the following must be considered:

### 1. Ensure the Right to Participation

While we commend HUD for engaging with resident leaders through a number of consultations on TRA, human rights oblige HUD to ensure that, with any new plan for its rental assistance programs, including RHRA, resident participation is meaningful at every stage of the plan's development. That is, individuals and communities must be able to take an active role in the decision-making that impacts their housing rights. Furthermore, since project-based housing is not necessarily government-owned, HUD must ensure that participatory protections, including but not limited to Regulation 964, are incorporated under any federally-subsidized housing program.

### 2. Maintaining Accessibility and Accountability

Project-based developments owned by private actors or that incorporate private interests through funding schemes offer little to no accountability mechanisms for residents. Public housing must remain publicly-owned and -operated and the Section 8 programs should be strengthened to ensure a process whereby the government remains accountable and accessible to residents' needs and concerns.

### 3. Safeguarding Affordability

It is likely that public housing converted to a project-based system will create a complex web of individual owners and private capital investors. The result is a conflict between profit-driven interests and the basic need for affordable, decent housing. This is particularly relevant if PHAs are enabled to access capital through the private market. While we understand that the private market may benefit many, any federal low-income housing plan that relies heavily on the private market for the provision of deeply affordable housing and fails to further, or even maintain, residents' human rights, should not be considered.<sup>109</sup> Instead, the federal government should consider full funding of operation subsidies, incrementally increasing capital funds to remove backlogs, stopping all demolitions and dispositions, and restoring hard public housing units to at least 1994 levels with reallocated federal resources. All replacement units must truly be at least one-for-one, like-for-like, i.e., hard public housing units not properties with "expiring use" contracts. Furthermore, in light of the current housing crisis, a two- or three-for-one replacement should be considered.

#### 4. 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, unlike public housing, they are based on contracts that may be terminated, at the option of property owners. Project-based Section 8 contracts must be restored to guarantee preservation and affordability to those most in need. Whereas project-based Section 8 contracts were previously established for 15-40 years, today they are being renewed on one-year contracts. Since 1994, 404,000 project-based units have been lost and, over the next year, more than 350,000 units will expire, with nearly 900,000 units expiring within 5 years.<sup>110</sup> 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 stock. 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 any 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. Any replacement units must be built upfront.

#### 5. Creating Greater Rights of Enforcement for Residents

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 RHRA is enacted by Congress, it is the residents that ultimately bear the consequences of HUD decision-making. Therefore, any proposal must include a private right of action and/or third party enforcement to ensure that residents have adequate redress should the current proposal fail to meet the community development objectives envisioned by HUD.

#### 6. Advancing Equity in Federal Housing Subsidies

Tax benefits to homeowners in 2005 amounted to \$147 billion, while direct aid to low-income renters amounted to \$41 billion in the same year.<sup>111</sup> The greatest benefits for homeowners accrue to the wealthy, with 72 percent of all the income tax benefits accruing to those making more than \$75,000 per year, while only a tiny amount goes to those making less than \$40,000 per year.<sup>112</sup> These "tax subsidies" primarily benefit upper income taxpayers and do not increase homeownership. In fact, according to the International Monetary Fund, this welfare for the wealthy "encouraged excessive leveraging and other financial market problems evident in the crisis."<sup>113</sup> In other words, these regressive taxes encourage speculation and make housing a volatile commodity, resulting in more expensive basic shelter that is out of reach for millions of people. If Congress wishes to explore cuts to housing subsidies for deficit reduction, it can begin by eliminating tax deductions for luxury and second homes and cap deductions for primary residents at \$500,000. Captured revenue would provide enough for the creation of new public housing and vouchers targeting very low-income households, while also paying down the deficit.



