

**Testimony of  
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on behalf of the  
Council of Large Public Housing Authorities  
before the  
U.S. House of Representatives  
Subcommittee on Housing and Community Opportunity  
Committee on Financial Services**

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Madam Chair, Ranking Member Capito and Members of the Subcommittee, my name is Keith Kinard and I am the Executive Director of the Newark Housing Authority and am a Board Member of the Council of Large Public Housing Authorities (CLPHA). CLPHA is a non-profit public interest organization whose members, located in virtually every major metropolitan area, are the largest Public Housing Authorities (PHAs) in the nation. These agencies act as both housing providers and community developers while effectively serving over one million households, managing almost half of the nation's multi-billion dollar public housing stock, and administering one quarter of the Section 8 Housing Choice Voucher program.

Newark Housing Authority (NHA) has over 12,000 public housing and housing choice vouchers. In my time at Newark and previously in Pittsburgh, I have overseen the preservation, development, demolition, disposition, and rehabilitation of thousands of units of public housing.

We have been asked to comment today on the discussion draft of two legislative proposals, the "Public Housing One-for-One Replacement and Tenant Protection Act of 2010" and the "Public Housing Preservation and Rehabilitation Act of 2010". However, before I turn to the specifics of these proposals, I want to note that within the public and affordable housing community we know there are no greater champions of public housing than Chairman Frank and Subcommittee Chairwoman Waters. The two of you have consistently, over the years, not only led the way in supporting and preserving this critical and scarce housing stock, but you have also been in the forefront of efforts to defend its programs and protect the people they serve, all the while ensuring that much needed funding for public housing is maintained and increased when possible. As an on-the-ground practitioner and public housing stakeholder, I, and my colleagues, are indebted to you for your commitment to the preservation of public housing. I know we share many of the same goals. I want to preserve and protect the housing I manage today. I want to build, develop, redevelop, and purchase even more affordable housing. I also want to provide tenants a transparent set of protections that will empower them against arbitrary and capricious actions.

I believe that some of the problems that this draft legislation is trying to address are the result of very early efforts of public housing redevelopment and do not accurately reflect what is happening today when public housing authorities redevelop a property. Unfortunately, I believe that without major modifications, or large new sources of federal funding, the one-for-one legislation would negatively impact the very residents it is seeking to protect.

At first glance, NHA may seem like we've been doing exactly what you want to stop. Since 2005, NHA has received approval for 1,032 units to be demolished at four different developments. However, to date, we have only demolished 106. Since I arrived at Newark in 2006, we have built and occupied 398 units of affordable housing, including 263 units of new public housing. I currently have another 226 units in development of which 69 percent may qualify as replacement housing in this legislation. We also created long term affordable housing by issuing several hundred project-based vouchers to private developers who have built or rehabbed over 600 units. I have plans and hopes of building another 1,500 units but we have development gaps of over \$125 million dollars and that scenario assumes that NHA wins 9% tax credits for every application submitted. I just heard that both of our latest applications did not receive tax credits which will make the gaps even larger. This bill as drafted would increase the number of units that NHA would have to build and make it even more difficult to build affordable housing. As currently drafted, I am not even sure that NHA would be able to build units in our jurisdiction and stay in compliance with the guidelines related to areas of low concentration of poverty.

I would like to share with you the tale of two developments. Felix Fuld and Seth Boyden. Felix has been approved for demo, it has 286 units. It has a physical needs assessment of over \$41 million required to make the units viable. It had a high density of residents below the poverty level, it is a high crime area, it has high operating and repair costs. The development was not viable under the asset-based management rules. I met with the residents in a large community meeting in December 2007 to discuss the results of a working group, which included resident leadership. The result of those working group meetings was that NHA and the resident leadership wanted to submit an application to demolish Felix Fuld.

When I announced that NHA wanted to demolish Felix, the residents actually applauded. Now that was not the reaction I expected. However, the residents knew this was the right thing to do. I made them a promise that night, that they would be going somewhere better, be it other low-rise public housing or newer scattered site public housing, or a section 8 voucher, they would be going someplace better in both the short term and the long term. I gave them a right to return, but only if they remain lease compliant. I provided them with all that Uniform Relocation Act (URA) requires and more. I gave them 180 day notice to move. I gave them housing counseling to help decide what type of temporary or permanent housing they wanted to choose.

