



MYTHS VS. FACTS: SETTING THE RECORD STRAIGHT ABOUT PETRA

Today, 6 million households pay more than half their incomes for housing, and family homelessness is on the rise. But in the last 15 years, the country has lost 150,000 units from its stock of public and assisted housing through sale or demolition.

To President Obama, failing to preserve these resources for the next generations is not an option. That's why the Obama Administration has proposed the Preservation, Enhancement and Transformation of Rental Assistance Act (PETRA) – to reform America's public housing system and transform the way the Federal government provides rental assistance to more than 4.5 million of our most vulnerable families.

Having successfully worked to increase and preserve affordable housing in Chicago and New York City using a combination of public and private resources, President Obama and Secretary Donovan know we can build a better system – one that harnesses the resources of the private market without compromising the important mission of publicly-supported housing.

PETRA would bring this proven strategy for preserving affordable housing to the Federal government by enabling federal housing programs to leverage \$7 billion in other capital in the first year—and as much as \$25 billion in the years to come—giving owners of affordable housing access to the resources they need to preserve this housing into the future. Just as importantly, PETRA embodies the Obama Administration's commitment to more robust tenant protections and strong provisions that keep public housing publicly owned and affordable to the people who need it the most.

Myth: *The Obama Administration is turning its back on public housing.*

FACT: PETRA represents an historic commitment to public housing.

President Obama and Secretary Donovan believe that failing to preserve public housing for the next generations is unacceptable. But we need to do a better job for those generations – and the Federal government can't do the job alone. The key to meeting the current and ongoing capital needs of public housing lies in shifting from the funding structure we have today—which exists in a parallel universe to the rest of the housing finance world—to a federal project-based subsidy that lenders understand and that can be used to leverage additional capital from public and private sources. This can be done *without* risking the loss of assisted units.

By opening HUD's rental programs up to private capital like other housing can access, HUD estimates that PETRA would leverage approximately \$25 billion in new resources for the public housing portfolio. Additionally, billions more of other public and private resources, including Low Income Housing Tax

Credits, will be leveraged. Indeed, the commitment of city and state governments, the private sector, local not-for-profits, and all the other innovators and partners that have emerged in housing finance in recent years, *in addition to the enhanced commitment of the Federal government*, will ensure a much broader coalition with a stake in the success of public housing.

Myth: *PETRA will privatize public housing.*

FACT: PETRA does not privatize public housing.

Neither President Obama—who worked on the South Side of Chicago to increase affordable housing—or Secretary Donovan—the architect of New York City’s plan to build and preserve 165,000 units of affordable housing—has any interest in risking such an important public resource. The goal of PETRA is to preserve this irreplaceable resource for generations to come.

PETRA does not change the ownership structure of public housing, but rather how public housing is funded. For years, we’ve seen public sector owners lose units for lack of funding: the programs under which they operate are unsustainable. By allowing public owners to access capital and other resources like private owners do today, we’re leveling the playing field to preserve publicly-owned housing. For some public housing properties, Low Income Housing Tax Credits will be needed for adequate rehabilitation. In these limited cases – like under mixed finance transactions permitted now – other entities with tax liability will have to have a stake in the property. But long-term public ownership can still be assured through continuing ownership of the land or other means.

Myth: *Under PETRA, banks could foreclose and convert public housing to market rate housing.*

FACT: PETRA contains an unprecedented combination of protections to minimize the risk of foreclosures.

To be clear: foreclosures should happen very rarely – far less frequently than publicly-owned units are lost today. In fact, other affordable housing programs that allow bank financing or private investors have extremely low foreclosure rates: the LIHTC program has an annualized foreclosure rate of less than 0.1 percent¹ and less than one quarter of one percent of FHA insured projects assisted with Section 8 are foreclosed annually. Nevertheless, PETRA contains an unprecedented combination of policies to minimize the risk of foreclosures, bankruptcy or owner non-compliance with HUD requirements.

In the unlikely event of foreclosure of an owner, any lease, contract, or use agreement would *remain in effect and binding* on a new owner. Put another way, while the owner may change, the form of ownership, the amount of subsidy given to the property, the amount of rent tenants pay, and their rights and protections would remain the same.² In these unique circumstances, HUD could also work

¹ Ernst & Young, "Understanding the Dynamics IV: Housing Tax Credit Investment Performance," (2007), p. 49.

