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1998 Public Housing Reform Bills

Letter to the Conferees

Dear Conferee:

I am writing to make you aware of the Administration's views on the public housing reform legislation you are now considering in the conference to reconcile S. 462 and H.R. 2. These bills propose major changes in the public housing and tenant-based Section 8 programs. Over several years now, both the Congress and the Administration have put a great deal of thought and hard work into the pursuit of sound reform legislation. As you move ahead in the conference, I look forward to our continued collaboration, so that important and long-overdue reforms may finally be enacted and implemented.

INTRODUCTION

The Administration strongly supports the goals of S. 462 and H.R. 2 -- to streamline and reorganize the Nation's public housing system in a manner which will benefit public housing residents, facilitate the efficient use of Federal resources, and increase accountability to the public. The Administration also appreciates the willingness of both the House and Senate to draw upon management reform and other provisions in the Administration's bill -- the Public Housing Management Reform Act of 1997.

However, the Administration has a number of major concerns about S. 462 and H.R. 2 as-passed which, among other things, require the Conferees to take the following actions:

- Provide more targeting of scarce housing assistance to the neediest families;
- Delete the H.R. 2 provision allowing "fungibility" to meet income targeting requirements;
- Delete or address the serious flaws in H.R. 2's "Home Rule Flexible Grant Option";
- Delete the self-sufficiency agreements and the community work provisions in H.R. 2;
- Delete the Housing Evaluation and Accreditation Board created by H.R. 2;

- Enact the Administration's provision for mandatory receiverships for troubled PHAs that do not improve sufficiently within one year, as well as related management assessment provisions;

- Further streamline "PHA Plan" requirements; allow small PHAs to use operating and capital funds interchangeably; delete provisions constraining flexibility in the operating subsidy formula; and make the Drug Elimination Program a formula-based program;

- Delete the S. 462 provision authorizing PHAs to obtain medical information about applicants for housing assistance; and

- Delete the provisions of both bills allowing PHAs to set the payment standard in the tenant-based Section 8 program higher than the Fair Market Rent established by HUD.

SUMMARY OF THE BILLS

The Senate and House bills make permanent a number of critical reforms that the Administration and the Congress have been able to achieve only through year-to-year provisions in appropriations legislation. Elements of the Senate and House bills would promote the continuation and strengthening of the transformation of the public housing and Section 8 programs already underway, including: (1) replacing the worst public housing with scattered-site and townhouse developments and with portable tenant-based assistance through the HOPE VI program, permanently repealing the one-for-one replacement requirement, and facilitating demolition of obsolete developments and conversion to tenant-based assistance or appropriate site revitalization; (2) turning around troubled PHAs through the use of various tools, including mandatory receiverships for chronically troubled PHAs and enhanced powers afforded to HUD and court-appointed receivers upon takeover; (3) promoting public housing communities with a greater income diversity and allowing PHAs to implement rent policies that encourage and reward work, and are coordinated with welfare reform; (4) demanding greater household responsibility as a condition of housing assistance through more vigorous screening, eviction or subsidy termination, and lease enforcement provisions; and (5) implementation of several of the Administration's key management reforms. Important provisions for management reform include program consolidation and streamlining, deregulation of well-managed PHAs and small PHAs, increased reliance on physical conditions in assessing PHA performance and more certain treatment of the most troubled PHAs.

DESCRIPTION OF ADMINISTRATION CONCERNS

As I am sure you are aware from my testimony last year and from other discussions in recent months, however, the Administration has a number of major concerns about particular provisions of both bills. Despite its support for the general goals of both bills, the Administration believes that certain provisions go farther than is necessary to make the reforms that are needed. Instead of making only reforms, some provisions -- particularly on income targeting -- would move the program too far away from fundamental, prudent national standards and appropriate federal oversight. **Income targeting is a fundamental issue because it sets the rules for access to assisted housing. A resolution of this issue that provides insufficient protection for those who most need assistance would lead me to recommend a veto of this legislation.** Nevertheless, the Administration is hopeful that our concerns can and will be addressed in the Conference, clearing the way to enactment of sound public housing and Section 8 reform legislation.

The Administration's most important concerns about the bills are described below.

I. MAJOR CONCERNS

A. INADEQUATE TARGETING OF HOUSING ASSISTANCE TO THOSE FAMILIES MOST IN NEED

1. Income Targeting in Public Housing

The Administration believes that the income targeting provisions of both bills must be

tightened to direct more housing assistance to families with the most pressing housing needs. In particular, the Administration strongly opposes the House "fungibility" provision, which could mean that PHAs in some cities would not have to offer any public housing units to extremely low-income families. The Administration supports the Senate requirement that 40% of available public housing units go to extremely low-income families; however, the Administration also advocates increasing -- from 70% (as in the Senate bill) to 90% -- the ratio of newly available units that must be offered to families with income levels no higher than 60% of median (which is approximately $22,600 nationally). The Administration also seeks a requirement that at least 40% of the units in each public housing development be occupied by families with incomes below 30% of area median income. This will ensure that the poorest families have housing opportunities at all developments, including those that may be most marketable to relatively higher income families.

The Administration believes that the income targeting provisions of both bills

-- especially the House's "fungibility" provision -- go much farther than is necessary to serve working families and achieve a more diverse income mix in public housing. It is essential to the social and financial health of public housing communities that more working families are admitted to public housing. Today, the median family income in public housing is only $6,940 per year -- just 21% of median income nationally. By contrast, both bills would open up too many public housing units to families at the upper end of the eligibility range -- families with incomes of up to 80% of the area median income, or approximately $40,000 in the ten largest metropolitan areas.

The Administration does not oppose admitting a small number of families at that income level. However, the Administration believes that mixed-income communities that serve working families can be attained without going as far as the House and Senate bills. This can be done by ensuring that at least 40% of admissions are reserved for families with incomes up to 30% of median (approximately $11,300) and that 90% of admissions are families with incomes at or below 60% of the area median (approximately $22,600). In comparison, 60% of median income is the absolute upper cap for the HOME and low-income housing tax credit programs. In addition, the Administration urges the Conferees to adopt language that would require PHAs generally to maintain an occupancy distribution such that ~~of~~ at least ~~a~~ forty percent ~~certain percentage~~ of units in each public housing development are occupied by very poor ~~extremely low-income~~ families.

Not only are the income targeting percentages inadequate, but the House bill's fungibility provision could undermine even that level of targeting which the bill proposes. This provision would allow a PHA to admit even fewer very poor families to public housing if the PHA gave more of its Section 8 ~~certificates~~ tenant-based assistance to such families than the minimal number which the bill requires. ~~I~~Because many communities' current levels of admissions of very poor families to the certificate and voucher programs substantially exceed the House percentage requirement, the result almost certainly would be that some PHAs would not have to offer any public housing units to families -- including many working families -- whose incomes are below 30% of the area median income. The Administration finds such a possibility to be unacceptable.

The Administration proposed its income targeting for public housing with the understanding that the achievement of a more diverse income mix necessarily would result in reduced access for those with the lowest incomes. Partly in recognition of this problem, the Administration each year has proposed that Congress provide substantial additional vouchers. Congress should recognize that these proposals are linked and that the loosening of public housing income targeting needs to be done in conjunction with the provision of additional vouchers. Any compromise between the Administration's income targeting and the Senate's income targeting, for both public housing and Section 8, should occur only to the

extent additional vouchers are provided that compensate for the loss of access for those who most need housing assistance. This would require an annual appropriation of 62,500 additional vouchers if the Senate's income targeting levels are adopted.

With respect to income targeting by development, that concept already is part of current law. The Administration proposal is a moderate proposal to ensure continuing access to all developments by all eligible income groups.

2. Income Targeting in the Tenant-Based Section 8 Rental Assistance Program

The Administration is opposed to the provisions of both bills on income targeting for the tenant-based Section 8 program. Instead, the Administration believes that 75% of tenant-based assistance which becomes available each year should be targeted to the very poor -- families with incomes at or below 30% of median income (approximately $11,300) -- and that the remainder of such assistance generally should go to families with incomes no greater than 50% of median, as under current law.

Both bills unnecessarily reduce the portion of Section 8 tenant-based assistance that would go to families with severe housing needs. Current law generally limits eligibility for tenant-based assistance to very low-income families with incomes below 50% of the area median income. Moreover, federal preferences, which applied to 90% of new Section 8 recipients prior to FY 1996 as opposed to only 50% of new public housing residents, have served to further target assistance to extremely low income families. The median income of Section 8 certificate holders is now approximately $7,550.

In contrast, H.R. 2 would require only that 40% of all Section 8 tenant-based assistance go to extremely low-income families -- the income range which the program has primarily served in the past. Relatively higher income families, with incomes up to 80% of median income, would become eligible to receive such assistance. S. 462 is not as extreme as the House bill, but would still require only that 65% of all tenant-based assistance go to families with the most severe housing needs and that 90% go to families with incomes under 60% of median.

The Administration contends that scarce federal rental subsidies for use in the private market must be targeted to families with the lowest incomes, for the following reasons: 1) 5.3 million very low-income renters now have "worst-case housing needs", defined as paying more than 50% of their income toward rent or living in substandard housing units, and these families are concentrated at the lowest income levels (below 30% of the area median income); 2) relatively few of the families with incomes in the upper ranges allowed under both bills who would

become eligible for admission to the Section 8 program (including 17.5 million unassisted renters) have serious unmet housing needs; 3) federal preferences are being repealed; 4) both the Senate and House bills propose opening up public housing admissions to families with relatively higher incomes to promote mixed-income communities, which means fewer units will be available for extremely poor families; and 5) tenant-based rental assistance integrates families with low incomes into private, mixed-income housing of their choice and does not suffer from the severe income concentration problems of project-based programs.

The Administration also sees no reason to expand tenant- based program eligibility limits so that these scarce housing resources can be provided to households with incomes at 80% of the median -- approximately $40,000 for families in the ten largest metropolitan areas -- who are better able to afford private market housing without any subsidy. This income level, which is equivalent to 250% of the poverty line, exceeds the income limits for virtually all other federal means-tested programs.

B. HOME RULE FLEXIBLE GRANT OPTION

The Administration strongly opposes the Home Rule Flexible Grant Option in H.R. 2, which could transfer public housing funds from a PHA to a city government regardless of the city's ability or experience in administering housing programs or the housing authority's management record. Instead, the Administration believes that implementation of the current ~~Moving-to-~~ Moving-to-Work demonstration will provide sufficient opportunity to explore innovative local approaches in the public housing and Section 8 programs.

The Administration has taken bold action to deal with chronically troubled PHAs and to demolish and replace the worst public housing. However, that is not what the House provision is about. The House provision would allow a city government, regardless of its motives or its track record in administering housing programs, to take over or replace even a high-performing housing authority. Some of the most intractable management problems in recent years have occurred in several chronically troubled PHAs that have been operated as part of city government.

The provision also inexplicably provides cities that would administer public housing more regulatory flexibility than PHAs (e.g., to charge rents exceeding Brooke amendment requirements). There is no reason to link additional regulatory flexibility with the choice of the entity to administer public housing.

If the goal of this provision is to address serious management problems in public housing, one would expect it to be crafted as an alternative intervention strategy with respect to ~~troubled~~failing PHAs. As a compromise, ~~T~~the provision

could be applied where HUD agrees that this is an acceptable alternative to court-ordered receivership (with the locality subject to the usual public housing and Section 8 regulations.) Rather, ~~I~~the current provision ~~instead~~ would be applicable to all PHA~~S~~s, irrespective of the demonstrated quality of their management.

With respect to the goal of testing additional regulatory flexibility, ~~Instead~~, the Administration instead supports continued implementation of the Moving to Work demonstration authorized by the FY 1996 appropriations act. That demonstration program allows up to thirty PHAs to design and test innovative ways to provide housing assistance and to link families to work, through merging funding streams and testing new rent structures while retaining reasonable income targeting. HUD has selected PHAs with diverse and potentially far-reaching proposals. The demonstration is large enough to allow substantial experimentation, yet small enough to permit a rigorous evaluation of program success and replicability.

C. COMMUNITY WORK AND SELF-SUFFICIENCY REQUIREMENTS

The Administration opposes the self-sufficiency agreements and the community work provisions in the House bill. Instead, the Administration believes that provisions emphasizing collaboration between PHAs and local welfare agencies are a better and more productive approach to addressing welfare reform and self-sufficiency issues. For example, the Administration supports the provisions in both bills which require PHAs to describe in their annual plans the ways in which they propose coordination with other local and state welfare and service agencies, and assure that households who violate welfare program self-sufficiency rules are not rewarded with subsidized housing rent decreases. The Administration also supports provisions in both bills permitting PHAs to set public housing rents "up to" 30% of a family's adjusted income, which allows for rent structures that do not penalize increases in earned income. Further, the Administration supports authorization of additional Section 8 certificates for use with local collaboratives in welfare-to-work initiatives.

The Administration believes that public housing and Section 8 residents must assume certain responsibilities in return for the benefits of their housing assistance. To this end, the Administration supports many reforms in both the House and Senate bills which place a premium on resident self-sufficiency and on linking the PHA with existing providers of services. Additionally, the Administration supports provisions in both bills to toughen screening, lease enforcement and eviction, and subsidy termination requirements.

However, the Administration opposes the House bill's mandatory self-sufficiency contracts. This sweeping new requirement would fundamentally change the public housing and Section 8 programs and would impose inordinate

and costly burdens on 3,400 local PHAs whose budgets and administrative capacities already have been stretched. A far more efficient and effective approach is to encourage partnerships between PHAs and State and local welfare agencies that promote self-sufficiency through initiatives such as the authorization of "Welfare to Work" certificates, as proposed in the Administration's bill.

The Administration also opposes significant aspects of the community work provisions included in the House bill. The Administration's bill includes a community service provision because the Administration believes it is reasonable to ask each recipient of public housing or tenant-based assistance to be engaged in some activity which benefits the community as a whole, which includes working, attending school, or otherwise preparing for work. However, the Administration's bill provides for much more reasonable exemptions than the House bill and would not authorize eviction as an enforcement tool.