## Conclusion

Despite changes in administrations, the federal government's approach to funding low-income housing has been significantly the same. In fact, former President George W. Bush's Secretary of HUD, Alphonso Jackson, first introduced the blueprint for the Obama administration's TRA in 2003 as the Public Housing Reinvestment Initiative ("PHRI").<sup>114</sup> Like TRA, PHRI involved: the conversion of public housing to project-based subsidies with use agreements; the argument that PHAs would be unable to address capital improvement backlogs without private sector money; promises of increased "choice" for low-income residents; "mixed-income" developments as a means of ending segregation; and "one-for-one" replacement of affordable units.<sup>115</sup>

TRA is part of a disturbing 30 year trend, in which basic housing rights have been progressively abandoned, despite growing housing needs. Chronic under-funding of HUD's low-income housing programs began under the Regan administration with drastic budget cuts, however they have never again been fully funded by either Republican or Democratic administrations. Additionally, under the Clinton administration, the U.S. Housing Act of 1937's "Declaration of Policy" was revised to say, "The Federal Government cannot through its direct action alone provide for the housing of every American citizen, or even a majority of its citizens," replacing the earlier goal of "a decent home and suitable living environment" for all.<sup>116</sup> These significant policy changes<sup>117</sup> have led to some disastrous proposals, which at the time appeared prudent to decision-makers. Many of these policy changes were untested, like TRA, before implementation.<sup>118</sup>

Given the significant funding shortfalls facing public housing, it is understandable that HUD is interested in reforming the financing mechanisms supporting the nation's public housing program.<sup>119</sup> Yet, HUD should consider alternative equitable mechanisms before relying on the private market to provide much-needed deeply affordable housing in our communities. RHRA is a particularly imprudent plan in light of the recent foreclosure crisis, which has demonstrated that markets alone will not address the basic needs and rights of people in the United States.

Therefore it is important that HUD not replace an imperfect system with something that is far less stable for Americans, especially at a time when they are most in need.

## ENDNOTES

<sup>1</sup> PHILIP HARVEY, DEMOS, BACK TO WORK: A PUBLIC JOBS PROPOSAL FOR ECONOMIC RECOVERY (Mar. 3, 2011).

<sup>2</sup> See ADAM WODKA, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, LANDSCAPES OF FORECLOSURE: THE FORECLOSURE CRISIS IN RURAL AMERICA (Nov. 2009); Darryl Holliday, *Eviction Notice: Chicago residents forced to vacate the premises*, COLUMBIA CHRONICLE, Feb. 7, 2011, available at <http://columbiachronicle.com/eviction-notice/>.

<sup>3</sup> See Press Release, National Employment Law Project, Economy Gained 192,000 Jobs in February: Despite Private Sector Increase, Disproportionate Growth in Lower-Wage Industries Remains Concern (Mar. 4, 2011) (finding 13.7 million workers unemployed – 44 percent long-term – and 8.3 million underemployed).

<sup>4</sup> Press Release, Bureau of Labor Statistics, United States Department of Labor, Employment Situation Summary (Mar. 4, 2011), available at <http://www.bls.gov/news.release/empsit.nr0.htm>.

<sup>5</sup> CENTER FOR LABOR MARKET STUDIES, NORTHEASTERN UNIVERSITY, LABOR UNDERUTILIZATION PROBLEMS OF U.S. WORKERS ACROSS HOUSEHOLD INCOME GROUPS AT THE END OF THE RECESSION: A TRULY GREAT DEPRESSION AMONG THE NATION'S LOW INCOME WORKERS AMIDST FULL EMPLOYMENT AMONG THE MOST AFFLUENT (Feb. 2010).

<sup>6</sup> Alex Veiga, *Foreclosure activity up across most US metro areas*, HUFFINGTON POST, Jan. 27, 2011; see also MINNESOTA TENANTS UNION, ET. AL., REPORT TO THE UN HUMAN RIGHTS COUNCIL OF THE UNIVERSAL PERIODIC REVIEW OF THE UNITED STATES REGARDING THE UNCHECKED DISCRIMINATORY IMPACT OF THE FORECLOSURE CRISIS ON MINORITY FAMILIES AND COMMUNITIES IN THE UNITED STATES (Apr. 19, 2010) (finding government policies regarding foreclosures fail to abate racially discriminatory effect of mortgage servicers' practices).

