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THE NATIONAL HOUSING LAW PROJECT

HEARING ON THE FUTURE OF HOUSING IN AMERICA: A BETTER WAY TO INCREASE  
EFFICIENCIES FOR HOUSING VOUCHERS AND CREATE UPWARD ECONOMIC MOBILITY

BEFORE THE HOUSE FINANCIAL SERVICES SUBCOMMITTEE ON  
HOUSING AND INSURANCE

WEDNESDAY, SEPTEMBER 21, 2016

Good morning Chairman Luetkemeyer, Ranking Member Cleaver, and distinguished members of the Committee. Thank you for the opportunity to testify today on behalf of the National Housing Law Project on the Small Public Housing Agency Opportunity Act of 2016.

The National Housing Law Project (NHLN) is a charitable nonprofit organization providing legal and technical support for housing advocates, tenant leaders and public officials nationwide on the housing issues confronting Americans with incomes at or near the poverty level. Our support role has included legal research, advice and co-counsel regarding litigation matters; legislative and administrative advocacy and assistance with Congress, federal agencies and state and local governments; publication of our housing law manuals; and training and technical assistance. NHLN hosts the national Housing Justice Network, a vast field network of over 1,000 community-level housing advocates and tenant leaders committed to protecting affordable housing and tenants' rights for low-income families and individuals nationwide. Since our inception in 1968, our work with local advocates, dealing with the day to day problems and opportunities presented by implementation of affordable housing laws and programs, has informed the views we express today.

**The Housing Choice Voucher Program provides housing choice and mobility to millions of families but key changes must be made to realize the program's full potential.**

The Housing Choice Voucher Program provides housing subsidies to 2.2 million low-income households in America.<sup>1</sup> A vast majority of these households include a member who experiences a disability and/or is elderly.<sup>2</sup> Almost half of voucher households include families with children.<sup>3</sup> Tenant-based housing vouchers have a proven track record of reducing family homelessness and housing instability.<sup>4</sup>

The cornerstone of the voucher program is the ability of voucher families to move from one unit to another while continuing to receive rental assistance. Families can move with continued assistance both inside and outside the jurisdiction of the Public Housing Agency (PHA) that issued the family's voucher (renting a unit outside of the issuing PHA's jurisdiction is referred to as "portability"). Recent studies have highlighted the importance of the voucher program's mobility feature by demonstrating that where we live has a lasting impact on our health and future economic mobility. For example, children who move to higher opportunity neighborhoods with high-performing schools, reliable public transportation, and quality jobs, tend to have higher adult earnings and educational attainment, among other positive outcomes.<sup>5</sup> And yet, an increasing amount of poor families live in areas of highly concentrated poverty where over 40% of residents are low-income.<sup>6</sup>

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<sup>1</sup> HUD, Office of Policy Development and Research, *Picture of Subsidized Households* (2015), <https://www.huduser.gov/portal/datasets/picture/yearlydata.html>.

<sup>2</sup> Center on Budget and Policy Priorities, *United States Fact Sheet: The Housing Choice Voucher Program* (July 21, 2016), [http://www.cbpp.org/sites/default/files/atoms/files/3-10-14hous-factsheets\\_us.pdf](http://www.cbpp.org/sites/default/files/atoms/files/3-10-14hous-factsheets_us.pdf)

<sup>3</sup> HUD, Office of Policy Development and Research, *Picture of Subsidized Households* (2015), <https://www.huduser.gov/portal/datasets/picture/yearlydata.html>.

<sup>4</sup> Michelle Wood, Jennifer Turnham, and Gregory Mills, *Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation*, Housing Policy Debate (2008).

<sup>5</sup> Raj Chetty, Nathaniel Hendren, and Lawrence Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project* (August 2015), available at [http://scholar.harvard.edu/files/hendren/files/mto\\_paper.pdf](http://scholar.harvard.edu/files/hendren/files/mto_paper.pdf)

<sup>6</sup> Elizabeth Kneebone and Natalie Holmes, *U.S. Concentrated Poverty in the Wake of the Great Recession*, Brookings Report (March 31, 2016). According to the report, by 2010-14, almost 14 million people lived in neighborhoods with poverty rates of 40% or more- more than twice as many as in 2000.

While vouchers have the potential to help deconcentrate poverty and improve the lives of low-income families, there is evidence that the program has failed to meet its housing choice and mobility goals. As HUD itself has acknowledged, even tenants with a Section 8 voucher live in low-rent, high poverty neighborhoods.<sup>7</sup> Families across the country report the difficulties of using their voucher in the private rental market. Despite spending years on the waitlist,<sup>8</sup> families that cannot use their voucher within a limited search time<sup>9</sup> must give the voucher back to the local PHA and often return to areas of high concentrations of poverty. As a result, PHAs are experiencing historically low “success rates” (the percentage of families that receive a housing voucher that are able to use it in the private market).<sup>10</sup> Low success rates are often tied to low voucher utilization rates (the number of units leased with voucher assistance as a percentage of the number of units that the PHA was authorized to lease by contract with HUD). Low utilization rates cause fiscal waste because the PHA leaves money on the table; money that could be used to provide critical services for families experiencing homelessness and housing instability.

