

## **Preliminary Issues and Concerns About HUD's TRA Initiative**

### **April 11, 2010**

I. Ownership and Financing. HUD has justified TRA as the only way to fund the \$20 billion “backlog” in desperately needed repairs for the nation’s aging Public Housing stock. HUD proposes to address this by inviting private lenders, investors and/or Limited Partner co-owners to raise the needed funds, in exchange for as yet to be defined arrangements that would somehow leave “public ownership” of Public Housing intact.

The 40 year history of HUD’s 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. 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.

Rather than bring the “camel nose” of private investment under the tent of Public Housing, why not explore alternative public investment to meet Public Housing needs? The Administration and Congress could renew the \$4 billion funding from the Stimulus Bill for five more years and fully fund the National Housing Trust Fund to build new homes. Rather than privatizing Public Housing, why not expand socially-responsible ownership (to tenants, nonprofits and public agencies) of at-risk privately-owned HUD housing, and remove HUD multifamily housing from the ever spiraling cost of voluntary “incentives” to persuade private owners to renew HUD contracts each time they expire?

Proponents have justified TRA 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.

These private actors 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 TRA. Won’t replacing the relatively simple financial structure of Public Housing with the privatizing vision of TRA increase complexity and confusion within the Public Housing program? Won’t this complexity disempower Public Housing tenants?.

Will TRA engage Limited Partner equity investors in the ownership structure of Public Housing? If so, how will this be achieved without compromising the “public ownership” of Public Housing? How will TRA preserve “public ownership” of Public Housing in the case of foreclosure and/or demands by lenders and outside investors or partners for input in “ownership” decisions such as change in management, maintaining affordability standards, repair and capital needs, and refinancing plans?

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. Before embarking on TRA, will HUD 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?

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. Recent HUD statements suggest that TRA refinancing could be administered by outside contractors.

What evidence can HUD provide that “contracting out” Section 8 has worked to empower tenants and sanction non-responsive owners?

Will HUD reform the contract administration system to clarify roles of outside contractors and require them to engage tenants in management reviews and enforcement?

Will HUD reverse the long term decline in HUD staff capacity to better oversee Multifamily Housing and safeguard Public Housing if private investors are brought in?.

We also question whether private investment promised by TRA will 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 siphoned off 20% of the federal tax expenditures for overhead and syndication costs. Won’t the federal government would get “more bang for its buck” by providing direct grants for housing compared to Tax Credit incentives, by increasing appropriations for Public Housing Modernization and fully funding the grant programs proposed by HR 4868, the Housing Preservation and Tenant Protection Act of 2010?

II. Long Term Affordability. The 20 to 30 year use restriction proposed in TRA would replace the relatively stable Public Housing universe with the same institutional struggles that have afflicted HUD multifamily tenants for many years, and threaten a similar loss of affordable housing. NAHT proposes that any federal program for renovating Public Housing or Multifamily Housing should provide for more permanent affordability.

Specifically, we recommend that HUD adopt an affordability standard similar to HUD’s former Title VI Preservation Program, which preserved more than 60,000 at-risk privately-owned apartments in the 1990’s:

- Preserve affordability for 50 years or the useful life of the building, whichever is greater
- Require owners/PHA’s to seek and accept subsidies from federal or other government sources to achieve this goal
- Require owners or PHA’s receiving assistance to maintain at least the same income profile that exists at the time of refinancing for each property, by filling turnover units at initial occupancy for the duration of the extended use restriction.
- Allow owners/PHA’s to exceed this profile by renting to lower income residents.
- Ensure that tenants pay no more than 30% of adjusted household income, or the “ceiling” budget-based rent for their unit, whichever is less
- Allow existing tenants, or new households whose incomes rise, to stay

Will HUD commit to a long term affordability restriction of 50 years or the useful life of the property, whichever is greater? If not, why not? Does a shorter term imply “concessions” to investors or lenders as the price for securing repair capital?

HUD has stated that TRA will promote “income mixing” in some properties. Any redevelopment plan should require one to one replacement of comparable units, on site wherever feasible. 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. How will HUD ensure

that “income mixing” in TRA 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)?

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. Will HUD commit to reverse the loss of low income units by conditioning TRA on “retroactive” one for one replacement? .

III. Resident Rights and Empowerment. Simplify rent rules.. One of TRA’s goals is to simplify rules affecting tenants by consolidating 13 rental assistance programs into one. In principle, this could empower tenants by making participation in HUD rental programs easier to understand and more transparent, providing residents’ rights and benefits are maintained. .

We support this objective. But rent simplification can be pursued in its own right, independently of HUD’s proposals for new ownership and affordability structures under TRA. Rent simplification is one of the principle goals of the Section 8 Voucher Reform Act (SEVRA), pending on the House Floor. 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 SEVRA and H.R. 4868 contain provisions that would move in this direction.

Will HUD work with NAHT and other tenants to implement rent simplification and help pass SEVRA and other legislation, independently of plans for other features of TRA?

Maintain Part 245 Right to Organize protections. NAHT fought long and hard to win the Right to Organize protections found in 24 CFR Part 245. The regulations protect a wide range of tenant organizing activities, including the right to leaflet, doorknock, post notices, meet without management or owners present, access meeting rooms, and receive assistance from outside organizers, without notice to or permission of owners or their agents. HUD funded non-tenant tenant organizers have the right to organize in a building without an invitation by residents or notice or permission from owners. These protections currently apply to buildings receiving Section 8 Enhanced Vouchers, and should be extended to Housing Choice Voucher tenants and Public Housing groups if they wish.

