

United States House of Representatives  
Committee on Financial Services  
2128 Rayburn House Office Building  
Washington, D.C. 20515

January 31, 2020

## Memorandum

**To:** Members, Committee on Financial Services

**From:** FSC Majority Staff

**Subject:** February 5, 2020, HCDI hearing entitled “A Future Without Public Housing? Examining the Trump Administration’s Efforts to Eliminate Public Housing”

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The Subcommittee on Housing, Community Development and Insurance will hold a hearing, entitled, “A Future Without Public Housing? Examining the Trump Administration’s Efforts to Eliminate Public Housing,” at 2:00 p.m. on Wednesday, February 5, 2020, in room 2128 of the Rayburn House Office Building. This hearing will have one panel with five witnesses:

- **Sylvia Blanco**, Chief Operating Officer, Housing Authority of the City of Austin
- **Bobby Collins**, Executive Director, Housing Authority of the City of Shreveport
- **Susan Popkin**, Senior Fellow, Urban Institute
- **Kate Walz**, Vice President of Advocacy, Shriver Center on Poverty Law

Additional witnesses may be added

### Background

Public housing plays a central role in addressing America’s affordable housing needs. Under the program, the Department of Housing and Urban Development (HUD) provides federal grants to local public housing authorities (PHAs) that collectively own and manage roughly one million permanently affordable housing units. Public housing is home to approximately 1.7 million low-income seniors, people with disabilities, families with children, and other individuals.<sup>1</sup> Over half of public housing households are headed by seniors and people with disabilities, while families with approximately 634,000 children comprise more than 35% of public housing households.<sup>2</sup> The average income of a household living in public housing is \$15,692 per year, and 82 percent of public housing residents are extremely or very low-income.<sup>3</sup> In order to ensure affordability, rent for public housing residents is generally capped at 30 percent of household income.

Over the past few decades, funding for the public housing program has decreased significantly. Congress provides funding for public housing through the Capital Fund, which primarily is used to address physical needs of public housing properties, and through the Operating Fund, which is used for day-to-day operating costs. In 2018, funding for the Capital Fund had fallen 36 percent since 2000, and Congress had provided sufficient funding for the Operating Fund only three times during the same time period.<sup>4</sup> While Congress recently increased funding for public housing in fiscal years 2018 and

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<sup>1</sup> HUD, [Resident Characteristics Report](#).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* Households with income at or below 50% of AMI.

<sup>4</sup> Doug Rice, Center on Budget and Policy Priorities, [Cuts in Federal Assistance Have Exacerbated Families’ Struggles to Afford Housing](#) (2016).

2019, overall funding for the program is still 17 percent lower than the FY 2010 funding level, after adjusting for inflation.<sup>5</sup> As a result of this chronic underfunding, there is an estimated \$70 billion backlog in needed capital repairs to fix tenants' homes from substandard and unsafe conditions, and more than 10,000 public housing homes are lost each year due to disrepair.<sup>6</sup> This represents a permanent loss of our public housing stock due to the Faircloth Amendment, which prohibits PHAs from constructing any new public housing units if it results in a net increase to their overall stock.<sup>7</sup>

Under the Trump Administration, HUD Secretary Carson has also taken steps to accelerate the loss of public housing, laying out a blueprint for a future without any public housing. As decades of chronic underfunding and various policy decisions force a shift away from public housing to other forms of assistance that rely on the private market, advocates have raised concerns that the benefits of public housing cannot be fully replicated by these other forms of assistance.<sup>8</sup> For example, public housing is more likely to be accessible to people with disabilities than apartments that are available to Housing Choice Voucher (HCV) holders.<sup>9</sup> Additionally, landlord participation in the HCV program is generally voluntary and households with HCVs often face challenges finding landlords who will accept their voucher.<sup>10</sup> In cities with tight rental markets, on average, it takes a voucher holder 94 days to find an apartment, while only 61 percent of voucher holders ultimately find a landlord who will accept it.<sup>11</sup> Furthermore, unlike Section 8 project-based rental assistance (PBRA) properties that are owned by private owners, public housing is permanently affordable; after a PBRA owner's contract expires, the owner can choose to exit the program and begin charging market rents for their units.