During the questions and answers that December night this is what I heard. How soon can I leave? Can I have a voucher now? Can I get a transfer now? I had to tell the residents that, "no, you have to wait for HUD to approve the demolition otherwise you will lose your rights to URA and right to return". This bill seems to lengthen this process – not shorten it, which is what my residents wanted. Yes, change is hard and there were tears shed about having to move on and move out of Felix, but I have kept my promise, people are in better situations now. What is interesting, is that after meeting with housing counselors and going through all of the implications of their choices - 51% have been relocated in public housing, 38% have vouchers. So because of the way relocation vouchers are distributed, I was able to serve, in addition to everyone at the development, over one

hundred new families from the Housing Choice Voucher Program (HCVP) waiting list. I'm actually serving more families by getting demolition approved at Felix. This bill looks like it would change that.

The sad part is, right now, I cannot build back a new Felix, the gaps are too big and the markets are too soft to be able put together a pro forma that works – and that is not even trying to replace the units one for one. The “Public Housing Preservation and Rehabilitation Act of 2010” would help to close some of the gap, however, it does not go far enough. The “Public Housing One-for-One Replacement and Tenant Protection Act of 2010” will, if passed, further reduce any chance of Felix being rebuilt and any residents returning to a new Felix unless there is a substantial new public housing development fund created. I would like nothing more than to be able to build back 286 new public housing units. I believe that most of my colleagues would agree with me. I would not put them all back on the original site, as that would just reconcentrate the problems that existed and contributed to the failure of Felix the first time around. I believe that these are the types of communities that need federal investment, rather than saying, “ you must build in areas of low poverty”. These are the neighborhoods that need transformation. If I had the money, I would build them back.

However, without a serious public housing building war chest, if this one-for-one bill passes, I am going to be left deciding what to do about the second development in this tale of two developments. Seth Boyden has 506 units of which only 220 are legally occupied. It also has at least the same level of problems as Felix. It has over \$50 million in deferred capital needs and is not a viable candidate for rehabilitation due to high abatement costs, ADA upgrades, and unit reconfiguration costs. The only real choices for Seth Boyden are: 1) short term, band-aid approaches to keep the units online or 2) demolish and rebuild something better.

The residents at Seth Boyden ask me when will they get to move to something better, like the residents of Felix. I would love to let them move. However, I cannot get people to accept offers of housing there. So units stand vacant. I want to move forward and promise these residents something better, but I have nothing to offer right now. NHA has deferred capital needs of over \$500 million across our portfolio. We cannot afford to even demolish everything that has been approved for demo. This bill, if passed, would not help the residents of Seth, it would condemn them to staying as the units continue to get worse. These are the kind of decisions that public housing authority executive directors have had to make across the country.

Public housing developments are not all alike and their preservation needs are different. Some need only modest repairs along with reliable future funding to be preserved, while others require substantial, up-front capital investment and deep, long-term subsidies. Still other developments may not be viable in their current form even with large investments, in which case alternative affordable housing solutions need to be implemented. The most recent comprehensive study of public housing capital needs found a backlog of up to \$32 billion. It also found that additional public housing capital needs accrue at a rate of more than \$2 billion per year. Yet, the tools available to us, annual appropriations for the public housing capital fund have been barely above that. Further, the public housing operating fund has been seriously under-funded for a number of years, resulting in the deferral of maintenance work that adds to the level of capital backlog needs.

Despite these funding shortfalls and other challenges, there have been significant financial and legal innovations in the redevelopment of public housing in recent years, typically involving techniques

for mixing public housing funds with private financing. For example, for more than a decade PHAs have been using the low-income housing tax credit to leverage private equity for public housing redevelopment projects. PHAs also have experience using bond-financing, forming and participating in private ownership entities through their affiliates with investors, and project-basing voucher subsidies to develop affordable units. HOPE VI projects now typically leverage tax credits, while other public housing redevelopment projects have been undertaken without HOPE VI, but with tax credits and other resources.

