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Assistant Secretary Sandra Henriquez
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Washington, D.C. 20410
(By Fax 202-619-8478 and email Sandra.Henriquez@hud.gov)

Dear Assistant Secretary Henriquez:

We are in receipt of your letter dated April 21, 2011 responding to the letter of February 17, 2011 from the National Housing Law Project, Housing Justice Network and the National Low Income Housing Coalition regarding the public housing demolition/disposition application review process. We appreciate your desire to have an ongoing conversation regarding these issues. Before scheduling a meeting/telephone call, we want to share with you our proposed amendments to the demolition/disposition regulations and our response to your letter reflecting our combined experiences with the demolition/disposition process. We are hopeful that this additional information will make the future meetings/conference calls most productive.

PHA Plan Process and Demolition/Disposition Application.

We were encouraged and surprised by the statement that it is current HUD policy that all proposed demolition and disposition activities must be included in the PHA Plan *or a significant amendment to a plan*. The policy regarding significant amendments is not one that is promoted by HUD or well known by PHAs. As the letter points out, the current regulations provide that a proposal to dispose of or demolish public housing must be in the PHA plan. 24 C.F.R. § 903.7(h); form HUD 50075, ¶ 7.0; see also 42 U.S.C. § 1437p(3). And, substantial amendments to a PHA Plan are subject to the PHA Plan process. 24 C.F.R. § 903.21. However, it is the PHA that defines a substantial amendment to a PHA Plan. 24 C.F.R. § 903.7(r)(3). We are not aware of any HUD authority other than the footnote in your April 21st letter that states that a proposal for demolition/disposition is a significant amendment to the PHA Plan. We believe that due to the lack of clarity, PHAs have relied upon their definitions of a significant amendment to justify moving ahead with a demolition/disposition proposal without first including it in their PHA Plan. To respond to this dilemma, we urge HUD to issue a PIH Notice stating the current policy: that a proposal to demolish/dispose of public housing is a significant amendment to the PHA Plan. The Notice should further state that any proposal to demolish/dispose of public housing will be rejected, returned to the PHA and not approved if the PHA has not previously included such a proposal in the PHA Plan or as a significant amendment to such plan. PHAs should not be able to skirt this requirement or shorten the time for resident review of demolition/disposition proposals.

The brief discussion of the PHA Plan process in your letter suggested that residents should use the PHA Plan process to gather information regarding a proposed demolition/disposition. In particular, the letter suggests that the regulations governing the PHA Plan process “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 suggests that PHAs should address all applicable fair housing/civil right implications of proposed demolition/disposition activities when first proposed.

This recitation of the PHA Plan process and what a PHA should provide in its PHA Plan is not consistent with our experiences or what HUD currently requires. The HUD form 50075, PHA 5-Year and Annual Plan requires minimal information regarding a PHA’s plans for demolition/disposition. All that is required is a project number, number of units by size and accessibility, and a timetable for the demolition/disposition. No details or narrative is required to explain why the action is proposed or whether there will be replacement units. Contrary to the April 21st letter, PHAs are not required to discuss replacement units as they relate to demolition/disposition. As a result, residents are provided with no details of the demolition/disposition and are not informed of the reasons for the proposal or the future plans for the site. With respect to future activities, all that is required is a timetable. Our experience is that PHAs often fill out the demolition/disposition section of the PHA Plan as a place holder. When asked for more information, PHAs frequently respond that “there are no detailed plans for demolition/disposition,” “do not worry this proposal is for a distant time,” etc.¹

Because more information is not required, the PHA Plan process is not as useful as it could be. Without information, it is very difficult for residents to have meaningful engagement with the PHA regarding its plans for the demolition/disposition of a development. To address this problem, HUD must do more to require PHAs to provide information and options so as to engage the residents, including the resident councils for the development and the city-wide and the Resident Advisory Board (RAB), as the plans develop.² Early engagement with meaningful information before the demolition/relocation plan is developed is important. Without it, residents are confronted with the plan selected by the PHA after all major decisions are made and the proposal is ready for submission to HUD. At that point, they have limited and stark options either to oppose or support the plan in its entirety. Residents should have other options. They should be involved early so that they may respond to claims that a building is obsolete because units are too small or cannot be rehabilitated for a reasonable costs, is isolated, or crime infested, etc.³ Residents may have ideas on how to combat these problems or to suggest that the PHA take actions that respond to their and the community needs.

Replacement Housing.

Applications for demolition/disposition that propose replacement of a maximum number of public housing units with ACC or PBV units that ensures maximum long term affordability *and*

¹ The HUD form is also confusing as it further states that “Note: This statement must be submitted to the extent that approved and/or pending demolition has changed.” This Note would be substantially improved if it provided that “this statement *also* must be submitted, etc.”

² Some of the ideas included in the paragraph that describes how the PHA Plan process should work could be incorporated into guidance on what a PHA must do to involve residents and address substantive issues.

³ In our letter of February 17th, we also mentioned the need to have a complete proposal for demolition/ disposition available to the residents prior to submission to HUD.

a continuation of resident rights consistent with public housing rules should be prioritized and expedited.

PHAs should be required to state how the Replacement Housing Factor funds (RHF) received as a result of the demolition/disposition of a particular development will be used to develop replacement housing for that development. Those plans for the RHF must be included in the PHA Plan and changes to those planned uses of the RHF must be considered a substantial amendment to the PHA Plan.

Fair Housing and Civil Rights Review.