### **Current federal resources to preserve public housing**

One of the main challenges in preserving public housing is the limitation on using public housing as collateral for loans. This limitation is intended to protect the permanent nature of public housing because a foreclosure would change the ownership of the property and threaten affordability, among other things. Thus, PHAs are limited to federal and other grants to rehabilitate aging public housing properties.

#### *Public Housing Capital Fund*

The Public Housing Capital Fund is the primary source of funding to address the physical needs of public housing developments, including leaky roofs, broken heating or air conditioning systems, and damage from mold or termites. Capital Fund dollars are allocated via formula to approximately 3,000 PHAs across the country based on relative needs. For more than a decade, Congress has funded the Capital Fund at levels that do not meet the estimated \$3.4 billion in capital needs that accrue each year.<sup>12</sup> As a result PHAs are forced to make ends meet with inadequate funding levels, often facing difficult choices on which repairs should be prioritized.

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<sup>5</sup> [Housing in America: Assessing the Infrastructure Needs of America's Housing Stock, Hearing Before the H. Committee on Financial Services](#), 116<sup>th</sup> Cong. (2019) (statement of Diane Yentel, President and CEO, National Low Income Housing Coalition).

<sup>6</sup> National Low Income Housing Coalition, [Public Housing: Where Do We Stand?](#) (October 2019).

<sup>7</sup> *Id.*

<sup>8</sup> Barbara Sard and Will Fisher, Center on Budget and Policy Priorities, [Preserving Safe, High Quality Public Housing Should Be a Priority of Federal Housing Policy](#) (Oct. 8, 2008).

<sup>9</sup> *Id.*

<sup>10</sup> Alison Bell et al., Center on Budget and Policy Priorities, [Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results](#) (Dec. 20, 2018).

<sup>11</sup> Doug Rice, Center on Budget and Policy Priorities, [Agencies Generally Use All Available Voucher Funding to Help Families Afford Housing](#) (March 4, 2019).

<sup>12</sup> Congressional Research Service, [Introduction to Public Housing](#) (Feb. 13, 2014); See also Rice *supra* note 4.

### *Choice Neighborhood Initiative*

The Choice Neighborhoods Initiative (CNI) is a competitive grant program that was created in 2010 under the Obama Administration to help transform severely distressed public housing and other HUD-assisted private housing developments through rehabilitation, demolition, and new construction. CNI is the only source of funding available to address public housing capital needs that requires the one-for-one replacement of all public housing units that are demolished.<sup>13</sup> CNI offers two types of grants: an implementation grant and a planning grant. Implementation grants are larger (typically \$25-30 million) and are awarded to communities that have undergone a comprehensive local planning process. Planning grants are smaller (typically around \$250,000 to \$1.3 million) and awarded to communities that need assistance to develop comprehensive revitalization plans. Not all communities that are awarded a planning grant will ultimately receive an implementation grant. HUD requires CNI applicant plans to go beyond addressing the capital needs of relevant housing units, and to holistically address community needs such as violent crime, failing schools, and capital disinvestment.

CNI has never been formally authorized; it was created and has been funded through annual appropriations since 2010. In FY 2020, the program was funded at \$175 million, a \$25 million increase over the prior fiscal year. In 2019, only three communities were awarded an implementation grant, while six communities received planning grants. The majority of implementation grants have been awarded to large and midsize cities, such as Phoenix and Shreveport respectively, while planning grants have been awarded to a wider variety of communities, including some in more rural areas, such as Salisbury, North Carolina.<sup>14</sup> Legislation to formally authorize the CNI program has been introduced by Chairwoman Maxine Waters and Senator Robert Menendez in past Congresses.

### **Current options for converting public housing into vouchers**

In the absence of sufficient funding for public housing preservation, PHAs facing challenges in maintaining their public housing as safe and decent can choose to convert public housing into voucher assistance through the following channels.

#### *Rental Assistance Demonstration*

The Rental Assistance Demonstration (RAD) was established by Congress in the FY 2012 Consolidated Appropriations Act as a voluntary, limited demonstration program to give PHAs<sup>15</sup> the opportunity to convert public housing properties into properties that are subsidized with long-term Section 8 PBRA or project-based vouchers (PBVs) contracts, which provide rental subsidies that are tied to specific housing units.<sup>16</sup> This conversion generally preserves the affordability of the housing units through rental assistance contracts and removes the limitations on collateralizing the property so that PHAs can leverage it, as well as the long-term rental assistance contract, to attract private capital. The use of the property as collateral exposes it to the possibility of a transfer of ownership to a private entity or bank in the case of foreclosure, which can undermine the long-term affordability of the units. According to HUD's final evaluation for the demonstration that was published in 2019, RAD projects have raised \$12.6 billion in private and other public funds to convert 103,268 units of public housing, an average of \$121,747 per unit.<sup>17</sup> To date, Congress has never provided any funding for RAD; instead,

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<sup>13</sup> Ed Gramlich, National Low Income Housing Coalition, [Advocates' Guide: Public Housing](#) (2019).