<sup>7</sup> NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, INDICATORS OF INCREASING HOMELESSNESS DUE TO THE FORECLOSURE AND ECONOMIC CRISES (2010).

<sup>8</sup> Meredith Shiner, *Bernanke: 'Several years' to normal*, POLITICO, Feb. 9, 2011.

<sup>9</sup> *In hard times, tent cities rise across the country: since foreclosure mess, homeless advocates report rise in encampments*, MSNBC, Sep. 18, 2008; see NATIONAL COALITION FOR THE HOMELESS, TENT CITIES IN AMERICA: A PACIFIC COAST REPORT (Mar. 2010).

<sup>10</sup> Diana Olick, *Nearly 11 Percent of US Homes Empty*, CNBC, Jan. 31, 2011 (reporting 18.4 million U.S. homes empty at the end of 2010); *Squatters move into foreclosed home*, CNN MONEY, Dec. 6, 2010, available at [http://money.cnn.com/video/news/2010/12/06/n\\_squatters\\_foreclosed\\_home.cnnmoney/](http://money.cnn.com/video/news/2010/12/06/n_squatters_foreclosed_home.cnnmoney/).

<sup>11</sup> See, e.g., Gretchen Morgenson, *Massachusetts Ruling on Foreclosures Is a Warning to Banks*, NYTIMES, Jan. 7, 2011; N.J. Supreme Court intervenes in mortgage foreclosures by six lenders, NJ.COM, Dec. 20, 2010.

<sup>12</sup> Yana Kunichoff, *The Chicago Anti-Eviction Campaign: Building a Movement from the Ground Up*, TRUTHOUT.ORG, Nov. 17, 2010; Randy LoBasso, *Philly Residents Save Their Homes – For Now*, PHILLYNOW, Jan. 12, 2011.

<sup>13</sup> Press Release, UN News Centre, Mortgage crisis shows markets alone cannot ensure housing for all – UN expert (Oct. 23, 2008), available at <http://www.un.org/apps/news/story.asp?NewsID=28681&Cr=Financial+Crisis&Cr1>.

<sup>14</sup> Preliminary Findings from UN Special Rapporteur on the Right to Adequate Housing Raquel Rolnik on the Mission to the United States of America (22 October to 8 November 2009) (Nov. 7, 2009) (on file with authors). U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, INVESTING IN PEOPLE AND PLACES: FY 2011 BUDGET at 17 (Feb. 2010), available at [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_4220.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_4220.pdf).

## CAMPAIGN TO RESTORE NATIONAL HOUSING RIGHTS

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## ENDNOTES contd.

<sup>16</sup> The following resident networks sent letters to Secretary Donovan: the Campaign to Restore National Housing Rights (Mar. 19, 2010), the National Alliance of HUD Tenants (Apr. 13, 2010), and the Housing Justice Movement (May 3, 2010) (on file with authors).

<sup>17</sup> NHLP Launches Resident Engagement Initiative, National Housing Law Project, <http://www.nhlp.org/node/1333> (last updated Feb. 2, 2011).

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

<sup>19</sup> TRA Leveraging Calculator, HUD.gov, [http://portal.hud.gov/hudportal/documents/huddoc?id=TRALeverageCalculator\\_2.xls](http://portal.hud.gov/hudportal/documents/huddoc?id=TRALeverageCalculator_2.xls).

<sup>20</sup> Preservation, Enhancement and Transformation of Rental Assistance Act of 2010, HUD.gov, [portal.hud.gov/portal/.../PETRABillText%202010-05-11.pdf](http://portal.hud.gov/portal/.../PETRABillText%202010-05-11.pdf).

<sup>21</sup> George Lakoff, *Privatization of public housing shelved – for now*, HUFFINGTON POST, Jun. 3, 2010; Press Release, Representative Maxine Waters, Congresswoman Waters expresses concerns about changes in public housing programs (May 25, 2010), *available at* <http://waters.house.gov/News/DocumentSingle.aspx?DocumentID=187239>.

<sup>22</sup> See Lakoff, *supra* note 21.

