

Statement of
Frederick S. Purnell Sr.
Executive Director
Wilmington Housing Authority, Wilmington, Delaware
On Behalf of the National Association of Housing and Redevelopment Officials
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Committee on Financial Services
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“Legislative Proposals to Preserve Public Housing”



Chairwoman Waters, Ranking Member Capito, members of the Subcommittee on Housing and Community Opportunity, thank you for the opportunity to testify on behalf of the National Association of Housing and Redevelopment Officials (NAHRO) during today's critically important hearing relating to public housing preservation. Specifically, we appreciate the opportunity to comment on two pieces of draft legislation that are intended to address this vitally important concern: the Public Housing Preservation and Rehabilitation Act of 2010 and the Public Housing One-for-One Replacement and Tenant Protection Act of 2010." My name is Frederick Purnell, and I am the Executive Director of the Wilmington Housing Authority in Wilmington, Delaware.

About NAHRO

A 501(c)(3) membership association, NAHRO represents over 3,200 housing authorities, community development departments, and redevelopment agencies, as well as over 20,000 individual associates working in the housing and community development industry. NAHRO's members administer HUD programs such as Public Housing, Section 8, CDBG, and the HOME Program. For more than 75 years, our extensive and diverse membership has allowed us to serve as the leading housing and community development advocate for the provision of adequate and affordable housing and strong, viable communities for all Americans—particularly those with low and moderate incomes.

NAHRO members own or administer approximately 1.1 million units of public housing (approximately 87 percent of the total inventory), 1.78 million units of tenant-based Section 8 housing (approximately 81 percent of the total inventory), and 383,000 units of other assisted housing. Not surprisingly, our members have a keen interest in the two proposals before us today to address the preservation of public housing.

Introduction

I would like to begin my testimony this morning by saying that NAHRO applauds the Subcommittee for the level of importance that you have assigned to our future ability to preserve

and maintain the nation's more than seventy-year investment in public housing. The bills we are discussing here today, as well as the important work that has been done with H.R. 4868, the Housing Preservation and Tenant Protection Act of 2010, demonstrate your leadership and commitment to ensuring the long-term viability of both the public and assisted housing inventory. The success of your efforts going forward will be vital to our industry to be sure, but most importantly they will be critical to the health and well being of low-income families, seniors and the disabled, who now occupy well over 2 million units of federally-assisted housing in this country. These families rely upon the dedication, persistence, and integrity of everyone in this room in order to maintain access to a decent, safe and affordable living environment.

In these challenging economic times, our multi-year investment in this inventory, tenuous as that investment has become due to larger fiscal constraints, must be sustained for the sake of current residents as well as the millions currently on waiting lists for such housing. The reality that we must expand the nation's inventory of affordable housing is a topic for another day, but, simply put, the absence of an adequate supply of affordable housing, especially for families at or below 50 percent of median income, is what makes our work here today so important. An inadequate supply of affordable housing for low-income Americans is the leading contributor to homelessness. Even before the current economic downturn, in late 2007, HUD estimated that 1.6 million people, including 340,000 children, were homeless and living in emergency shelters or transitional housing. Our failure to address the financial and physical needs of our existing inventory of affordable housing *now* will only compound both the human cost as well as the federal budgetary costs we will eventually need to pay if, as a nation, we are to remain true to the commitment made long ago of a decent home and a suitable living environment for all Americans.

To be sure, these are difficult times. Prolonged turmoil in the mortgage and financial sectors has highlighted the serious challenges facing the affordable housing and community development industry we at NAHRO represent. Our public infrastructure is decaying, and foreclosed and abandoned homes continue to plague neighborhoods. Most importantly for the purposes of today's hearing is the fact that a backlog of deferred maintenance and modernization in public housing—estimated to be in excess of \$30 billion—has placed this irreplaceable inventory at risk.

