

Statement To

**Committee on Financial Services
United States House of Representatives**

**Testimony on Administration's Proposal
to Preserve and Transform Public and Assisted Housing:
The Transforming Rental Assistance Initiative**

**By Judy Montanez, Board Member
National Alliance of HUD Tenants
May 25, 2010**

**Prepared Statement of Ms. Judy Montanez
Board Member
National Alliance of HUD Tenants**

**Committee on Financial Services
Tuesday, May 25, 2010**

On behalf of the National Alliance of HUD Tenants (NAHT), I want to thank Chairman Frank, Chairwoman Waters, Ranking Member Bachus, and members of the Subcommittee for inviting our testimony today. My name is Judy Montanez. I am here today as a tenant in project-based Section 8 housing; the Co-Chairperson of the Castleton Park Tenants Association in Staten Island, and a elected NAHT Board Member representing Region II (New York/New Jersey). I am also member of the Executive Board of the Mitchell-Lama Residents Coalition (MLRC), which represents tenants in state-assisted subsidized housing in New York, and I work closely with NAHT's New York affiliates, New York Tenants and Neighbors and the Urban Homesteading Assistance Board (UHAB).

Since 1992, the National Alliance of HUD Tenants (NAHT) has represented the 1.7 million families in privately-owned, HUD subsidized multifamily housing, including the 1.3 million families, elderly and disabled people in apartments receiving project-based Section 8 assistance. NAHT is the only tenant-led, national tenants union in the US today, with voting member tenant groups and areawide coalitions in 25 states.

In April, NAHT's network of local organizers and elected tenant Board of Directors met and identified a number of concerns regarding HUD's Transforming Rental Assistance (TRA) Initiative. At HUD's Tenant Consultation on April 14, I presented *NAHT's position paper (available at www.saveourhomes.org)* to Secretary Donovan on behalf of HUD Multifamily tenants, including more than 20 NAHT members in the meeting. *At the time, we indicated that NAHT could not support TRA unless these concerns were addressed in HUD's legislative proposal.* Tenants also said that we could not support TRA unless HUD first demonstrated a serious commitment to respect tenants as partners and to enforce existing regulations against owners and PHA's who violate tenants' rights.

The NAHT Board has reviewed the Discussion Draft of the Preservation, Enhancement and Transformation of Rental Assistance (PETRA) filed by HUD. *NAHT can support the principles of rent simplification, mobility (with increases in Voucher funding), and tenant empowerment, as discussed below. We also can support, in principle, the consolidation and simplification of 13 disparate programs into one new "funding stream"—provided this is done in the most cost effective manner, another principle which we propose be introduced to PETRA, as discussed below.*

However, while some of NAHT's concerns have been addressed in PETRA, *regrettably the bill falls short of Administration promises* to preserve Public Housing under public ownership with maximum affordability, to improve deteriorating stock, and replace "hard" assisted units on a one-for-one basis. *Taken together, several provisions of the Discussion Draft could result in the permanent privatization and loss of the nation's system of Publicly Owned housing within 20 to 30 years.* These provisions would result in more, not less, complexity in the financing and ownership of assisted housing, and would appear to cost far more to the federal government in the long term than direct financing of public housing repairs. *Unless these fundamental problems are corrected, NAHT cannot support, and must oppose, the current Draft of PETRA.*

Although PETRA primarily focuses on Public Housing in its first year, HUD plans to convert approximately 30,000 units of Multifamily Housing that receive archaic operating subsidy programs

that preceded Section 8 (Rent Supplement and the Rental Assistance Program, or RAP), as well as Moderate Rehab Section 8, to PETRA subsidies next year. HUD then plans to expand PETRA to all HUD Multifamily Housing in subsequent years. In fact, *Section 8 (m) would allow the conversion of any project-based Section 8 contract to PETRA, if the Secretary invites a private Multifamily owner to participate and the owner agrees.* We share our experience from Multifamily housing both to support our brothers and sisters on the front lines in Public Housing, and to maximize protections for Multifamily tenants who will eventually be affected by the new program.

PETRA Would Needlessly Convert Public and Assisted Housing to “Expiring Use” Housing

HUD has justified PETRA as the only way to fund a reported “backlog” of \$20 to \$30 billion in desperately needed repairs for the nation’s aging Public Housing stock. The Discussion Draft proposes to address this by inviting private lenders, investors and/or Limited Partner co-owners to raise the needed funds, financed by a new Section 8 subsidy program based on “market” subsidy principles. Developments converted to PETRA funding would receive a 30 year Use Restriction, but only a 20 year guarantee of funding. A future HUD Secretary would have the option, but would not be required, to extend this restriction another 20 years, and/or to purchase an at-risk development at the end of the use agreement, presumably at market value. Owners would not be required to seek an extension.