<sup>23</sup> Shaun Donovan, *Making Public Housing Work for Families*, HUFFINGTON POST, May 26, 2010.

<sup>24</sup> Rental Housing Revitalization Act of 2010, H.R. 6468 (introduced Dec. 1, 2010), *available at* [http://ellison.house.gov/index.php?option=com\\_wrapper&view=wrapper&Itemid=75](http://ellison.house.gov/index.php?option=com_wrapper&view=wrapper&Itemid=75).

<sup>25</sup> Letter from David H. Stevens, Assistant Secretary for Housing, Federal Housing Commissioner, (Feb. 10, 2011), *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=FTDOTCFinal10Feb2011.pdf>.

<sup>26</sup> Transcript of President Franklin D. Roosevelt's State of the Union Address (Jan. 11, 1944), *available at* <http://teachingamericanhistory.org/library/index.asp?document=463>.

<sup>27</sup> U.S. Housing Act of 1937, 42 U.S.C. § 1437 et seq. (Sep. 1, 1937).

<sup>28</sup> See ECONSULT CORPORATION, ASSESSING THE ECONOMIC BENEFITS OF PUBLIC HOUSING, THE COUNCIL OF LARGE PUBLIC HOUSING AUTHORITIES (Jan. 2007), *available at* [http://www.myphalinks.com/userfiles/file/final\\_report.pdf](http://www.myphalinks.com/userfiles/file/final_report.pdf) [hereinafter BENEFITS OF PUBLIC HOUSING].

<sup>29</sup> See HUD Resident Characteristics Report, HUD.gov, <https://pic.hud.gov/pic/RCRPublic/rcrmain.asp>.

<sup>30</sup> *Id.*; INTRODUCTION TO PUBLIC HOUSING. CENTER ON BUDGET AND POLICY PRIORITIES (Dec. 17, 2008), <http://www.cbpp.org/files/policybasics-housing.pdf>.

<sup>31</sup> Executive Office of the President, Office of Management and Budget (nd), Public Budget Database, [www.whitehouse.gov/omb/budget/](http://www.whitehouse.gov/omb/budget/).

<sup>32</sup> See INTRODUCTION TO PUBLIC HOUSING, *supra* note 30, at 6.

<sup>33</sup> See HUD Resident Characteristics Report, *supra* note 29 (reporting 1,195,953 public housing units as of Feb. 28, 2011); BIPARTISAN MILLENNIAL HOUSING COMMISSION, MILLENNIAL HOUSING COMMISSION FINAL REPORT at 106 (May 2002), *available at* [govinfo.library.unt.edu/mhc/MHCReport.pdf](http://govinfo.library.unt.edu/mhc/MHCReport.pdf) (reporting a 1991 peak in the public housing stock at 1,410,137 units); NATIONAL HOUSING LAW PROJECT, ET AL., FALSE HOPE: A CRITICAL ASSESSMENT OF THE HOPE VI PUBLIC HOUSING REDEVELOPMENT PROGRAM at ii (2002) (analyzing the impact of the HOPE VI program and concluding that the program has done "more harm than good").