D. MANAGEMENT REFORM

1. Federal Oversight

The Administration supports several of the bills' revisions to the PHMAP system, including those that emphasize the importance of decent living conditions, and would support the establishment of an advisory performance evaluation board or other task force to review various performance evaluation systems and determine the need, if any, for an outside accreditation entity. The Administration also supports the House and Senate bill provisions which give HUD or a receiver enhanced powers for dealing with troubled PHAs; require ~~PHAs;~~ the takeover of ~~severely~~ troubled PHAs that fail to improve promptly; and require the obligation and expenditure of capital funds within certain time frames (which the Administration believes should be extended to the HOPE VI program). The Administration does not support the Accreditation Board created by the House bill.

The Administration believes that it is critical to have an assessment tool which accurately measures PHA performance and is consistent with the Administration's management reform plan for HUD. ~~In the short run, this requires making modifications to~~ This requires overhauling ~~looking~~ the current performance measurement system -- the Public Housing Management Assessment Program (PHMAP). In particular, the Administration supports the bills' provision adding an ~~PHMAP~~ indicator assessing the extent to which a PHA is providing acceptable basic housing conditions and the House provision making acceptable basic housing conditions a precondition for a PHA to get a passing grade in the assessment system. This will support HUD's efforts to make ~~PHMAP~~ the performance evaluation system more objectively verifiable and reflective of the conditions under which public housing residents are living.

The Administration, however, strongly opposes the House bill's "Accreditation Board", a new federal agency which would create an accreditation program for all public housing agencies and other providers of federally assisted housing. This proposal, written prior to the Administration's management reform efforts, runs directly counter to the Administration's plan for improving and streamlining Federal oversight of the public housing program. It would not reduce, but instead would redistribute and probably increase, the Federal bureaucracy. Moreover, the proposal would appear to divorce Federal oversight and auditing responsibilities which would be given to the Accreditation Board, from HUD's ongoing obligation to provide Federal funds to PHAs. This would make it more difficult for HUD to hold PHAs accountable.

Instead of the House bill's Accreditation Board, an advisory entity such as the Administration's proposed Performance Evaluation Board should be given the opportunity to review and make recommendations on implementation of HUD's management reform in this area as well as various approaches to Federal oversight and assessment of PHAs, including accreditation. Finally, the Justice Department advises that the proposed means of appointing the Accreditation Board would unduly restrict the President and thus violate the Appointments Clause of the Constitution.

The Administration already has taken the most aggressive actions in HUD's history against chronically troubled PHAs, including direct takeovers and support for judicial receiverships. In this regard, the Administration supports the Senate bill's provisions giving HUD enhanced powers to deal with troubled ~~PHAs (which are the same provisions as in the Administration's bill)~~ PHAs. Those provisions require HUD to take certain actions against any PHA that is still troubled after one year (including mandatory receivership for any large PHA). After further consideration, the Administration believes that this provision should be modified to give a troubled PHA one additional year before HUD will take action if that PHA has made progress in the first year that is equal to at least half the difference between its ~~PHMAP~~ assessment score and the score necessary to be a "standard" performer.

In addition, the Administration supports the Senate bill provision requiring PHAs to obligate capital funds within 24 months. It is critical in these times of fiscal restraint to ensure that appropriated funds are used promptly for their intended purposes. Further, the Administration urges the Conferees to adopt two additional provisions from the Administration's bill: (1) requiring PHAs to spend capital funds within 48 months (in addition to obligating such funds within 24 months); and (2) applying specific time frames to the HOPE VI program, such that a PHA would have to sign a primary construction contract within 18 months of executing the grant agreement, and would have to complete construction within 4 years from the grant agreement.

2. Consolidation and Streamlining

The Administration urges the Conferees to further streamline PHA plan requirements as in the Administration's bill. In addition, the Administration supports the House provision allowing small PHAs to use operating and capital funds interchangeably. The Administration also advocates the deletion of House provisions constraining flexibility in the operating subsidy formula. Further, the Administration urges the Conferees to convert the Drug Elimination Program into a formula-based program, and to merge the TOP and EDSS programs.

The Administration supports and recognizes the benefits of consolidating PHA planning and reporting requirements into a single annual plan, as provided in both the Senate and House bills. However, the Administration is concerned that the scope of the annual plans be consistent with HUD efforts to streamline PHA and HUD administration of the public housing and Section 8 programs. The Administration strongly urges the Conferees to consider limiting the number and scope of plan elements as described in the Administration's bill. Conferees also should adopt the Senate provision permitting HUD by regulation to provide that elements of the PHA plan other than the capital plan and civil rights shall be reviewed only if challenged.

The Administration also supports the House provision allowing small PHAs (less than 250 units) to use operating and capital funds fungibly, as provided in the House bill, because the formula allocation of capital funds to such PHAs would be small and the additional flexibility would simplify PHA operations and HUD administration. However, the Administration opposes the provision of the House bill giving governors new responsibility to allocate half of such funds.

In addition, the Administration supports the language in both bills authorizing HUD to renegotiate the formula for allocating public housing operating subsidies to PHAs. The current system has not been changed in many years. A renegotiation could result in a revised formula that is simpler and more equitable, and that provides better incentives for sound, cost-effective public housing management. However, HUD opposes the House provisions defining treatment of vacant units, utility rates, and rental income. These provisions may hamstring and substantially complicate the future formula and should be left to rulemaking (which will be negotiated rulemaking under the House and Senate bills). The extent to which PHAs may retain increases in rental income, in particular, should be left to rulemaking because: (1) rental income has ~~is~~ increased~~ing~~ substantially throughout the program, for reasons that may be unrelated to PHA administration of the program; and (2) such retention creates a strong financial incentive for PHAs not to serve the poorest households. The House §204(d) interim allocation provisions also are unnecessary.

Further, the Administration urges the Conferees to convert the Public Housing Drug Elimination Program from a competitive to a formula-based program, to provide predictable funding for PHAs and reduce the administrative burden on both HUD and PHAs of annual competitions. The Administration also advocates permanent authorization of the supportive service (EDSS) program and a merger of EDSS and the Tenant Opportunities Program (TOP), as provided in the Administration's bill.

~~E. OCCUPANCY STANDARDS~~

~~*The Administration opposes the House bill's provision on occupancy standards because it would reduce protections currently afforded to families with children under the Fair Housing Act.*~~

~~The House provision on occupancy standards would invite state adoption of absolute occupancy standards regardless of the facts of a particular situation, or the existence of any health or safety justifications. Enactment of this provision could result, for example, in a State allowing a housing provider to refuse to rent a 2-bedroom unit to a family with three children, even if: 1) the bedrooms were unusually large; 2) one of the children was an infant; or 3) a den could reasonably be used as a bedroom. This could contribute to the shortage of affordable housing large enough for families. HUD's current occupancy standard, which conforms to Congress's direction in the FY 1996 HUD Appropriation Act, appropriately requires HUD to determine, on a case by case basis, whether a standard is legal under the Fair Housing Act, based upon a variety of circumstances.~~

EF. RESIDENT EMPOWERMENT

The Administration strongly supports provisions in both bills, and retention of certain elements of current law, which empower residents, ensure that residents are given the opportunity to participate in decisions affecting their lives, and protect residents from unwarranted intrusions.

In the Administration's view, the final bill must include, at least, the following:

- The Senate bill's authorization of the supportive services funding originally authorized in the FY 1996 appropriation (the EDSS program), which should include elements of the Tenant Opportunity Program as proposed in the Administration's bill

- Resident membership requirements on the public housing boards of commissioners, as provided in both bills, and the House bill's required

plan review period for affected residents;

- The Senate bill's provisions protecting residents' rights to adequate notice and consultation and ensuring adequate relocation assistance in the demolition and disposition process; and

- Retention of current law provisions on: (1) lease and grievance procedures (as opposed to the House repeal); and (2) notice of lease termination (as opposed to the House bill's preemption of any minimum notice requirements provided under State law).

FG. ACCESS TO MEDICAL RECORDS

The Administration strongly opposes the provision in the Senate bill that would authorize PHAs to obtain medical information about applicants for housing assistance.

This provision could increase the potential that important antidiscrimination protections of Federal fair housing laws could be violated and could discourage persons with drug problems from seeking treatment. The Administration shares the Senate's desire to ensure safety and security in public housing, and has proposed and implemented tough new policies, such as "One Strike and You're Out", to achieve that goal. However, the Administration believes that the Senate's medical records provision goes too far, weakening other important legal protections and compromising efforts to encourage people with drug abuse problems to enter appropriate and effective treatment programs. The Administration is concerned that this provision could have negative consequences for individuals who have received treatment and are attempting to rebuild their lives.

GH. PAYMENT STANDARD

The Administration opposes the provisions of both bills allowing PHAs to set the payment standard in the tenant-based Section 8 program at levels higher than the Fair Market Rent established by HUD.

The Administration believes that the Payment Standard should be set at no higher than the Fair Market Rent (FMR) or a HUD-approved exception rent up to 120% of FMR. H.R. 2 would permit PHAs to establish payment standards of 80% to 120% of FMR. The Senate bill would allow PHAs to establish payment standards of 90% to 110% of FMR, though PHAs may establish higher or lower payment standards with HUD approval.

The higher the payment standard, the greater the subsidy to each assisted household. Consequently, fewer eligible families would receive housing assistance.

The pressures on PHAs to help the currently assisted at the expense of the unassisted are very high, and work against national goals of helping more families in need. In addition, a higher payment standard would encourage a greater number of relatively higher-income and less needy families to apply for housing assistance, further reducing the amount of housing assistance available to the poorest families with the most severe housing needs.

II. OTHER CONCERNS

A. REPEAL OF THE U.S. HOUSING ACT OF 1937

The Administration urges Congress to find another means of signaling dramatic program reform.

The Administration sees no compelling operational reason to repeal the 1937 Act. The new law can be crafted so that it clearly calls for sweeping reform of the public housing and tenant-based assistance programs, without including the complications of repealing the 1937 Act.

There are also practical concerns regarding repeal. At the request of the House Banking Committee in the previous legislative session, the Administration conducted an extensive review of the implications of the proposed repeal of the U.S. Housing Act of 1937. HUD determined that there are, at a minimum, over 500 references to the 1937 Act in other statutes, located both within and outside of the jurisdiction of the Congressional Banking Committees. Additionally, the Administration identified a series of issues which the Conferees should address if the repeal is accepted in the Conference. Moreover, coupling the 1937 Act repeal with a ban on new regulations prior to the effective date of the law, as provided in the House bill, would inhibit the ability of the Administration to ensure that the new law is carried out uniformly and with adequate guidance.

B. RENT LEVELS

1. Flat Rents

The Administration does not see the need for the House bill provision giving public housing residents the choice of paying an income-based rent or a flat rent based on the market value of their units.

This provision would be administratively burdensome to the 3,400 PHAs who will have to determine the market value of well over one million public housing

units, including units in elderly housing developments. In addition, if the goal is to encourage residents to increase their incomes or to encourage relatively higher-income families to move into or remain in public housing, then the same thing can be accomplished by implementing a program of rent incentives, including earned income disregards and ceiling rents. Both bills allow PHAs to adopt innovative rent policies by permitting rents "up to" 30% of adjusted income (as opposed to current law, which requires rents to be set "at" 30% of adjusted income).

2. Minimum Rents

The Administration opposes the minimum rent provisions in the bills, particularly the authority in the House bill to set a minimum up to fifty dollars. Instead, the Administration supports a minimum rent requirement of $25 per month, with an exemption for hardship categories to be determined by the Secretary or the PHA.

The Administration generally agrees with the concept that every family receiving housing assistance should make at least some rental payment. However, the Administration believes such a minimum rent should not exceed $25 per month, an amount which is sufficient to make the symbolic point that all residents should contribute something to maintenance of their development without imposing an undue burden on the very poorest families. Thus, the Administration opposes the House provision allowing PHAs to charge a minimum rent of up to $50 per month. Further, the Administration believes that the Secretary of HUD must have the authority to establish hardship exemptions for certain types of cases -- for example, for those families awaiting public benefit eligibility determinations.

C. HOME AND CDBG INCOME TARGETING

The Administration opposes the House bill's unnecessarily loosened income targeting in both the CDBG and HOME programs.

The Administration strongly objects to the changes which would preclude the Secretary from capping median incomes at the national median income. Currently, the CDBG and HOME funds are targetted to assure that low-income families are well served. This proposal would immediately raise the income limit in thirty-seven relatively higher income metropolitan areas. For example, in one community, the income limit for a four person family would exceed $71,000 (Stamford, Connecticut). By allowing families with incomes even above moderate income ranges to benefit from these programs, these changes would eviscerate the requirement that those programs substantially benefit low and moderate income households.

D. DISCRETION TO SETTLE LAWSUITS

The Administration opposes the House bill's provision which requires the Secretary of HUD to consult all adjacent local governments, when settling any lawsuit involving HUD, a PHA, and a local government.

This provision is an unnecessary intrusion into the federal government's ability to manage its affairs. Moreover, the Justice Department represents HUD in settling lawsuits. It would be unwise to require the Secretary of HUD to engage in particular consultations that may conflict with or duplicate the efforts of the Justice Department. At a minimum, this provision could be extremely costly for the Federal government, since it will hinder the ability to settle lawsuits in a timely and cost-effective manner. Finally, the provision is overly broad, since it would require such consultation for all matters, whether trivial or substantial.

E. CDBG SANCTION

The Administration opposes the House bill's CDBG sanction against local governments contributing to the troubled status of a PHA.

H.R. 2 provides that the Secretary may withhold or redirect the CDBG funds of any local government whose actions or inactions have substantially contributed to the troubled status of a PHA. Current law, coupled with new sanctions included in both bills gives HUD a number of other sanctions to deal with troubled PHAs, including receivership. The proposed CDBG sanction could lead to substantial charges, countercharges, and litigation, without resulting in the improvement of troubled PHAs.

F. AVAILABILITY OF CRIMINAL CONVICTION RECORDS

The Administration opposes the apparent requirement in the House bill that private owners of federally assisted housing be provided with information regarding criminal conviction records of adult applicants or tenants of that housing.