Families face significant barriers that prevent them from using their housing voucher, which undermines the effectiveness of the voucher program. We address the key barriers below and provide policy recommendations to overcome them, including:

- Increasing the value of vouchers to reflect market rent by improving HUD’s Fair Market Rent (FMR) methodology;
- Improving landlord participation in the voucher program by providing incentives to participate in the voucher program;
- Implementing mobility counseling, including the Administration’s proposed Housing Choice Voucher Mobility Demonstration program that would provide resources to administer and study much-needed mobility programs;
- Encouraging consortia and regionalization of PHAs, instead of the deregulation of small PHAs as proposed in H.R. 4816, the Small Public Housing Agency Opportunity Act.

Vouchers are an essential component of a multifaceted national housing policy. Coupled with project-based assistance and the preservation of the existing affordable housing stock, tenant-based vouchers could go a long way towards improving the lives of low-income families. Until Congress addresses the barriers to true housing choice and mobility, however, voucher families are yet to realize the potential of the voucher program.

We look forward to working with the Subcommittee staff to provide more specific suggestions on the many issues raised by the mobility demonstration and H.R. 4816 as they move forward.

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<sup>7</sup> Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50<sup>th</sup> Percentile FMRs, 81 Fed. Reg. 39,218 (Jun. 16, 2016) at 39,219.

<sup>8</sup> It is not uncommon for PHAs to have a waitlist of up to 10-15 years. Many PHAs close their waitlists for periods of time when the list becomes too long.

<sup>9</sup> 24 C.F.R. § 982.203. The initial term of the voucher must be at least 60 days although PHAs have discretion to extend the term.

<sup>10</sup> The Housing Authority of the County of Santa Clara, for example, had a success rate of 14% in June 2014. Probably one of the lowest, San Francisco Housing Authority, experienced a success rate of 5% in 2015. HUD does not require the reporting of success rate data. The success rates here were discovered through a California Public Records Act request.

## ***Vouchers Must Reflect Market Rents***

In areas throughout the country, voucher tenants simply cannot compete for private housing because the value of their voucher is less than market rent. The two main factors at play are HUD’s setting of “fair market rents” and PHAs’ setting of “payment standards.” First, HUD sets “fair market rents” (FMRs) for Metropolitan Statistical Areas (MSAs) throughout the country. FMRs are meant to reflect gross rent estimates in a given geographical area and are used by PHAs to set the maximum assistance that a housing authority will pay for a particular bedroom sized unit (the “payment standard”).<sup>11</sup> PHAs have considerable discretion in setting a payment standard but HUD generally requires PHAs to set it at 90-110% of FMR.<sup>12</sup> Even in areas where HUD has set the FMR at lower than average market rent, some PHAs don’t set payment standards at the maximum amount allowed under the law. This reduces both the amount of assistance and the quantity of housing available to voucher families in low poverty, high opportunity neighborhoods.

Statutory law requires HUD to revise FMRs annually using the most recent available data.<sup>13</sup> Pursuant to its authority, HUD has set FMRs at either the 40<sup>th</sup> or 50<sup>th</sup> percentile rent – the dollar amount below which the rent for 40 or 50 percent of standard quality rental housing units are rented by recent movers in a given geographic area.<sup>14</sup> HUD’s methodology in setting the FMRs, however, often results in inaccurate and significantly lower than market rents because of its underlying flaws. In part, FMRs are problematic because they are based on rents across a metropolitan area, where rents can vary drastically between cities and towns. FMRs also use data that is several years old and does not account for recent shifts in the housing market. *Simply put, HUD’s current methodology produces FMRs that, in many areas across the country, do not reflect the current realities of the rental market faced by voucher families.*

Despite pleas from a range of stakeholders including PHA industry groups, housing advocates, and local governments, HUD has declined to change its methodology. As a result of HUD’s inaction, voucher holders are effectively barred from living in many areas, especially low-poverty neighborhoods with access to high-performing schools and other community amenities. The majority of voucher tenants continue to live in low-rent, high-poverty areas.<sup>15</sup>

HUD recently proposed a rule to address the geographical scope of FMRs and to “establish a more effective means for HCV tenants to move into areas of high opportunity and lower poverty” by replacing Fair Market Rents (FMRs) with zip-code level rent data, thereby raising the potential maximum assistance amount in some areas and lowering it in others.<sup>16</sup> Under HUD’s proposal, the new “Small Area Fair Market Rents” will be applied to about 30 areas that meet HUD’s criteria although other housing authorities could choose to opt in.