## ENDNOTES contd.

- <sup>34</sup> These rigid measures ban people with eviction histories or with criminal convictions from attaining rental assistance, while removing people from their subsidized homes for such simple “violations” as: missing two housing inspection appointments, “disturbing the peace,” a visiting family member uses abusive language with a PHA employee, a visiting family member uses illegal drugs, or “poor housekeeping.” Tiffany M. Gardner, NATIONAL ECONOMIC AND SOCIAL RIGHTS INITIATIVE, CONSTANT THREAT (forthcoming publication) [hereinafter CONSTANT THREAT].
- <sup>35</sup> CONSTANT THREAT, *supra* note 34 (finding over 50 percent of surveyed New Orleans public housing residents living in fear of eviction or voucher termination); WESTERN REGIONAL ADVOCACY PROJECT, WITHOUT HOUSING: DECADES OF FEDERAL HOUSING CUTBACKS, MASSIVE HOMELESSNESS AND POLICY FAILURES (2010 Update) at 21 [hereinafter WITHOUT HOUSING].
- <sup>36</sup> U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ESTIMATES OF THE COSTS AND DEBT LEVERAGING POTENTIAL OF CONVERTING PUBLIC HOUSING TO LONG-TERM SECTION 8 PROJECT-BASED RENTAL ASSISTANCE (May 28, 2010), *available at* <http://www.nlihc.org/doc/5-28%20HUD-Cost-leveraging-potential.pdf>.
- <sup>37</sup> *Id.*
- <sup>38</sup> U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC AND INDIAN HOUSING, TRANSFORMING RENTAL ASSISTANCE: 2011 SUMMARY STATEMENT AND INITIATIVES, *available at* <http://www.hud.gov/offices/cfo/reports/2011/cjs/tra2011.pdf>.
- <sup>39</sup> 24 C.F.R. § 982.1(b). Notably, there are another 1.3 million families that live in privately-owned, HUD-subsidized multifamily housing complexes. The multifamily housing programs guarantee incentives to private owners to build and maintain affordable housing for lower-income people. 12 U.S.C. § 1701 et seq.
- <sup>40</sup> 42 U.S.C. § 1437f(o)(13)(D); *see* NATIONAL LOW-INCOME HOUSING COALITION, THE PRESERVATION GUIDE: FEDERAL HOUSING AND HOMELESSNESS PLANS (Apr. 2010) (finding that, while project-based voucher contracts were initially for 20 to 40 year terms, they are currently being renewed as one-year contracts).
- <sup>41</sup> 42 U.S.C. § 1437f(o), et seq. While a tenant-based voucher holder may technically “choose” any housing, the unit must meet program criteria, including health, safety, and price standards. *Id.*
- <sup>42</sup> HUD Resident Characteristics Report, *supra* note 29.
- <sup>43</sup> CHRISTOPHER SWOPE, NATIONAL HOUSING INSTITUTE, SECTION 8 IS BROKEN (Jan. 2003), *available at* <http://www.nhi.org/online/issues/127/section8.html> [hereinafter SECTION 8 IS BROKEN].
- <sup>44</sup> *Id.*; Deborah Kenn, *Fighting the Housing Crisis with Underachieving Programs: The Problem with Section 8*, 44 WASH. U. J. URBAN & CONTEMPORARY LAW 77 (1993) (exploring loopholes in the Section 8 program that undermine the program’s original intent).
- <sup>45</sup> *See, e.g.*, New York City Housing Authority, Section 8 Assistance: Frequently Asked Questions, NYC.gov, *last visited* Mar. 13, 2011 (reporting the Section 8 waiting list closed and a list that is 122,000 applicants long); *Thousands Crowd Atlanta Area Housing Authority for Section 8 Waiting List, Fights Break Out*, HUFFINGTON POST, Aug. 11, 2010.
- <sup>46</sup> Grunbaum, Mara, *Sectioned Out*, STREET NEWS SERVICE, Mar. 7, 2008, *available at* [http://www.streetnewsservice.org/index.php?page=archive\\_detail&articleID=2379](http://www.streetnewsservice.org/index.php?page=archive_detail&articleID=2379), *last visited* Oct. 23, 2009 (reporting an unusually low number of Section 8 recipients were finding rental units before their vouchers expired); *see* 2004 GREEN BOOK (108<sup>TH</sup> CONGRESS), HOUSE WAYS AND MEANS COMMITTEE § 15 (2004), *available at* <http://frwebgate3.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=Lu3lgh/0/1/0&WASaction=retrieve> (noting that decreasing utilization rates of Section 8 is, in part, related to the difficulty faced by Section 8 voucher holders to use their vouchers in tight housing markets and because of landlords unwilling to participate in the program).
