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CREATION DATE/TIME:22-JUN-1998 16:12:54.00

SUBJECT: REVISED HUD Report on S462,HR 2 Public Housing Reform and Responsibility Act of

TO: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

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TEXT:

please print; for some reason, i can't

----- Forwarded by Elena Kagan/OPD/EOP on 06/22/98 04:22 PM -----

From: Melissa N. Benton on 06/22/98 10:28:38 AM

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To: See the distribution list at the bottom of this message

cc: Janet R. Forsgren/OMB/EOP, James C. Murr/OMB/EOP

Subject: REVISED HUD Report on S462,HR 2 Public Housing Reform and Responsibility Act of 1997

Total Pages: _____

LRM ID: MNB192
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, June 22, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Melissa N. Benton

PHONE: (202)395-7887 FAX: (202)395-6148

SUBJECT: REVISED HUD Report on S462,HR 2 Public Housing Reform and Responsibility Act of 1997

DEADLINE: COB Monday, June 22, 1998

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: To follow is a revised version of the HUD report on Public Housing Reform, redlined to show the changes that were made in response to comments received on the first draft.

We understand that significant portions of the public housing legislation will be attached to the House VA/HUD appropriations bill, which is scheduled to be marked up by the Appropriations Committee this Thursday. HUD would like to send its letter before Appropriations Committee action.

The deadline is firm.

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- LRM ID: MNB192 SUBJECT: REVISED HUD Report on S462,HR 2 Public Housing Reform and Responsibility Act of 1997

RESPONSE TO

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LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

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Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)
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The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
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- _____ FAX RETURN of _____ pages, attached to this response sheet

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===== ATTACHMENT 1 =====
 ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

COMMENT

AUTHOR : Stephen I. Holmquist
 OPERATOR : Stephen I. Holmquist
 COMMENT :
 PRINTER FONT 12_POINT_ROMAN
 Draft 6/19/98
 Redlined against Draft 5/1/98

1998 Public Housing Reform Bills

Letter to the Conferees

Dear Conferee:

I am writing to make you aware of the Administration's views on the public housing reform legislation you are now considering in the conference to reconcile S. 462 and H.R. 2. These bills propose major changes in the public housing and tenant

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-based

Section 8 programs. Over several years now, both the Congress and the Administration have put a great deal of thought and hard work into the pursuit of sound reform legislation. As you move ahead in the conference, I look forward to our continued collaboration, so that important and long

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-overdue reforms may finally be enacted and implemented.

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INTRODUCTION

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The Administration strongly supports the goals of S. 462 and H.R. 2 -- to streamline and reorganize the Nation's public housing system in a manner which will benefit public housing residents, facilitate the efficient use of Federal resources, and

increase accountability to the public. The Administration also appreciates the willingness of both the House and Senate to draw upon management reform and other provisions in the Administration's bill -- the Public Housing Management Reform Act of 1997.

However, the Administration has a number of major concerns about S. 462 and H.R. 2 which, among other things, require the Conferees to take the following actions:

- ? Provide more targeting of scarce housing assistance to the neediest families;
- ? Delete the H.R. 2 provision allowing "fungibility" to meet income targeting requirements;
- ? Delete or address the serious flaws in H.R. 2's "Home Rule Flexible Grant Option";
- ? Delete the self

- sufficiency agreements and the community work provisions in H.R. 2;
- ? Delete the Housing Evaluation and Accreditation Board created by H.R. 2;

? Further streamline "PHA Plan" requirements; allow small PHAs to use operating and capital funds interchangeably; delete provisions constraining flexibility in the operating subsidy formula; and make the Drug Elimination Program a formula

- based program;
- ? Delete the S. 462 provision authorizing PHAs to obtain medical information about applicants for housing assistance; and
- ? Delete the provisions of both bills allowing PHAs to set the payment standard in the tenant

-based Section 8 program higher than the Fair Market Rent established by HUD.