In effect, *these provisions of the Discussion Draft would bring the whole nightmare of “expiring use” housing into the nation’s system of Public Housing.* The 40 year history of HUD’s “expiring use” multifamily housing should raise red flags. In the late 1960’s, HUD similarly built affordable low income housing by engaging private owners, lenders and Limited Partner investors to develop HUD multifamily housing. Then, as now, an Administration pursuing a “guns and butter” budget strategy opted to meet low income housing needs through long term debt payments rather than direct public housing expenditures, while paying for a costly and unpopular war.

Since then, *HUD tenants have waged countless struggles building by building against rent increases, declining services, substandard conditions, and “expiring use” restrictions.* Since 1996, *private owners or HUD have removed more than 400,000 apartments from the affordable stock, and another 200,000 more are at risk as 40 year HUD mortgages mature.* The nation’s investment in these lost units has been squandered, while untold billions have been siphoned off by wealthy developers and investors. HUD and Congress should think twice before extending these risks and conflicts to Public Housing.

My own building is a good example. Castleton Park was built in 1974 with a HUD insured mortgage by a nonprofit developer. It is today a great, diverse community of 454 working and poor families, from all walks of life, with 139 of the apartments aided by the Project Based Section 8 Program. We have been fighting to stay in affordable housing since 2006. I would have been homeless many times over due to income changes if I did not live in a subsidized complex. I am now on Section 8 due to an accident that rendered me disabled. I lost my job and my pension. Many of the tenants in my complex are seniors, and disabled.

Because of today’s speculative market, our “nonprofit” landlord wants to sell our development for a \$14 million profit to a “predatory equity” speculator. Our owner sought HUD approval under Section 250 of the Housing Act to “prepay” the HUD insured mortgage and raise rents to facilitate this sale, which would have destroyed our affordable community. We spent hundreds of hours researching Castleton’s mortgage because we could not afford a lawyer. HUD should have rejected our owner’s request. Instead, we found ourselves fighting and rallying against HUD to enforce this Federal law, and begging tenants for donations to pay for the fight to keep our homes. This is unconscionable!

We did HUD's work; we had to seek out politicians to support us, in a fight that should not have ever taken place. Eventually, we persuaded HUD to reject the prepayment, but the landlord has challenged us in court. In the meantime, building conditions have plummeted while the current owner has milked the building dry. Our experience shows what could happen to a future PETRA funded development if the "public" owner tries to profiteer down the road, and can persuade HUD—as our landlord tried to do—to sign off on a market conversion.

This struggle has been a nightmare for Castleton Park, as it has been for the 400,000 families who have lost their affordable housing because HUD and Congress, 40 years ago, tried to build low income housing through a costly "devil's bargain" with private investors. ***On behalf of Multifamily HUD Tenants, we urge Congress to not make the same mistake twice.***

To avoid this problem, ***PETRA should require Owners and HUD to commit to the longest term use restriction legally allowable, bounded only by the limits of state law.*** (A close Multifamily precedent is the Title VI Preservation Program use restriction of 50 years or the useful life of the property, whichever is greater.) ***All public owners should be required to accept and/or renew Section 8 subsidy contracts as long as Congress appropriates the funds.***

Nor is the threat to affordable housing confined to the Public Housing stock. The "Release of Prior Requirements" paragraph (p. 32, lines 11-16) would appear to nullify stronger protections in *any* development which switches to PETRA funding—including, in theory, Multifamily Housing preserved, for example, under the Title VI Preservation Program, the Boston Demonstration Disposition Program, or where tenants have negotiated longer term Use Agreements with owners! This "Pandora's Box" should be closed by extending the "permanent affordability" requirement to Multifamily owners as well.

Discussion Draft Would Invite Massive Privatization of Public Housing

In earlier meetings, HUD officials promised that Public Housing would remain in public ownership. In our April position paper, we expressed concern that the TRA initiative could bring the "camel's nose" of private owners under the tent of Public Housing. ***Far from a "camel's nose," the Discussion Draft would invite a "camel herd" of private investors and lenders to fundamentally erode the nation's stock of Public Housing.***

For example, the Discussion Draft (p. 30, line 11-16) would redefine "public housing" to include a "project or unit owned by an entity in which the agency *or its officers, employees or agents* hold a significant *direct or indirect* interest and which has *among* its purposes the ownership or management of affordable housing." (Emphasis added). ***This astounding language is a recipe for privatization and unbridled corruption, on a massive scale.*** It would legalize "insider" deals by PHA officials with private investors and lenders who would have a stake in the eventual conversion of these units to market rate housing in the future—the sort of corrupt self-dealing seen in the New Orleans, Miami, Chicago and other housing authorities in recent years.