- <sup>47</sup> SECTION 8 IS BROKEN, *supra* note 43; John Bebow, Darnell Little, John Olivio, *Landlords Fail to Fix Poor’s Housing Woes*, CHICAGO TRIBUNE, May 22, 2005, *available at* <http://www.chicagotribune.com/news/nationworld/chi-0505220393may22.0.6547777.story>.
- <sup>48</sup> Rental Housing Revitalization Act of 2010, *supra* note 24, §5.
- <sup>49</sup> *Id.* at § 5(2)(B).
- <sup>50</sup> *Id.* at § 3(16).
- <sup>51</sup> 42 U.S.C. § 1437f(o)(13)(G).
- <sup>52</sup> HUD Secretary Shaun Donovan (March 2010) in response to questions from Senator Murray, Senate Appropriations Subcommittee on Transportation, Housing and Related Agencies.
- <sup>53</sup> Rental Housing Revitalization Act of 2010, *supra* note 24, §3(1).
- <sup>54</sup> The seven components to the Human Right to Adequate Housing are: security of tenure, accessibility, affordability, habitability, availability of services, location, and cultural adequacy. *The Right to Adequate Housing, General Comment 4*, United Nations Office of the High Commissioner for Human Rights, *available at* <http://www.unhchr.ch/tb/doc.nsf/0/469f4d91a9378221c12563ed0053547e?OpenDocument>.
- <sup>55</sup> *See* 24 C.F.R. § 964.1 et seq.; 24 C.F.R. § 966.1 et seq.
- <sup>56</sup> *See* 24 C.F.R. § 964, Subpart B, et seq.; 42 U.S.C. § 1437c(1) et seq.
- <sup>57</sup> Rental Housing Revitalization Act of 2010, *supra* note 24, § 4(2)(A).
- <sup>58</sup> *See* Letter from National Alliance of HUD Tenants, Preliminary Issues and Concerns about HUD’s TRA Initiative (Apr. 13, 2010), *available at* <http://nhlp.org/files/05%20NAHT%20letter,%204-13-10%20resident%20convening.pdf>.
- <sup>59</sup> Letter from National Alliance of HUD Tenants, NAHT Comments on Ellison Draft PETRA Bill (Nov. 18, 2010) (on file with authors).
- <sup>60</sup> 24 C.F.R. § 964.1 et seq.
- <sup>61</sup> 5 U.S.C. § 552.
- <sup>62</sup> Rental Housing Revitalization Act of 2010, *supra* note 24, §7(a)(4).
- <sup>63</sup> *Id.* at § 3(13)(B).
- <sup>64</sup> 26 U.S.C. § 42.
- <sup>65</sup> *Id.* at § 3(13)(B).
- <sup>66</sup> Montgomery County, Montgomery County: Tenants Work Group Report (Mar. 2010), *available at* [www.montgomerycountymd.gov/Content/EXEC/.../twg\\_report\\_3-2010.pdf](http://www.montgomerycountymd.gov/Content/EXEC/.../twg_report_3-2010.pdf).
- <sup>67</sup> Rental Housing Revitalization Act of 2010, *supra* note 24, at § 4(2)(G).
- <sup>68</sup> 24 C.F.R. § 966.4(a)(2) and (l).
- <sup>69</sup> *See* 24 C.F.R. § 966, Subpart B.
- <sup>70</sup> *See* 42 U.S.C. § 1437p.
- <sup>71</sup> 42 U.S.C. § 1437g.
- <sup>72</sup> Rental Housing Revitalization Act of 2010, *supra* note 24, § 3(5)(F).
- <sup>73</sup> 24 C.F.R. § 982.310.
- <sup>74</sup> Rental Housing Revitalization Act of 2010, *supra* note 24, § 5(7).
- <sup>75</sup> 24 C.F.R. § 983.257.
- <sup>76</sup> Rental Housing Revitalization Act of 2010, *supra* note 24, § 3(5).
- <sup>77</sup> *Id.* at § 4(2)(B).
- <sup>78</sup> *Id.* at § 3(19)(A)(ii).
- <sup>79</sup> *Id.* at § 3(19)(C).
- <sup>80</sup> *Id.* at § 3(6)(A).
- <sup>81</sup> WITHOUT HOUSING, *supra* note 35.
- <sup>82</sup> Pepper Hamilton LLP, IRS Offers Additional Guidance to LIHTC Not-for-Profits (last edited Dec. 2, 2002), [http://www.pepperlaw.com/publications\\_article.aspx?ArticleKey=165](http://www.pepperlaw.com/publications_article.aspx?ArticleKey=165).
- <sup>83</sup> Rental Housing Revitalization Act of 2010, *supra* note 24, § 3 (18).
- <sup>84</sup> *Id.*
- <sup>85</sup> HUD’s Public Housing Program, HUD.gov, *last visited* Mar. 13, 2010.
- <sup>86</sup> INTERNATIONAL ADVISORY GROUP ON FORCED EVICTIONS, MISSION REPORT TO NEW ORLEANS (Nov. 2010).
- <sup>87</sup> Rental Housing Revitalization Act of 2010, *supra* note 24, § 3 (7).
- <sup>88</sup> *Id.* at § 4 (1).
- <sup>89</sup> Press Release, Public Housing Authorities Directors Association, PHADA Sends RHRA Comments to Rep. Ellison (D-MN) (Dec. 1, 2010) (on file with author).
- <sup>90</sup> Dr. Mindy Fullilove, *Root Shock: Tearing Up City Neighborhoods Hurts America, and What We Can Do About It*, (New York: Ballantine, 2004); *see also* CAROLINA GUZMAN 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 (Nov. 8, 2005), *available at* <http://www.sfpshes.org/>