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SUMMARY OF THE BILLS
PRINTER FONT 12_POINT_ROMAN

The Senate and House bills make permanent a number of critical reforms that the Administration and the Congress have been able to achieve only through year

- to
- year provisions in appropriations legislation. Elements of the Senate and House bills would promote the continuation and strengthening of the transformation of the public housing and Section 8 programs already underway, including: (1) replacing the worst public housing with scattered

- site and townhouse developments and with portable tenant
- based assistance, which is achieved through extending the HOPE VI program, permanently repealing the one
- for
- one replacement requirement, and facilitating demolition

of obsolete developments and conversion to tenant

-based

assistance or appropriate site revitalization; (2) turning around troubled PHAs through the use of various tools, including mandatory receiverships for chronically troubled PHAs and enhanced powers afforded to HUD and court

-appointed receivers

upon takeover; (3) promoting public housing communities with a greater income diversity and allowing PHAs to implement rent policies that encourage and reward work, and are coordinated with welfare reform; (4) demanding greater household responsibility as a condition of housing assistance through more vigorous screening, eviction or subsidy termination, and lease enforcement provisions; and (5) implementation of several of the Administration's key management reforms. Important provisions for management reform include program consolidation and streamlining, deregulation of well

-managed PHAs and small PHAs,

increased reliance on physical conditions in assessing PHA performance and more certain treatment of the most troubled PHAs.

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DESCRIPTION OF ADMINISTRATION CONCERNS

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As I am sure you are aware from my testimony last year and from other discussions in recent months, however, the

Administration has a number of major concerns about particular provisions of both bills. Despite its support for the general goals of both bills, the Administration believes that certain provisions go farther than is necessary to make the reforms that are needed. Instead of making only reforms, some provisions -- particularly on income targeting -- would move the program too far away from fundamental, prudent national standards and appropriate federal oversight. Nevertheless, the Administration is hopeful that our concerns can and will be addressed in the Conference, clearing the way to enactment of sound public housing and Section 8 reform legislation.

The Administration's most important concerns about the bills are described below.

I. MAJOR CONCERNS

A. INADEQUATE TARGETING OF HOUSING ASSISTANCE TO THOSE FAMILIES MOST IN NEED

1. Income Targeting in Public Housing
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The Administration believes that the income targeting provisions of both bills must be tightened to direct more housing assistance to families with the most pressing housing needs. In particular, the Administration strongly opposes the House "fungibility" provision, which could mean that PHAs in some cities would not have to offer any public housing units to extremely low

-income families. The Administration supports the Senate requirement that 40% of available public housing units go to extremely low

-income families; however, the Administration

also advocates increasing -- from 70% (as in the Senate bill) to 90% -- the ratio of newly available units that must be offered to families with income levels no higher than 60% of median (which is approximately \$22,600 nationally). The Administration also seeks a requirement that at least 40% of the units in each public housing development be occupied by families with incomes below 30% of area median income. This will ensure that the poorest families have housing opportunities at all developments, including those that may be most marketable to relatively higher income families.

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The Administration believes that the income targeting provisions of both bills -- especially the House's "fungibility" provision -- go much farther than is necessary to serve working

families and achieve a more diverse income mix in public housing. It is essential to the social and financial health of public housing communities that more working families are admitted to public housing. Today, the median family income in public housing is only \$6,940 per year -- just 21% of median income nationally. By contrast, both bills would open up too many public housing units to families at the upper end of the eligibility range -- families with incomes of up to 80% of the area median income, or approximately \$40,000 in the ten largest metropolitan areas.

The Administration does not oppose admitting a small number of families at that income level. However, the Administration believes that mixed

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-income communities that serve working families can be attained without going as far as the House and Senate bills. This can be done by ensuring that at least 40% of admissions are reserved for families with incomes up to 30% of median (approximately \$11,300) and that 90% of admissions are families with incomes at or below 60% of the area median (approximately \$22,600). In comparison, 60% of median income is the absolute upper cap for the HOME and low

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-income housing tax credit programs. In addition, the Administration urges the Conferees to adopt language that would require PHAs to maintain occupancy of at least a certain percentage of units in each public housing development by extremely low

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-income families.

Not only are the income targeting percentages inadequate, but the House bill's fungibility provision could undermine even that level of targeting which the bill proposes. This provision would allow a PHA to admit even fewer very poor families to public housing if the PHA gave more of its Section 8 certificates to such families than the minimal number which the bill requires. The result almost certainly would be that some PHAs would not have to offer any public housing units to families -- including many working families -- whose incomes are below 30% of the area median income. The Administration finds such a possibility to be unacceptable.