Part 245 requires Owners/Agents to recognize tenant associations and newly formed organizing committees as long as they meet regularly, operate democratically, represent all groups, and are “completely independent” of owners and their management agents. This is a critical protection which allows tenants and others to reject “company unions” appointed by managers or owners as “illegitimate,” and to prevent Owners/Agents from running or sending representatives to tenant association meetings and elections. .

Part 245 does not require tenant associations to have written by-laws, elections, or officers to be considered “legitimate” and recognized by landlords, although groups may choose to develop these institutions if they consider it appropriate in their building. NAHT has found this flexibility regarding organizational structure to be more appropriate for the varied political situations in HUD multifamily buildings, in particular to protect newly formed “organizing committees from harassment and retaliation by landlords, which remains a widespread problem nationwide. .

The more specific requirements in the Part 964 Public Housing regulations (written by-laws, specific structural requirements, elections) are not appropriate for Multifamily housing, since owners (and

HUD staff) could easily block newly started organizing committees from developing these structures by denying groups “legitimacy” unless they had these specific features in the first place. Moreover, NAHT’s members value the flexibility to develop specific structures and by-laws tailored to the situation in their buildings, as long as they meet the “organic” requirements of Part 245, and NAHT’s own By-Laws (available at [www.saveourhomes.org](http://www.saveourhomes.org)), on which Part 245 is based.

We appreciate HUD’s statements that Part 245 protections will be preserved under TRA. However, HUD has yet to enforce sanctions against owners and even HUD field staff who violate tenants’ rights or refuse to recognize legitimate tenants associations. What steps will HUD take to demonstrate its commitment to enforce tenants Right to Organize, and to the promise of tenant recognition and empowerment under TRA?

Provide resources to organize tenants independently of owners. Regarding resources to organize and support independent tenant associations (as distinct from social activities and services, which may be provided in HUD funded management budgets), NAHT believes that these resources must be provided “completely independently” of Owners/Agents to maintain the democratic integrity of tenant groups. The provision in the Part 964 regulations regarding funding for tenant groups from a \$25/unit fee and/or laundry room income, if extended to Multifamily housing, could make tenant groups dependent on Owners/Agents who provide the funds and undermine the group’s independence and legitimacy.

To provide resources to organize independent tenant associations, NAHT believes this is best done through locally based, areawide nonprofit tenant organizing groups that are independent of current or potential owners, preferably with tenant run governing boards. The successful experience of the HUD funded OTAG grant and VISTA programs should be replicated by immediate implementation of HUD’s proposed new TRN grant program to “organize the unorganized” HUD multifamily housing tenants. Will HUD extend these resources to underserved areas by creating a “Start Up Grant” grant program to qualified by less experienced nonprofit groups? Will HUD support national training for local grantees and provide resources immediately through an Interagency Agreement with VISTA, co-sponsored by NAHT, as recommended by former grantees?

For Public Housing and Voucher tenants, HUD should consider replicating these successful programs through ROSS grants, by making funds available to similar independent, locally-based tenant organizing projects, outside of the control of PHAs or their appointees.

Support and extend individual tenants rights. NAHT fully supports the recommendations to retain and strengthen individual tenants rights that have been made by Public Housing and Voucher tenants. For Multifamily housing, NAHT supports protecting the individual lease rights currently afforded Multifamily tenants in Handbook 4350.3, with additional protections as recommended by NAHT in 2003. NAHT also supports the recommendations by Public and Voucher tenant representatives to protect their current individual lease, grievance rights and eviction hearing protections.

Will HUD support extension of individual grievance and eviction hearing rights to Multifamily tenants, to allow HUD tenants the right to a HUD administrative hearing before owners can proceed to eviction? Tenants should have the right to bring an organizer, attorney or another tenant to any hearing, with appropriate due process protections. Will HUD include this guarantee?

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. These proposals are under attack by owners, and HUD has yet to support them. Will HUD support these Tenant Empowerment measures? Will HUD include these rights in TRA, so tenants can get access to owner plans and budgets and have the right to sue in court if owners and/or HUD fail to enforce HUD contracts?

IV. Tenant Mobility and Vouchers. NAHT endorses the questions and concerns raised by Voucher and Public Housing tenants about proposals to increase tenant mobility in TRA. HUD multifamily tenants whose buildings have been converted to “Enhanced Vouchers” have found that the promised mobility doesn’t always work. In many cities, tenants have faced limited choices due to high market rents, discrimination by landlords based on tenants’ race or income, lack of services and enforcement by local agencies, and inadequate or inflexible payment standards for vouchers. What administrative changes can HUD make now to demonstrate that HUD’s Voucher programs will work better if expanded under TRA?

HUD’s attempt to “square the circle” of providing mobile Section 8 Vouchers while maintaining the number of assisted units in a community raises concerns about how this will actually work under different scenarios. In most cities, Voucher waiting lists are very long and often closed to new applicants. TRA proposes that 1/3 of turnover units be set aside for tenants who choose to move out of a TRA assisted building. To the extent that TRA tenants use Vouchers to move out of their building, isn’t this unfair to tenants on Voucher waiting lists? Will HUD and Congress agree to annually increase Housing Choice Vouchers to minimize unjust delays to these tenants?

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. How will HUD preserve and safeguard affordable units if too many tenants move out of a TRA 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. Won’t TRA 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 TRA 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. How is “accountability” and performance improved when people leave, and new tenants move in to replace them in tight markets?