<sup>91</sup> SECTION 8 IS BROKEN, *supra* note 43.

<sup>92</sup> 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 average wait for Section 8 vouchers in 2004 was 35 months. U.S. MAYORS CONFERENCE, 2004 HUNGER AND HOMELESSNESS SURVEY (2004), *available at* <http://usmayors.org/hungersurvey/2004/online/HungerAndHomelessnessReport2004.pdf>; *see also* Dan Gorenstein, *Section 8 Shortfall Leaves Thousands Waiting*, NATIONAL PUBLIC RADIO, Aug. 23, 2009, *available at* <http://www.npr.org/templates/story/story.php?storyId=112080752>.

<sup>93</sup> Katherine Lehe, National Housing Law Project, *Courts Consider Landlord Defense to Source of Income Law*, HOUSING LAW BULLETIN (Nov. 2008), *available at* [http://www.nhlp.org/files/03%20NHLB\\_Bull\\_NovDec08\\_source%20of%20income%20defense.pdf](http://www.nhlp.org/files/03%20NHLB_Bull_NovDec08_source%20of%20income%20defense.pdf); *see also* John W. Fountain, *Suit Says Chicago Housing Renewal Plan Perpetuates Segregation*, NEW YORK TIMES, Jan. 24, 2003, *available at* <http://www.nytimes.com/2003/01/24/us/suit-says-chicago-housing-renewal-plan-perpetuates-segregation.html?pagewanted=1>.

<sup>94</sup> *See* 24 C.F.R. § 960.202b(1) (requiring PHAs to target extremely low-income persons for at least 40 percent of new public housing residents); *Id.* at § 982.201b(2) (requiring PHAs to target 75 percent of its Section 8 allocation for extremely low-income households; however, the 75 percent is a combination of the project-based and Section 8 voucher programs and, thus, a PHA could conceivably target higher income levels for project-based units).

<sup>95</sup> HUD's Public Housing Program, *supra* note 85.

<sup>96</sup> *See* 42 U.S.C. § 1437c(a)(1); 42 U.S.C. § 1437g(d)(3).

<sup>97</sup> *See* 24 C.F.R. § 960.225(b)(3).

<sup>98</sup> *See* 24 C.F.R. § 960.261.

<sup>99</sup> Housing Choice Vouchers Fact Sheet, HUD.gov, *last visited* Mar. 13, 2011.

<sup>100</sup> U.S. Department of Housing and Urban Development, Utility Allowances, HUD.gov, *last visited* Mar. 13, 2011.