Even if this language were "cleaned up" to eliminate self-dealing and conflicts of interest by PHA officials, the Discussion Draft would effectively allow Low Income Housing Tax Credit (LIHTC) Limited Partnerships with equity investors to participate in the future ownership of PETRA units. By definition, such partnerships will dilute public ownership, accountability and control. ***Limited partner" equity investors, including traditional LIHTC investors, should not be utilized to finance the capital needs of public housing.***

Banks Could Foreclose and Convert Public Housing to Market

The Discussion Draft is also premised on attracting private lenders to meet Public Housing capital needs. Despite earlier assurances by HUD officials that TRA would subordinate private bank loans to Public Housing deed restrictions, the Discussion Draft provisions in the event of foreclosure or bankruptcy (p. 11-12) would allow the Secretary to “modify” use restrictions “if the Secretary determines the converted units are not physically viable or financially sustainable, *or if necessary to generate sufficient lender participation.*” (p. 12, line 1-5; emphasis added). Nor does the Discussion Draft require Owners to obtain Federal Housing Administration (FHA) insurance, which at least has provided some protections for Multifamily Housing tenants in the past (though HUD has allowed 100,000 foreclosed units to be converted to market housing even with this protection, since 1994).

HUD Multifamily tenants have learned some hard lessons. ***Private investors and lenders have expectations and motives fundamentally in conflict with affordable housing preservation.*** They will bargain hard for higher rents, replacement of low income with higher income tenants, and rights to convert and/or sell under certain conditions such as foreclosure, no matter what the initial intentions of PETRA. They will also seek to dilute public ownership by demanding input in “ownership” decisions such as change in management, affordability standards, repair and capital needs, and refinancing plans. ***Their influence should be reduced, not expanded, in the nation’s affordable housing system.***

We also question whether private investment promised by PETRA would actually materialize, and at what cost. Just a year ago, the Tax Credit market was in collapse, and banks were not making loans under any conditions. With an uncertain economy, lenders and investors will seek even greater concessions at the expense of affordable housing as the “price” for providing private capital for repairs. Even in the best of times, Tax Credit investors siphon off from 10 to 20% of the federal tax expenditures for overhead and syndication costs.

Investors and Lenders Would Pressure HUD to Convert Public Housing

HUD tenants have also learned the hard way what can happen when powerful private interests have a stake in converting HUD housing when use restrictions expire, as in Castleton Park. Under the Discussion Draft, this will happen to PETRA developments in 30 years. ***While the current leadership of HUD may be committed to preserve at-risk housing, most HUD Secretaries since 1980 have not done so, and there is no guarantee that HUD’s leadership in 30 years will stand up to institutionalized pressure from owners, investors and lenders*** seeking to “cherry pick” the most valuable developments in high market areas. To the extent that preservation at “market values” conflicts with scarce budget resources at the time, the risk that public units will be lost will only increase.

PETRA goes in exactly the wrong direction. ***Rather than privatizing Public Housing, and institutionalizing “expiring use” conflicts where none exist now, we should be seeking to expand socially-responsible ownership (to tenants, nonprofits, and public agencies) of at risk privately-owned HUD housing,*** and remove HUD housing from the ever-spiraling cost of voluntary “incentives” needed to persuade private owners to renew HUD contracts each time they expire.

At a minimum, ***private equity owners and LIHTC Limited Partners should be barred from PETRA. If private lenders are allowed, use restrictions must supercede any foreclosure or bankruptcy proceedings, in all cases, and Owners should be required to obtain insurance from the Federal Housing Administration (FHA).*** This will help reduce the risk that ownership will pass to a private lender in the event of a foreclosure caused by funding shortfalls, physical neglect or mismanagement.

PETRA should also provide for *permanent preservation of the housing in the event of HUD foreclosure and disposition*, by applying the related provisions of HR 4868, Chairman Frank’s Preservation bill, currently before the Committee. In addition, *Congress should also provide tenants with Third Party Beneficiary status to enable us to sue to enforce PETRA contracts*, to help HUD in its oversight mission. (Similar language has been included in Section 304 of HR 4868.)