The Administration proposed its income targeting for public housing with the understanding that the achievement of a more diverse income mix necessarily would result in reduced access for those with the lowest incomes. Partly in recognition of this problem, the Administration each year has proposed that Congress provide substantial additional vouchers. Congress should recognize that these proposals are linked and that the loosening

of public housing income targeting needs to be done in conjunction with the provision of additional vouchers.

With respect to income targeting by development, that concept already is part of current law. The Administration

proposal is a moderate proposal to ensure continuing access to all developments by all eligible income groups.

2. Income Targeting in the Tenant

-Based Section

8 Rental Assistance Program

The Administration is opposed to the provisions of both bills on income targeting for the tenant

-based Section 8 program.

Instead, the Administration believes that 75% of tenant

-based

assistance which, becomes available each year should be targeted to the very poor -- families with incomes at or below 30% of median income (approximately \$11,300) -- and that the remainder of such assistance generally should go to families with incomes no greater than 50% of median, as under current law.

Both bills unnecessarily reduce the portion of Section 8 tenant

-based assistance that would go to families with severe housing needs. Current law generally limits eligibility for tenant

-based assistance to very low

-income families with incomes

below 50% of the area median income. Moreover, federal preferences, which applied to 90% of new Section 8 recipients prior to FY 1996 as opposed to only 50% of new public housing residents, have served to further target assistance to extremely low income families. The median income of Section 8 certificate holders is now approximately \$7,550.

In contrast, H.R. 2 would require only that 40% of all Section 8 tenant

-based assistance go to extremely low

-income

families -- the income range which the program has primarily served in the past. Relatively higher income families, with incomes up to 80% of median income, would become eligible to receive such assistance. S. 462 is not as extreme as the House bill, but would still require only that 65% of all tenant

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assistance go to families with the most severe housing needs and that 90% go to families with incomes under 60% of median.

The Administration contends that scarce federal rental subsidies for use in the private market must be targeted to families with the lowest incomes, for the following reasons: 1) 5.3 million very low

-income renters now have "worst

-case housing

needs", defined as paying more than 50% of their income toward

rent or living in substandard housing units, and these families are concentrated at the lowest income levels (below 30% of the area median income); 2) relatively few of the families with incomes in the upper ranges allowed under both bills who would become eligible for admission to the Section 8 program (including 17.5 million unassisted renters) have serious unmet housing needs; 3) federal preferences are being repealed; 4) both the Senate and House bills propose opening up public housing admissions to families with relatively higher incomes to promote

mixed

-income communities, which means fewer units will be available for extremely poor families; and 5) tenant

-based rental

assistance integrates families with low incomes into private, mixed

-income housing of their choice and does not suffer from the severe income concentration problems of project

-based programs.

The Administration also sees no reason to expand tenant-based program eligibility limits so that these scarce housing resources can be provided to households with incomes at 80% of the median -- approximately \$40,000 for families in the ten largest metropolitan areas -- who are better able to afford private market housing without any subsidy. This income level, which is equivalent to 250% of the poverty line, exceeds the income limits for virtually all other federal means

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programs.

B. HOME RULE FLEXIBLE GRANT OPTION

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The Administration strongly opposes the Home Rule Flexible Grant Option in H.R. 2, which could transfer public housing funds from a PHA to a city government regardless of the city's ability or experience in administering housing programs. Instead, the Administration believes that implementation of the current Moving

-to

-Work demonstration will provide sufficient opportunity to explore innovative local approaches in the public housing and Section 8 programs.

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The Administration strongly opposes the Home Rule Flexible Grant Option in H.R. 2. This provision could completely undermine the public housing program in some localities by allowing the city government to supplant the local PHA and capture its funds, with limited explanation and no justification.

The Administration has taken bold action to deal with chronically troubled PHAs and to demolish and replace the worst public housing. However, that is not what the House provision is about. The House provision would allow a city government, regardless of its motives or its track record in administering housing programs, to take over or replace even a high

-performing

housing authority. Some of the most intractable management

problems in recent years have occurred in several chronically troubled PHAs that have been operated as part of city government.