It is part of the reason why two years ago, CLPHA convened a group of stakeholders to forge a new paradigm for the preservation of public housing. The Summit on The Future of Public Housing developed a policy framework committed to the goals of preserving, improving, and expanding the availability of housing opportunities for low-income individuals and families. While the two legislative drafts before us, at first glance, do not appear to have much in common, in the larger context of public housing preservation they are two sides of a coin. One side focuses on the tenants who reside in public housing, the other focuses on the rehabilitation and recapitalization of public housing. Several of the ideas and proposals which came out of the summit are reflected in these legislative drafts, and many of them are proposals which CLPHA has long advocated, including a commitment to preservation; serving low-income residents; greening and promoting energy efficiencies in public housing; leveraging other financing resources, including tax credits for modernization, rehabilitation and expansion of public housing; and serving the elderly and other vulnerable populations.

In regards to the specifics of the legislative drafts:

### **Public Housing One-for-One Replacement and Tenant Protection Act of 2010**

#### ***One-for-One Replacement***

In 1996, Congress repealed the one-for-one replacement housing requirement because it prevented PHAs from making progress on alleviating conditions in the nation's most severely distressed and functionally obsolete public housing, and which could not be built today under fair housing laws and other requirements. This bill would essentially reauthorize that requirement.

In Newark my concern has been for families not units. The places authorized for demolition are often experiencing high rates of vacancies. These are the residents that I want to promise something better. The loss of the hard unit concerns me less, as the HCVP units are serving more and new families through the demo/dispo relocation process.

CLPHA supports the preservation and expansion of the supply of affordable housing and the use of both hard units and vouchers in providing replacement housing. Furthermore, CLPHA supports utilizing hard units and vouchers in the goal of one-for-one replacement as long as there are sufficient funds to provide one-for-one replacement. While the legislation would require one-for-one for all units demolished or disposed of, it does not authorize any additional appropriations to meet that requirement. Additionally, the bill reaches back and grandfathered in units demolished or disposed of after January 1, 2005. CLPHA recommends that only units going forward as of the date of enactment of the legislation should be affected and funds should be authorized for the program.

Also, the bill would impose certain public housing rules and requirements on units that are not public housing. We believe this provision will have an adverse effect on the one-for-one

replacement objective and will have the unintended consequence of reducing the availability of affordable housing opportunities. Nonpublic housing owners, who will be reluctant to accept more restrictive and burdensome public housing requirements on their units, may simply opt out of the voucher program.

### ***Location of Replacement Units***

The bill's requirement that at least one-third of all replacement units for demolished public housing must be constructed on the original public housing location is too restrictive and may impose unworkable requirements on redevelopment efforts. Also, where replacement units are located should be determined by local market conditions rather than the bill's arbitrary proportion of one-third. Developers constructing replacement housing units need to have the flexibility to structure phases of their projects taking into account the availability of building sites, financing, types of units (e.g., the mix is often different in units designated for the elderly), and other local market factors.

If an original site is highly concentrated by poverty and race, requiring PHAs to provide at least one-third replacement housing on the same site, in the same neighborhood, or even in an adjacent neighborhood may not afford the PHA enough flexibility to create the public-private partnership with its attendant mixed-financing component which so many of the redevelopment deals today require.

Also, the bill's requirement that replacement housing units be provided in areas having a low concentration of poverty within the jurisdiction of the public housing authority—while good public policy—may be difficult to achieve in those areas where the availability of land, land costs, neighborhood opposition and other extenuating factors may be difficult to overcome. The ancillary conditions of furthering the “economic and educational opportunities for residents” on top of the location requirements simply adds another layer of difficulty.

In Newark there is not one census tract that would qualify as an area with a low concentration of poverty. The lowest poverty tract contains the Airport. Within my jurisdiction deconcentration means going from a tract with 50% poverty to one with 25% poverty. I want to change a neighborhood from one of desperate poverty to one that is thriving. We cannot just write these neighborhoods off as not deserving of federal investment.

### ***Maintaining Rights of Public Housing Residents***

The section on “Other Requirements” in the bill would apply several current public housing only requirements, including the requirements of CFR 24 Part 964 and the public housing grievance laws, to any replacement unit provided for temporary relocation. This major shift in policy would be overly burdensome for private owners and would provide new protections for temporary relocated residents that are not afforded to other residents – including other HCV recipients - in their properties.