Market-Based Rent Setting and Contract Renewal Is Excessively Costly

The Discussion Draft proposes to new project-based Section 8 “funding stream,” Section 8 (n), to replace Public Housing Operating Funds and other forms of Project Based Section 8 in properties that convert to PETRA. The Discussion Draft (p. 37, line 9-15) *requires* the Secretary to establish the initial subsidy levels under Section 8 (n) “*at the level requested by the owner*” (emphasis added), but not to exceed the comparable market rent, up to 110% of the Fair Market Rent set by HUD “or such higher amount approved by the Secretary,” later (p. 38, line 2-6) defined as an “exception” rent not to exceed 120% of the comparable *market* rent.

In effect, HUD would be required to make subsidy payments, as requested by owners, that will be at unrestricted “market” levels, and in some cases (depending on the owner’s clout with a future HUD administration) actually in excess of actual market rents.

HUD’s model here seems to be the Mark Up to Market Program (MU2M), adopted by Congress and HUD in 1999-2000 to address a growing problem of Section 8 Opt Outs in high market areas. Unlike the earlier Title VI Preservation Program, which at least required capital repairs, long-term use restrictions (50 years or the useful life of the property), and preferred sales to tenant or nonprofit owners in exchange for a big jump in Section 8 subsidy payments, MU2M has no such requirements. The only benefit in exchange for what amounts to huge subsidy windfalls to owners in high market areas is the continued preservation of low income housing for the community—less costly than building new low income housing.

In tight markets, owners have been able to extract ever spiraling subsidy payments from HUD upon each contract renewal as the price for saving affordable housing—as NAHT Board member Ricky Leung has described at Cherry Street Apartments in Manhattan, in previous testimony before the Committee. *Guaranteeing PETRA owners “market” rate Section 8, regardless of their commitment to improve the units, is a recipe for similar unrestricted windfall profits and needlessly inflated subsidy costs.*

Base Section 8 Rents on Actual Operating and Capital Budget Costs

There is a less costly alternative. The original Project Based Section 8 Program (New Construction/Substantial Rehab Section 8) built or renovated 900,000 units between 1978-1983 using a “Budget Based,” not “Market Based,” rent setting method. *Under the “Budget Based” rent approach, Section 8 contract amounts and subsidy payments are set on actual operating costs, plus debt service, and a limited profit or fee for owners—not the “market” rent, which may bear no relation to these needs.*

If, as we believe is the case, Public Housing developments converting to PETRA funding have operating costs substantially below private market rents in their communities, *using this formula will save substantial amounts over the “market” formula in the Discussion Draft. It will also reduce the*

attractiveness of Public Housing to speculative investors and minimize “expiring use” conflicts in future.

Base Annual Adjustments on Actual Cost Increases, Not Market Rent Hikes

The Discussion Draft (p. 38, line 12-15) also provides for annual adjustments to PETRA Section 8 payments based on “change in the rents of multifamily housing.” This is a disappointing step backward. When Congress passed the Multifamily Assisted Housing Reform and Affordability Act (MAHRAA) in 1998, it replaced precisely this type of inflation-based formula, called Annual Adjustment Factor (AAF), with a less costly and more rational alternative, called Operating Cost Adjustment Factor (OCAF). For a Section 8 owner with fixed debt service costs, only the operating cost portion of the annual budget is subject to inflation. Using the general AAF formula over the years, based on general inflation, had resulted in excessive windfalls to owners under earlier Section 8 programs. At the very least, ***PETRA should allow increases based on inflation in actual costs (OCAF), to bring it in line with this project-based Section 8 reform previously adopted by Congress and avoid unnecessary giveaways.***

Require Repairs and Maximize Up Front Capital Grants

Currently, there are no requirements in PETRA for HUD to require owners to make needed repairs in Public Housing in exchange for PETRA assistance. As in the MU2M program, this amounts to a giveaway of public funds with potential windfalls to owners. Unlike the MU2M program, however, there is no excuse for doing this with Public Housing units in PETRA, since owners are not yet free to “opt out” of the project-based subsidy system and do not need to be “bribed” to keep the units affordable. ***PETRA should be amended to require owners to make needed repairs, to be reviewed and approved by HUD with input and consultation by residents, as a condition of PETRA assistance.***

Similarly, ***there is no requirement in PETRA for HUD and owners to maximize capital grant sources to meet Public or Private Housing repair needs, and thereby reduce the need to take out private bank loans, which will inevitably cost more in the long run due to bank interest charges. We recommend that a section be added to this effect.*** Potential sources include Public Housing Modernization Grants (funded at \$6 billion in FY 10, with a \$2 billion request in FY 11); state and local grant or capital loan programs; and the LIHTC “exchange” program, which allows state agencies to convert a portion of their unused LIHTC credit allocations to capital grants, without the need for Limited Partner investors.