Due to the negative impact on existing voucher families, Small Area FMRs alone are only part of the solution to address systemic barriers to housing choice faced by current voucher tenants. While

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<sup>11</sup> 42 U.S.C.A. § 1437f(c); HUD, Office of Policy Development & Research, *Fair Market Rents for the Section 8 Housing Assistance Payments Program* (July 2007).

<sup>12</sup> 42 U.S.C.A. § 1437f(o)(1)(B).

<sup>13</sup> 42 U.S.C.A. § 1437f(c)(1)(B).

<sup>14</sup> 24 C.F.R. § 888.113(a).

<sup>15</sup> Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50<sup>th</sup> Percentile FMRs, 81 Fed. Reg. 39,218 (Jun. 16, 2016) at 39,219.

<sup>16</sup> *Id.*

Small Area FMRs would likely expand housing opportunities for new families entering the voucher program by increasing the value of a voucher in high opportunity areas, it would put a large number of existing voucher participants at risk of eviction and termination of assistance. *In fact, approximately 78% of current voucher holders in the areas that meet HUD's criteria, or over 435,000 voucher families, will likely experience reduced payment standards, and therefore a reduction in rental assistance, under the proposed Small Area FMR rule.*<sup>17</sup> For example, in the Washington-Arlington-Alexandria HUD Metro FMR Area, the payment standard for the average current 2-bedroom voucher holder will decrease by \$281.97. For those voucher tenants whose rents already match the payment standard, unless the landlord *lowers* the rent (an unlikely scenario), this equates to a \$281.97 rent increase.<sup>18</sup> Under the Small Area FMR rule, a significant number of voucher participants already facing tight budgets will have to make a difficult decision: pay more or get priced out. Many families will be forcibly displaced and uprooted from their neighborhoods.

Small Area FMRs suffer from many of the same methodological issues as FMRs. One way to improve the FMR methodology would be to require HUD to account for trends in local rental markets. HUD currently uses a “Trend Factor” to calculate FMRs, which measures the forecasted changes in *national* gross rents. Instead, HUD should use the percentage change in MSA-wide rents published as part of HUD PD&R’s quarterly U.S. Housing Market Conditions Regional Reports. Using the MSA, instead of the whole nation, as the unit of analysis for measuring rental market changes will result in a trend factor that is more sensitive to local conditions. The FMRs and payment standards will therefore more closely represent actual rents, improving housing choice and mobility opportunities for low-income families.

### ***Landlord Participation is Essential to the Voucher Program***

Along with a voucher that reflects market rent, participant families must find a landlord willing to rent to voucher tenants. In many areas, this is no easy task. Even in cities like San Diego, where hundreds of veterans remain on the street because they have nowhere to use their housing vouchers, government officials are desperately seeking help from landlords to accept vouchers and help house the nation’s veterans.<sup>19</sup> This is particularly disturbing because vouchers are largely responsible for the reduction in homeless veterans nationwide.<sup>20</sup> *Landlords’ blanket refusal to consider voucher holders increases the harm and severity of the country’s rental housing crisis, continues a cycle of poverty and segregation, and perpetuates housing barriers that are often based on misguided stereotypes.*

The most effective way to improve tenant mobility for all voucher families would be to require landlords to accept vouchers or at the least, prevent unreasonable discrimination against voucher

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<sup>17</sup> NHLP, Understanding the Impact of HUD’s Proposed Small Area Fair Market rent (SAFMR) Rule at <http://safmrnhlp.blogspot.com/> Note that this figure excludes Dallas, one of the areas designated to use Small Area FMRs. NHLP compiled data in order to assess the impact of the rule on current tenants. Please refer to the website to see our data and methodology.

<sup>18</sup> The tenant must receive proper notice, but once the payment standard is reduced below the full contract rent, the tenant becomes responsible for any rent above the payment standard.

<sup>19</sup> KPBS News, *Targeting Homeless Vets, Faulconer Launches ‘Housing Our Heroes*, January 15, 2016. San Diego Mayor Kevin Faulconer announced the initiative because the city had enough vouchers to house all of its homeless veterans, but not enough landlords willing to rent to them.

<sup>20</sup> The Veterans Supportive Housing Program (VASH), a partnership between the Department of Veterans Affairs and HUD, caused the number of homeless veterans to drop by almost 50% since 2010. HUD Exchange, *Obama Administration Announces Nearly 50 Percent Decline in Veteran Homelessness* (August 1, 2016). <https://www.hudexchange.info/news/obama-administration-announces-nearly-50-percent-decline-in-veteran-homelessness/>

tenants. The failure of landlords to accept vouchers is so pervasive that many states and local jurisdictions have adopted “Source of Income Protection” laws to protect voucher families from discrimination based on stereotypes of people that participate in the program.<sup>21</sup> Source of Income Protection laws broaden housing opportunities for low-income families by increasing the amount of housing available. Protection from discrimination based on receipt of housing assistance also helps reduce the stigma associated with voucher families. State and local laws are insufficient because they are vulnerable to legal challenges and inconsistent across jurisdictional boundaries.<sup>22</sup> Federal action is necessary in order to truly safeguard voucher families from discrimination solely on the basis that they receive federal housing assistance.