The Administration opposes allowing any private citizens or entities, including the private owners of federally assisted housing, to obtain criminal record information about other individuals. The provision of such sensitive information to private individuals and entities raises significant privacy concerns. The Administration will work with Congress to identify other means of bolstering security efforts in privately owned, federally assisted housing.

G. DESIGNATED HOUSING

The Administration opposes the changes H.R. 2 makes to current law

requirements for designation of housing for elderly persons or persons with disabilities. These changes would weaken current law provisions requiring PHAs to consider the housing needs of persons with disabilities, and would not allow an adequate time period for proper review of designated housing plans.

Under current law, a PHA's plan to designate housing must meet two requirements. First, the plan must be "necessary to meet the jurisdiction's Comprehensive Housing Affordability Strategy, "and" the plan must be "necessary to meet the low-income housing needs of the jurisdiction." Under H.R. 2, a PHA would need to meet only one of these two prongs, showing that a designation plan is necessary to meet either the CHAS "or" the low income housing needs of the jurisdiction.

These changes are not necessary and are likely to have a detrimental impact on access to housing for persons with disabilities. The current statutory framework is working effectively. HUD has been successful in helping PHAs designate thousands of units for elderly persons, while preserving housing access for persons with disabilities in those communities.

Allowing a PHA to rely solely on a CHAS, as H.R. 2 proposes, may lead to designations which are inconsistent with the housing needs of persons served by the PHA. The CHAS is written based upon Consolidated Plan regulations that are tailored to community planning and development programs and that do not require communities to assess the housing needs of persons with disabilities in general. Rather, they refer specifically only to persons with disabilities who require service-connected or accessible housing. The vast majority of persons with disabilities who apply to live in public housing are merely low-income individuals who also have disabilities. They are neither looking for, nor need supportive housing.

In addition, the submission and review of designated housing plans should not be incorporated into the PHA's "local housing management plan", as under the House bill. The Administration believes that, since they involve significant decisions that could permanently limit access to important housing resources for some low-income people, designated housing plans should be considered separately from the many other administrative and management issues that are addressed in the local housing management plan.

H. TOTAL DEVELOPMENT COSTS

The Administration urges the Conferees to include language reflecting the Administration's proposal on total development costs.

The Conference staffs ~~have been provided with~~ are being provided HUD's

proposal on total development costs. The proposal would assure that capital costs allowed for HOPE VI and other public housing development will produce sound and durable, but modest, housing that fits into the community. It would also assure that the costs of community development and supportive service activities are not confused with the costs of housing construction. HUD urges the Conferees to include statutory language that reflects this proposal.

I. OCCUPANCY STANDARDS

HUD opposes the House provision barring a national occupancy standard, solely because the provision may cause confusion regarding HUD's authority.

HUD has no intention to establish, directly or indirectly, a national occupancy standard. The Department continues to follow Congress's direction in the FY 1996 HUD Appropriations Act, which requires that HUD, in connection with a complaint under the Fair Housing Act, determine the~~at~~ legality of a State or local standard, on a case-by-case basis, considering a variety of circumstances.

JI. VOLUNTEER SERVICES

The Administration urges the Conferees to take this opportunity to revise the volunteer exception to the Davis-Bacon Act to conform to the language of the Community Improvement Volunteer Act of 1994.

There is no policy reason to continue the differences in the definitions of volunteer exemptions. The Administration included the necessary language in its public housing bill (H.R. 1447, Section 121). Any volunteer provisions regarding resident management corporations also need to be consistent with this definition.

KJ. SEXUALLY VIOLENT PREDATORS

A rule barring "sexually violent predators" from public housing probably would be difficult or impossible to enforce. In addition, housing agencies already have access to the information contained in the National Sex Offender Registry.

Section 641(c) of H.R. 2 and § 301 (f) of S.462 would require public housing agencies to exclude "sexually violent predators" as defined in the Wetterling Act (42 U.S.C. 14071). The Wetterling Act contains standards for States sex offender registration programs. In the past, those standards required states to determine convicted sex offenders are "sexually violent predators" (using a partially legal and quash-psychiatric definition set out in the Act), for purpose of

imposing registration requirements. However, under recent amendment to the Act, States no longer are required to make such determinations. Instead, they can adopt other measures to protect the public from particularly dangerous sex offenders. Because it is predictable that many states will not make "sexually violent predator" determinations, a rule barring "sexually violent predators" from public housing will probably be difficult or impossible to enforce.

Section 644(a) of H.R. 2 and § 304(b) of S.462 require the FBI and state and local agencies to provide public housing agencies with information collected under the National Sex Offender Registry (NSOR) or a State registry. An an initial matter, these provisions refer to language ("designated State law enforcement agency: and "local law enforcement agency authorized by the State agency") that is no longer in the Wetterling Act. In addition, an NSOR check alone will not to reveal whether a sex offender is a "sexually violent predator." As it currently exists, NSOR is a system for noting on an offender's criminal history record in the FBI's records system if he or she is a convicted sex offender required to register in some State. A person accessing the record can contact the State for more detailed information. If a State uses the "sexually violent predator" classification, the State registry may reveal whether a sex offender has been determined to be a sexually violent predator.

Finally, there already are procedures for housing agencies to obtain criminal history record information on housing applications from the FBI. The agencies can use the existing procedures to determine whether an applicant is a convicted sex offender, and then contact the state for additional information.

I look forward to contributing to the constructive resolution of these issues. As always, please call upon me and the HUD staff for any assistance we can provide.

Sincerely,

Andrew Cuomo

Housing - Legislation

Draft 6/19/98
Redlined against Draft 5/1/98

1998 Public Housing Reform Bills

Letter to the Conferees

Dear Conferee:

I am writing to make you aware of the Administration's views on the public housing reform legislation you are now considering in the conference to reconcile S. 462 and H.R. 2. These bills propose major changes in the public housing and tenant-based Section 8 programs. Over several years now, both the Congress and the Administration have put a great deal of thought and hard work into the pursuit of sound reform legislation. As you move ahead in the conference, I look forward to our continued collaboration, so that important and long-overdue reforms may finally be enacted and implemented.

INTRODUCTION

The Administration strongly supports the goals of S. 462 and H.R. 2 -- to streamline and reorganize the Nation's public housing system in a manner which will benefit public housing residents, facilitate the efficient use of Federal resources, and increase accountability to the public. The Administration also appreciates the willingness of both the House and Senate to draw upon management reform and other provisions in the Administration's bill -- the Public Housing Management Reform Act of 1997.

However, the Administration has a number of major concerns about S. 462 and H.R. 2 which, among other things, require the Conferees to take the following actions:

- Provide more targeting of scarce housing assistance to the neediest families;
- Delete the H.R. 2 provision allowing "fungibility" to meet income targeting requirements;
- Delete or address the serious flaws in H.R. 2's "Home Rule Flexible Grant Option";
- Delete the self-sufficiency agreements and the community work provisions in H.R. 2;
- Delete the Housing Evaluation and Accreditation Board created by H.R. 2;
- Further streamline "PHA Plan" requirements; allow small PHAs to use operating and capital funds interchangeably; delete provisions constraining flexibility in the operating subsidy formula; and make the Drug Elimination Program a formula-based program;
- Delete the S. 462 provision authorizing PHAs to obtain medical information about applicants for housing assistance; and

- Delete the provisions of both bills allowing PHAs to set the payment standard in the tenant-based Section 8 program higher than the Fair Market Rent established by HUD.

SUMMARY OF THE BILLS

The Senate and House bills make permanent a number of critical reforms that the Administration and the Congress have been able to achieve only through year-to-year provisions in appropriations legislation. Elements of the Senate and House bills would promote the continuation and strengthening of the transformation of the public housing and Section 8 programs already underway, including: (1) replacing the worst public housing with scattered-site and townhouse developments and with portable tenant-based assistance, ~~which is achieved~~ through ~~extending~~ the HOPE VI program, permanently repealing the one-for-one replacement requirement, and facilitating demolition of obsolete developments and conversion to tenant-based assistance or appropriate site revitalization; (2) turning around troubled PHAs through the use of various tools, including mandatory receiverships for chronically troubled PHAs and enhanced powers afforded to HUD and court-appointed receivers upon takeover; (3) promoting public housing communities with a greater income diversity and allowing PHAs to implement rent policies that encourage and reward work, and are coordinated with welfare reform; (4) demanding greater household responsibility as a condition of housing assistance through more vigorous screening, eviction or subsidy termination, and lease enforcement provisions; and (5) implementation of several of the Administration's key management reforms. Important provisions for management reform include program consolidation and streamlining, deregulation of well-managed PHAs and small PHAs, increased reliance on physical conditions in assessing PHA performance and more certain treatment of the most troubled PHAs.

DESCRIPTION OF ADMINISTRATION CONCERNS

As I am sure you are aware from my testimony last year and from other discussions in recent months, however, the Administration has a number of major concerns about particular provisions of both bills. Despite its support for the general goals of both bills, the Administration believes that certain provisions go farther than is necessary to make the reforms that are needed. Instead of making only reforms, some provisions -- particularly on income targeting -- would move the program too far away from fundamental, prudent national standards and appropriate federal oversight. Nevertheless, the Administration is hopeful that our concerns can and will be addressed in the Conference, clearing the way to enactment of sound public housing and Section 8 reform legislation.

The Administration's most important concerns about the bills are described below.

I. MAJOR CONCERNS

A. INADEQUATE TARGETING OF HOUSING ASSISTANCE TO THOSE FAMILIES MOST IN NEED

1. Income Targeting in Public Housing

The Administration believes that the income targeting provisions of both bills must be tightened to direct more housing assistance to families with the most pressing housing needs. In particular, the Administration strongly opposes the House "fungibility" provision, which could mean that PHAs in some cities would not have to offer any public housing units to extremely low-income families. The Administration supports the Senate requirement that 40% of available public housing units go to extremely low-income families; however, the Administration also advocates increasing – from 70% (as in the Senate bill) to 90% -- the ratio of newly available units that must be offered to families with income levels no higher than 60% of median (which is approximately $22,600 nationally). The Administration also seeks a requirement that at least 40% of the units in each public housing development be occupied by families with incomes below 30% of area median income. This will ensure that the poorest families have housing opportunities at all developments, including those that may be most marketable to relatively higher income families.

The Administration believes that the income targeting provisions of both bills -- especially the House's "fungibility" provision -- go much farther than is necessary to serve working families and achieve a more diverse income mix in public housing. It is essential to the social and financial health of public housing communities that more working families are admitted to public housing. Today, the median family income in public housing is only $6,940 per year -- just 21% of median income nationally. By contrast, both bills would open up too many public housing units to families at the upper end of the eligibility range -- families with incomes of up to 80% of the area median income, or approximately $40,000 in the ten largest metropolitan areas.

The Administration does not oppose admitting a small number of families at that income level. However, the Administration believes that mixed-income communities that serve working families can be attained without going as far as the House and Senate bills. This can be done by ensuring that at least 40% of admissions are reserved for families with incomes up to 30% of median (approximately $11,300) and that 90% of admissions are families with incomes at or below 60% of the area median (approximately $22,600). In comparison, 60% of median income is the absolute upper cap for the HOME and low-income housing tax credit programs. In addition, the Administration urges the Conferees to adopt language that would require PHAs to maintain occupancy of at least a certain percentage of units in each public housing development by extremely low-income families.

Not only are the income targeting percentages inadequate, but the House bill's fungibility provision could undermine even that level of targeting which the bill proposes. This provision

would allow a PHA to admit even fewer very poor families to public housing if the PHA gave more of its Section 8 certificates to such families than the minimal number which the bill requires. The result almost certainly would be that some PHAs would not have to offer any public housing units to families -- including many working families -- whose incomes are below 30% of the area median income. The Administration finds such a possibility to be unacceptable.

The Administration proposed its income targeting for public housing with the understanding that the achievement of a more diverse income mix necessarily would result in reduced access for those with the lowest incomes. Partly in recognition of this problem, the Administration each year has proposed that Congress provide substantial additional vouchers. Congress should recognize that these proposals are linked and that the loosening of public housing income targeting needs to be done in conjunction with the provision of additional vouchers.

With respect to income targeting by development, that concept already is part of current law. The Administration proposal is a moderate proposal to ensure continuing access to all developments by all eligible income groups.

2. Income Targeting in the Tenant-Based Section 8 Rental Assistance Program

The Administration is opposed to the provisions of both bills on income targeting for the tenant-based Section 8 program. Instead, the Administration believes that 75% of tenant-based assistance which becomes available each year should be targeted to the very poor -- families with incomes at or below 30% of median income (approximately $11,300) -- and that the remainder of such assistance generally should go to families with incomes no greater than 50% of median, as under current law.

Both bills unnecessarily reduce the portion of Section 8 tenant-based assistance that would go to families with severe housing needs. Current law generally limits eligibility for tenant-based assistance to very low-income families with incomes below 50% of the area median income. Moreover, federal preferences, which applied to 90% of new Section 8 recipients prior to FY 1996 as opposed to only 50% of new public housing residents, have served to further target assistance to extremely low income families. The median income of Section 8 certificate holders is now approximately $7,550.

In contrast, H.R. 2 would require only that 40% of all Section 8 tenant-based assistance go to extremely low-income families -- the income range which the program has primarily served in the past. Relatively higher income families, with incomes up to 80% of median income, would become eligible to receive such assistance. S. 462 is not as extreme as the House bill, but would still require only that 65% of all tenant-based assistance go to families with the most severe housing needs and that 90% go to families with incomes under 60% of median.

The Administration contends that scarce federal rental subsidies for use in the private market must be targeted to families with the lowest incomes, for the following reasons: 1) 5.3 million very low-income renters now have "worst-case housing needs", defined as paying more than 50% of their income toward rent or living in substandard housing units, and these families are concentrated at the lowest income levels (below 30% of the area median income); 2) relatively few of the families with incomes in the upper ranges allowed under both bills who would become eligible for admission to the Section 8 program (including 17.5 million unassisted renters) have serious unmet housing needs; 3) federal preferences are being repealed; 4) both the Senate and House bills propose opening up public housing admissions to families with relatively higher incomes to promote mixed-income communities, which means fewer units will be available for extremely poor families; and 5) tenant-based rental assistance integrates families with low incomes into private, mixed-income housing of their choice and does not suffer from the severe income concentration problems of project-based programs.

