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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:

Thank you for the time you and your staff are devoting to understand and address the issues that we confront regarding proposals to dispose of or demolish public housing. We appreciate that you are interested in identifying both immediate and long-term solutions.

Proposed PIH Notice. As we discussed, there are current important HUD policies that are not acknowledged, well known or followed in the field. Some of these issues relate to providing for full resident participation. In particular we discussed the current HUD policy regarding the demolition/disposition activities and the PHA Plan. Our understanding of the current HUD policy is that

- All demolition/disposition proposals/plans/activities must be included in a PHA Plan or in a significant amendment to a plan. Any demolition/disposition proposals/plans/activities not included in a PHA Plan constitute a significant amendment to the plan and are subject to §§ 903.13, 903.15 and 903.17, which includes a public hearing and comment period and consultation with the resident advisory board (RAB).

At the meeting/call, you concurred that a demolition or disposition proposal/plan/activity constitutes a substantial amendment. Because this policy is not universally understood or applied, you suggested that it should be included in a PIH Notice for all PHAs. We support that decision and look forward to an early distribution of the PIH Notice.

We also discussed the need to include in the proposed PIH Notice instructions to public housing agencies to notify and engage residents regarding a PHA's proposal for mixed finance development, which often follows an application for demolition/disposition. It is our understanding that you agreed to include such instructions in the proposed PIH Notice. In addition, we noted that there are other HUD policies identified in your April 21, 2011 letter that we agree with, which are also not universally known. One of these policies—the prohibition on relocating residents prior to HUD's approval of the demolition/disposition approval—we

discussed and urged be included in the PIH Notice. Again, it is our understanding that you agreed to its inclusion.

Other policies from your April 21st letter that we believe need little further explanation and, therefore, ought to be included in the PIH Notice include:

- that it is permissible for a PHA to assist a displaced tenant by paying for certain moving expenses such as security deposits, and
- requiring that displaced residents be offered a right to return in certain circumstances.¹

We appreciate that issuing a Notice will take time. However, the proposed regulations are tentatively scheduled for publication for comment in June 2012 and publication of a final rule will take additional time. Because approximately 10,000 units will be lost in the next 12 months, we believe that a PIH Notice for this interim period is essential. Moreover, such a Notice will signal to PHAs and residents that HUD is serious about taking action to clarify responsibilities and address problems in the demolition/disposition process.

Although we did not discuss this issue on the call, we believe that in order to achieve maximum resident participation, HUD should establish a mechanism for an ongoing dialogue between concerned residents, their advocates and HUD. We believe this should be addressed in the short term and included in the proposed PIH Notice. Currently, residents may raise issues, but they have no knowledge as to how best to proceed to have their concerns addressed by HUD. Often HUD responds to their complaints by conversations with the PHA but with little or no contact with residents. In other situations, HUD assists the PHA so as to eliminate or minimize the resident complaints. In addition, residents are seldom included in or notified of HUD investigations or any reports developed by HUD or PHAs, some of which may be in response to their concerns. These responses can result in residents feeling excluded from the process and can escalate frustration and distrust. We urge that the proposed PIH Notice state where HUD residents should go for assistance—a point of contact—if they believe that a PHA proposal is inconsistent with law or the facts. In addition, it should be HUD policy to respond in writing to the residents' concerns, notify residents of any HUD inspections or fact finding, especially any conducted on site by HUD, and to provide residents with copies of any reports regarding a demolition/disposition developed by or submitted to HUD.

Other resident participation issues. We discussed the current HUD practice of maintaining indefinitely incomplete PHA applications for demolition or disposition or until the PHA corrects the HUD identified deficiencies. This practice excludes the residents, denies them the opportunity to review and comment upon a complete application and results in HUD approvals months or years after the initial submission. We understood that you are concerned about this

¹ Your April 21st letter also identified other areas where “the Department supports [our] proposals . . . 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 and the PHA plans to request for relocation;
- Timing of resident relocation, including prohibitions on relocation resident prior to the Department's application approval;
- Heightened standards for determining obsolescence of projects; and 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.”

practice and believe it should not continue. In addition, we discussed the need for residents to access technical assistance so that they may support their claims. On this latter issue, you appreciated the problem and would consider how such assistance may be provided.

Civil Rights/Fair Housing Review and Section 3. In our discussion of the civil rights issues, you noted that a relatively new fair housing review procedure must be undertaken before an application for demolition/disposition may be approved.² We are interested in knowing more about how that review procedure is working, how PHAs and residents are notified of the new process, whether it is applicable to all demolition/disposition applications, which offices of HUD, local, regional or national are undertaking the reviews, and what standard/check list is being used.

With respect to Section 3, the discussion included whether the Section 3 obligation should be incorporated as an overarching feature of the public housing program and/or included as an independent obligation in the demolition/disposition process. We believe that both tracks should be followed, as is currently the process with other PHA obligations, such as Davis-Bacon.

To accelerate the discussion on the civil rights and Section 3 issues, we believe that it would be helpful to have a joint call/meeting with you and Assistant Secretary Trasvina.

Remaining issues. Finally, there are a number of issues included in the letters that you identified as issues for further discussion, which we did not have time to discuss on June 22nd. We request a follow-up call/meeting with you and your staff to discuss these issues, including:

- Replacement Housing Factor
- Prioritizing and expediting applications for demolition/disposition that would replace the maximum number of units with ACC or project-based vouchers, and
- Replacing public housing that is demolished or disposed of with project based vouchers or with units assisted pursuant to the proposed rental assistance demonstration (RAD).

In conclusion, we believe that it is important for HUD to issue a PIH Notice addressing the resident participation issues, the policies prohibiting relocation until HUD approval of an application, policies defining security deposits as permissible relocation expenses, and policies establishing that residents ought to have the right to return. We would also like to schedule another call/meeting with you to discuss the remaining issues that we did not have time to address. In addition, we would like to have a call with you and Assistant Secretary Trasvina to discuss the Civil Rights and Section 3 issues.

We look forward to hearing from you and your staff as we move forward.

Sincerely,

Catherine Bishop
National Housing Law Project

² The non-discrimination and equal opportunity requirements for PHA were recently summarized in PIH Notice 2001-31, June 13, 2011 and include Title VI of the Civil Rights Act of 1964; the Fair Housing Act, Title VIII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act of 1990; Executive Order 13,166 and “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Affecting Limited English proficient Persons, 72 Fed. Reg. 2732 (Jan. 22, 2007); and the obligation to affirmatively further fair housing.

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