Other solutions to increase the amount of landlords participating in the voucher program include:

- Ensuring that PHAs are providing rental assistance to tenants that reflect market rent. Even if HUD-published FMRs are too low, PHAs should be increasing their payment standards to realistic rent levels.
- Mobility counseling that includes landlord outreach. We support that the Administration’s mobility proposal explicitly includes landlord outreach as a possible activity under the demonstration.
- The loosening or elimination of certain regulatory requirements on PHAs so that tenants can move into their units faster. The Housing Opportunity Through Modernization Act (HOTMA) accomplished this goal in part by allowing families to move into a unit that fails an inspection for a non-life threatening Housing Quality Standards (HQS) violation.<sup>23</sup> However, it can still take a few weeks for a PHA to perform an initial inspection and landlords prefer to rent out apartments immediately to other applicants.
- Providing a financial premium to landlords for participation. PHAs could pay more than market rent to compensate landlords for the additional administrative requirements required by the voucher program.
- Even when landlords are willing to participate in the voucher program, they may be denied insurance coverage simply for agreeing to house voucher tenants, based on false stereotypes about the risks of renting to a voucher family. Landlords who wish to rent to voucher families should be protected by law from such discrimination.<sup>24</sup>

### ***Families Benefit From the Services Offered by Mobility Counseling***

Even with an adequate amount of rental assistance and a willing landlord, families often find it difficult to successfully obtain and maintain housing in higher opportunity areas. Mobility counseling

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<sup>21</sup> Poverty and Race Research Action Council, *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program, Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination* (Updated May 2016), found at: <http://www.prrac.org/pdf/AppendixB.pdf>

<sup>22</sup> See Austin Apt. Ass’n v. City of Austin, 89 F. Supp. 3d 886 (Feb. 27, 2015) (federal court upheld an amendment to the city’s fair housing code that prohibits landlords from refusing to rent to prospective tenants on the basis of using a housing voucher). Consequently, the state legislature passed a law prohibiting adoption or enforcement of such local ordinances. See S.B. 267, 2015 Leg., 84(R) Sess. (Tex. 2015).

<sup>23</sup> Housing Opportunity Through Modernization Act (HOTMA), H.R. 3700, Pub. L. 114-201, div. \_\_\_, tit. \_\_\_, 130 Stat. 782 (July 29, 2016) to be codified at 42 U.S.C. § 1437f(o)(8)(1)(A)(ii).

<sup>24</sup> See Complaint, National Fair Housing Alliance v. Travelers Indemnity Company, 1:16-cv-00928 (D.C. Cir. May 17, 2016) (suit alleges that defendant insurance company violated local and federal fair housing laws when they refused to provide insurance to owners of multi-unit residential buildings because some of the residents relied on vouchers).

is an essential component of the voucher program because it educates families about the advantages of moving to higher opportunity areas and provides the support and resources to complete a successful housing search. Studies have shown that families who wish to move to higher opportunity areas have a hard time doing so due to a variety of administrative and social constraints.<sup>25</sup> One pilot in Dallas was successful in moving families to areas with lower crime rates in part because participating voucher families had access to mobility counseling as a means to assist families to move to high opportunity areas.<sup>26</sup>

*We therefore fully support the Administration’s proposal for a new Housing Choice Voucher Mobility Demonstration to assist public housing agencies in ten regions collaborate on initiatives to help low-income families use existing vouchers to move to higher-opportunity neighborhoods.*<sup>27</sup> The one-time funding also would support research to learn what strategies are most cost-effective. The mobility demonstration not only has the potential to improve low-income families’ opportunities, but acts as an investment in evidence-based programs.

Despite the strong evidence that mobility programs help families overcome obstacles to locating housing in low poverty neighborhoods, few housing authorities provide mobility counseling, most likely due to the administrative costs to PHAs. However, it may be worth the small investment now as there is evidence that mobility programs could generate medical cost savings (to government health programs such as Medicaid) in the long-term due to the health benefits of living in high opportunity areas.<sup>28</sup>

The Mobility Demonstration will provide participating PHAs with the financial capacity to build mobility programs. The proposal includes examples of mobility-related services that may be funded including “counseling, portability coordination, landlord outreach, and administrative activities.” Other key elements of a successful mobility program include financial assistance for security deposits and moving assistance as well as long-term support for second and third moves.