The Administration also sees no reason to expand tenant- based program eligibility limits so that these scarce housing resources can be provided to households with incomes at 80% of the median -- approximately $40,000 for families in the ten largest metropolitan areas -- who are better able to afford private market housing without any subsidy. This income level, which is equivalent to 250% of the poverty line, exceeds the income limits for virtually all other federal means-tested programs.

B. HOME RULE FLEXIBLE GRANT OPTION

The Administration strongly opposes the Home Rule Flexible Grant Option in H.R. 2, which could transfer public housing funds from a PHA to a city government regardless of the city's ability or experience in administering housing programs. Instead, the Administration believes that implementation of the current Moving-to-Work demonstration will provide sufficient opportunity to explore innovative local approaches in the public housing and Section 8 programs.

~~The Administration strongly opposes the Home Rule Flexible Grant Option in H.R. 2. This provision could completely undermine the public housing program in some localities by allowing the city government to supplant the local PHA and capture its funds, with limited explanation and no justification.~~

The Administration has taken bold action to deal with chronically troubled PHAs and to demolish and replace the worst public housing. However, that is not what the House provision is about. The House provision would allow a city government, regardless of its motives or its track record in administering housing programs, to take over or replace even a high-performing housing authority. Some of the most intractable management problems in recent years have occurred in several chronically troubled PHAs that have been operated as part of city government.

The provision also inexplicably provides cities that would administer public housing more regulatory flexibility than PHAs (e.g., to charge rents exceeding Brooke amendment requirements).

There is no reason to link additional regulatory flexibility with the choice of the entity to administer public housing.

If the goal of this provision is to address serious management problems in public housing, one would expect it to be crafted as an alternative intervention strategy with respect to troubled PHAs. The provision instead would be applicable to all PHAS irrespective of the demonstrated quality of their management.

Instead, the Administration supports continued implementation of the Moving to Work demonstration authorized by the FY 1996 appropriations act. That demonstration program allows up to thirty PHAs to design and test innovative ways to provide housing assistance and to link families to work, through merging funding streams and testing new rent structures while retaining reasonable income targeting. HUD has selected PHAs with diverse and potentially far-reaching proposals. The demonstration is large enough to allow substantial experimentation, yet small enough to permit a rigorous evaluation of program success and replicability.

C. COMMUNITY WORK AND SELF-SUFFICIENCY REQUIREMENTS

The Administration opposes the self-sufficiency agreements and the community work provisions in the House bill. Instead, the Administration believes that provisions emphasizing collaboration between PHAs and local welfare agencies are a better and more productive approach to addressing welfare reform and self-sufficiency issues. For example, the Administration supports the provisions in both bills which require PHAs to describe in their annual plans the ways in which they propose coordination with other local and state welfare and service agencies, and assure that households who violate welfare program self-sufficiency rules are not rewarded with subsidized housing rent decreases. The Administration also supports provisions in both bills permitting PHAs to set public housing rents "up to" 30% of a family's adjusted income, which allows for rent structures that do not penalize increases in earned income. Further, the Administration supports authorization of additional Section 8 certificates for use with local collaboratives in welfare-to-work initiatives.

The Administration believes that public housing and Section 8 residents must assume certain responsibilities in return for the benefits of their housing assistance. To this end, the Administration supports many reforms in both the House and Senate bills which place a premium on resident self-sufficiency and on linking the PHA with existing providers of services. Additionally, the Administration supports provisions in both bills to toughen screening, lease enforcement, and eviction, and subsidy termination requirements.

However, the Administration opposes the House bill's mandatory self-sufficiency contracts. This sweeping new requirement would fundamentally change the public housing and Section 8 programs and would impose inordinate and costly burdens on 3,400 local PHAs whose budgets and administrative capacities already have been stretched. A far more efficient and effective approach is to encourage partnerships between PHAs and State and local welfare agencies that promote self-

sufficiency through initiatives such as the authorization of "Welfare to Work" certificates, as proposed in the Administration's bill.

The Administration also opposes significant aspects of the community work provisions included in the House bill. The Administration's bill includes a community service provision because the Administration believes it is reasonable to ask each recipient of public housing or tenant-based assistance to be engaged in some activity which benefits the community as a whole, which includes working, attending school, or otherwise preparing for work. However, the Administration's bill provides for much more reasonable exemptions than the House bill and would not authorize eviction as an enforcement tool.

D. MANAGEMENT REFORM

1. Federal Oversight

The Administration supports several of the bills' revisions to the PHMAP system and would support the establishment of a performance evaluation board or other task force to review various performance evaluation systems and determine the need, if any, for an outside accreditation entity. The Administration also supports the House and Senate bill provisions which give HUD or a receiver enhanced powers for dealing with troubled PHAs; require the takeover of severely troubled PHAs that fail to improve promptly; and require the obligation and expenditure of capital funds within certain time frames (which the Administration believes should be extended to the HOPE VI program). The Administration does not support the Accreditation Board created by the House bill.

The Administration believes that it is critical to have an assessment tool which accurately measures PHA performance and is consistent with the Administration's management reform plan for HUD. In the short run, this requires making modifications to the current performance measurement system -- the Public Housing Management Assessment Program (PHMAP). In particular, the Administration supports the bills' provision adding a PHMAP indicator assessing the extent to which a PHA is providing acceptable basic housing conditions and the House provision making acceptable basic housing conditions a precondition for a PHA to get a passing grade in the assessment system. This will support HUD's efforts to make PHMAP more objectively verifiable and reflective of the conditions under which public housing residents are living.

The Administration, however, strongly opposes the House bill's "Accreditation Board", a new federal agency which would create an accreditation program for all public housing agencies and other providers of federally assisted housing. This proposal, written prior to the Administration's management reform efforts, runs directly counter to the Administration's plan for improving and streamlining Federal oversight of the public housing program. It would not reduce, but instead would redistribute and probably increase, the Federal bureaucracy. Moreover, the proposal would appear to divorce Federal oversight and auditing responsibilities which would be given to the Accreditation

Board, from HUD's ongoing obligation to provide Federal funds to PHAs. This would make it more difficult for HUD to hold PHAs accountable.

Instead of the House bill's Accreditation Board, an entity_such as the Administration's proposed Performance Evaluation Board should be given the opportunity to review and make recommendations on various approaches to Federal oversight and assessment of PHAs, including accreditation. Finally, the Justice Department advises that the proposed means of appointing the Accreditation Board would unduly restrict the President and thus violate the Appointments Clause of the Constitution.

The Administration already has taken the most aggressive actions in HUD's history against chronically troubled PHAs, including direct takeovers and support for judicial receiverships. In this regard, the Administration supports the Senate bill's provisions giving HUD enhanced powers to deal with troubled PHAs (which are the same provisions as in the Administration's bill). Those provisions require HUD to take certain actions against any PHA that is still troubled after one year (including mandatory receivership for any large PHA). After further consideration, the Administration believes that this provision should be modified to give a troubled PHA one additional year before HUD will take action if that PHA has made progress in the first year that is equal to at least half the difference between its PHMAP score and the score necessary to be a "standard" performer.

In addition, the Administration supports the Senate bill provision requiring PHAs to obligate capital funds within 24 months. It is critical in these times of fiscal restraint to ensure that appropriated funds are used promptly for their intended purposes. Further, the Administration urges the Conferees to adopt two additional provisions from the Administration's bill: (1) requiring PHAs to spend capital funds within 48 months (in addition to obligating such funds within 24 months); and (2) applying specific time frames to the HOPE VI program, such that a PHA would have to sign a primary construction contract within 18 months of executing the grant agreement, and would have to complete construction within 4 years from the grant agreement.

2. Consolidation and Streamlining

The Administration urges the Conferees to further streamline PHA plan requirements as in the Administration's bill. In addition, the Administration supports the House provision allowing small PHAs to use operating and capital funds interchangeably. The Administration also advocates the deletion of provisions constraining flexibility in the operating subsidy formula. Further, the Administration urges the Conferees to convert the Drug Elimination Program into a formula-based program, and to merge the TOP and EDSS programs.

The Administration supports and recognizes the benefits of consolidating PHA planning and reporting requirements into a single annual plan, as provided in both the Senate and House bills. However, the Administration is concerned that the scope of the annual plans be consistent with HUD efforts to streamline PHA and HUD administration of the public housing and Section 8 programs.

The Administration strongly urges the Conferees to consider limiting the number and scope of plan elements as described in the Administration's bill. Conferees also should adopt the Senate provision permitting HUD by regulation to provide that elements of the PHA plan other than the capital plan and civil rights shall be reviewed only if challenged.

The Administration also supports the House provision allowing small PHAs (less than 250 units) to use operating and capital funds fungibly, as provided in the House bill, because the formula allocation of capital funds to such PHAs would be small and the additional flexibility would simplify PHA operations and HUD administration. However, the Administration opposes the provision of the House bill giving governors new responsibility to allocate half of such funds.

In addition, the Administration supports the language in both bills authorizing HUD to renegotiate the formula for allocating public housing operating subsidies to PHAs. The current system has not been changed in many years. A renegotiation could result in a revised formula that is simpler and more equitable, and that provides better incentives for sound, cost-effective public housing management. However, HUD opposes the House provisions defining treatment of vacant units, utility rates, and rental income. These provisions may hamstring and substantially complicate the future formula and should be left to rulemaking (which will be negotiated rulemaking under the House and Senate bills). The extent to which PHAs may retain increases in rental income, in particular, should be left to rulemaking because: (1) rental income is increasing substantially throughout the program, for reasons that may be unrelated to PHA administration of the program; and (2) such retention creates a strong financial incentive for PHAs not to serve the poorest households. The House §204(d) interim allocation provisions also are unnecessary.

~~In addition~~ Further, the Administration urges the Conferees to convert the Public Housing Drug Elimination Program from a competitive to a formula-based program, to provide predictable funding for PHAs and reduce the administrative burden on both HUD and PHAs of annual competitions. The Administration also advocates permanent authorization of the supportive service (EDSS) program and a merger of EDSS and the Tenant Opportunities Program (TOP), as provided in the Administration's bill.

E. OCCUPANCY STANDARDS

The Administration opposes the House bill's provision on occupancy standards because it would reduce protections currently afforded to families with children under the Fair Housing Act.

The House provision on occupancy standards would invite state adoption of absolute occupancy standards regardless of the facts of a particular situation, or the existence of any health or safety justifications. Enactment of this provision could result, for example, in a State allowing a housing provider to refuse to rent a 2-bedroom unit to a family with three children, even if: 1) the bedrooms were unusually large; 2) one of the children was an infant; or 3) a den could reasonably be used as a bedroom. This could contribute to the shortage of affordable housing large enough for

families. HUD's current occupancy standard, which conforms to Congress's direction in the FY 1996 HUD Appropriation Act, appropriately requires HUD to determine, on a case by case basis, whether a standard is legal under the Fair Housing Act, based upon a variety of circumstances.

F. RESIDENT EMPOWERMENT

The Administration strongly supports provisions in both bills, and retention of certain elements of current law, which empower residents, ensure that residents are given the opportunity to participate in decisions affecting their lives, and protect residents from unwarranted intrusions.

In the Administration's view, the final bill must include, at least, the following:

- The Senate bill's authorization of the supportive services funding originally authorized in the FY 1996 appropriation (the EDSS program), which should include elements of the Tenant Opportunity Program as proposed in the Administration's bill;

- Resident membership requirements on the public housing board, as provided in both bills, and the House bill's required plan review period for affected residents;

- The Senate bill's provisions protecting residents' rights to adequate notice and consultation and ensuring adequate relocation assistance in the demolition and disposition process; and

- Retention of current law provisions on: (1) lease and grievance procedures (as opposed to the House repeal); and (2) notice of lease termination (as opposed to the House bill's preemption of any minimum notice requirements provided under State law).

G. ACCESS TO MEDICAL RECORDS

The Administration strongly opposes the provision in the Senate bill that would authorize PHAs to obtain medical information about applicants for housing assistance.

This provision could increase the potential that important antidiscrimination protections of Federal fair housing laws could be violated and could discourage persons with drug problems from seeking treatment. The Administration shares the Senate's desire to ensure safety and security in public housing, and has proposed and implemented tough new policies, such as "One Strike and You're Out", to achieve that goal. However, the Administration believes that the Senate's medical records provision goes too far, weakening other important legal protections and compromising

efforts to encourage people with drug abuse problems to enter appropriate and effective treatment programs. The Administration is concerned that this provision could have negative consequences for individuals who have received treatment and are attempting to rebuild their lives.

H. PAYMENT STANDARD

The Administration opposes the provisions of both bills allowing PHAs to set the payment standard in the tenant-based Section 8 program at levels higher than the Fair Market Rent established by HUD.

The Administration believes that the Payment Standard should be set at no higher than the Fair Market Rent (FMR) or a HUD-approved exception rent up to 120% of FMR. H.R. 2 would permit PHAs to establish payment standards of 80% to 120% of FMR. The Senate bill would allow PHAs to establish payment standards of 90% to 110% of FMR, though PHAs may establish higher or lower payment standards with HUD approval.

The higher the payment standard, the greater the subsidy to each assisted household. Consequently, fewer eligible families would receive housing assistance. The pressures on PHAs to help the currently assisted at the expense of the unassisted are very high, and work against national goals of helping more families in need. In addition, a higher payment standard would encourage a greater number of relatively higher-income and less needy families to apply for housing assistance, further reducing the amount of housing assistance available to the poorest families with the most severe housing needs.

II. OTHER CONCERNS

A. REPEAL OF THE U.S. HOUSING ACT OF 1937

The Administration urges Congress to find another means of signaling dramatic program reform.

The Administration sees no compelling operational reason to repeal the 1937 Act. ~~Congress and the Administration can find another, less divisive, way to ensure that the legislation clearly indicates the intent that public housing change dramatically.~~ The new law can be crafted so that it clearly calls for sweeping reform of the public housing and tenant-based assistance programs, without including the complications of repealing the 1937 Act.