The provision also inexplicably provides cities that would administer public housing more regulatory flexibility than PHAs (e.g., to charge rents exceeding Brooke amendment requirements). There is no reason to link additional regulatory flexibility with the choice of the entity to administer public housing.

If the goal of this provision is to address serious management problems in public housing, one would expect it to be crafted as an alternative intervention strategy with respect to troubled PHAs. The provision instead would be applicable to all PHAs irrespective of the demonstrated quality of their management.

Instead, the Administration supports continued implementation of the Moving to Work demonstration authorized by the FY 1996 appropriations act. That demonstration program allows up to thirty PHAs to design and test innovative ways to provide housing assistance and to link families to work, through merging funding streams and testing new rent structures while retaining reasonable income targeting. HUD has selected PHAs with diverse and potentially far

-reaching proposals. The demonstration is large enough to allow substantial experimentation, yet small enough to permit a rigorous evaluation of program success and replicability.

C. COMMUNITY WORK AND SELF

-SUFFICIENCY REQUIREMENTS

The Administration opposes the self

-sufficiency agreements and the community work provisions in the House bill. Instead, the Administration believes that provisions emphasizing collaboration between PHAs and local welfare agencies are a better and more productive approach to addressing welfare reform and self

-sufficiency issues. For example, the Administration supports the provisions in both bills which require PHAs to describe in their annual plans the ways in which they propose coordination with other local and state welfare and service agencies, and assure that households who violate welfare program self

-sufficiency rules are not rewarded with subsidized housing rent decreases. The Administration also supports provisions in both bills permitting PHAs to set public housing rents "up to" 30% of a family's adjusted income, which allows for rent structures that do not penalize increases in earned income. Further, the Administration supports authorization of additional Section 8 certificates for use with local collaboratives in welfare

-to

-work initiatives.

The Administration believes that public housing and Section 8 residents must assume certain responsibilities in return for the benefits of their housing assistance. To this end, the Administration supports many reforms in both the House and Senate

bills which place a premium on resident self

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-sufficiency and on

linking the PHA with existing providers of services.

Additionally, the Administration supports provisions in both bills to toughen screening, lease enforcement, and eviction, and subsidy termination requirements.

However, the Administration opposes the House bill's mandatory self

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-sufficiency contracts. This sweeping new

requirement would fundamentally change the public housing and Section 8 programs and would impose inordinate and costly burdens on 3,400 local PHAs whose budgets and administrative capacities already have been stretched. A far more efficient and effective approach is to encourage partnerships between PHAs and State and local welfare agencies that promote self

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-sufficiency through

initiatives such as the authorization of "Welfare to Work" certificates, as proposed in the Administration's bill.

The Administration also opposes significant aspects of the community work provisions included in the House bill. The Administration's bill includes a community service provision because the Administration believes it is reasonable to ask each recipient of public housing or tenant

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-based assistance to be

engaged in some activity which benefits the community as a whole, which includes working, attending school, or otherwise preparing for work. However, the Administration's bill provides for much more reasonable exemptions than the House bill and would not authorize eviction as an enforcement tool.

D. MANAGEMENT REFORM

1. Federal Oversight

The Administration supports several of the bills' revisions to the PHMAP system and would support the establishment of a performance evaluation board or other task force to review various performance evaluation systems and determine the need, if any, for an outside accreditation entity. The Administration also supports the House and Senate bill provisions which give HUD or a receiver enhanced powers for dealing with troubled PHAs; require the takeover of severely troubled PHAs that fail to improve promptly; and require the obligation and expenditure of capital funds within certain time frames (which the Administration believes should be extended to the HOPE VI program). The Administration does not support the Accreditation Board created by the House bill.

The Administration believes that it is critical to have an assessment tool which accurately measures PHA performance and is consistent with the Administration's management reform plan for HUD. In the short run, this requires making modifications to the current performance measurement system -- the Public Housing Management Assessment Program (PHMAP). In particular, the Administration supports the bills' provision adding a PHMAP indicator assessing the extent to which a PHA is providing acceptable basic housing conditions and the House provision

making acceptable basic housing conditions a precondition for a

PHA to get a passing grade in the assessment system. This will support HUD's efforts to make PHMAP more objectively verifiable and reflective of the conditions under which public housing residents are living.