### ***Too Many Housing Authorities Results in Waitlist and Portability Problems for Tenants***

Nearly 4,000 PHAs administer public housing and/or Section 8 vouchers. About 3,300 of these agencies are small, administering fewer than 550 units. When numerous agencies administer rental assistance programs in a metropolitan area, as occurs frequently, applicants face greater barriers to obtain the assistance they need and families have more difficulty moving to areas of opportunity.

First, in metro areas where there are multiple PHAs, tenants have to apply for housing separately with each agency, and many end up on a number of waitlists. A single-point-of-contact makes the process of applying for and obtaining rental assistance less confusing and more transparent.<sup>29</sup> This is especially true for applicants that face special barriers to housing access such as

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<sup>25</sup> Ruoniu Wang, *Tracking “Choice” in the Housing Choice Voucher Program, The Relationship Between Neighborhood Preference and Locational Outcome*, Shimberg Center for Housing Studies (April 2016).

<sup>26</sup> Robert Collinson and Peter Ganong, *Incidence and Price Discrimination: Evidence from Housing Vouchers*, Joint Center for Housing Studies, Harvard University (April 2016).

<sup>27</sup> HUD, FY 2017 Budget Proposal, Sec. 270, “Housing Choice Voucher Mobility Demonstration.”

<sup>28</sup> Dan Rinzler et al. *Leveraging the Power of Place: Using Pay for Success to Support Housing Mobility*, Federal Reserve Bank of San Francisco (July 2015).

<sup>29</sup> U.S. Government Accountability Office, *Housing Choice Vouchers: Options Exist to Increase Program Efficiencies*, GAO-12-300 (March 2012) at 43.

people with disabilities, seniors, and individuals with limited English proficiency. Massachusetts provides an example of a statewide system for Section 8 voucher applications. The waitlist is centralized and applicants need only apply once for a housing voucher.

Second, when a number of PHAs administer housing assistance in a particular area, voucher tenants who wish to move are more likely to experience the challenges created by the portability process. Existing portability regulations are burdensome and confusing for tenants and housing authorities alike and can put tenants at risk of homelessness. For example, the roles of the initial and receiving PHAs are often unclear, particularly with respect to billing requirements and rules around search times, leading to delays in approval of portability requests. Given that families must find a new unit within a limited search time, any delay can result in eviction or termination of assistance. Tenants are also provided conflicting information from various PHAs about eligibility requirements. Even though PHAs have an obligation to accept most porting tenants, families can be discouraged from porting because of a misunderstanding about the eligibility criteria at a receiving PHA. HUD's recent changes to the portability regulations and subsequent guidance are an improvement but did not go far enough to have a real impact on tenant moves with continued assistance.

*The most effective policy to address the problems created by the number of PHAs is to encourage the formation of consortia and regional PHAs.* To that effect, H.R. 4816 contains an important provision that would incentivize PHAs to participate in consortia by reducing administrative burdens and reporting requirements for participating agencies, while maintaining some HUD oversight and tenant protections.

Consortia and regional PHAs have the potential to significantly improve the operation of the HCV program while expanding families' housing choice and mobility because they eliminate portability requirements and consolidate waiting lists, among other benefits to applicants and tenants. In areas where PHAs form consortia or regional entities, voucher participants are free to choose a unit without the existing barriers created by complex portability rules. Expanding the jurisdiction of a PHA allows an avenue of mobility for families to move closer to a current job, for example, or to move out of neighborhoods with high concentrations of poverty to those richer in community assets.

Consortia also provide a degree of administrative relief to PHAs by allowing PHAs to pool resources, share program staff, reduce reporting requirements, and increase efficiency.<sup>30</sup> Because PHAs retain their separate existence while participating in a consortia and some ability to continue local policies, PHAs and their trade groups tend to support increased flexibility to form consortia while opposing more comprehensive consolidation.<sup>31</sup> However, very few agencies currently take advantage of the consortia option.<sup>32</sup> H.R. 4816 would take an important step to incentivize the formation of consortia by allowing participating agencies to fully merge reporting obligations. HUD issued a proposed rule in 2014 that contained a similar innovation, "single-Annual Contributions Contract (ACC) consortia," which would allow PHAs participating in a consortium to merge reporting requirements.

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<sup>30</sup> 42 U.S.C.A. § 1437a(6)(A); 24 C.F.R. § 943.122.

<sup>31</sup> National Association of Housing and Redevelopment Officials (NAHRO), *Banding Together to Face Tough Times: The Consortium Option*, NAHRO Monitor (June 30, 2013).

<sup>32</sup> Barbara Sard and Deborah Thrope, *Consolidating Rental Assistance Administration Would Increase Efficiency and Expand Opportunity*, Center on Budget and Policy Priorities (April 2016), <http://www.cbpp.org/research/consolidating-rental-assistance-administration-would-increase-efficiency-and-expand>

Along with allowing for single-contract consortia, Congress could ensure that there are no state law barriers to the formation of consortia. Federal law broadly permits PHAs to form consortia although a minority of states appear to be limited by state-enabling legislation.<sup>33</sup> Congress could eliminate the barriers created by the lack of uniform state-enabling legislation by revising the U.S. Housing Act to include explicit authorization for the formation of consortia, notwithstanding state law barriers.