Left unattended, this backlog will cause this aging inventory to become uninhabitable. While we have some concerns based upon our initial review of the current version of the “Public Housing One-for-One Replacement and Tenant Protection Act of 2010” which I will highlight later in my testimony, we do strongly agree with Chairwoman Waters that we simply cannot afford the loss of otherwise viable public housing units given the level of need so clearly demonstrated in report after report.

We believe the time has come to find new ways to secure the future viability of our nation’s public housing stock, a resource whose financial and physical integrity has been undermined by significant underfunding of the Public Housing Capital Fund and the Public Housing Operating Fund, which are the life-blood of public housing. Underfunding of these two federal subsidies has resulted in roofs that were not replaced, plumbing that has not been repaired in a timely fashion, police and security personnel that were reduced, energy improvements that were not made, after school education and anti-gang programs that were eliminated, and on and on. On this point NAHRO wishes to sincerely thank Chairwoman Waters, Ranking Member Capito, Chairman Frank and others on this Subcommittee who have fought hard over the years for the provision of adequate resources to support our nation’s public housing. Absent those efforts and absent your most recent advocacy for capital fund dollars under the Recovery Act, today’s conversation would be much more difficult and far more urgent. The fact that public housing is so dependent upon these funds is in many ways a double-edged sword. On the one hand, our awareness of that dependency shines a bright light on the failure to adequately fund these two accounts properly and demonstrates how important it is that the administration request and the Congress provide full funding to support public housing’s operating and capital needs. On the other hand, our almost total dependence on these subsidies (given the inability of current rents to cover operations and maintenance expenses) calls into question why and whether public housing should be administered so far outside the boundaries of conventional real estate finance practices, including the practices employed under other HUD subsidized programs, including the Section 8 project-based rental assistance program.

The fact of the matter is that, for many NAHRO members, a *responsibly funded* public housing program as currently structured will enable many innovative local agencies to continue to

provide safe, decent housing in their communities. Indeed, this is the same industry that obligated 99.9 percent of capital fund dollars under ARRA on time as called for under statute. These funds will be used for much needed repairs and improvements to public housing properties, and are strong evidence that, when given the appropriate level of resources, the public housing industry can and will continue to deliver.

However, for some public housing agencies, the absence of adequate funding illuminates the need to find new ways to maintain and preserve their inventories given local market conditions. For these agencies, the current program's regulatory model is simply upside down. Public housing agencies are mission driven. They will persistently find a way to meet the housing needs of the less fortunate in their communities. The fear that local agencies are looking to stabilize their inventory by abandoning those they have served for years is not supported by the facts on the ground. To the contrary, public housing agencies have redoubled their efforts to use innovative approaches to access additional resources to continue to serve these families and individuals. The proposed "Public Housing Preservation and Rehabilitation Act of 2010" begins to positively confront the reality that local agencies need new tools and new approaches to help preserve public housing in a reasoned, cost-effective and responsible manner. They need resources including tax credits and conventional private financing to be accessible in ways that the current public housing program has rendered inaccessible given its unique set of regulatory burdens.

Chairwoman Waters, NAHRO submits that while not the subject of today's hearing, in addition to the approaches contemplated in the Public Housing Preservation and Rehabilitation Act of 2010, as well as your own bill, the current discussions surrounding the prospective opportunity to convert public housing assistance to either Section 8 project-based vouchers or a form of project-based contract under Section 8 also represents a positive step in the larger effort to preserve public housing. The fact that you are holding this hearing is evidence of your recognition that the preservation of public housing requires new tools and approaches, both within the public housing program and beyond. While I realize you that you will be looking closely at the administration's Transforming Rental Assistance proposal and possibly at other conversion options in the weeks ahead, before I review our comments on the "Public Housing One-for-One Replacement and

Tenant Protection Act” and the “Public Housing Preservation and Rehabilitation Act of 2010,” I would like to take just a moment to outline NAHRO’s own approach to the possible conversion of public housing to Section 8 rental assistance, an approach we believe best accomplishes the preservation goals that are the foundation of this hearing and the basis of your work in the days ahead.

