



ASSISTANT SECRETARY FOR
PUBLIC AND INDIAN HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

April 21, 2011

Ms. Catherine Bishop, National Housing Law Project
Housing Justice Network
c/o National Housing Law Project
703 Market Street, Suite 2000
San Francisco, CA 94103

Dear Ms. Bishop:

Thank you for your letter of February 17, 2011, concerning the Department's application review process for the demolition/disposition of public housing and suggested amendments to the Department's 24 CFR Part 970 implementing regulation of Section 18 of the U.S. Housing Act of 1937 (Act). The Department appreciates your feedback and suggestions on this program and will carefully consider all of your comments as it continues to implement processing improvements and regulatory changes to this program.

As I mentioned at the November 16, 2010 meeting with Secretary Donovan and the Board and State Partners of the National Low Income Housing Coalition, the Department is in the process of drafting a revision to 24 CFR Part 970. Although the current version of this regulation was published relatively recently, in 2006, the Department has determined that the regulation should again be revised in order to elaborate on the Department's interpretation of the statute and prescribe clearer guidance concerning the processing and future use requirements associated with the program. The Department is confident a regulatory revision will not only increase transparency and provide PHAs with more up-front guidance on whether a demolition/disposition action is appropriate for their public housing stock, but will also ensure the program is utilized only as the Department believes Congress intended.

The Department supports many of your proposals for a 24 CFR Part 970 revision, including:

- More meaningful resident consultation on complete applications;
- More comprehensive descriptions of plans for reuse of sites, including size, number, and affordability of units and priorities for displaced residents;
- Number of Section 8 tenant-protection vouchers the PHA plans to request for relocation;
- Timing of resident relocation, including prohibitions on relocating residents prior to the Department's application approval;
- Heightened standards for determining obsolescence of projects¹; and

¹ You recommend that HUD revise the 970 regulation to restore the standard for the cost-effectiveness for rehabilitation of public housing projects to 90 percent of total development cost (TDC) (the pre-2006 standard). The 90% standard was based on the Capital Fund Program (CFP) rule that allows PHAs to use CFP at a project so long as the rehabilitation costs at the project do not exceed 90% of TDC. HUD had originally applied the 90% standard in the original 970 regulation based on a continuum from that standard. However, HUD determined that the standard was too high. Specifically, the standard exceeded the housing construction costs (HCC) (which is the sum

- Increased guidance on relocation, including permissibility of paying for certain moving expenses (e.g. security deposits) and requiring that displaced residents be offered a right-to-return to redeveloped property in certain instances.

Some of your recommendations are already reflected in the Department's current requirements and policies, including PHA Plan requirements, submission of written comments from residents/resident organizations, and submission of certain information about the future reuse of the site after disposition. However, the Department will consider further clarifying these requirements in the forthcoming 24 CFR Part 970 revision.² In addition, many of the concerns you raise should be addressed by PHAs as part of the PHA Plan process and prior to the submission of a demolition/disposition application. For instance, 24 CFR Part 903 requires PHAs to include in their PHA Plans all planned public housing development (including development of "replacement units" in connection with a demolition/disposition) and all proposed future demolition/disposition activities. Moreover, pursuant to 24 CFR Parts 5 and 903, PHAs should be addressing all applicable fair housing/civil rights implications of proposed demolition/disposition activities (including their duties to affirmatively further fair housing) at the time such activities are first proposed in their PHA Plans. PHAs must consult the Resident Advisory Board (RAB) and the general public as part of the PHA Plan process. The Department encourages you to become more involved in the PHA Plan process in order to best address many of the concerns you raise. Given the Section 18 statute, the review of demolition/disposition applications is not intended to revisit PHA Plan issues.

Under the current Section 18 statute, the Department has limited authority to disapprove demolition/disposition applications. In fact, Section 18 of the Act requires the Department to approve a demolition/disposition application if a PHA certifies to certain requirements with respect to that application. With that said, consistent with Secretary Donovan's commitment, the Department is reviewing demolition/disposition applications through the "lens of the number, location, and affordability of units returning to the inventory." The Department intends to revise the regulation in a way that gives it clear authority to deny demolition/disposition applications that fail to meet the revised regulatory requirements. In addition, the Department plans to include use restriction and other requirements in the regulation that will ensure former public

of the following HUD approved costs related to the development of a public housing project: dwelling unit hard costs—including construction and equipment, builder's overhead and profit, the cost of extending utilities from the street to the public housing project, finish landscaping, and the payment of Davis bacon wage rates). The HCC is derived from the average of the R.S. Means and the Marshal & Swift cost indexes. When revising the regulation in 2006, HUD translated the HCC into the 62.5% and 57.14% TDC standards. HUD is considering using the HCC (not TDC) standard for determining the cost-effectiveness for rehabilitation and requiring that PHAs submit an independent engineer or architect's report to show that the rehabilitation costs at a project exceed HCC.