<sup>101</sup> Rental Housing Revitalization Act of 2010, *supra* note 24, § 3(6), §§ 5-6.

<sup>102</sup> *Id.* at §§ 5-6.

<sup>103</sup> WITHOUT HOUSING, *supra* note 35.

<sup>104</sup> THE PRESERVATION GUIDE: FEDERAL HOUSING AND HOMELESSNESS PLANS, NATIONAL LOW-INCOME HOUSING COALITION (Apr. 2010); *see* 2004 GREEN BOOK (108<sup>TH</sup> CONGRESS), *supra* note 46.

<sup>105</sup> Madison Gray, *Low-Income Housing: Another Crisis Looming?*, TIME, Sep. 19, 2008, *available at* <http://www.time.com/time/nation/article/0,8599,1839187,00.html>.

<sup>106</sup> *See* Jennifer Oldham, *Housing for the Poor in U.S. Faces Crisis: Low-Income tenants may be forced to move as a federal subsidy program is set to expire*, LA TIMES, Jun. 23, 2001.

<sup>107</sup> *See* 24 C.F.R. § 5.617.

<sup>108</sup> Rental Housing Revitalization Act of 2010, *supra* note 24, § 3(11).

<sup>109</sup> BENEFITS OF PUBLIC HOUSING, *supra* note 28.

<sup>110</sup> *See* note 104.

<sup>111</sup> Adam Carasso et al., *The Trend in Federal Housing Tax Expenditures*, TAX NOTES at 1081 (Feb. 28, 2005).

<sup>112</sup> Adam Carasso, *Who Receives Homeownership Tax Deductions and How Much?*, TAX NOTES (Aug. 01, 2005) (using FY 2004 data).

<sup>113</sup> INTERNATIONAL MONETARY FUND, DEBT BIAS AND OTHER DISTORTIONS: CRISIS-RELATED ISSUES IN TAX POLICY (Jun. 12, 2009).

<sup>114</sup> Letter from HUD Special Advisor Barbara Sard to the Housing Justice Movement (stating explicitly the connection between the Bush Administration's PHRI and PETRA) (on file with authors).

<sup>115</sup> *See* U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING REINVESTMENT INITIATIVE (Mar. 2003).

<sup>116</sup> U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, U.S. HOUSING ACT OF 1937 AS AMENDED BY THE QUALITY HOUSING AND WORK RESPONSIBILITY ACT OF 1998 (Mar. 2, 1999), [www.hud.gov/offices/ogc/usha1937.pdf](http://www.hud.gov/offices/ogc/usha1937.pdf).

<sup>117</sup> ISIL CELIMLI AND SUDHIR VENKATESH, TEARING DOWN THE COMMUNITY, NATIONAL HOUSING INSTITUTE (Nov. 2004), <http://www.nhi.org/online/issues/138/chicago.html>.

<sup>118</sup> We understand that a few jurisdictions have already eliminated their public housing programs and converted to a project-based system, however the long-term impact has yet to be evidenced. Lori Weisberg, *Affordable Rent Plan Approved by Council*, SAN DIEGO UNION TRIBUNE, Jun. 11, 2008, *available at* <http://legacy.signonsandiego.com/news/business/20080611-9999-1b11housing.html>, *see also* Lori Weisberg, *Very-low income housing hard to find, study says*, SAN DIEGO UNION TRIBUNE, Dec. 1, 2009, *available at* <http://www.signonsandiego.com/news/2009/dec/01/very-low-income-housing-hard-find-study-shows/>.

<sup>119</sup> *See* WITHOUT HOUSING, *supra* note 35; Ray Riviera, *A History of Problems, in a Time of Dwindling Budgets*, NY TIMES, Aug. 20, 2008, *available at* <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. William Fischer, Douglas Rice and Barbara Sard, HUD BUDGET CONTAINS MAJOR FUNDING SHORTFALLS, CENTER FOR BUDGET AND POLICY PRIORITIES (May 5, 2008), *available at* <http://www.cbpp.org/cms/?fa=view&id=128>.