There are also practical concerns regarding repeal. At the request of the House Banking Committee in the previous legislative session, the Administration conducted an extensive review of the implications of the proposed repeal of the U.S. Housing Act of 1937. HUD determined that there are, at a minimum, over 500 references to the 1937 Act in other statutes, located both within and outside of the jurisdiction of the Congressional Banking Committees. Additionally, the Administration identified a series of issues which the Conferees should address if the repeal is

accepted in the Conference. Moreover, coupling the 1937 Act repeal with a ban on new regulations prior to the effective date of the law, as provided in the House bill, would inhibit the ability of the Administration to ensure that the new law is carried out uniformly and with adequate guidance.

B. RENT LEVELS

1. Flat Rents

The Administration does not see the need for the House bill provision giving public housing residents the choice of paying an income-based rent or a flat rent based on the market value of their units.

This provision would be administratively burdensome to the ~~In addition to the administrative burden on~~ 3,400 PHAs who will have ~~of having~~ to determine the market value of well over one million public housing units, including units in elderly housing developments. ~~the result of the House bill's flat rent proposal ("Family Choice of Rental Payment") would be to give residents the opportunity to make a bad economic choice. That is, residents could choose to pay a rent based on the flat rent even when thirty percent of their adjusted income would be lower. If~~ In addition, if the goal is to encourage residents to increase their incomes or to encourage relatively higher-income families to move into or remain in public housing, then the same thing can be accomplished by implementing a program of rent incentives, including earned income disregards and ceiling rents. Both bills allow PHAs to adopt innovative rent policies by permitting rents "up to" 30% of adjusted income (as opposed to current law, which requires rents to be set "at" 30% of adjusted income).

2. Minimum Rents

The Administration opposes the minimum rent provisions in the bills, particularly the authority in the House bill to set a minimum up to fifty dollars. Instead, the Administration supports a minimum rent requirement of $25 per month, with an exemption for hardship categories to be determined by the Secretary or the PHA.

The Administration generally agrees with the concept that every family receiving housing assistance should make at least some rental payment. However, the Administration believes such a minimum rent should not exceed $25 per month, an amount which is sufficient to make the symbolic point that all residents should contribute something to maintenance of their development without imposing an undue burden on the very poorest families. Thus, the Administration opposes the House provision allowing PHAs to charge a minimum rent of up to $50 per month. Further, the Administration believes that the Secretary of HUD must have the authority to establish hardship exemptions for certain types of cases -- for example, for those families awaiting public benefit eligibility determinations.

C. HOME AND CDBG INCOME TARGETING

The Administration opposes the House bill's unnecessarily loosened income targeting in both the CDBG and HOME programs.

This proposal would immediately raise the income limit in thirty-seven relatively higher income metropolitan areas. For example, in one community, the income limit for a four person family would exceed $71,000 (Stamford, Connecticut). By allowing families with incomes even above moderate income ranges to benefit from these programs, these changes would eviscerate the requirement that those programs substantially benefit low and moderate income households.

D. DISCRETION TO SETTLE LAWSUITS

The Administration opposes the House bill's provision which requires the Secretary of HUD to consult all adjacent local governments, when settling any lawsuit involving HUD, a PHA, and a local government.

This provision is an unnecessary intrusion into the federal government's ability to manage its affairs. Moreover, the Justice Department represents HUD in settling lawsuits. It would be unwise to require the Secretary of HUD to engage in particular consultations that may conflict with or duplicate the efforts of the Justice Department. At a minimum, this provision could be extremely costly for the Federal government, since it will hinder the ability to settle lawsuits in a timely and cost-effective manner. Finally, the provision is overly broad, since it would require such consultation for all matters, whether trivial or substantial.

E. CDBG SANCTION

The Administration opposes the House bill's CDBG sanction against local governments contributing to the troubled status of a PHA.

H.R. 2 provides that the Secretary may withhold or redirect the CDBG funds of any local government whose actions or inactions have substantially contributed to the troubled status of a PHA.
~~The proposed CDBG sanction could lead to substantial charges, countercharges, and litigation, without resulting in the improvement of troubled PHAs.~~ Current law, coupled with new sanctions included in both ~~The~~ bills gives HUD a number of other sanctions to deal with troubled PHAs, including receivership. The proposed CDBG sanction could lead to substantial charges, countercharges, and litigation, without resulting in the improvement of troubled PHAs.

F. AVAILABILITY OF CRIMINAL CONVICTION RECORDS

The Administration opposes the apparent requirement in the House bill that private owners of federally assisted housing be provided with information regarding criminal conviction records of adult applicants or tenants of that housing.

The Administration opposes allowing any private citizens or entities, including the private owners of federally assisted housing, to obtain criminal record information about other individuals. The provision of such sensitive information to private individuals and entities raises significant privacy concerns. The Administration will work with Congress to identify other means of bolstering security efforts in privately owned, federally assisted housing.

G. DESIGNATED HOUSING

The Administration opposes the changes H.R. 2 makes to current law requirements for designation of housing for elderly persons or persons with disabilities. These changes would weaken current law provisions requiring PHAs to consider the housing needs of persons with disabilities, and would not allow an adequate time period for proper review of designated housing plans.

Under current law, a PHA's plan to designate housing must meet two requirements. First, the plan must be "necessary to meet the jurisdiction's Comprehensive Housing Affordability Strategy, "and" the plan must be "necessary to meet the low-income housing needs of the jurisdiction." Under H.R. 2, a PHA would need to meet only one of these two prongs, showing that a designation plan is necessary to meet either the CHAS "or" the low income housing needs of the jurisdiction.

These changes are not necessary and are likely to have a detrimental impact on access to housing for persons with disabilities. The current statutory framework is working effectively. HUD has been successful in helping PHAs designate thousands of units for elderly persons, while preserving housing access for persons with disabilities in those communities.

Allowing a PHA to rely solely on a CHAS, as H.R. 2 proposes, may lead to designations which are inconsistent with the housing needs of persons served by the PHA. The CHAS is written based upon Consolidated Plan regulations that are tailored to community planning and development programs and that do not require communities to assess the housing needs of persons with disabilities in general. Rather, they refer specifically only to persons with disabilities who require service-connected or accessible housing. The vast majority of persons with disabilities who apply to live in public housing are merely low-income individuals who also have disabilities. They are neither looking for, nor need supportive housing. ~~Moreover, the proposed change would effectively create different statutory requirements for large and small PHAs, since Consolidated Plans are only required for jurisdictions with populations of more than 50,000.~~

In addition, the submission and review of designated housing plans should not be incorporated into the PHA's "local housing management plan", as under the House bill. The Administration believes that, since they involve significant decisions that could permanently limit access to important housing resources for some low-income people, designated housing plans should be considered separately from the many other administrative and management issues that are addressed in the local housing management plan.

H. TOTAL DEVELOPMENT COSTS

The Administration urges the Conferees to include language reflecting the Administration's proposal on total development costs.

The Conference staffs have been provided with HUD's proposal on total development costs. The proposal would assure that capital costs allowed for HOPE VI and other public housing development will produce sound and durable, but modest, housing that fits into the community. It would also assure that the costs of community development and supportive service activities are not confused with the costs of housing construction. HUD urges the Conferees to include statutory language that reflects this proposal.

I. VOLUNTEER SERVICES

The Administration urges the Conferees to take this opportunity to revise the volunteer exception to the Davis-Bacon Act to conform to the language of the Community Improvement Volunteer Act of 1994.

There is no policy reason to continue the differences in the definitions of volunteer exemptions. The Administration included the necessary language in its public housing bill (H.R. 1447, Section 121). Any volunteer provisions regarding resident management corporations also need to be consistent with this definition.

J. SEXUALLY VIOLENT PREDATORS

[Awaiting DOJ rewrite.]

I look forward to contributing to the constructive resolution of these issues. As always, please call upon me and the HUD staff for any assistance we can provide.

Sincerely,

Andrew Cuomo

Housing-Legislative

1st page to Bruce, Paul — Is anyone paying attention to this in our office? Should we be playing a more active role? Elena

DRAFT

Draft 5/1/98

1998 Public Housing Reform Bills

Letter to the Conferees

Dear Conferee:

I am writing to make you aware of the Administration's views on the public housing reform legislation you are now considering in the conference to reconcile S. 462 and H.R. 2. These bills propose major changes in the public housing and tenant-based Section 8 programs. Over several years now, both the Congress and the Administration have put a great deal of thought and hard work into the pursuit of sound reform legislation. As you move ahead in the conference, I look forward to our continued collaboration, so that important and long-overdue reforms may finally be enacted and implemented.

The Administration strongly supports the goals of S. 462 and H.R. 2 -- to streamline and reorganize the Nation's public housing system in a manner which will benefit public housing residents, facilitate the efficient use of Federal resources, and increase accountability to the public. The Administration also appreciates the willingness of both the House and Senate to draw upon management reform and other provisions in the Administration's bill -- the Public Housing Management Reform Act of 1997.

The Senate and House bills make permanent a number of critical reforms that the Administration and the Congress have been able to achieve only through year-to-year provisions in appropriations legislation. Elements of the Senate and House bills would promote the continuation and strengthening of the transformation of the public housing and Section 8 programs already underway, including: (1) replacing the worst public housing with scattered-site and town house developments and with portable tenant-based assistance, which is achieved through extending the HOPE VI program, permanently repealing the one-for-one replacement requirement, and facilitating demolition of obsolete developments and conversion to tenant-based assistance or appropriate site revitalization; (2) turning around troubled PHAs through the use of various tools, including mandatory receiverships for chronically troubled PHAs and enhanced powers afforded to HUD and court-appointed receivers upon takeover; (3) promoting public housing communities with a greater income diversity and allowing PHAs to implement rent policies that encourage and reward work, and are coordinated with welfare reform; (4) demanding greater household responsibility as a condition of housing assistance through more vigorous screening, eviction or subsidy termination, and lease enforcement provisions; and (5) implementation of several of the Administration's key management reforms. Important provisions for management reform include program consolidation and streamlining, deregulation of well-managed PHAs and small PHAs, increased reliance on physical conditions in assessing PHA performance and more certain treatment of the most troubled PHAs.

As I am sure you are aware from my testimony last year and from other discussions in recent months, however, the Administration has a number of major concerns about particular provisions of both bills. Despite its support for the general goals of both bills, the Administration believes that certain provisions go farther than is necessary to make the reforms that are needed. Instead of making only reforms, some provisions -- particularly on income targeting -- would move the program too far away from fundamental, prudent national standards and appropriate federal oversight. Nevertheless, the Administration is hopeful that our concerns can and will be addressed in the Conference, clearing the way to enactment of sound public housing and Section 8 reform legislation.

The Administration's most important concerns about the bills are described below.

I. MAJOR CONCERNS

A. INADEQUATE TARGETING OF HOUSING ASSISTANCE TO THOSE FAMILIES MOST IN NEED

1. Income Targeting in Public Housing

The Administration believes that the income targeting provisions of both bills must be tightened to direct more housing assistance to families with the most pressing housing needs. In particular, the Administration strongly opposes the House "fungibility" provision, which could mean that PHAs in some cities would not have to offer any public housing units to extremely low-income families. The Administration supports the Senate requirement that 40% of available public housing units go to extremely low-income families; however, the Administration also advocates increasing -- from 70% (as in the Senate bill) to 90% -- the ratio of newly available units that must be offered to families with income levels no higher than 60% of median (which is approximately $22,600 nationally). The Administration also seeks a requirement that at least 40% of the units in each public housing development be occupied by families with incomes below 30% of area median income. This will ensure that the poorest families have housing opportunities at all developments, including those that may be most marketable to relatively higher income families.

The Administration believes that the income targeting provisions of both bills -- especially the House's "fungibility" provision -- go much farther than is necessary to serve working families and achieve a more diverse income mix in public housing. It is essential to the social and financial health of public housing communities that more working families are admitted to public housing. Today, the median family income in public housing is only $6,940 per year -- just 21% of median income nationally. By contrast, both bills would open up too many public housing units

to families at the upper end of the eligibility range -- families with incomes of up to 80% of the area median income, or approximately $40,000 in the ten largest metropolitan areas.

The Administration does not oppose admitting a small number of families at that income level. However, the Administration believes that mixed-income communities that serve working families can be attained without going as far as the House and Senate bills. This can be done by ensuring that at least 40% of admissions are reserved for families with incomes up to 30% of median (approximately $11,300) and that 90% of admissions are families with incomes at or below 60% of the area median (approximately $22,600). In comparison, 60% of median income is the absolute upper cap for the HOME and low-income housing tax credit programs. In addition, the Administration urges the Conferees to adopt language that would require PHAs to maintain occupancy of at least a certain percentage of units in each public housing development by extremely low-income families.

Not only are the income targeting percentages inadequate, but the House bill's fungibility provision could undermine even that level of targeting which the bill proposes. This provision would allow a PHA to admit even fewer very poor families to public housing if the PHA gave more of its Section 8 certificates to such families than the minimal number which the bill requires. The result almost certainly would be that some PHAs would not have to offer any public housing units to families -- including many working families -- whose incomes are below 30% of the area median income. The Administration finds such a possibility to be unacceptable.

2. Income Targeting in the Tenant-Based Section 8 Rental Assistance Program

The Administration is opposed to the provisions of both bills on income targeting for the tenant-based Section 8 program. Instead, the Administration believes that 75% of tenant-based assistance which becomes available each year should be targeted to the very poor -- families with incomes at or below 30% of median income (approximately $11,300) -- and that the remainder of such assistance generally should go to families with incomes no greater than 50% of median, as under current law.

Both bills unnecessarily reduce the portion of Section 8 tenant-based assistance that would go to families with severe housing needs. Current law generally limits eligibility for tenant-based assistance to very low-income families with incomes below 50% of the area median income. Moreover, federal preferences, which applied to 90% of new Section 8 recipients prior to FY 1996 as opposed to only 50% of new public housing residents, have served to further target assistance to extremely low income

families. The median income of Section 8 certificate holders is now approximately $7,550.

In contrast, H.R. 2 would require only that 40% of all Section 8 tenant-based assistance go to extremely low-income families -- the income range which the program has primarily served in the past. Relatively higher income families, with incomes up to 80% of median income, would become eligible to receive such assistance. S. 462 is not as extreme as the House bill, but would still require only that 65% of all tenant-based assistance go to families with the most severe housing needs and that 90% go to families with incomes under 60% of median.