² Section 8 (m)(1)(vii)(I), pp. 11-12.

with lenders -- through FHA insurance or other means -- to restructure the debt and retain PHA ownership, or prioritize other public or non-profit owners.

In addition to ensuring continuity of ownership type and project use in the unlikely event of foreclosure, PETRA also introduces important new safeguards to prevent foreclosure from happening at all. For example, converted properties will be required to submit annual financial statements to HUD and will be subject to regular monitoring of their physical and financial condition through HUD's performance-based contract administrators (PBCAs). Complementing HUD's monitoring efforts, tenant organizations—required by PETRA to be independent of Public Housing Agencies (PHAs)—will be able to "blow the whistle" if properties are not being well-managed or maintained.

PETRA will also give HUD new powers to directly enforce compliance with the terms of the contract and the governing law, including the authority to condition distributions of owner cash flow upon compliance with physical, financial, and other program requirements. In addition, in the event of owner non-compliance, HUD will have authority to transfer the rental assistance to an alternative property suitable to house the tenants. This HUD authority will incentivize owners to physically and financially maintain their projects or sell to a mission oriented entity, and will work to significantly minimize the likelihood of foreclosure.

Myth: *After 30 years, housing converted under PETRA will become market-rate housing.*

FACT: Public Housing will remain affordable indefinitely.

One of the primary goals of PETRA is to preserve public ownership, not put it at risk. For years, public-sector owners have lost units because they lacked reliable funding. By enabling public housing properties to tap their accumulated value to meet their capital needs, as owners of any other form of real estate do, PETRA will make it more likely that properties will remain publicly owned and affordable to the lowest-income households.

The core mission of public housing agencies is to provide housing to people who cannot afford market-rate rents. It is highly unlikely that PHAs would choose -- or be allowed by state law -- to alter their mission to serve higher income households. But to ensure that owners don't opt out, converted public housing properties will be subject to a use agreement for a minimum of 30 years requiring the owners to continue to house the lowest income families at rents they can afford.³ HUD will require owners of converted public housing to accept extensions of the contract in nearly all circumstances,⁴ which will continue the use agreement. The only exception would be in situations where it is demonstrably not in the best interests of residents to maintain the contract at the current property -- in these rare

³ Section 8(m)(2)(E)(i), p. 24. Some states impose much longer use agreement periods for properties receiving Low Income Housing Tax Credits. The bill allows HUD the flexibility to set parallel requirements.

⁴ Section 8(n)(2)(B) lines 20-22, p. 36. A parallel requirement for converted public housing properties with project-based vouchers would permit a PHA to decline to offer to extend a contract only with the advance approval of the Secretary. PETRA, p. 47, lines 10-15, amending section 8(o)(13)(G).

instances HUD would work with the PHA to transfer the rental assistance to another property, which, if possible, would also be publicly owned.

At any point -- during the period of the use agreement or at its expiration -- a PHA cannot sell or otherwise transfer a converted public housing property without the permission of HUD, which has the first option to purchase.⁵

Myth: PETRA would allow for up to half of public housing units to be replaced with Housing Choice Vouchers (HCVs).

FACT: PETRA requires one-for-one replacement of all converted properties, in almost all instances.⁶

Most converted properties will be rehabbed without any demolition, and most will remain fully assisted, so no families will have to move. However, if a PHA proposes to reduce the number of assisted apartments at a property, then the PHA must submit to HUD a plan for the timely replacement of all units.

For example, if an owner of a 100-unit public housing property proposes to convert to a mixed-income property with only 40 of the units assisted with project-based vouchers, then the owner would need to provide a plan for the replacement of 60 units at another property or properties. PETRA puts in place strong tenant protections, allowing residents to participate both in the decisions surrounding conversion as well as relocation.

There are two exceptions to this general requirement. The first exception is a *de minimis* exception that provides agencies with the flexibility to reconfigure units, for example, by combining efficiencies to create one-bedroom apartments or to provide community space. This exception is intended to provide owners with the flexibility to meet the needs of existing and prospective tenants. Under this exception, a converting property can reconfigure the lesser of 5 apartments or 5 percent of the units at a property.