Coupling a provision to maximize capital grants with a Budget Based Section 8 subsidy stream under PETRA will ensure that public and private developments are preserved at the least cost to the federal government, even if PETRA utilizes private bank loans.

In the 1990’s, NAHT was the first organization to propose a similar Up Front Capital Grant in the Title VI Preservation Program. Under Title VI, owners who otherwise could “prepay” their HUD subsidized mortgages were guaranteed full market value in exchange for a commitment to preserve affordability for low income residents, and initially received market-based Project Based Section 8 subsidies to secure this goal. When this proved costly, NAHT proposed, and HUD eventually adopted, a Title VI Grant program, which converted portion of Section 8 budget authority into up front grants, reducing the amount of future Section 8 outlays and saving money overall.

We propose that HUD adopt the similar principle in PETRA. Unlike Title VI, where owners were arguably already legally entitled to receive additional Section 8 at market levels, Congress is under no such constraint with Public Housing, so should use the opportunity to base PETRA Section 8 on less costly “budget based” levels.

Finally, to help ensure maximum use of cost-saving Capital Grants and ensure resources remain for Public Housing repairs in developments that are not converting to PETRA, the section which allows transfer of unused Public Housing operating and capital funds to the PETRA account (p. 32, line 7-10) should be clarified to “hold harmless” these accounts to ensure “maintenance of existing efforts” in these programs.

Budget Based Rents with Capital Grants Will Simplify HUD Programs

Proponents have justified PETRA as a means to simplify 13 diverse programs, saving administrative costs. In fact, much of the complexity and confusion in HUD’s 13 programs result from complications within HUD’s Multifamily Housing system. Tenants, communities and HUD itself have long been challenged with the Byzantine complexity that inevitably follows from Limited Partnership and/or tax syndication or credit agreements, multiple financing sources, and complex lending instruments. Replacing the relatively simple financial structure of Public Housing with the privatizing vision of PETRA will increase the complexity and confusion within the Public Housing program, and disempower Public Housing tenants.

NAHT supports the principle of program unification and simplification. ***Changing PETRA to a budget-based Section 8 model with a maximum of capital grants to pay for repairs will better achieve program simplicity, at a reduced cost to the federal government.*** Put another way, the simpler and more transparent financial model of the Public Housing system should be extended, via PETRA, to the entire system of HUD assisted housing.

Compare Alternatives to Fund Repair Needs

HUD has based its “market-driven” PETRA model on the assumption that There Is No Alternative to fund Public Housing repair needs other than bringing in private lenders and investors. This assumption is open to question.

Only a year ago, in FY 2010, Congress provided \$6 billion for Public Housing modernization grants. An additional \$2 billion has been requested for FY 2011, not counting the \$350 million sought for PETRA. While we do not question the need for capital repairs in the \$20 to 30 billion range in the next several years, it would seem reasonable for HUD to first assess the results (spending rates, project completion, resident hiring, etc) of the \$6 billion obligated during FY 10. HUD should also complete its promised comprehensive Capital Needs Assessment of Public Housing needs, including when and where additional repair commitments are actually needed and can be realistically accomplished, before embarking on a risky program that could jeopardize the nation’s Public Housing system.

In addition, HUD should produce a cost-benefit analysis that compares the costs for meeting actual repair needs (phased in as physically required and achievable under HUD’s CNA) under three funding scenarios: 1) the market-driven PETRA proposal, paying Section 8 rents based on “comparable market” levels, independent of actual operating and debt service costs, and involving LIHTC investors; 2) budget-based PETRA contracts based on actual operating and debt service costs, with a limited development fee; and 3) direct capital grant sources for Public Housing repairs

(Modernization funds, Stimulus funds, weatherization grants, state/local grants, LIHTC Exchange funds, and (for private Multifamily housing) new Preservation programs proposed in HR 4868).

It should be obvious that the cost of funding Public or Private Housing repair needs by up front capital grants is likely to be less costly than alternatives based on private lending *over the long term*, due to the additional costs of interest. Assuming Public Housing operating costs are substantially below market rents, it should be even more costly to finance PETRA using “market based” rather than “budget-based” Section 8 rent payments. If LIHTC Tax Credits are also envisioned, a cost comparison should take into account lost federal revenue from the Tax Credits and the “transaction costs” for the LIHTC program. The question is how much are the relative costs of these scenarios.

Budget Climate Can Change

We acknowledge that the “climate” for seeking additional spending for Public Housing repairs is less favorable than just a year ago, when Congress voted \$6 billion for this purpose. But the budget climate can change again.