The Administration contends that scarce federal rental subsidies for use in the private market must be targeted to families with the lowest incomes, for the following reasons: 1) 5.3 million very low-income renters now have "worst-case housing needs", defined as paying more than 50% of their income toward rent or living in substandard housing units, and these families are concentrated at the lowest income levels (below 30% of the area median income); 2) relatively few of the families with incomes in the upper ranges allowed under both bills who would become eligible for admission to the Section 8 program (including 17.5 million unassisted renters) have serious unmet housing needs; 3) federal preferences are being repealed; 4) both the Senate and House bills propose opening up public housing admissions to families with relatively higher incomes to promote mixed-income communities, which means fewer units will be available for extremely poor families; and 5) tenant-based rental assistance integrates families with low incomes into private, mixed-income housing of their choice and does not suffer from the severe income concentration problems of project-based programs.

The Administration also sees no reason to expand tenant- based program eligibility limits so that these scarce housing resources can be provided to households with incomes at 80% of the median -- approximately $40,000 for families in the ten largest metropolitan areas -- who are better able to afford private market housing without any subsidy. This income level, which is equivalent to 250% of the poverty line, exceeds the income limits for virtually all other federal means-tested programs.

B. HOME RULE FLEXIBLE GRANT OPTION

The Administration strongly opposes the Home Rule Flexible Grant Option in H.R. 2, which could transfer public housing funds from a PHA to a city government regardless of the city's ability or experience in administering housing programs. Instead, the Administration believes that implementation of the current Moving-to-Work demonstration will provide sufficient opportunity to explore innovative local approaches in the public housing and Section 8 programs.

The Administration strongly opposes the Home Rule Flexible Grant Option in H.R. 2. This provision could completely undermine the public housing program in some localities by allowing the city government to supplant the local PHA and capture its funds, with limited explanation and no justification.

The Administration has taken bold action to deal with chronically troubled PHAs and to demolish and replace the worst public housing. However, that is not what the House provision is about. The House provision would allow a city government, regardless of its motives or its track record in administering housing programs, to take over or replace even a high-performing housing authority. Some of the most intractable management problems in recent years have occurred in several chronically troubled PHAs that have been operated as part of city government.

The provision also inexplicably provides cities that would administer public housing more regulatory flexibility than PHAs (e.g., to charge rents exceeding Brooke amendment requirements). There is no reason to link additional regulatory flexibility with the choice of the entity to administer public housing.

Instead, the Administration supports continued implementation of the Moving to Work demonstration authorized by the FY 1996 appropriations act. That demonstration program allows up to thirty PHAs to design and test innovative ways to provide housing assistance and to link families to work, through merging funding streams and creating new rent structures while retaining reasonable income targeting. HUD has selected PHAs with diverse and potentially far-reaching proposals. The demonstration is large enough to allow substantial experimentation, yet small enough to permit a rigorous evaluation of program success and replicability.

C. COMMUNITY WORK AND SELF-SUFFICIENCY REQUIREMENTS

The Administration opposes the self-sufficiency agreements and the community work provisions in the House bill. Instead, the Administration believes that provisions emphasizing collaboration between PHAs and local welfare agencies are a better and more productive approach to addressing welfare reform and self-sufficiency issues. For example, the Administration supports the provisions in both bills which require PHAs to describe in their annual plans the ways in which they propose coordination with other local and state welfare and service agencies, and assure that households who violate welfare program self-sufficiency rules are not rewarded with subsidized housing rent decreases. The Administration also supports provisions in both bills permitting PHAs to set public housing rents 'up to' 30% of a family's adjusted income, which allows for rent structures that do not penalize increases in earned income. Further, the Administration supports authorization of additional Section 8 certificates for use with local collaboratives in welfare-to-work initiatives.

The Administration believes that public housing and Section 8 residents must assume certain responsibilities in return for the benefits of their housing assistance. To this end, the Administration supports many reforms in both the House and Senate bills which place a premium on resident self-sufficiency and on linking the PHA with existing providers of services. Additionally, the Administration supports provisions in both bills to toughen screening, lease enforcement, and eviction, and subsidy termination requirements.

However, the Administration opposes the House bill's mandatory self-sufficiency contracts. This sweeping new requirement would fundamentally change the public housing and Section 8 programs and would impose inordinate and costly burdens on 3,400 local PHAs whose budgets and administrative capacities already have been stretched. A far more efficient and effective approach is to encourage partnerships between PHAs and State and local welfare agencies that promote self-sufficiency through initiatives such as the authorization of "Welfare to Work" certificates, as proposed in the Administration's bill.

The Administration also opposes significant aspects of the community work provisions included in the House bill. The Administration's bill includes a community service provision because the Administration believes it is reasonable to ask each recipient of public housing or tenant-based assistance to be engaged in some activity which benefits the community as a whole, which includes working, attending school, or otherwise preparing for work. However, the Administration's bill provides for much more reasonable exemptions than the House bill and would not authorize eviction as an enforcement tool.

D. MANAGEMENT REFORM

1. Federal Oversight

The Administration supports several of the bills' revisions to the PHMAP system and would support the establishment of a performance evaluation board or other task force to review various performance evaluation systems and determine the need, if any, for an outside accreditation entity. The Administration also supports the House and Senate bill provisions which give HUD or a receiver enhanced powers for dealing with troubled PHAs; require the takeover of severely troubled PHAs that fail to improve promptly; and require the obligation and expenditure of capital funds within certain time frames (which the Administration believes should be extended to the HOPE VI program). The Administration does not support the Accreditation Board created by the House bill.

The Administration believes that it is critical to have an assessment tool which accurately measures PHA performance and is consistent with the Administration's management reform plan for

HUD. In the short run, this requires making modifications to the current performance measurement system -- the Public Housing Management Assessment Program (PHMAP). In particular, the Administration supports the bills' provision adding a PHMAP indicator assessing the extent to which a PHA is providing acceptable basic housing conditions. This will support HUD's efforts to make PHMAP more objectively verifiable and reflective of the conditions under which public housing residents are living.

The Administration, however, strongly opposes the House bill's "Accreditation Board", a new federal agency which would create an accreditation program for all public housing agencies and other providers of federally assisted housing. This proposal runs directly counter to the Administration's plan for improving and streamlining Federal oversight of the public housing program. It would not reduce, but instead would redistribute and probably increase, the Federal bureaucracy. Moreover, the proposal would appear to divorce Federal oversight and auditing responsibilities which would be given to the Accreditation Board, from HUD's ongoing obligation to provide Federal funds to PHAs. This would make it more difficult for HUD to hold PHAs accountable.

Instead of the House bill's Accreditation Board, an entity such as the Administration's proposed Performance Evaluation Board should be given the opportunity to review and make recommendations on various approaches to Federal oversight and assessment of PHAs, including accreditation.

The Administration already has taken the most aggressive actions in HUD's history against chronically troubled PHAs, including direct takeovers and support for judicial receiverships. In this regard, the Administration supports the Senate bill's provisions giving HUD enhanced powers to deal with troubled PHAs (which are the same provisions as in the Administration's bill). Those provisions require HUD to take certain actions against any PHA that is still troubled after one year (including mandatory receivership for any large PHA). After further consideration, the Administration believes that this provision should be modified to give a troubled PHA one additional year before HUD will take action if that PHA has made progress in the first year that is equal to at least half the difference between its PHMAP score and the score necessary to be a "standard" performer.

In addition, the Administration supports the Senate bill provision requiring PHAs to obligate capital funds within 24 months. It is critical in these times of fiscal restraint to ensure that appropriated funds are used promptly for their intended purposes. Further, the Administration urges the Conferees to adopt two additional provisions from the Administration's bill: (1) requiring PHAs to spend capital funds within 48 months (in addition to obligating such funds within 24 months); and (2) applying specific time frames to the HOPE VI program, such that a PHA would

have to sign a primary construction contract within 18 months of executing the grant agreement, and would have to complete construction within 4 years from the grant agreement.

2. Consolidation and Streamlining

The Administration urges the Conferees to further streamline PHA plan requirements as in the Administration's bill. In addition, the Administration supports the House provision allowing small PHAs to use operating and capital funds interchangeably. Further, the Administration urges the Conferees to convert the Drug Elimination Program into a formula-based program, and to merge the TOP and EDSS programs.

The Administration supports and recognizes the benefits of consolidating PHA planning and reporting requirements into a single annual plan, as provided in both the Senate and House bills. However, the Administration is concerned that the scope of the annual plans be consistent with HUD efforts to streamline PHA and HUD administration of the public housing and Section 8 programs. The Administration strongly urges the Conferees to consider limiting the number and scope of plan elements as described in the Administration's bill. Conferees also should adopt the Senate provision permitting HUD by regulation to provide that elements of the PHA plan other than the capital plan and civil rights shall be reviewed only if challenged.

The Administration also supports the House provision allowing small PHAs (less than 250 units) to use operating and capital funds fungibly, as provided in the House bill, because the formula allocation of capital funds to such PHAs would be small and the additional flexibility would simplify PHA operations and HUD administration. However, the Administration opposes the provision of the House bill giving governors new responsibility to allocate half of such funds.

In addition, the Administration urges the Conferees to convert the Public Housing Drug Elimination Program from a competitive to a formula-based program, to provide predictable funding for PHAs and reduce the administrative burden on both HUD and PHAs of annual competitions. The Administration also advocates permanent authorization of the supportive service (EDSS) program and a merger of EDSS and the Tenant Opportunities Program (TOP), as provided in the Administration's bill.

E. OCCUPANCY STANDARDS

The Administration opposes the House bill's provision on occupancy standards because it would reduce protections currently afforded to families with children under the Fair Housing Act.

The House provision on occupancy standards would invite state adoption of absolute occupancy standards regardless of the facts of a particular situation, or the existence of any health or safety justifications. Enactment of this provision could result, for example, in a State allowing a housing provider to refuse to rent a 2-bedroom unit to a family with three children, even if: 1) the bedrooms were unusually large; 2) one of the children was an infant; or 3) a den could reasonably be used as a bedroom. HUD's current occupancy standard, which conforms to Congress's direction in the FY 1996 HUD Appropriation Act, appropriately requires HUD to determine, on a case by case basis, whether a standard is legal under the Fair Housing Act, based upon a variety of circumstances.

F. RESIDENT EMPOWERMENT

The Administration strongly supports provisions in both bills, and retention of certain elements of current law, which empower residents, ensure that residents are given the opportunity to participate in decisions affecting their lives, and protect residents from unwarranted intrusions.

In the Administration's view, the final bill must include, at least, the following:

- The Senate bill's authorization of the supportive services funding originally authorized in the FY 1996 appropriation (the EDSS program), which should include elements of the Tenant Opportunity Program as proposed in the Administration's bill;

- Resident membership requirements on the public housing board, as provided in both bills, and the House bill's required plan review period for affected residents;

- The Senate bill's provisions protecting residents' rights to adequate notice and consultation and ensuring adequate relocation assistance in the demolition and disposition process; and

- Retention of current law provisions on: (1) lease and grievance procedures (as opposed to the House repeal); and (2) notice of lease termination (as opposed to the House bill's preemption of any minimum notice requirements provided under State law).

G. ACCESS TO MEDICAL RECORDS

The Administration strongly opposes the provision in the Senate bill that would authorize PHAs to obtain medical information about applicants for housing assistance.

This provision could increase the potential that important antidiscrimination protections of Federal fair housing laws could be violated and could discourage persons with drug problems from seeking treatment. The Administration shares the Senate's desire to ensure safety and security in public housing, and has proposed and implemented tough new policies, such as "One Strike and You're Out", to achieve that goal. However, the Administration believes that the Senate's medical records provision goes too far, weakening other important legal protections and compromising efforts to encourage people with drug abuse problems to enter appropriate and effective treatment programs.

B. PAYMENT STANDARD

The Administration opposes the provisions of both bills allowing PHAs to set the payment standard in the tenant-based Section 8 program at levels higher than the Fair Market Rent established by HUD.

The Administration believes that the Payment Standard should be set at no higher than the Fair Market Rent (FMR) or a HUD-approved exception rent up to 120% of FMR. H.R. 2 would permit PHAs to establish payment standards of 80% to 120% of FMR. The Senate bill would allow PHAs to establish payment standards of 90% to 110% of FMR, though PHAs may establish higher or lower payment standards with HUD approval.

The higher the payment standard, the greater the subsidy to each assisted household. Consequently, fewer eligible families would receive housing assistance. The pressures on PHAs to help the currently assisted at the expense of the unassisted are very high, and work against national goals of helping more families in need. In addition, a higher payment standard would encourage a greater number of relatively higher-income and less needy families to apply for housing assistance, further reducing the amount of housing assistance available to the poorest families with the most severe housing needs.

II. OTHER CONCERNS

A. REPEAL OF THE U.S. HOUSING ACT OF 1937

The Administration urges Congress to find another means of signaling dramatic program reform.

The Administration sees no compelling operational reason to repeal the 1937 Act. Congress and the Administration can find another, less divisive, way to ensure that the legislation clearly indicates the intent that public housing change dramatically.

There are also practical concerns regarding repeal. At the request of the House Banking Committee in the previous legislative

session, the Administration conducted an extensive review of the implications of the proposed repeal of the U.S. Housing Act of 1937. HUD determined that there are, at a minimum, over 500 references to the 1937 Act in other statutes, located both within and outside of the jurisdiction of the Congressional Banking Committees. Additionally, the Administration identified a series of issues which the Conferees should address if the repeal is accepted in the Conference. Moreover, coupling the 1937 Act repeal with a ban on new regulations prior to the effective date of the law, as provided in the House bill, would inhibit the ability of the Administration to ensure that the new law is carried out uniformly and with adequate guidance.

B. RENT LEVELS

1. Flat Rents

The Administration does not see the need for the House bill provision giving public housing residents the choice of paying an income-based rent or a flat rent based on the market value of their units.