The second exception would permit an owner to replace up to 50 percent of the units at a converting property with tenant-based vouchers, but only under certain circumstances. An owner could choose this option if the property is located in an area where there is an adequate supply of affordable housing in areas of low poverty and the agency has an 80 percent voucher success rate (if the agency converting the property does not administer vouchers, then the agency that administers vouchers for the area must meet the success rate requirement). HUD estimates that approximately 127,000 units of

⁵ Section 8(m)(2)(Q), p. 32. If HUD has no funds available that may be used to purchase such properties, HUD would act as an intermediary to identify an appropriate purchaser. In addition, and as is currently the case with virtually all of HUD's contracts with owners under the project-based section 8 programs, the assistance contract will require an owner to obtain HUD's permission prior to sale of an assisted property during the term of the contract, and the contract would be assigned to an approved purchaser.

⁶ Section 8(m)(2)(D), pp. 20-24.

public housing, nationwide, (less than 10% of the total stock) are eligible for this second exception. If the owner of a 100-unit public housing property wished to convert to PBV assistance and was eligible for this second exception, then that owner would be able to provide vouchers to 30 families but would have to come up with a plan for the replacement of 30 units.

Myth: *Under PETRA, 60% of tenants will be kicked out of their homes.*

FACT: There will be no reduction in the number of families receiving rental assistance under PETRA.⁷

Some people may have misunderstood the PETRA policy that permits small or partially assisted properties to convert to a different type of project-based contract (project-based vouchers) that involves less HUD oversight. A PHA could not evict tenants to qualify for this alternative type of contract, and has no reason to do so. Public housing properties are eligible to convert and get rental assistance for every unit, regardless of the size of the property.

The change in funding source for rental subsidies should be seamless for tenants. Residents of converting units will not be subject to re-screening or termination because of conversion.⁸ If tenants are displaced temporarily while properties are rehabilitated (or replacement housing is constructed), they will have a right to return so long as they have not committed "serious or repeated violations of material terms of the lease".⁹

Myth: *PETRA will allow for PHAs to serve higher income families.*

FACT: The same low income families being housed today in public housing will continue to be housed in converted properties.

PETRA will ensure that rental assistance will continue to be targeted to the neediest families by maintaining the targeting and affordability requirements of the U.S. Housing Act.¹⁰

Myth: *Under PETRA, owners would charge tenants 10% above market rents.*

FACT: Residents will continue to pay no more than 30% of their income towards rent.¹¹

Some people may have confused the total unit rent -- which generally may be up to 110 percent of the average market rent in the area -- with the amount of rent paid by tenants. Tenant rents will continue to be based on income.

⁷ Section 8(m)(2)(B)(ii), p. 20.

⁸ Section 8(m)(2)(F), p. 25.

⁹ Section 8(m)(2)(G)(ii), p. 26.

¹⁰ Section 8(n)(4), and Sec. 8(n)(5)(B), pp. 39-40.

¹¹ Section 8(n)(4), p.39

Myth: Residents of HUD-subsidized housing, and other stakeholders, were not consulted in the crafting of this proposal.

FACT: HUD worked closely with residents and other stakeholders to make at least 40 changes to PETRA.

Over the past year, HUD conducted an extensive strategic planning process that engaged over 1,500 internal and external stakeholders plus tens of thousands more through the Internet. The Department hosted three convenings with a cross-section of state and local agency administrators, residents, developers, property owners, lenders, advocates and other stakeholders to explore in depth issues in each of our three major rental assistance programs. We also held two additional convenings with residents of our programs, one with public housing residents and in the other, for the first time in the history of the Department, we brought together tenants of public and assisted housing and participants in the Housing Choice Voucher program to discuss how these programs could be improved.

Collectively, this process has not only affirmed the need for our rental programs to change, but also provided valuable insight into *how* they must change – what works, what doesn't and what we need to do better. It is based on this feedback from those who know our programs best—their strengths and their weaknesses—that the PETRA legislation was developed. That is why we say that PETRA represents not only the Department's best thinking, but also our best listening.