There is a precedent in Multifamily Housing. In 1996, a Republican led Congress reached a bi-partisan consensus to increase Section 8 budget authority from \$4.5 to \$20 billion annually, over several years, to avert a crisis of Section 8 contract terminations and mass displacement, even while Congress implemented domestic budget cuts overall. If the Administration can document its claim that Public Housing is in imminent danger of collapse without an immediate infusion of \$7.5 billion for repairs, a similar consensus could emerge to utilize more cost-effective Public Housing Modernization grants, without the need to risk the future of Public Housing.

Additional Rent and Affordability Recommendations

One of PETRA’s goals is to simplify rules affecting tenants by consolidating 13 rental assistance programs into one. In principle, this would empower tenants by making participation in HUD rental programs easier to understand and more transparent, provided residents’ rights and benefits are maintained.

NAHT strongly supports this objective. The Discussion Draft includes two basic principles recommended in NAHT’s April memorandum: 1) Ensuring that tenants pay no more than 30% of adjusted household income, or the “ceiling” budget-based rent for their unit, whichever is less. 2) Allowing existing tenants, or new households whose incomes rise, to stay.

In particular, tenants would benefit by phasing out and consolidating archaic HUD multifamily programs such as Rent Supplement and RAP into a single type of project-based Section 8, and conforming Enhanced Section 8 Vouchers with project-based assistance. Both the Section 8 Voucher Reform Act (SEVRA), pending on the House Floor, and H.R. 4868 also contain provisions that would move in this direction.

Based on experience and precedents in Multifamily Housing, we recommend a few amendments to the rent provisions of PETRA. First, in converting to PETRA, some Public and Multifamily tenants who are currently paying less than 30% of income for rent (for example, lower or moderate income tenants capped at below-market “ceiling” rents today) could experience sharp rent increases when their units convert to a market-based PETRA contract. For these families, rent increases should be capped at no more than 10% a year until the new ceiling rent or 30% of income (whichever is greater) is reached.

Second, in cases where a PETRA owner elects to not renew an expiring PETRA contract and HUD does not exercise its right to extend or purchase the property, the Discussion Draft (p. 25, line 17) requires HUD to provide only regular Housing Choice Vouchers (Section 8 (o)) to tenants, rather than Enhanced Vouchers (Section 8 (t)) that would cover the higher “market” rent proposed under PETRA. Especially in high market areas, this would result in the forced eviction and displacement of residents. To bring this situation into conformity with similar “market” conversions in Multifamily Housing today, this provision should be changed to Section 8 (t), which not only provides a higher rent to cover the increase, but requires owners to accept the Enhanced Voucher as long as the tenant wishes to remain, the payment standard is “reasonable” and Congress votes the funds.

Besides requiring permanent affordability, NAHT recommends additional affordability protections based on the Title VI Preservation Program. For current and future tenants upon turnover, Title VI required owners to maintain at least the same income profile that existed at the time of refinancing for each property, by protecting existing tenants and filling turnover units at initial occupancy for the duration of the extended use restriction. Title VI also allowed owners to exceed this profile by renting to lower income residents in each category upon turnover. We recommend adding additional language to the “Use Restriction” section on p.24 (line 11-16) to establish these protections in PETRA.

Strengthen One for One Replacement

No exception to One for One Replacement. The Discussion Draft generally requires “One for One” Replacement of “hard” units affordable to low income families in developments converting to PETRA assistance. However, the Draft includes an “exception” to this general requirement where HUD determines that there is an “adequate supply of affordable rental housing in areas of low poverty,” based on a high voucher utilization rate, wide geographical dispersal of vouchers, and a high vacancy rate. In such cases, the Draft bill would allow up to 50% of the “replacement” units to be provided through mobile Vouchers.

We recommend that this exception be dropped. The nation has already suffered an unacceptable loss of “hard” Public and Multifamily housing units through demolition, neglect and market conversion. Homelessness is endemic in virtually all regions of the country, including areas with relatively “soft” rental markets today. These market conditions can change over time. PETRA should require one for one replacement of “hard” units in all cases to provide housing for the all.

Provide for “retroactive” One for One Replacement. In addition, HUD should condition TRA or other funds with a requirement for communities to provide “retroactive” one for one replacement for “hard” PHA or HUD Multifamily low income units already lost through demolition, neglect or market conversion. The goal should be based on the maximum number of “hard” low income units provided in that community in previous years, similar to the precedent set by the recent Scott Carver decision in Miami, Florida. HUD should fully fund the costs of renovation and relocation. Congress and HUD should commit to reverse the loss of low income units by conditioning PETRA assistance on “retroactive” one-for-one replacement.