### **H.R. 4816 will negatively impact low-income families; the formation of consortia and regional PHAs are better options.**

H.R. 4816 seeks to address the administrative burdens placed upon small PHAs. Despite its objective, H.R. 4816 will create additional problems for small PHAs by creating a new regulatory system and oversight challenges for HUD. The bill's provisions are also likely to have a negative impact on low-income tenants.

#### ***Complete Deregulation Will Lead to Less Families Served***

H.R. 4816 contains two potentially harmful provisions that will fully deregulate the voucher program administered by small PHAs. The bill (1) allows small PHAs to combine funds for voucher assistance with the public housing operating and capital funds and (2) allows small PHAs to use the combined funds for any activity authorized under those programs. The funding flexibility is only limited in that the use of the combined funds must "assist substantially the same number of low-income families, with a comparable mix of families."

The Moving to Work Demonstration Program (MTW) authorizes similar funding flexibility to 39 participating PHAs and includes the requirement that PHAs serve substantially the same number of families. One valuable lesson learned from the MTW program is that without guidance on the criteria for serving "substantially the same" numbers of families, PHAs tend to serve significantly less families than before participation in the program. *In fact, the five MTW agencies responsible for the largest percentage of funds transferred away from the voucher program provided housing for 3,600 families with the money that could have been used to provide vouchers to 32,000 families.*<sup>34</sup> Moreover, the average voucher utilization rate for a traditional PHA is 96% on average and the average voucher utilization rate for MTW agencies is only 81%.<sup>35</sup> Some MTW PHAs have utilization rates as low as 71%.<sup>36</sup> Voucher applicants are left on increasingly long waitlists while PHAs fail to use their share of authorized vouchers. Without guidance on reporting obligations, some PHAs grossly inflate the number of families served. PHAs have accomplished this in part by using all units and households that receive any amount of funding from the PHA as a measure of the number of families served.<sup>37</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> Will Fischer, *HUD Seeks Significant Improvements to "Moving to Work" Demonstration, But Additional Changes Needed*, Center on Budget and Policy Priorities (January 21, 2015).

<sup>35</sup> Will Fisher, *Senate Expansion of "Moving to Work" Block Grants Would Sharply Cut Number of Families with Housing Vouchers*, Center on Budget and Policy Priorities (July 29, 2015).

<sup>36</sup> Center on Budget and Policy Priorities, *Housing Choice Voucher Utilization Data*, <http://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data>

<sup>37</sup> Will Fischer, *HUD Seeks Significant Improvements to "Moving to Work" Demonstration, But Additional Changes Needed*, Center on Budget and Policy Priorities (January 21, 2015).

One reason the voucher program suffers when PHAs are authorized to have funding flexibility is that it allows PHAs to disinvest in the voucher program in order to make up for the chronic underfunding, capital needs, and maintenance backlogs in public housing. In addition, voucher funding is not tied to the number of households served, eliminating the incentive to utilize all vouchers available. There is also additional evidence that funding flexibility results in funds being diverted from housing assistance all together. In Chicago, for example, the PHA used its MTW authority to stockpile unused federal dollars. There, the PHA diverted an average of \$107 million per year from its voucher program from FY 2008-2012 and during that time built up a cash reserve of \$432 million.<sup>38</sup> There are also examples of huge increases in executive compensation for MTW agency employees.<sup>39</sup>

At least four MTW PHAs used their deregulated authority to limit mobility options by severely restricting tenant portability. The San Diego Housing Commission revised its portability policy so that households who request to “port out” of the jurisdiction must provide a “compelling” reason to the PHA, such as an employment opportunity, medical needs, or safety reasons.<sup>40</sup> Similarly, the Keene Housing Authority in New Hampshire restricts portability unless it is requested as an accommodation for an individual with a disability or due to documented domestic violence.<sup>41</sup>

While there are currently no small PHAs participating in MTW, Congress recently expanded the program to include an additional 50 PHAs that have fewer than 1000 public housing units and vouchers combined. Given that the MTW demonstration includes a deregulation component and will expand to include small PHAs, H.R. 4816 is duplicative of existing efforts that will test and evaluate potentially innovative policies that could improve the administration of small PHAs. If there is a benefit to complete deregulation, it is more likely to be realized under the more rigorous oversight and evaluation requirements of MTW.

### ***The Proposed Rent Demonstration Will Cause Extreme Financial Hardship***

H.R. 4816 contains a rent reform demonstration project that allows selected small PHAs to choose among three rent-setting methodologies: (1) a tiered rent system, (2) gross rents, or (3) the existing rent mechanism. Currently, voucher tenants generally pay 30% of their income in rent.<sup>42</sup> As described below, both the proposed tiered rent and gross rent systems have the potential to cause significant harm to existing tenants by increasing low-income families’ rent burdens to an unsustainable level.