The Administration, however, strongly opposes the House bill's "Accreditation Board", a new federal agency which would create an accreditation program for all public housing agencies and other providers of federally assisted housing. This proposal, written prior to the Administration's management reform efforts, runs directly counter to the Administration's plan for improving and streamlining Federal oversight of the public housing program. It would not reduce, but instead would redistribute and probably increase, the Federal bureaucracy. Moreover, the proposal would appear to divorce Federal oversight and auditing responsibilities which would be given to the Accreditation Board, from HUD's ongoing obligation to provide Federal funds to PHAs. This would make it more difficult for HUD to hold PHAs accountable.

Instead of the House bill's Accreditation Board, an entity such as the Administration's proposed Performance Evaluation Board should be given the opportunity to review and make recommendations on various approaches to Federal oversight and assessment of PHAs, including accreditation. Finally, the Justice Department advises that the proposed means of appointing the Accreditation Board would unduly restrict the President and thus violate the Appointments Clause of the Constitution.

The Administration already has taken the most aggressive actions in HUD's history against chronically troubled PHAs, including direct takeovers and support for judicial receiverships. In this regard, the Administration supports the Senate bill's provisions giving HUD enhanced powers to deal with troubled PHAs (which are the same provisions as in the Administration's bill). Those provisions require HUD to take certain actions against any PHA that is still troubled after one year (including mandatory receivership for any large PHA). After further consideration, the Administration believes that this provision should be modified to give a troubled PHA one additional year before HUD will take action if that PHA has made progress in the first year that is equal to at least half the difference between its PHMAP score and the score necessary to be a "standard" performer.

In addition, the Administration supports the Senate bill provision requiring PHAs to obligate capital funds within 24 months. It is critical in these times of fiscal restraint to ensure that appropriated funds are used promptly for their intended purposes. Further, the Administration urges the

Conferees to adopt two additional provisions from the Administration's bill: (1) requiring PHAs to spend capital funds within 48 months (in addition to obligating such funds within 24 months); and (2) applying specific time frames to the HOPE VI program, such that a PHA would have to sign a primary construction contract within 18 months of executing the grant agreement, and would have to complete construction within 4 years from the grant agreement.

2. Consolidation and Streamlining

The Administration urges the Conferees to further streamline PHA plan requirements as in the Administration's bill. In addition, the Administration supports the House provision allowing small PHAs to use operating and capital funds interchangeably. The Administration also advocates the deletion of provisions constraining flexibility in the operating subsidy formula. Further, the Administration urges the Conferees to

convert the Drug Elimination Program into a formula

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-based

program, and to merge the TOP and EDSS programs.

The Administration supports and recognizes the benefits of consolidating PHA planning and reporting requirements into a single annual plan, as provided in both the Senate and House bills. However, the Administration is concerned that the scope of the annual plans be consistent with HUD efforts to streamline PHA and HUD administration of the public housing and Section 8 programs. The Administration strongly urges the Conferees to consider limiting the number and scope of plan elements as described in the Administration's bill. Conferees also should adopt the Senate provision permitting HUD by regulation to provide that elements of the PHA plan other than the capital plan and civil rights shall be reviewed only if challenged.

The Administration also supports the House provision allowing small PHAs (less than 250 units) to use operating and capital funds fungibly, as provided in the House bill, because the formula allocation of capital funds to such PHAs would be small and the additional flexibility would simplify PHA operations and HUD administration. However, the Administration opposes the provision of the House bill giving governors new responsibility to allocate half of such funds.

In addition, the Administration supports the language in both bills authorizing HUD to renegotiate the formula for allocating public housing operating subsidies to PHAs. The current system has not been changed in many years. A renegotiation could result in a revised formula that is simpler and more equitable, and that provides better incentives for sound, cost

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-effective public housing management. However, HUD

opposes the House provisions defining treatment of vacant units, utility rates, and rental income. These provisions may hamstring and substantially complicate the future formula and should be left to rulemaking (which will be negotiated rulemaking under the House and Senate bills). The extent to which PHAs may retain increases in rental income, in particular, should be left to rulemaking because: (1) rental income is increasing substantially throughout the program, for reasons that may be unrelated to PHA administration of the program; and (2) such retention creates a strong financial incentive for PHAs not to serve the poorest households. The House ?204(d) interim allocation provisions also are unnecessary.