NAHRO’S Public Housing Conversion Proposal

NAHRO believes that the present method of funding the operating and capital needs of public housing has left much of the public housing inventory in an unsustainable position. We recommend that PHAs going forward be afforded a variety of financial options for preserving their public housing and creating a sustainable operating environment.

With this in mind, NAHRO has proposed a program that would allow PHAs the option to voluntarily convert public housing projects to project-based rental assistance (PBRA) under Section 8. This conversion tool, in addition to much-needed reforms and resources for the public housing program, would provide PHAs with meaningful options for crafting strategies to meet the preservation needs of their properties. Under our proposal, federal oversight of converted properties would be transferred to HUD’s Office of Housing. Projects would be converted in the same manner as Section 8 project-based renewals under section 524 of the Multifamily Assisted Reform and Affordability Act of 1997 (MAHRA). Conversions could occur with or without rehabilitation, depending on the individual needs of the properties. Funds for rehabilitation would be generated through debt, grant funding, tax credits, or some combination of these and other forms of assistance. Structuring would be permitted to address both physical and market obsolescence. Greening of projects in the course of rehabilitation would, under our proposal, be incentivized. Optionally, an FHA guarantee or loan product could be made available to reduce borrower costs and allay lender fear of possible reductions in federal appropriations in the future. Once converted, each project would be funded through a minimum 20-year Housing Assistance Payment (HAP) contract and would be subject to the same program structure and regulatory oversight scheme as the existing Section 8 project-based multifamily inventory. A major benefit of this proposal is that this program could be implemented immediately. No new program would be created under our proposal for operating the properties, and HUD could utilize existing

contractors to carry out oversight responsibilities. Existing tenants would remain in occupancy and any tenant temporarily displaced by rehabilitation activities would be able to return to the property. Current public housing income targeting requirements would remain the same under this proposal.

NAHRO's conversion proposal has several important advantages that should be considered in the further development of preservation legislation. Among other things, the proposal would:

- be relatively simple to execute and would require no new programs;
- posture properties to have better access to public and private financing to meet accrued capital needs that are critical to maintaining the viability of these assets; stabilize and render predictable the income of the converted projects and place them in a regulatory environment that would allow them to more readily access private sector financing;
- allow PHAs to transfer the affected public housing projects to entities that could seek and receive equity in the form of Low Income Housing Tax Credits;
- end the isolation of these properties from private capital markets. Private lenders are familiar with the existing Section 8 project-based rental assistance program, and have shown that they are comfortable lending under these terms;
- eliminate all areas of present contention surrounding the conversion of public housing to asset-based management, since each converted project would be operated under a separate contract and the shift to asset-based management would accordingly be simple and automatic;
- make certain greening programs available to converted properties; and
- require little or no additional HUD staff since the ongoing oversight would be assigned to contract administrators.

We look forward to the opportunity to work with the Subcommittee and will continue to work with the Department to seek consensus on a viable, pragmatic, and cost-effective conversion alternative consistent with the larger preservation goals and objectives of this Committee and the Congress as a whole. We welcome your comments and questions on our proposal.

I would now like to turn to our review of the proposed legislation provided to us for comment at this hearing. To begin, let me say that we received draft copies of both the “Public Housing One-for-One Replacement and Tenant Protection Act” and the “Public Housing Preservation and Rehabilitation Act” just last week, and we have not had time to fully vet these important pieces of legislation with our membership. Accordingly, my comments on behalf of the Association are based on a preliminary review of both bills. We look forward to further articulating our views and working with members of this Committee and staff in the weeks ahead.