<sup>14</sup> HUD, [Choice Neighborhoods Planning Grantee List](#) & [Choice Neighborhoods Implementation Grantee List](#).

<sup>15</sup> RAD has two components. Component 1 allows public housing to convert to PBVs or PBRA. Component 2 allows Mod Rehab, Rent Supp, RAP, and Section 202 PRAC units to convert to PBV or PBRA. This memo only discusses Component 1.

<sup>16</sup> However, unlike PBRA and PBV properties that were not originally public housing, the RAD statute requires converted public housing units to be owned or controlled by a public or non-profit entity. Pub. Law 112-55, 125 Stat. 673 (Nov. 18, 2011).

<sup>17</sup> HUD, [Final Report: Evaluation of HUD's Rental Assistance Demonstration](#) (June 2019).

the demonstration relies on programmatic flexibilities to allow for the leveraging of private and other capital.

Congress initially authorized up to 60,000 units of public housing to be converted under RAD. Despite criticisms from affordable housing advocates and the Government Accountability Office (GAO), Congress has increased the number of units that can be converted under the demonstration to 455,000 units in FY 2018, which represents nearly half of the remaining public housing stock,<sup>18</sup> without any reforms that fully address those concerns. Specifically, a 2018 GAO report found that HUD is not currently able to reasonably monitor and assess the effects of ongoing and completed RAD conversions on residents and compliance with resident safeguards.<sup>19</sup> The report also found that the strength of protections intended to preserve affordability is unknown and untested, and HUD does not have procedures to address preservation risks. Advocates echoed concerns about preserving the long-term affordability of properties post-RAD conversion and have also been critical of the lack of HUD oversight and PHAs failing to comply with the program's tenant protections and rights.<sup>20</sup> HUD's most recent report on RAD did not assess PHA compliance with resident protections and rights. Further, RAD is often not a feasible option for small and rural PHAs or other PHAs with significant capital needs because these PHAs tend to face more challenges in attracting investor interest and generating sufficient revenue from rents to recapitalize and rehabilitate their properties.<sup>21</sup>

#### *Demolition/Disposition*

Section 18 of the U.S. Housing Act of 1937 provides that PHAs may demolish or dispose of public housing with HUD approval. This is intended to be a last resort for PHAs with public housing units that are in dire disrepair and without the funding to rehabilitate them. A PHA submitting an application for the demolition of public housing must certify that the development or portion of the development it seeks to demolish is (1) obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes; and (2) no reasonable program of modification is cost-effective to return the development or portion thereof to useful life. Residents affected by a demolition/disposition receive a tenant protection voucher (TPV),<sup>22</sup> which provides a rental subsidy that households can use to find housing in the private rental market.

#### *Voluntary Conversion to Vouchers*

Section 22 of the U.S. Housing Act of 1937 provides that PHAs have the authority to convert public housing units to HCVs. Generally, PHAs must demonstrate that it is more cost-effective to issue HCVs than to continue to operate the project as public housing. However, HUD recently published the Streamlined Voluntary Conversion PIH Notice 2019-05 that waives the cost-test requirement and makes it simpler for PHAs operating 250 or less public housing units to undergo this process.

### **Trump Administration's efforts to eliminate public housing**

#### *Proposed budget cuts*

The Trump administration has proposed cuts to the public housing capital fund, as well as CNI, in every budget request it has submitted to Congress. In President Trump's first budget request, funding

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<sup>18</sup> Section 237 of Title II, Division L, Transportation, Housing and Urban Development, and Related Agencies, of the Consolidated Appropriations Act, 2018 (Pub. L. 115-141, approved March 23, 2018)

<sup>19</sup> GAO, [Rental Assistance Demonstration: HUD Needs to Take Action to Improve Metrics and Ongoing Oversight](#) (Feb. 2018).