In addition Further, the Administration urges the Conferees to convert the Public Housing Drug Elimination Program from a competitive to a formula

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-based program, to provide predictable

funding for PHAs and reduce the administrative burden on both HUD and PHAs of annual competitions. The Administration also advocates permanent authorization of the supportive service (EDSS) program and a merger of EDSS and the Tenant Opportunities Program (TOP), as provided in the Administration's bill.

E. OCCUPANCY STANDARDS

The Administration opposes the House bill's provision on occupancy standards because it would reduce protections currently afforded to families with children under the Fair Housing Act.

The House provision on occupancy standards would invite state adoption of absolute occupancy standards regardless of the

facts of a particular situation, or the existence of any health or safety justifications. Enactment of this provision could result, for example, in a State allowing a housing provider to refuse to rent a 2

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-bedroom unit to a family with three children, even if: 1) the bedrooms were unusually large; 2) one of the children was an infant; or 3) a den could reasonably be used as a bedroom. This could contribute to the shortage of affordable housing large enough for families. HUD's current occupancy standard, which conforms to Congress's direction in the FY 1996 HUD Appropriation Act, appropriately requires HUD to determine, on a case by case basis, whether a standard is legal under the Fair Housing Act, based upon a variety of circumstances.

F. RESIDENT EMPOWERMENT

The Administration strongly supports provisions in both bills, and retention of certain elements of current law, which empower residents, ensure that residents are given the opportunity to participate in decisions affecting their lives, and protect residents from unwarranted intrusions.

In the Administration's view, the final bill must include, at least, the following:

- ? The Senate bill's authorization of the supportive services funding originally authorized in the FY 1996 appropriation (the EDSS program), which should include elements of the Tenant Opportunity Program as proposed in the Administration's bill;
- ? Resident membership requirements on the public housing board, as provided in both bills, and the House bill's required plan review period for affected residents;
- ? The Senate bill's provisions protecting residents' rights to adequate notice and consultation and ensuring adequate relocation assistance in the demolition and disposition process; and
- ? Retention of current law provisions on: (1) lease and grievance procedures (as opposed to the House repeal); and (2) notice of lease termination (as opposed to the House bill's preemption of any minimum notice requirements provided under State law).

G. ACCESS TO MEDICAL RECORDS

The Administration strongly opposes the provision in the Senate bill that would authorize PHAs to obtain medical information about applicants for housing assistance.

This provision could increase the potential that important antidiscrimination protections of Federal fair housing laws could be violated and could discourage persons with drug problems from seeking treatment. The Administration shares the Senate's desire to ensure safety and security in public housing, and has proposed and implemented tough new policies, such as "One Strike and You're Out", to achieve that goal. However, the Administration believes that the Senate's medical records provision goes too far, weakening other important legal protections and compromising efforts to encourage people with drug abuse problems to enter appropriate and effective treatment programs. The Administration is concerned that this provision could have negative consequences for individuals who have received treatment and are attempting to rebuild their lives.

H. PAYMENT STANDARD

The Administration opposes the provisions of both bills

allowing PHAs to set the payment standard in the tenant

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Section 8 program at levels higher than the Fair Market Rent established by HUD.

The Administration believes that the Payment Standard should be set at no higher than the Fair Market Rent (FMR) or a HUD

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-approved exception rent up to 120% of FMR. H.R. 2 would permit PHAs to establish payment standards of 80% to 120% of FMR. The Senate bill would allow PHAs to establish payment standards of 90% to 110% of FMR, though PHAs may establish higher or lower payment standards with HUD approval.

The higher the payment standard, the greater the subsidy to each assisted household. Consequently, fewer eligible families would receive housing assistance. The pressures on PHAs to help the currently assisted at the expense of the unassisted are very high, and work against national goals of helping more families in need. In addition, a higher payment standard would encourage a greater number of relatively higher

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-income and less needy

families to apply for housing assistance, further reducing the amount of housing assistance available to the poorest families with the most severe housing needs.

II. OTHER CONCERNS

A. REPEAL OF THE U.S. HOUSING ACT OF 1937

The Administration urges Congress to find another means of signaling dramatic program reform.