The Public Housing One-for-One Replacement and Tenant Protection Act

As I mentioned earlier in my testimony, NAHRO recognizes and appreciates the spirit and intent of this legislation and the desire of the Chairwoman to stem the loss of public housing units and ensure the availability and viability of decent, safe and affordable housing generally. We also appreciate the legislation’s intent to ensure that the rights and interests of residents are protected when public housing communities are undergoing redevelopment. Finally, having worked with the Chairwoman, her staff, and members of this Subcommittee on legislation to reauthorize the HOPE VI program over the period of the last several years, we want to acknowledge the efforts that have been made in this legislation to recognize the issues and concerns raised by NAHRO and others regarding relocation and the definition of what may or may not constitute a suitable replacement unit. We welcome the opportunity to continue an informed dialogue with this Subcommittee and other interested parties on such matters as this legislation advances in the House and Senate. With this in mind, we offer the following initial comments regarding the Public Housing One-for-One Replacement and Tenant Protection Act:

One-for-One Replacement: NAHRO believes that national housing policy must ensure that there is no net loss of “hard” affordable housing units when public housing units are taken off line. As

a direct result of the demolition of any public housing unit, a replacement unit should be added to the nation's affordable housing. One-for-one replacement should, however, be implemented at the national level rather than strictly at the local level. So long as all residents of public housing units removed from the affordable housing inventory locally are adequately housed in hard units or with rental assistance, a national housing one-for-one replacement policy should not require that each replacement unit be specifically located on or near the site of units removed, nor should it necessarily require that the replacement unit be owned by the public housing agency whose public housing unit is removed from inventory. This expanded conceptualization would allow for redistribution within our nation's affordable housing stock, which could address shifting population and demographic trends and would better position the affordable housing industry to meet the needs of the nation.

NAHRO submits for consideration the conceptual suggestion summarized below based in part on the following observations:

- Existing public housing was constructed over many years, much of it before the rental assistance programs were created. Its location reflects population, demographics and relative housing needs at the time it was constructed. Freezing the location of public housing units in place, notwithstanding significant shifts in relative housing needs, does not deploy public housing resources where they are most needed. A more flexible approach is desirable and should be considered.
- National policy should seek to create affordable housing opportunities where reasonable educational and employment opportunities currently exist for residents.
- In general, localities should have a reasonable mix of affordable hard units and units supported with tenant-based voucher rental assistance. This provides a cost hedge against tight rental markets and minimizes the inflationary effect voucher programs may have on local fair market rents (and, ultimately, program costs).

- Agencies should seek to replace as many hard units locally as is truly feasible. However, rigid and detailed requirements for localized one-for-one replacement can be impractical when actually applied. Moreover, such requirements intrinsically ignore relative housing needs nationally.
- Financial resources are absolutely essential to any replacement housing policy. Necessary financial resources for acquiring or developing replacement units should be identified and provided. Failure to do this when a one-for-one replacement requirement previously existed in federal law resulted in the inability to demolish failed public housing projects, leaving communities with no way of addressing these sources of blight in their neighborhoods.

With regard to the matter of one-for-one replacement, NAHRO would welcome the opportunity to explore legislation with the Subcommittee that is otherwise flexible in the application of the one-for-one requirement locally, but unyielding in its implementation nationally, again assuming that sufficient financial resources are made available for implementation. We recommend authorizing HUD to redirect public housing operating and capital subsidy--otherwise allocable to units removed from inventory *and not otherwise replaced with hard units locally*--together with such portion of revitalization funding as necessary to enable acquisition or development of an equal number of replacement units by applicant-PHAs nationally. Applicants for these redirected funds would be required to demonstrate (a) high relative affordable housing need in their localities, (b) the ability to achieve timely acquisition or development of replacement units at a reasonable cost, and (c) a commitment to locate replacement units in a manner that will afford employment and educational opportunities to residents, and that comply with Fair Housing requirements. As replacement units are added to the public housing inventory, HUD would transfer Annual Contributions Contract authority, including HUD's continuing obligation to provide Operating Fund and Capital Fund subsidy, to the agencies creating such replacement units.

Tenant Protections: Subsection (k) found on page 119 of the bill would, as we read it, give "any affected person" the right to bring a civil rights suit under section 1983 to enforce section 18.