Maximize on-site and neighborhood replacement. PETRA proposes to allow owners to meet the One for One Replacement requirement off-site, as long as new housing is located within 25 miles of the original site, tenants are “consulted,” new housing is near economic opportunities, and bedroom mix and fair housing requirements are met. This is insufficient protection. Under HOPE VI and Multifamily demolitions, One to One Replacement has rarely been achieved, despite years of agitation and litigation by tenants. Powerful development coalitions who covet prime land sites

occupied by Public or Multifamily Housing have torn down more than 140,000 units of Public Housing alone in the past 20 years, with fewer than 40,000 units of replacement housing built.

We urge amendment of PETRA (p. 21) to require Owner/PHA's to provide a maximum of One to One Replacement units on site wherever possible, followed by a site within the neighborhood as a second preference, and finally any site within 25 miles. Such a safeguard is needed to minimize the potential gentrification and displacement of low income residents from their community, when powerful institutions seek to acquire their land.

In Multifamily housing, NAHT members have struggled to cope with HUD's authority to "transfer" project-based Section 8 contracts from one site to another. When faced with the demolition of their deteriorated buildings near the University of Chicago, NAHT's Member Group, the Grove Parc Tenants Association, won an agreement from their owner and HUD to rebuild 300 units on site, and 200 offsite in three neighborhood locations. PETRA should build on this experience by providing residents with legislative handles to remain and rebuild in their communities, if they wish.

. Where "mixed income" redevelopment is appropriate, subject to tenant association approval, units provided for higher income households should be provided by increasing the total number of units overall. If tenants must be temporarily relocated due to renovations or demolition, new replacement units should be provided before removal of units, with phased on-site relocation, wherever feasible. Finally, PETRA should ensure that "income mixing" is not achieved at the expense of "hard" low income units in a community receiving assistance, for each income category (low, very low, and extremely low income) of tenants who occupy the building at the time of conversion.

Provide Incremental Vouchers to Make Mobility Work

The Discussion Draft proposes to allow new tenants aided by PETRA to move out of their development with a Housing Choice Voucher after two years of occupancy (one year for pre-existing tenants), while maintaining the number of units under the project-based PETRA contract. In most cities, Voucher waiting lists are very long and often closed to new applicants. PETRA proposes that 1/3 of turnover units be set aside for tenants who choose to move out of a PETRA assisted building. .

In the 1990's, NAHT opposed HUD proposals to "voucherize" the entire system of Public and Multifamily housing, in large part due to a lack of provisions to maintain project-based contracts and the housing they supported. *NAHT is cautiously supportive of the mobility provision in PETRA, on two conditions: (1) that Congress provides annual increases in Housing Choice Vouchers to minimize unjust delays for tenants "bumped" on Voucher waiting lists by tenants moving from a PETRA building; and (2) HUD ensures that PETRA assisted buildings are not destabilized.*

This is not an idle concern. In Salem, Massachusetts, after a Rent Supplement building was converted to Enhanced Vouchers with \$20 million in loans financed with Tax Credit and public subsidies, close to 50% of the tenants moved out, threatening the building with foreclosure and tenants with plummeting services. *HUD should explain how PETRA will safeguard affordable units if too many tenants move out of a PETRA assisted building. What happens if the number of tenants who choose to move exceeds the number of available turnover Voucher units in the community?*

In many cases, factors beyond an owner/managers control can influence whether or not tenants leave a building with mobile Vouchers. Location near jobs and services, neighborhood safety, environmental hazards can all influence tenants' choices. *There is a risk that PETRA could destabilize some well-maintained buildings under these circumstances, unfairly harming some landlords and worsening conditions for tenants less able to move.*

We are not convinced that PETRA will result in management improvements by subjecting owner/managers to “market discipline” if tenants move out of the building. In our experience, “accountability” is better achieved when people stay and organize to improve their building. In tight markets, owners of substandard housing can simply replace tenants who move out with new tenants from long waiting lists. ***HUD should be asked to explain how “accountability” and performance improve when people leave, and new tenants move in to replace them in tight markets.***

HUD Should Justify the Use of Outside Contractors to Administer PETRA

HUD has indicated that PETRA would be implemented by outside contractors, not HUD staff. In the past decade, HUD has dramatically slashed agency employees, opting to “farm out” oversight to local agencies and even for-profit companies. This process has reduced transparency and added layers of complexity and confusion for the public and tenants alike.

The Committee should ask what portion of the proposed \$350 million for PETRA in FY 2011 would be allocated to outside contractors to implement the program. The Committee should require HUD to provide evidence that “contracting out” is more cost effective than overseeing Section 8 contracts or converting to PETRA “in house.” The Committee should also ask for HUD to provide evidence that “contracting out” has worked to empower tenants and sanction non-responsive owners.