<sup>20</sup> National Housing Law Project, [Rental Assistance Demonstration](#) (Sept. 7, 2017); Ed Gramlich, National Low Income Housing Coalition, [Advocates' Guide: Rental Assistance Demonstration](#) (2019).

<sup>21</sup> HUD, *supra* note 15.

<sup>22</sup> A TPV is issued as an HCV, but its funding comes from a separate TPV account in Congress's annual spending bill for HUD.

for the Public Housing Capital Fund would have been cut to \$628 million in FY18, a 68 percent cut. For both FY19 and FY20, the Administration proposed to eliminate funding for the Public Housing Capital Fund and CNI in its budget request. Instead, the Administration requested \$100 million for RAD, and \$30 million for competitive grants to facilitate the demolition of physically obsolete public housing properties.<sup>23</sup> Affordable housing stakeholders have stated that such cuts would prevent PHAs from addressing their most pressing capital needs, including fixing leaking roofs or replacing outdated heating systems.<sup>24</sup> Advocates have also pointed out that defunding the Public Housing Capital Fund would make it harder for PHAs to convert their stock under the RAD program, since they need their capital reserves to make conversions possible financially.<sup>25</sup>

#### *HUD’s “repositioning” initiative*

In November 2018, HUD’s Office of Public and Indian Housing (PIH) sent a letter to PHAs outlining the agency’s efforts to “reposition” public housing, meaning conversion to other forms of assistance.<sup>26</sup> The letter states, “Under the leadership of Secretary Carson, [PIH] is focusing on repositioning public housing by providing PHAs with additional flexibilities.” HUD pointed to the growing capital backlog as the reason for this effort. HUD’s initial goal was to convert 105,000 public housing units by September 2019. HUD later updated this goal in its FY 2020 budget request to 125,000 units to be converted by the end of the same fiscal year. HUD has been providing PHAs with technical assistance to convert their housing stock, including making presentations to create awareness, setting up Repositioning Assistance Panels where PHAs can discuss various options with HUD staff, and making trained “Repositioning Expeditors” available. While HUD has stated that conversion is voluntary, some PHAs have reported that HUD field offices are pressuring them to convert their public housing stock through intimidation and misleading information.<sup>27</sup>

#### **Legislative Proposals**

- **“The Public Housing Tenant Protection Act of 2020”** is a discussion draft that would: 1) Require one-for-one replacement for any public housing units that are demolished or disposed of; 2) Provide additional protections for residents through the revitalization process, including stronger notification requirements, increased resident involvement in the planning and implementation stages, and more robust tenant protections regarding relocation; 3) Allow the Secretary of HUD to establish the Capital Fund Loan Guarantee, which would allow housing authorities to attract private investment to rehabilitate public housing properties and, 4) lift the restriction on the construction of new public housing units.
- **H.R. 5187, the “Housing is Infrastructure Act of 2019”** is a bill sponsored by Representative Maxine Waters that would authorize more than \$100 billion in federal investments for the nation’s affordable housing infrastructure, including \$70 billion for the public housing capital fund, which is estimated to fully address the public housing capital backlog.
- **“The Choice Neighborhoods Initiative Act of 2019”** is a discussion draft that would permanently authorize the Choice Neighborhoods Initiative Program.
- **“The Averting Crises in Housing Assistance (ACHA) Act”** is a discussion draft that would strengthen HUD’s oversight of distressed public housing properties and prioritize the preservation of public housing over demolition or conversion.

<sup>23</sup> The Administration only requested the \$30 million for competitive grants in its FY19 budget.

<sup>24</sup> Richard Kogan et al, Center on Budget and Policy Priorities, [Cuts to Low-Income Assistance Programs in President Trump’s 2020 Budget Are Wide Ranging](#) (May 15, 2019); Diane Yentel, National Low Income Housing Coalition, [Point of View: Trump’s Massive Cuts to Housing Must be Stopped](#) (May 22, 2017).

<sup>25</sup> Council of Large Public Housing Authorities, [CLPHA Analysis of FY19 HUD Budget Request](#) (2018).

<sup>26</sup> [HUD Letter](#) from Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing, to Public Housing Executive Directors (Nov. 13, 2018).

<sup>27</sup> Public Housing Authorities Directors Association, [PHADA Registers Concerns About HUD Messaging to Small HAS](#) (2018).