That section creates personal liability with respect to individual state officials and rights to attorney's fees under section 1988. NAHRO believes this subsection is both unnecessary and unwise in that it would more broadly subject PHAs and individual PHA staff, and possibly commissioners, to costly litigation that will ultimately limit authority resources. While we continue to review and assess the implications of this subsection, at this point we believe that HUD oversight and sanctions with respect to the demolition and disposition process should provide all safeguards necessary to ensure compliance with section 18 as ultimately revised.

Public Housing Requirements. Our initial review of the bill also raises questions concerning the public housing program requirements that would be imposed with respect to replacement units developed using other forms of financing, including conventional financing and other forms of subsidy such as the use of Low Income Housing Tax Credits. Development/redevelopment of housing where demolition/disposition of public housing units has occurred using these tools has not to date been accomplished, nor have the same mandates been required that are pertinent to public housing units, including those specified in the bill under Section 2e(2), pages 6 and 7 of the draft. While we believe further exploration and investigation by the Subcommittee is warranted in conversations with lenders, developers and others with experience using low income housing tax credits and other forms of housing assistance, we would raise at this juncture an initial concern that the imposition of these requirements on affordable housing units developed to replace formerly distressed public housing, as mentioned above, may chill or otherwise limit the development of replacement housing, and possibly also that of housing units developed outside the demo-dispo process.

Overall Complexity. Again based on only preliminary review, NAHRO would like to evaluate with practitioners how the myriad requirements contained in this bill would ultimately be operationalized. We have concerns that full compliance may be difficult or impossible given the practical constraints of the development process.

Retroactivity. Finally, we are concerned about the retroactive nature of this legislation. As currently written, the provisions of the bill apply to any unit demolished or disposed of after January 1, 2005. We believe that imposing retroactive requirements is not only fundamentally

unfair, but may create a dangerous precedent. Replacement of some of these units according to the requirements of the bill is simply not possible, as these parcels may have already been redeveloped in other ways.

We will continue to review the language of the proposed bill with our members and our committees of jurisdiction within the Association, and will forward any additional comments, questions or suggested changes to the Subcommittee in an expeditious fashion.

The Public Housing Preservation and Rehabilitation Act of 2010

As I mentioned with respect to the One-for-One Replacement and Tenant Protection Act of 2010, NAHRO has begun the vetting process to the proposed Public Housing Preservation and Rehabilitation Act, and we look forward to working with you to shape legislation that can provide public housing authorities with the tools they need to sustain viable public housing for years to come for families and seniors in need. Our initial review of the legislation is enormously positive. We applaud your insight and creativity in crafting a bill with the promise to empower public housing authorities in ways they quite simply have not previously possessed for rehabilitating their properties, including rehabilitation to promote energy conservation. Again, it is our understanding that the bill in final form is likely to address the matter of the conversion of current assistance. We reiterate our desire to remain actively engaged in that conversation and welcome further review of the conversion proposal I outlined earlier in my testimony.

With respect to the draft legislation, our initial reactions are as follows:

- Section 2 of the bill facilitates the leveraging of other assistance and notably would authorize capital fund loan guarantees. As we have previously noted, public housing has long suffered from its isolation from private capital markets. Public housing authorities have had very limited access to debt, an essential resource for funding the rehabilitation and modernization of most rental real estate. Lending to public housing has traditionally been very difficult for two reasons. The first is the deed of trust attached to public housing, which significantly reduces its value as collateral for a loan. The second reason

is the uncertainty in the funding streams that support public housing. We believe that a “full faith and credit” guarantee will make lending against public housing assets and funding streams far more palatable, opening up a significant new opportunity for the recapitalization of public housing properties. We would welcome the opportunity to discuss how this form of guarantee might be extended to other forms of financing, i.e., the operating fund financing program and the public housing mortgage program.