In addition to the administrative burden on 3,400 PHAs of having to determine the market value of well over one million public housing units, the result of the House bill's flat rent proposal ("Family Choice of Rental Payment") would be to give residents the opportunity to make a bad economic choice. That is, residents could choose to pay a rent based on the flat rent even when thirty percent of their adjusted income would be lower. If the goal is to encourage residents to increase their incomes or to encourage relatively higher-income families to move into or remain in public housing, then the same thing can be accomplished by implementing a program of rent incentives, including earned income disregards and ceiling rents. Both bills allow PHAs to adopt innovative rent policies by permitting rents "up to" 30% of adjusted income (as opposed to current law, which requires rents to be set "at" 30% of adjusted income).

2. Minimum Rents

The Administration opposes the minimum rent provisions in the bills, particularly the authority in the House bill to set a minimum up to fifty dollars. Instead, the Administration supports a minimum rent requirement of $25 per month, with an exemption for hardship categories to be determined by the Secretary or the PHA.

The Administration generally agrees with the concept that every family receiving housing assistance should make at least some rental payment. However, the Administration believes such a minimum rent should not exceed $25 per month, an amount which is sufficient to make the symbolic point that all residents should contribute something to maintenance of their development without

imposing an undue burden on the very poorest families. Thus, the Administration opposes the House provision allowing PHAs to charge a minimum rent of up to $50 per month. Further, the Administration believes that the Secretary of HUD must have the authority to establish hardship exemptions for certain types of cases -- for example, for those families awaiting public benefit eligibility determinations.

C. HOME AND CDBG INCOME TARGETING

The Administration opposes the House bill's unnecessarily loosened income targeting in both the CDBG and HOME programs.

This proposal would immediately raise the income limit in thirty-seven relatively higher income metropolitan areas. For example, in one community, the income limit for a four person family would exceed $71,000 (Stamford, Connecticut). By allowing families with incomes even above moderate income ranges to benefit from these programs, these changes would eviscerate the requirement that those programs substantially benefit low and moderate income households.

D. DISCRETION TO SETTLE LAWSUITS

The Administration opposes the House bill's provision which requires the Secretary of HUD to consult all adjacent local governments, when settling any lawsuit involving HUD, a PHA, and a local government.

This provision is an unnecessary intrusion into the federal government's ability to manage its affairs. Moreover, the Justice Department represents HUD in settling lawsuits. It would be unwise to require the Secretary of HUD to engage in particular consultations that may conflict with or duplicate the efforts of the Justice Department. At a minimum, this provision could be extremely costly for the Federal government, since it will hinder the ability to settle lawsuits in a timely and cost-effective manner. Finally, the provision is overly broad, since it would require such consultation for all matters, whether trivial or substantial.

E. CDBG SANCTION

The Administration opposes the House bill's CDBG sanction against local governments contributing to the troubled status of a PHA.

H.R. 2 provides that the Secretary may withhold or redirect the CDBG funds of any local government whose actions or inactions have substantially contributed to the troubled status of a PHA. The proposed CDBG sanction could lead to substantial charges, countercharges, and litigation, without resulting in the

improvement of troubled PHAs. The bills give HUD a number of other sanctions to deal with troubled PHAs, including receivership.

F. AVAILABILITY OF CRIMINAL CONVICTION RECORDS

The Administration opposes the apparent requirement in the House bill that private owners of federally assisted housing be provided with information regarding criminal conviction records of adult applicants or tenants of that housing.

The Administration opposes allowing any private citizens or entities, including the private owners of federally assisted housing, to obtain criminal record information about other individuals. The provision of such sensitive information to private individuals and entities raises significant privacy concerns. The Administration will work with Congress to identify other means of bolstering security efforts in privately owned, federally assisted housing.

G. DESIGNATED HOUSING

The Administration opposes the changes H.R. 2 makes to current law requirements for designation of housing for elderly persons or persons with disabilities. These changes would weaken current law provisions requiring PHAs to consider the housing needs of persons with disabilities, and would not allow an adequate time period for proper review of designated housing plans.

Under current law, a PHA's plan to designate housing must meet two requirements. First, the plan must be "necessary to meet the jurisdiction's Comprehensive Housing Affordability Strategy, "and" the plan must be "necessary to meet the low-income housing needs of the jurisdiction." Under H.R. 2, a PHA would need to meet only one of these two prongs, showing that a designation plan is necessary to meet either the CHAS "or" the low income housing needs of the jurisdiction.

These changes are not necessary and are likely to have a detrimental impact on access to housing for persons with disabilities. The current statutory framework is working effectively. HUD has been successful in helping PHAs designate thousands of units for elderly persons, while preserving housing access for persons with disabilities in those communities.

Allowing a PHA to rely solely on a CHAS, as H.R. 2 proposes, may lead to designations which are inconsistent with the housing needs of persons served by the PHA. The CHAS is written based upon Consolidated Plan regulations that are tailored to community planning and development programs and that do not require communities to assess the housing needs of persons with disabilities in general. Rather, they refer specifically only to persons with disabilities who require service-connected or

accessible housing. The vast majority of persons with disabilities who apply to live in public housing are merely low-income individuals who also have disabilities. They are neither looking for, nor need supportive housing. Moreover, the proposed change would effectively create different statutory requirements for large and small PHAs, since Consolidated Plans are only required for jurisdictions with populations of more than 50,000.

In addition, the submission and review of designated housing plans should not be incorporated into the PHA's "local housing management plan", as under the House bill. The Administration believes that, since they involve significant decisions that could permanently limit access to important housing resources for some low-income people, designated housing plans should be considered separately from the many other administrative and management issues that are addressed in the local housing management plan.

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The Administration urges the Conferees to include language reflecting the Administration's proposal on total development costs.

The Conference staffs have been provided with HUD's proposal on total development costs. The proposal would assure that capital costs allowed for HOPE VI and other public housing development will produce sound and durable, but modest, housing that fits into the community. It would also assure that the costs of community development and supportive service activities are not confused with the costs of housing construction. HUD urges the Conferees to include statutory language that reflects this proposal.

I look forward to contributing to the constructive resolution of these issues. As always, please call upon me and the HUD staff for any assistance we can provide.

Sincerely,

DRAFT

Andrew Cuomo

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Housing – Legislation

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0001

THE SECRETARY

October 2, 1997

MEMORANDUM

TO: **ERSKINE BOWLES, CHIEF OF STAFF**
BRUCE REED
GENE SPERLING
THURGOOD MARSHALL, JR.
ANN LEWIS
PAUL BEGALA
RAHM EMANUEL
JOHN HILLEY
STEPHANIE STREET

FROM: **ANDREW CUOMO**

SUBJECT: **HUD-VA APPROPRIATION BILL: AN OPPORTUNITY FOR THE ADMINISTRATION TO APPLAUD MAJOR HOUSING REFORM, SAVING TAXPAYERS MILLIONS**

As you know, Congress is poised to pass the HUD-VA appropriations bill. This bill includes the most significant housing reform legislation enacted by Congress during the Clinton Administration and presents the President an opportunity to claim victory on an issue that HUD, Congress and the housing industry have been grappling with for four years.

This bill addresses the Section 8 housing crisis by:

Balancing the Budget while meeting our priorities -- CBO says the legislation saves $562 million dollars, plus hundreds of millions in additional savings in future years from lowering rent subsidy costs. These savings allow continued spending on domestic priorities, including the environment veterans.

Preserving affordable housing – The legislation will preserve decent, affordable housing for 850,000 low-income Americans well into the 21st century.

Protecting against waste, fraud and abuse in government programs – The legislation significantly reduces inflated federal subsidies to landlords.

Background

Twenty years ago, to entice private landlords to build affordable housing, the Federal government signed twenty-year contracts promising to provide rent subsidies to the owners' low-income tenants. To entice lenders to make loans for construction of these projects, FHA insured their forty-year mortgages. The loans assumed that the federal rent subsidies would continue indefinitely.

Today, in many cities, the rents we pay to support low-income tenants in these projects are "out of whack" with market rents. For example, in Las Vegas, the market rent on a unit is $340. But HUD -- and taxpayers -- pay $820. In other words, we are over-subsidizing landlords at twice market rate, while waiting lists for affordable housing remain several years long. In an era of scarce resources, we cannot afford to use housing dollars so inefficiently.

The multi year contracts prevented HUD from cutting rents, but now the contracts are expiring. However, if we simply cut rents, many owners will default on their mortgages. Default could mean an explosion of families with no place to go, devastating deterioration in impacted communities, loss of valuable affordable housing stock built at taxpayer expense, and multibillion dollar claims to the FHA insurance fund – and to the American taxpayer. The Mark to Market legislation solves this problem by restructuring the debt, permitting us to lower the rent subsidies to market rents for thousands of projects. As a result, it prevents insurance costs and saves on future rent subsidies.

Administration Opportunity

We would like to propose two opportunities surrounding passage of this legislation:

Oval Office or White House Signing Ceremony -- An official signing ceremony at the White House would provide the opportunity for the President to take credit for resolving a critical housing issue in a practical way that saves taxpayer dollars and protects low-income families. It also would provide an opportunity for the President to show the Administration working in cooperation with Congressional leaders of both parties. Senators Mack and Sarbanes and Appropriations Subcommittee Chairs Senator Bond and Congressman Lewis deserve special praise for their role in bringing this controversial issue to resolution.

Or:

HUD celebration and press conference immediately following congressional passage and prior to the President's signing of the appropriations bill -- Passage of legislation that preserves and protects the government's investment in affordable housing, while reducing excessive costs, was HUD's top priority. While Mark to Market is a significant victory on both of these fronts, if no particular emphasis is sought, it will be engulfed by the larger message of the appropriations passage. Therefore, we suggest a special celebration **before** the bill is signed, ideally a press conference here at HUD with the Vice President, Members of Congress and relevant interest groups.

Please let me know if we should move ahead with either of these options. I would be glad to discuss either proposal with you further.

Guil/Reed
What's our
answer to this?
What are we going
to do?

BC

THE PRESIDENT HAS SEEN
6-10-97

Copied
Sperling
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COS

are right. But to those
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y McVeigh.

So where do the poorest go?

NEWARK, NEW JERSEY

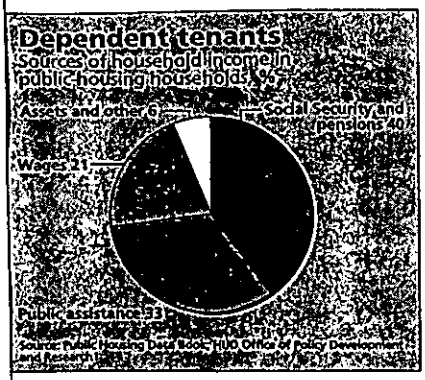
AMERICA cannot be accused of dragging its feet in dealing with the poor. First, welfare reform required most single mothers to find work and accept time-limits on benefits, overturning 60 years of guaranteed assistance. Now a similar upheaval is planned for public housing, the biggest since the country's housing authorities were set up in 1937.

Contentious legislation passed by the House last month (and echoed in the Senate) would give local housing authorities more power to set criteria for admissions, but would require them to rent more units as they become available to working people, so that housing estates cease to be simply dumping grounds for the dependent. The House bill also changes rules that have discouraged tenants from taking up work by raising their rents when they do so; and it requires unemployed tenants to do eight hours a month of volunteer work, though that particular bright idea will be impossible to enforce or police.

The point, say the legislation's backers, is that public housing should be a transitional phase for the working poor instead of a dead end. Opponents, including the housing secretary, Andrew Cuomo, reply with a question. If public housing is gradually inhabited by working people, where do

THE PRESIDENT HAS SEEN
6-10-97

Housing - Legislation and
Racial + Pol - Econ Empowerment -
Housing



he poorest go?

The question is pertinent because the low-cost housing market, public or private, is disappearing, and lower-income Americans are increasingly hard-pressed to pay the rent. The Department of Housing and Urban Development (HUD) estimates that 5.3m households pay half or more of their income in housing costs, up by about a fifth from the mid-1980s. Out of every five American households that qualify for low-cost housing benefits, only one actually gets them. And the Census Bureau estimates that 87% of renters cannot afford to buy a cheap house in their area.

HUD is ill-equipped to deal with this squeeze. Since 1992, its budget has been cut from $24.77 billion to $19.59 billion. In 1994, the number of Section 8 claimants, who use federal subsidies to buy private-sector rental housing, was frozen at 1.1m households (another 1.8m are in a voucher programme) and plans to add to the 1.3m units in the public-housing stock were blocked. In the most recent budget, funds to do up government-owned units and to preserve low-cost housing stock in the private sector were both cut.

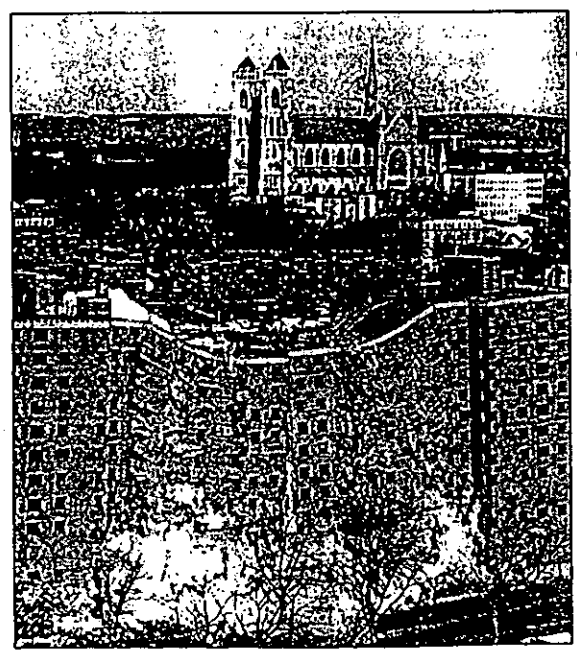
Alas, the loss of money for publicly supported housing comes at a time when there is at last almost a consensus about how to do it right: a mixture of subsidies, small housing developments scattered through communities, and a "one strike and you're out" policy for criminals and drug-dealers. There are plenty of success stories about; and HUD is even getting slightly better marks for its historically awful management.