² Regarding the PHA Plan requirement, it is the Department's current policy that all proposed demolition and disposition activities must be included in a PHA Plan or in a significant amendment to a plan. *See* 24 C.F.R §§ 903.7 & 970.21. Regarding the submission of written comments from residents/resident organizations and PHA's written response to those comments, the Department currently requires PHAs to submit these materials with its application. *See* 24 C.F.R. § 970.9 and HUD-52860, Section #7, item #5. Finally, regarding the description of plans for reuse of the site, including size, number, and affordability of units that will be replaced on site, the Department already requires most of this information for properties that will be disposed of at less than fair market value based on commensurate public benefit. *See* HUD-52860, Section #5, item #7.

housing assets (dwelling units, proceeds, and/or vacant land) are used to create and preserve the maximum number of quality long-term affordable housing for our nation's low-income families.

With respect to your fair housing and civil rights concerns, the Department's Office of Fair Housing and Equal Opportunity (FHEO) reviews demolition/disposition applications for compliance with fair housing and civil rights laws. PIH is also working closely with FHEO in finalizing the revision to 24 CFR Part 970.

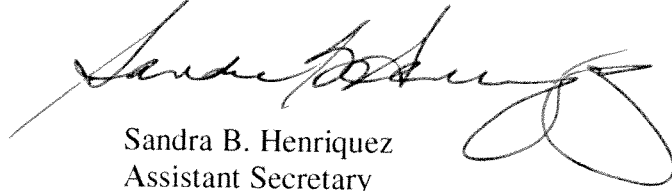
With respect to Section 3 of the Housing and Urban Development Act of 1968 (Section 3), the Administration is strongly committed to ensuring that PHAs are complying with all applicable Section 3 requirements. In October 2009, HUD contacted more than 3,500 state and local government agencies (including PHAs) to remind them of their legal obligations to report their hiring and contracting efforts under Section 3. If a PHA uses HUD funds to carry out demolition and/or public housing redevelopment activities in connection with an approved Section 18 action, Section 3 requirements apply. HUD Field Offices of Public Housing are responsible for monitoring and enforcing all applicable Section 3 requirements that apply to PHAs. Notwithstanding this, because Section 3 requirements are independent from requirements of Section 18 of the Act, and 24 CFR part 970 implements only Section 18 of the Act, HUD has determined that 24 CFR part 970 should not be revised to specifically address Section 3 requirements. If you have information that a particular PHA is not in compliance with applicable Section 3 requirements in connection with a demolition and/or disposition action, HUD would appreciate you bringing that information to its attention.

The Administration is strongly committed to refining the public housing program for the immediate benefit of residents nationwide. Yet, the Administration also recognizes that the Department has limited ability to preserve affordable units for the families living in public housing by making regulatory and other changes to the demolition/disposition program. Therefore, the Department has also proposed a Transforming Rental Assistance (TRA) demonstration program in its FY 2012 budget. The demonstration seeks to convert 255,000 public housing units to long-term affordable Section 8 units. The Administration believes this will go a long way towards ensuring the preservation of the nation's limited low-income housing stock. It may also be a significant step towards ending the need for demolition/disposition of public and assisted housing. The TRA demonstration has the potential to place the public housing stock on a sound, sensible financial and regulatory footing for the long term. It will provide access to the much-needed capital to maintain, rebuild and reposition quality housing and improve the living conditions of residents. The TRA demonstration also has the potential to increase residents' choice and mobility and leverage other sources of capital for use in providing affordable housing. The Department hopes to continue to work with you, and have your support and cooperation, as it implements this important demonstration program.

Again, thank you for your thoughtful comments on the demolition/disposition program, including your recommendations for how the Department can improve its regulatory and processing implementation of this program. I appreciate your interest in this important program and would welcome the opportunity to meet with you to further discuss your ideas. Please let me know if you would like to schedule a meeting. I also encourage you to provide formal comments to the 24 CFR Part 970 rule revision when it is published in the Federal Registrar. Should you

have additional information that you believe the Department should consider in its review demolition/disposition applications until then, please do not hesitate to contact Deputy Assistant Secretary Dominique Blom at dominique.g.blom@hud.gov or (202) 402-8500 or Mr. Ainars Rodins, P.E., Director of the Special Applications Center (SAC) at ainars.rodins@hud.gov at (312) 913-8766.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra B. Henriquez", with a large, stylized flourish at the end.

Sandra B. Henriquez
Assistant Secretary