First, H.R. 4816 proposes the following tiered rent system based on the area median income (AMI):

- Extremely low-income families would pay a rent equivalent to 30% of 10% of the AMI;
- Very low-income families would pay a rent equivalent to 30% of 30% of the AMI; and
- A low-income family would pay a rent equivalent to 30% of 50% of the AMI.

The proposed tiered rent system could force poor families to pay a huge portion of their income in rent because it shifts rent-setting from an income based method to one based on AMI. In some cases,

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<sup>38</sup> Center for Tax and Budget Accountability, *A Fiscal Review of the Chicago Housing Authority* (July 2014).

<sup>39</sup> WABE News, *Atlanta Housing Authority CEO Compensation At Center of HUD New Policy* (June 7, 2012), <http://news.wabe.org/post/atlanta-housing-authority-ceo-compensation-center-hud-new-policy>. The Housing Authority’s Chief office, Renee Glover, was cited as the highest paid housing authority executive in the country at over \$600,000.

<sup>40</sup> Jill Khadduri, et al. *Innovations in the Moving to Work Demonstration*, Abt Associates (Dec. 2014).

<sup>41</sup> *Id.*

<sup>42</sup> 42 U.S.C.A. § 1437f(o)(2)(A).

the poorest tenants will experience the most significant rent increases. For example, a low-income tenant (as defined by HUD) in Kansas City, Missouri whose total adjusted income is \$25,600 per year<sup>43</sup> would pay about \$7,680 per year in rent according to the current rules (30% of income). Under the proposed tiered rent system, the tenant would pay \$10,920 per year in rent (30% of 50% of the AMI), resulting in a 42% rent increase per year (a total of \$3,240 additional rent per year). As another example, a 2-person low-income family (as defined by HUD) living in Meriwether County, Georgia whose total adjusted income is \$18,300 per year<sup>44</sup> and currently pays \$5,490 per year in rent (30% of income) would experience a rent increase of 22% (\$1,215 additional rent per year). Both of these examples assume that rent is set at or below the PHA's payment standard and that the voucher plus the tenant's portion covers the entire rent.

Linking a tenant's rent contribution to actual income enables the tenant to pay a rental amount that is affordable, given his/her individual income limitations. *Connecting a tenant's rent to the average income in the community, instead of the tenant's own income, causes families to be increasingly rent-burdened, takes monthly income away from food, medical needs, and other basic necessities, and puts low-income families at risk of homelessness.* It also incentivizes families to move to low-income areas where the AMI is lower, which perpetuates economic segregation and undermines the voucher program's mobility and deconcentration objectives.

Additionally, H.R. 4816 states that a tenant whose rent is determined by the tiered income system is considered over-income if their income exceeds 80% of the AMI. HOTMA, with bipartisan support, recently defined over-income tenants in the public housing program as those tenants whose income has exceeded 120% of the area median income.<sup>45</sup> Congress has legislated this issue and should not enact a different rule for small PHAs.

The gross rent methodology proposes to eliminate deductions for some of the most vulnerable families, including elderly and disabled households and households with unreimbursed medical or child-care expenses. Currently, after determining a family's total annual income, owners and PHAs must apply certain additional deductions to arrive at the tenant family's adjusted annual income.<sup>46</sup> These deductions include: veterans' aid expenses, reasonable child care expenses necessary to enable employment or education, unreimbursed medical expenses, deductions for senior or disabled family members, deductions for students, and other amounts excluded by the Social Security Act.<sup>47</sup> Congress has recognized these vital needs by preserving and increasing the amount and types of deductions, including most recently in HOTMA.<sup>48</sup> It is a rational policy choice that small PHAs follow the same income deduction rules as other PHAs.

Alarmingly, H.R. 4816 would allow PHAs to impose a minimum rent of *any amount*, subject to a PHA's hardship policy. Currently, PHAs are allowed to impose a minimum rent up to \$50 per month, subject to certain statutory hardship suspensions and exemptions.<sup>49</sup> Imposing an unlimited minimum

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<sup>43</sup> HUD, *FY 16 Income Limits*, HUDUSER.GOV, <https://www.huduser.gov/portal/datasets/il/il16/>.

<sup>44</sup> HUD, *FY 16 Income Limits*, HUDUSER.GOV, <https://www.huduser.gov/portal/datasets/il/il16/>.

<sup>45</sup> Housing Opportunity Through Modernization Act, HR 3700 (HOTMA), Pub. L. 114-201 (July 29, 2016).

<sup>46</sup> Streamlining Administrative Regulation for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs, 81 Fed. Reg. 12,354 (Mar. 8, 2016); Housing Opportunity Through Modernization Act, HR 3700 (HOTMA), Pub. L. 114-201 (July 29, 2016) *to be codified at 42 U.S.C.A. § 1437a(b)(5)(A)*.