Strengthen Resident Rights Provisions

Maintain Part 245 Right to Organize protections. The Discussion Draft includes a section that codifies key provisions of 24 CFR Part 245, the Right to Organize protections in Multifamily Housing, and extends them to Public and Voucher tenants. This is a positive feature of PETRA which should be retained. It will provide immediate protections for Voucher tenants, and should help Public Housing tenants establish independence from PHA landlords.

Provide resources to organize tenants independently of owners. The Discussion Draft (p. 6) provides only that the Secretary “may” provide PETRA funds to facilitate tenants’ right to organize. This appears to many as a retreat from the current Public Housing requirement for HUD to set aside \$25 per unit for resident organizations. To reassure tenants that PETRA will at least sustain existing levels of protections and resources for Tenants’ Rights, ***it would be helpful to stipulate that HUD shall provide at least \$25 per unit in funding for every unit aided under PETRA, for this purpose, with funds to be allocated “completely independently” of current or potential owners or PHA’s either for areawide tenant support resident organizations (with a priority for tenant run organizations) and/or for direct funding of qualified resident organizations who meet standards to be determined by the Secretary.***

Support and extend individual tenants rights. NAHT recognizes that the Discussion Draft would extend, for the first time, individual rent grievance rights to Multifamily tenants. However, we understand that the Draft also *weakens* existing grievance rights currently enjoyed by Public Housing and Voucher tenants. ***NAHT fully supports the recommendations to restore and strengthen individual rent grievance rights that have been made by Public Housing and Voucher tenants and their partners,*** including right to full hearings by neutral third parties, with outside representatives and appropriate access to evidence.

Provide Access to Information and Third Party Beneficiary status to empower tenants in PETRA. NAHT has recommended Tenant Empowerment measures now included in HR 4868 to provide tenants Access to Information, Third Party Beneficiary status in HUD contracts, and Rent

Withholding rights in substandard buildings. HUD should support these measures in HR 4868, as well as in PETRA so that tenants have access to owners' plans and budgets and have the right to sue in court if owners and/or HUD fail to enforce PETRA contracts.

Build tenant confidence and trust. HUD's track record in effectively overseeing powerful corporate owners and investors in Multifamily Housing is not the best. HUD has rarely vetted speculators and operators of substandard housing, and has yet to sanction a single owner for countless egregious violations of tenants Rights to Organize.

In this regard, we appreciate that the Discussion Draft includes several sections that extend HUD's authority to assess Civil Monetary Penalties for owner violations of PETRA contracts. However, HUD has had similar authority on the books since 2000, but has rarely used it for any violation. The Discussion Draft should make assessment of these penalties mandatory, not discretionary. ***Before embarking on PETRA, HUD must also demonstrate a willingness and capacity to enforce its own rules and sanction private owners for violations of tenants rights, and to engage tenants as partners in enforcement of HUD housing standards in REAC inspections and oversight, including resources to build tenant capacity.*** NAHT has made a number of specific recommendations in this regard to the Office of Multifamily Housing, with few results to date.

Similarly, despite promises over the past year, HUD has yet to make available \$10 million provided by Congress in FY 2010 for tenant outreach assistance to nonprofit resident assistance organizations; it will be at least another year before these resources are available. Nor has HUD responded to urgent requests to provide resources sooner by an Interagency Agreement with the Corporation for National Service/VISTA program, despite the unanimous bi-partisan vote of the Financial Services Committee urging HUD to do so in October 2007.

We appreciate the Committee's continued support for getting out these resources, especially the efforts of Rep. Green, Waters and Frank. We urge HUD to step up to the plate and show that it is serious about enforcement of tenants rights and empowerment before we can trust HUD to implement PETRA, even if the legislative changes outlined above are made.

In sum, while NAHT supports many of the stated principles of PETRA and much of the Discussion Draft, there are several provisions which, taken together, could result in the massive privatization of Public Housing at a greater expense than alternatives that would better preserve affordable housing. These provisions would increase, not reduce, the complexity and confusion surrounding HUD programs. Until these provisions are changed, NAHT cannot support, and must oppose, the current Draft of PETRA.

Thank you for inviting NAHT to express these views. We are submitting, for the record, excerpts from a letter to HUD Secretary Donovan by the Housing Justice Network, a national network of more than 700 legal service housing advocates and clients, which gives an excellent analysis of the Public Ownership issues in PETRA. We are also submitting a recent article by George Lakoff from the Huffington Post about the Administration's PETRA Initiative.