The April 21st letter states that FHEO reviews demolition/disposition applications for compliance with fair housing and civil rights laws. In our collective experience, this statement is inconsistent with HUD practice. We are not aware that either PIH or FHEO routinely review all applications for demolition/disposition to assess their fair housing impact on protected groups or to assure compliance with civil rights laws. (We do know of a few situations of review by the local HUD FHEO, but only after civil rights issues were specifically raised by residents.)⁴ Also, we are not aware of any PHAs that address civil rights implications of a demolition/disposition proposal at an early stage in the PHA Plan process. And we believe that such analysis rarely, if ever, occurs as we are not aware of HUD requesting copies of such analysis in either the PHA Plan process or in the Section 18 demolition/disposition review process.

We do believe that the civil rights review by FHEO is important and should be standard practice, pursuant to HUD's duty to have an institutionalized method for assessing potentially discriminatory impacts, as well as its duty to affirmatively further fair housing. Our February letter suggested a number of items that FHEO could use to review a demolition/disposition application.⁵ We request that these items be included in any check list used by FHEO to review such applications.⁶ We also urged that HUD adopt a policy to certify compliance with civil rights requirements.

Finally, HUD should clarify in its regulations that proposed demolition/disposition actions must comply with civil rights laws and other generally applicable federal laws, such as environmental laws, and that the Secretary has authority to deny a demolition or disposition application under these laws independent of the grounds enumerated in Section 18 of the U.S. Housing Act.

Section 3.

We are disappointed that HUD has determined that it will not revise the demolition/disposition rule to specifically address Section 3. We believe that such a determination is inconsistent with

⁴ HUD FHEO review of a demolition/disposition application is not mentioned in the regulations or on the Special Applications Center website.

⁵ We suggested that the FHEO review include a) description and analysis of the impact of the proposed demolition/disposition on the supply, location, availability and affordability of housing or racial and ethnic minorities, persons with disabilities, female-headed households, families with children, and to the extent relevant, other groups protected by the Fair Housing Act; 2) identification of any potentially discriminatory effects; and 3) to the extent discriminatory effects are identified, a description of less discriminatory alternatives and any concrete steps that the PHA could take to avoid, minimize, or mitigate the potentially discriminatory effects.

⁶ If HUD has developed a check list for the reviews that FHEO is currently conducting of demolition/disposition applications, we would appreciate a copy of such a check list.

the economic development and job creation goals of the HUD FY 2010-2015 Strategic Plan.⁷ A demolition application, if approved, will generate jobs and economic opportunities, many of which will be suitable for entry level and low skill workers. If there is relocation, new jobs may be created by that activity. If replacement housing is proposed, additional opportunities will arise if new construction or rehabilitation is pursued. HUD should not claim that Section 18 is independent of Section 3 any more than it is independent of Davis-Bacon requirements.

Standards for Determining Obsolescence of Projects.

We recommended that HUD restore the standard for the cost-effectiveness for rehabilitation of public housing projects to 90% of total development costs. HUD, in its response, supports the notion that the standards for determining obsolescence of projects need to be heightened. However, the response is unclear. Is HUD planning to revise current policy by allowing for additional rehabilitation cost to justify preservation, or will it continue with the current policy but provide the rehabilitation standard as housing construction costs (HCC) instead of TDC? It would be helpful to clarify what is intended and what new standard HUD is contemplating.

Project Based Vouchers.

In our February letter, we did not address the issue of replacing public housing that is demolished or disposed of with project-based vouchers (PBV). This is a topic that ought to be considered in the context of any revisions to the Section 18 demolition/disposition regulations. We know that some applications for demolition/disposition anticipate replacement units using PBV. We believe that many of the issues that HUD is considering in the context of preserving public housing assets, should be applied to any plans of a PHA to replace public housing with PBVs. The tools that foster long term affordability in PBV units include:

- commitments by the owner of such housing to accept any renewals of the housing subsidy,
- a commitment by HUD to offer renewals of the contract, subject to appropriations,
- ground leases, whereby the PHA maintains ownership of the land.

In addition, proposals to replace demolished or disposed of public housing with PBVs should ensure that residents' rights consistent with the rights of public housing residents are preserved and carried over to the PBV units.

Transforming Rental Assistance (TRA).

The April 21st letter notes that the Administration is looking to TRA as a tool to preserve public housing and has proposed a demonstration program in the FY 2012 budget. We recognize that public housing is underfunded and that there is a substantial backlog of capital needs. We appreciate the importance of seeking adequate funding of public housing and the potential of the TRA demonstration. We want to continue to engage with you on these issues. However, we also want to re-emphasize that residents and advocates are currently facing the repercussions of HUD approved demolitions and dispositions. In many cases, residents have been shut out of the planning process, ejected from their homes of many years, relocated into housing that is less desirable than their former public housing unit, denied the right to return and have seen the substantial shrinkage of low income housing. It is these experiences that form the basis of

⁷ These goals include "utilizing HUD assistance to increase economic security and self-sufficiency" and "catalyzing economic development and job creation, while enhancing and preserving community assets."

residents' and advocates' skepticism regarding promises in the TRA program and make the commitment to improve the demolition/disposition process so important to all.

We would like to speak to you about the proposals to improve the demolition/disposition rules and would like you to suggest a convenient time to talk. We would prefer to do this via phone as most of us are not located in or near Washington D.C. We look forward to continuing this dialogue.

Sincerely,

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Enclosure

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