<sup>47</sup> *Id.*

<sup>48</sup> Housing Opportunity Through Modernization Act, HR 3700 (HOTMA), Pub. L. 114-201 (July 29, 2016).

<sup>49</sup> 42 U.S.C.A. § 1437a(a)(3); 24 C.F.R. § 5.630.

rent without taking into consideration a family's income is a harmful policy that could cause housing instability and put the lowest income tenants at risk of homelessness.

An additional provision in H.R. 4816 related to rents allows for rental adjustments every five years or more frequently if the agency establishes a specific percentage that would warrant an interim recertification. H.R. 4816 provides no limitations or requirements for PHAs when determining this threshold. If a PHA sets the threshold for downward rent adjustments too high, it could severely impact tenants whose income decreases due to a loss of employment or medical hardship. HOTMA recently revised the law to allow PHAs to recertify income every 3 years for families with a fixed income. The law was supported by a broad range of stakeholders and the change is sufficient to reduce administrative burdens for small PHAs, without having a negative impact on families.

Finally, as with any demonstration project, Congress should ensure that meaningful and comprehensive evaluation mechanisms are put into place. H.R. 4816 contains no indications of how and when an evaluation of the demonstration will be completed. As MTW expands to include small PHAs, HUD plans to perform a rigorous analysis of the policies implemented by participating PHAs. The smart approach is to study rent reform through the MTW program expansion.

### ***Eliminating Reporting Requirements will Exclude Voucher Tenants From the Planning Process***

H.R. 4816 limits reporting requirements for small PHAs to submissions that are required of HUD owners and operators of Section 8 project-based properties. The Quality Housing and Work Responsibility Act of 1998 already exempted small PHAs that have fewer than 250 public housing units from submitting annual PHA Plans to HUD and other reporting requirements.<sup>50</sup> H.R. 4816 would eliminate virtually all of a small PHA's reporting obligations. The PHA Plan is used by HUD as a key oversight tool and as a way to ensure resident participation of the administration of the PHA's public housing and vouchers. Eliminating the PHA Plan requirement will exclude tenants almost entirely from participating in the PHA's planning process.

### ***H.R. 4816 Weakens Section 3 Requirements***

The Section 3 program is an important workforce development program requiring "that recipients of certain HUD financial assistance, to the greatest extent possible, provide job training, employment, and contract opportunities for low- or very-low-income residents in connection with projects and activities in their neighborhoods."<sup>51</sup> H.R. 4816 limits Section 3 requirements for small PHAs only to the extent that Section 8 property owners and operators have to comply. This greatly weakens the Section 3 program. There are few requirements for Section 8 owners and operators to comply with Section 3. Rather than the extensive and significant weakening of Section 3 proposed in H.R. 4816, Congress should apply Section 3 more broadly to Project-Based Section 8 owners.

### ***Other Provisions That Negatively Impact Tenants***

The following additional provisions of H.R. 4816 will negatively impact tenants

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<sup>50</sup> 42 U.S.C.A. § 1437c-1; 24 C.F.R. § 903.111.

<sup>51</sup> HUD, *Section 3- Economic Opportunities*,  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/section3/section3](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3).

- H.R. 4816 authorizes small PHAs to perform physical inspections of public housing units every 3 years. Inspections every three years are insufficient to guard against unsafe and uninhabitable living conditions. In some cases, units deteriorate quickly and issues will not be identified for long stretches of time. Families often do not complain about living conditions for fear of retaliation. Inspections are important to implement the statutory obligation that PHAs maintain public housing in a decent, safe, and sanitary condition.<sup>52</sup> By limiting inspections to every 3 years, it is impossible to monitor whether this obligation is being met.
- H.R. 4816 allows small PHAs to project-base up to 50% of its tenant-based vouchers. HOTMA recently authorized PHAs to raise the cap by 10% (from 20% to 30%) in order to provide units for certain populations (formerly homeless individuals and families, veterans, persons with disabilities, and the elderly)<sup>53</sup> or where tenant-based vouchers are difficult to use.<sup>54</sup> HOTMA’s revisions to existing law are sufficient to meet the needs of small PHAs.

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<sup>52</sup> 42 U.S.C.A. § 1437d(l).

<sup>53</sup> Housing Opportunity Through Modernization Act, HR 3700 (HOTMA), Pub. L. 114-201 (July 29, 2016) *to be codified at* 42 U.S.C.A. § 1437f(o)(13)(B)(ii).

<sup>54</sup> Housing Opportunity Through Modernization Act, HR 3700 (HOTMA), Pub. L. 114-201 (July 29, 2016) *to be codified at* 42 U.S.C.A. §§ 1437f(o)(13)(D)(ii)(II).