The Administration sees no compelling operational reason to repeal the 1937 Act. Congress and the Administration can find another, less divisive, way to ensure that the legislation clearly indicates the intent that public housing change dramatically. The new law can be crafted so that it clearly calls for sweeping reform of the public housing and tenant

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assistance programs, without including the complications of repealing the 1937 Act.

There are also practical concerns regarding repeal. At the request of the House Banking Committee in the previous legislative session, the Administration conducted an extensive review of the implications of the proposed repeal of the U.S. Housing Act of 1937. HUD determined that there are, at a minimum, over 500 references to the 1937 Act in other statutes, located both within and outside of the jurisdiction of the Congressional Banking Committees. Additionally, the Administration identified a series of issues which the Conferees should address if the repeal is accepted in the Conference. Moreover, coupling the 1937 Act repeal with a ban on new

regulations prior to the effective date of the law, as provided in the House bill, would inhibit the ability of the Administration to ensure that the new law is carried out uniformly and with adequate guidance.

B. RENT LEVELS

1. Flat Rents

The Administration does not see the need for the House bill provision giving public housing residents the choice of paying an

income

-based rent or a flat rent based on the market value of their units.

This provision would be administratively burdensome to the In addition to the administrative burden on 3,400 PHAs who will have of having to determine the market value of well over one million public housing units, including units in elderly housing developments. the result of the House bill's flat rent proposal ("Family Choice of Rental Payment") would be to give residents the opportunity to make a bad economic choice. That is, residents could choose to pay a rent based on the flat rent even when thirty percent of their adjusted income would be lower. If In addition, if the goal is to encourage residents to increase their incomes or to encourage relatively higher

-income families

to move into or remain in public housing, then the same thing can be accomplished by implementing a program of rent incentives, including earned income disregards and ceiling rents. Both bills allow PHAs to adopt innovative rent policies by permitting rents "up to" 30% of adjusted income (as opposed to current law, which requires rents to be set "at" 30% of adjusted income).

2. Minimum Rents

The Administration opposes the minimum rent provisions in the bills, particularly the authority in the House bill to set a minimum up to fifty dollars. Instead, the Administration supports a minimum rent requirement of \$25 per month, with an exemption for hardship categories to be determined by the Secretary or the PHA.

The Administration generally agrees with the concept that every family receiving housing assistance should make at least some rental payment. However, the Administration believes such a minimum rent should not exceed \$25 per month, an amount which is sufficient to make the symbolic point that all residents should contribute something to maintenance of their development without imposing an undue burden on the very poorest families. Thus, the Administration opposes the House provision allowing PHAs to charge a minimum rent of up to \$50 per month. Further, the

Administration believes that the Secretary of HUD must have the authority to establish hardship exemptions for certain types of cases -- for example, for those families awaiting public benefit eligibility determinations.

C. HOME AND CDBG INCOME TARGETING

The Administration opposes the House bill's unnecessarily loosened income targeting in both the CDBG and HOME programs.

This proposal would immediately raise the income limit in thirty

-seven relatively higher income metropolitan areas. For example, in one community, the income limit for a four person family would exceed \$71,000 (Stamford, Connecticut). By allowing families with incomes even above moderate income ranges to benefit from these programs, these changes would eviscerate the requirement that those programs substantially benefit low and moderate income households.

D. DISCRETION TO SETTLE LAWSUITS

The Administration opposes the House bill's provision which requires the Secretary of HUD to consult all adjacent local governments, when settling any lawsuit involving HUD, a PHA, and a local government.

This provision is an unnecessary intrusion into the federal government's ability to manage its affairs. Moreover, the Justice Department represents HUD in settling lawsuits. It would be unwise to require the Secretary of HUD to engage in particular consultations that may conflict with or duplicate the efforts of the Justice Department. At a minimum, this provision could be extremely costly for the Federal government, since it will hinder the ability to settle lawsuits in a timely and cost

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manner. Finally, the provision is overly broad, since it would require such consultation for all matters, whether trivial or substantial.

E. CDBG SANCTION

The Administration opposes the House bill's CDBG sanction against local governments contributing to the troubled status of a PHA.