- The bill provides for all public housing agencies the provision of energy conservation incentives and, we think correctly, does not limit access or the ability to receive these incentives only to those who enter into energy performance contracts. NAHRO believes this is very important and a positive step forward to allow agencies of all sizes to benefit from energy conservation measures. We are also particularly pleased to see that the language found in the proposed bill on this topic mirrors our own thinking and that of the Public Housing Directors Association (PHADA). Our respective organizations have recommended a very similar provision in our own proposal for small housing agency reform and we would welcome the opportunity to be of future assistance to the Subcommittee on matters of this sort. In sum, we think the inclusion of this provision in the proposed bill is a “win” all-around. The proposal from our perspective should not cost HUD and the federal government any more than they would have likely otherwise spent and, more importantly, provides public housing authorities with much needed resources to invest in energy conservation measures which should ultimately yield additional savings in the future.
- We support language in the bill that ensures that public housing and/or projects using project-based vouchers receive tax credits and remain under the control of the public housing authority during and after the tax compliance period.
- Section 3 of the proposed bill would authorize grants in lieu of tax credits. While we request the opportunity to discuss the more fundamental mechanics of this form of preservation assistance with staff, we certainly could, based on our initial review, support this form of preservation assistance if properly executed. We believe there are a number

of advantages associated with a direct grant program that public housing authorities would find attractive. Such an approach bypasses the transaction costs and administrative complexity normally associated with tax credit financing, making it a potential resource for properties that would not have sufficient scale to justify the costs of a tax credit transaction. We also believe this type of an approach would be a more directed and cost effective use of otherwise limited subsidies. Additionally, for many of our nation's smaller housing authorities, this approach creates preservation opportunities that may not have otherwise materialized under more complex tax credit financing arrangements, which can be beyond the reach of smaller housing authorities.

NAHRO believes that a range of flexible financing tools is needed to ensure the preservation of the public housing inventory. To that end, NAHRO has developed its own low-income housing preservation tax credit proposal, which would authorize new credits incremental to current state tax credit allocations for the specific public purpose of preserving public housing. It is important to stress that the tax credits that would be allocated under this program would not be set aside from the state's regular allocation of Low Income Housing Tax Credits. We welcome your interest, consideration and support of this approach. I would also note that NAHRO supports an extension of the existing Tax Credit Exchange Program (TCEP), as well as the expansion of TCEP to include otherwise unusable 4 percent credits that accompany tax-exempt multifamily housing bonds.

- Section 4 of the proposed legislation enables greater flexibility with respect to the use of capital fund dollars and repeals the statutory language generally referred to as the Faircloth Amendment. NAHRO strongly supports this action. We also support language in this section of the bill that authorizes options to increase the stock of deeply subsidized housing through more flexible use of the Capital Fund and the flexibility to enable public housing authorities to manage their portfolios with greater ability to meet local needs. Enabling public housing authorities to use capital fund dollars to assist other non-federal units in their jurisdiction where federally assisted housing has otherwise been sufficiently

maintained will be of enormous assistance to the long-term preservation in several states of an aging stock of state-assisted public housing exists. Our support assumes, however, that sufficient dollars continue to be made available to enable public housing authorities to not only meet current needs associated with the federally-assisted stock of public housing, but also to enable authorities to reduce the more than \$30 billion backlog of capital needs.

- Section 5 of the proposed legislation would authorize grants for the conversion of public housing to assisted living. As many as 50 percent of those occupying public housing facilities today are senior citizens. Many are aging in place with needs that extend beyond the boundaries of conventional public housing facilities. NAHRO recognizes this need and applauds you for including this provision in the bill. We believe a properly funded grant program will be of enormous assistance to many of our members and is vital to the longer term well-being of these increasingly vulnerable residents.

Madame Chairwoman, members of the Subcommittee, this concludes my statement. On behalf of NAHRO members across the country, thank you again for the opportunity to testify today. We look forward to continuing to work with you and your staff to ensure the preservation of our nation's public housing asset. I would be happy to answer any questions you may have.