Newark, New Jersey, whose public housing authority used to be among the worst in the country, is a good place to see the possibilities. Motorists on the nearby freeway once had to endure the sight of grim brick apartment blocks. No more. The Christopher Columbus Homes were torn down in 1994, and now motorists see the city's soaring basilica instead. The former residents of the Homes live in tidy two-storey houses, many of them just across the road from where the blocks once loomed. There are no graffiti, not much litter: the houses gleam. Only the broken-down cars reveal that this is housing for the poor.

Demolition has played a large part in recent housing strategy. The disappearance of the heartless blocks is hardly mourned: when the wrecking ball began to batter down Newark's Archbishop Walsh homes in April, residents cheered. All told, some 100,000 decrepit high-rise units have or will come down by the turn of the century in cities from New Orleans to Denver. But only 40,000 are being replaced. Combined with the freeze on new Section 8 vouchers, the result is that America will have fewer publicly financed units when Bill Clinton leaves office than when he came in.

The private sector is unlikely to fill the gap. The much-admired Community Development Corporations build perhaps 40,000 affordable units a year, but they depend on the low-income housing tax credit (which was almost abolished in 1995) and on being able to house a proportion of Section 8 tenants. Under Section 8, tenants pay 30% of their income to private landlords; the federal government picks up the rest of the bill. With the number of these tenants frozen, the economics of building low-cost housing falls apart.

Housing for low-income people, moreover, is unpopular in many communities, which price them out by forbidding high-density development. And regulation can push up construction costs unnecessarily, shaving the razor-thin profit margins. New York city, for example, has stricter require-



Goodbye, Columbus

Put in case file

. . . and deeper in debt

PHILADELPHIA

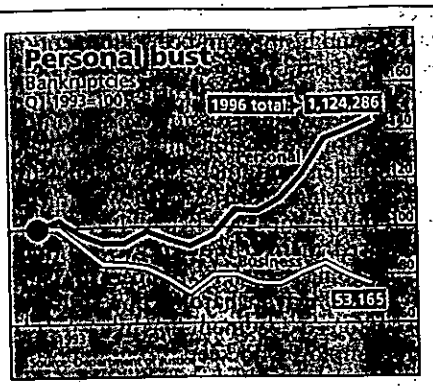
BAROMETER

THE summery American economy is not without its cold spots. During 1996, a record 1.1m Americans declared personal bankruptcy, up 28.6% from 1995 and 44.1% from 1994. The bankruptcy binge was widely foreseen, as financial crises go. Consumer debt had grown sharply during 1994 and 1995, particularly credit-card debt, with a daunting average interest rate of 15.8% over the two-year period.

According to the National Consumer Bankruptcy Coalition, a group of banks and credit-card companies, the bankrupt should be pitied less than the lenders. They have a point. America's liberal bankruptcy code is much more of a shield for the debtor than a sword for the creditor. An extreme case, say bankruptcy-reform lobbyists, is a student who pays off his federal tuition loans by piling up enormous credit-card bills which he then uses as the basis for a bankruptcy petition.

In congressional hearings in April, lenders received some sympathy for the idea of a "needs-based" bankruptcy system under which bankrupt borrowers would be relieved of debt only to the extent judged necessary by a bankruptcy court. A resolution of the bankruptcy-reform question is expected from Congress this autumn.

Meanwhile, lenders tend to steer their portfolios away from consumer debt and towards business debt. According to Robert Morris Associates in Philadelphia, the national association of credit-risk professionals, this shift is a direct result of deterioration in the quality of consumer credit. Since the beginning of 1997, the volume of bank commercial and industrial loans has increased by a healthy 3.9%, while the volume of consumer loans has fallen slightly. Mischievous consumer borrowers who presume that new debt will be available to finance the old may be in for a bit of market discipline at the hands of their creditors.



ments for handicapped access than the federal government, adding almost 10% to the cost of construction per unit. It can take years to get permission to build on former industrial sites. Private developers grumble at over-regulation, complaining that they have to build units "one piece of paper at a time". Many give up. It is a sad paradox. Not only is government retreating from the provision of social housing, but it continues to make it hard for others to step in instead.

Illegal immigrants

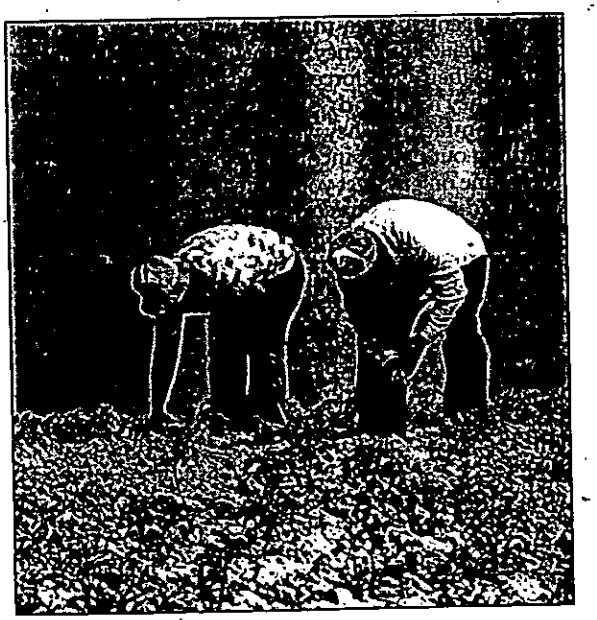
Willing, eager and cheap

GALVESTON AND DALLAS

AS TEXAS begins to recover from two weeks of devastating storms, a generally hidden truth about its economy will come to light again. Most of the builders and electricians who will have to repair the houses, remake the roads and re-establish the power lines will have to take on undocumented workers in order to meet their contracts. In 1996 the Immigration and Naturalisation Service (INS) conservatively estimated that Texas had over 600,000 undocumented immigrants, doing the jobs no one else wants: hauling carcasses in packing plants, picking fruit, cleaning hotel rooms, or sorting out the unspeakable damage caused by natural disasters.

Raise the issue of these workers with a Texan, and he is liable to fall uncharacteristically silent. Even state legislators avoid the issue. They know that many of their constituents employ undocumented workers. They also know that the booming Texas economy is driven in part by the ready supply of cheap, diligent, illegal labour.

Dallas is one magnet for undocumented workers. The city's politicians oppose INS crackdowns, fearing they will damage the local economy and bankrupt small companies. Houston is another; there, a dawn drive past some of the city's 36 informal day-labour sites shows the size of the undocumented workforce. Young Mexicans loiter on the pavement, poised to jump into the back of any pick-up truck that slows down to take them. Houston police estimate that over 150,000 labourers, about 85% of them undocumented, gather every day in search of a job. It is a testament to the vitality of the Texas economy that most of them get hired, usually to mix cement and shift bricks. No questions are asked, no papers signed. Most workers do not even know their employer's name. They are paid, in cash, around $40 a day.



No questions asked

In Galveston, a breezy town on the Gulf coast, undocumented labour is less an issue than a wink-and-nod discussion at the dinner table. As in Dallas and Houston, wealthier families discreetly employ undocumented maids and gardeners. "We may vote against immigration but we still want a cheap gardener," confesses one Galvestonian. The main sources of employment are restaurants, building sites and small plumbing or electrical firms. At dusk undocumented workers set out along the promenade for their evening jobs as busboys and dishwashers in restaurants. A recent INS raid has kept the more jittery on their toes; but the only tangible impact of the raid, locals say, was the sudden explosion of help-wanted ads for waiters and hotel maids in the next day's paper.

Stricter immigration laws have just made smugglers sharper. The black market in fake documents is buoyant. On a street corner in a Latino district in Dallas, *The Economist*'s correspondent was offered a forged Green Card for $200. Complete

Housing - Legislation

DRAFT -- NOT FOR RELEASE

July 11, 1997
(Senate)

S. 462 - Public Housing Reform and Responsibility Act of 1997
(Sen. Mack (R) FL and four cosponsors)

The Administration supports the purpose of S. 462, which would reform and consolidate the Nation's public housing and Section 8 programs. It also appreciates the Senate's effort to provide the Department of Housing and Urban Development with the authorities to implement needed management reforms and to work with the Administration to improve the bill both before and after Committee markup.

The Administration believes, however, that S. 462 is fundamentally flawed because its income targeting requirements fail to ensure that Federal housing assistance will continue its historic mission of helping those with very substantial housing needs. This is particularly true for the tenant-based assistance program, where the income eligibility level is increased and substantial previous targeting protections are removed. This income targeting could result, over time, in the loss of several hundred thousand apartments for families with extremely low incomes. The problem would be addressed only partially by the proposed Manager's amendment.

Therefore, S. 462 must be amended to:

- Target 75 percent of new tenant-based assistance to families with incomes not exceeding 30 percent of median income and retain the current income eligibility level for tenant-based assistance at 50 percent of median income. This would maintain the program's focus on serving the neediest families.

- Improve the income targeting requirements for public housing so that: (1) at least 90 percent of a PHA's new admissions have incomes not exceeding 60 percent of median income; and (2) at least 40 percent of families in occupancy at each development have incomes not exceeding 30 percent of median income. This would reduce the units available to very low-income families only to the extent necessary to achieve income-mixing, and would ensure access by those families to all developments.

The Administration also opposes the provision of S. 462 authorizing PHAs to obtain medical information about applicants for housing assistance, which would increase the potential that important antidiscrimination protections of Federal fair housing laws could be violated.

In addition, the Administration will work with the Senate on other amendments to S. 462 that would make it more consistent with the Administration's public housing reform bill that was transmitted to Congress on April 18, 1997.

Pay-As-You-Go Scoring. S. 462 would affect direct spending; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. OMB's preliminary scoring estimate of this bill is under development.

* * * * * * * * * *

Housing Legislation

Total Pages: 4

LRM ID: RJP97

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

SPECIAL

Tuesday, May 20, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference
OMB CONTACT: Robert J. Pellicci
PHONE: (202)395-4871 FAX: (202)395-6148

SUBJECT: OMB Statement of Administration Policy on S462 Public Housing Reform and Responsibility Act of 1997

DEADLINE: NOON Tuesday, May 27, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The Senate is expected to consider S. 462 shortly after the Memorial Day recess.
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Rush

To T. Prince and copy p. 4 for me.

EOP:
Michael Deich
Alan B. Rhinesmith
Francis S. Redburn
Hang T. Tran
Jose Cerda III

Jonathan —
Is this the same as what we said on the House side?
Elena

KAGAN_E
Jennifer C. Wagner
Jeffrey A. Farkas
Janet Himler
Raymond P. Kogut
Harry G. Meyers
Joseph F. Lackey Jr.
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OMB

LRM ID: RJP97SUBJECT: OMB Statement of Administration Policy on S462 Public Housing Reform and Responsibility Act of 1997

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Robert J. Pellicci Phone: 395-4871 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the reponse of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of ____ pages, attached to this reponse sheet

DRAFT -- NOT FOR RELEASE

DRAFT

May 19, 1997
(Senate)

S. 462 - Public Housing Reform and Responsibility Act of 1997
(Sen. Mack (R) FL and four cosponsors)

The Administration supports the purpose of S. 462, which would reform and consolidate the Nation's public housing and Section 8 programs. It also appreciates the Senate's effort to provide the Department of Housing and Urban Development with the tools to implement needed management reforms.

The Administration, however, believes that S. 462 is fundamentally flawed because its income targeting requirements fail to ensure that Federal housing assistance will continue its historic mission of helping those with very substantial housing needs. This is particularly true for the tenant-based assistance program, where the income eligibility level is substantially increased, and the income targeting could result, over time, in the loss of several hundred thousand apartments to families with extremely low incomes.

The Administration, therefore, opposes S. 462 unless it is amended to:

- Target 75 percent of new tenant-based assistance to families with incomes not exceeding 30 percent of median income and retain the current income eligibility level for tenant-based assistance at 50 percent of median income. This would maintain the program's focus on serving the neediest families.

- Establish an income limit for Section 8 project-based assistance requiring that 40 percent of the new admissions must have incomes at or below 30 percent of median income and 90 percent must have incomes at or below 60 percent of median income. S. 462 contains no income limits for such assistance.

- Improve the income targeting requirements for public housing so that: (1) at least 90 percent of a PHA's new admissions have incomes not exceeding 60 percent of median income; and (2) at least 40 percent of families at each development have incomes not exceeding 30 percent of median income. This would reduce the units available to very low-income families only to the extent necessary to achieve income-mixing.

In addition, the Administration will work with the Senate on other amendments to S. 462 that would make it more consistent with the Administration's public housing reform bill that was transmitted to Congress on April 18, 1997.

File: Housing-legislation

Bruce/Jonathan —
We should make sure to get into this loop at the earliest opportunity. I don't think this is the SAP we would have written.
Elena

Bruce N. Reed
05/06/97 01:07:59 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:
Subject: Housing Bill

---------- Forwarded by Bruce N. Reed/OPD/EOP on 05/06/97 01:13 PM ----------

[redacted] 11:23:23 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

cc:
Subject: Housing Bill

The SAP actually opposes the bill, unless certain amendments are made. They list 8 different areas we want changed, but they probably don't all rise to the level of a veto.

The most important are fixes to the assistance targeting in the House bill, and the most important targeting fix we want is a Section 8 income limit for new admissions (90% at or below 60% median income, 40% at or below 30%). We want tighter targeting requirements for PHAs and tenant-based assistance as well, although at least some OMB folks concede that the argument against tight PHA targeting -- it creates clusters, and cultures, of poverty -- makes sense.

Of the other fixes, there are only two I think you might be interested in.

First, we want to delete requirement of a self-sufficiency agreement between PHAs and tenants or assistance recipients. In the House bill, this has two components: the 8 hour service requirement, and a contract with adults that sets a targeted graduation date. Our bill includes the service requirement, but not the contract; instead our proposal "clarifies" that "it would be the PHA's job to assist State welfare agencies," presumably on the logic that housing offices shouldn't be welfare offices...

Second, we want to delete the requirement that private owners of federally assisted housing are provided with conviction information about applicants and tenants. Hmmm...

Of other interest: HR2 (and our alternate as well, I assume) includes $290 million for 98 and 99 for a new grant to fight crime in and around public or assisted housing; expands access to NCIC, and Rahm's sex offender registry; and mandates 3 years of ineligibility if a family is evicted for a drug-related crime.

Let me know what else you want to know.