H.R. 2 provides that the Secretary may withhold or redirect the CDBG funds of any local government whose actions or inactions have substantially contributed to the troubled status of a PHA. The proposed CDBG sanction could lead to substantial charges, countercharges, and litigation, without resulting in the

improvement of troubled PHAs. Current law, coupled with new sanctions included in both The bills gives HUD a number of other sanctions to deal with troubled PHAs, including receivership. The proposed CDBG sanction could lead to substantial charges, countercharges, and litigation, without resulting in the improvement of troubled PHAs.

F. AVAILABILITY OF CRIMINAL CONVICTION RECORDS

The Administration opposes the apparent requirement in the House bill that private owners of federally assisted housing be provided with information regarding criminal conviction records of adult applicants or tenants of that housing.

The Administration opposes allowing any private citizens or entities, including the private owners of federally assisted housing, to obtain criminal record information about other individuals. The provision of such sensitive information to private individuals and entities raises significant privacy concerns. The Administration will work with Congress to identify other means of bolstering security efforts in privately owned, federally assisted housing.

G. DESIGNATED HOUSING

The Administration opposes the changes H.R. 2 makes to current law requirements for designation of housing for elderly persons or persons with disabilities. These changes would weaken current law provisions requiring PHAs to consider the housing needs of persons with disabilities, and would not allow an adequate time period for proper review of designated housing plans.

Under current law, a PHA's plan to designate housing must meet two requirements. First, the plan must be "necessary to meet the jurisdiction's Comprehensive Housing Affordability Strategy, "and" the plan must be "necessary to meet the low

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-income housing needs of the jurisdiction." Under H.R. 2, a PHA would need to meet only one of these two prongs, showing that a designation plan is necessary to meet either the CHAS "or" the low income housing needs of the jurisdiction.

These changes are not necessary and are likely to have a detrimental impact on access to housing for persons with disabilities. The current statutory framework is working

effectively. HUD has been successful in helping PHAs designate thousands of units for elderly persons, while preserving housing access for persons with disabilities in those communities.

Allowing a PHA to rely solely on a CHAS, as H.R. 2 proposes, may lead to designations which are inconsistent with the housing

needs of persons served by the PHA. The CHAS is written based upon Consolidated Plan regulations that are tailored to community planning and development programs and that do not require communities to assess the housing needs of persons with disabilities in general. Rather, they refer specifically only to persons with disabilities who require service

-connected or

accessible housing. The vast majority of persons with disabilities who apply to live in public housing are merely low

-income individuals who also have disabilities. They are neither looking for, nor need supportive housing. Moreover, the proposed change would effectively create different statutory requirements for large and small PHAs, since Consolidated Plans are only required for jurisdictions with populations of more than 50,000.

In addition, the submission and review of designated housing plans should not be incorporated into the PHA's "local housing management plan", as under the House bill. The Administration believes that, since they involve significant decisions that could permanently limit access to important housing resources for some low

-income people, designated housing plans should be considered separately from the many other administrative and management issues that are addressed in the local housing management plan.

H. TOTAL DEVELOPMENT COSTS

The Administration urges the Conferees to include language reflecting the Administration's proposal on total development costs.

The Conference staffs have been provided with HUD's proposal on total development costs. The proposal would assure that capital costs allowed for HOPE VI and other public housing development will produce sound and durable, but modest, housing that fits into the community. It would also assure that the costs of community development and supportive service activities are not confused with the costs of housing construction. HUD urges the Conferees to include statutory language that reflects this proposal.

I. VOLUNTEER SERVICES

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The Administration urges the Conferees to take this opportunity to revise the volunteer exception to the Davis

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Act to conform to the language of the Community Improvement Volunteer Act of 1994.

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There is no policy reason to continue the differences in the definitions of volunteer exemptions. The Administration included the necessary language in its public housing bill (H.R. 1447, Section 121). Any volunteer provisions regarding resident

management corporations also need to be consistent with this definition.

J. SEXUALLY VIOLENT PREDATORS
[Awaiting DOJ rewrite.]

I look forward to contributing to the constructive resolution of these issues. As always, please call upon me and the HUD staff for any assistance we can provide.

Sincerely,

Andrew Cuomo

===== END ATTACHMENT 1 =====