Part 964 has a number of protections for residents in each property including residents' right to organize and “be involved and participate in the overall policy development and direction of public housing operation” that are not currently provided to housing choice voucher recipients. Private owners are unlikely to continue participation in the program if their operations will be subject to consultation with the resident council. Moreover, because private owners are not currently subject to these requirements they do not have the staff expertise to easily accommodate these new

requirements. The change will be extremely costly, burdensome and time consuming for them to alter their operations resulting in increased rents and ultimately in increased program costs.

Section 6(k) of the U.S. Housing Act of 1937 enumerates the various grievance rights of tenants in public housing. These include the right to a hearing prior to eviction, right to provide witnesses at a hearing, and other due process rights in eviction proceedings that are not currently provided to housing choice voucher recipients. The primary benefit of the voucher program is resident mobility and choice. However, with this choice, voucher recipients also must adhere to more restrictive lease terms than are found in public housing. Extending the provisions of Section 6(K) to relocated voucher recipients would remove a private owners' ability to independently manage a property, provide separate sets of rules for different residents, and again, would likely cause many owners to exit the voucher program altogether.

### ***Right to Return***

CLPHA believes that any public housing resident who was lease compliant before, and during demolition and/or disposition of their public housing unit during temporary relocation, should be entitled to a replacement housing unit.

Also, the right to return also needs to be better defined. The tenant should have to indicate if they want to return by a date certain. The current language is vague enough that ten years could go by before the family could decide they want to return even though the property is fully occupied.

### ***Tenant Notification***

Whereas the bill requires a one-for-one replacement for units, it also would impose a two-for-one relocation requirement for tenants. The bill states that if temporary, off-site relocation is necessary, each displaced family must be offered comparable housing "which shall include at least one unit located in an area of low poverty and one unit located within the neighborhood of the original public housing site". This has the effect of requiring two units to be available for each displaced family. This is an onerous and unprecedented use of scarce housing resources in a time of a shrinking affordable housing supply. Again, it would not be possible to meet this threshold in my city.

Also, the time allotted for a tenant provided with tenant-based assistance to search for a dwelling unit due to relocation is not less than 150 days (5 months) with the option for an undefined time extension. Given critical timelines to meet contractual obligations in demolition and redevelopment activities, CLPHA believes 150 days is a prolonged time and recommends the period be shortened to 120 days (4 months) with no more than two 30 day extensions, for a total 60 day extension.

There also needs to be clarity that while buildings cannot be demolished with tenants in them, however demolition should be allowed at other buildings within the project when those buildings are unoccupied. One of our sites is over 3 acres and it makes sense to begin demolition work at one end, even with residents at the other end.

## **Public Housing Preservation and Rehabilitation Act of 2010**

### ***Leveraging of Other Assistance***

*Capital Fund Loan Guarantees* – This provision represents a new tool that is unprecedented and will be critical to achieving the goals set out in the Future of Public Housing Framework. CLPHA

has long supported and promoted this approach in making capital available to PHAs for the preservation, rehabilitation, development and expansion of affordable housing.

The federal loan guarantee created by this section authorizes the rehabilitation of public housing using the capital fund as security and for repayment. While the Capital Fund Financing Program (CFFP) can already be used for rehabilitation and development projects, a federal loan guarantee will lift the capital fund pledge to a whole new level. Over the years, the capital fund has experienced declining appropriations while demand for the program has grown. Recently, Standard & Poor's Ratings Services assessed the long-term credit implications of the CFFP appropriations risk following the Administration's FY2011 budget proposal and determined that federal budget deficits may increase the appropriations risk to the CFFP in future years.

CLPHA recommends broadening the security and repayment sources beyond the capital fund by extending the pledged amounts to include the Public Housing Operating Fund and Section 8 voucher funds. This would have the effect of minimizing pressure on the Capital Fund while expanding the potential for leveraging additional funds. A simple modification to the bill language under "(D) Use of Funds" by adding ", 9(e), or 8(o)" after "section 9(d)" would accomplish this action.

CLPHA commends the authors of the bill for their explicit wording in the loan guarantee. The particularly strong and unequivocal language, which provides that the "full faith and credit of the United States is pledged to the payment of all guarantees...and the validity of such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations". Congress has not put the full faith and credit of the United States behind public housing debt obligations since passage of the U.S. Housing Act of 1937. This federal guarantee should give strong reassurance to lenders, bondholders and other stakeholders in making funds available for public housing preservation.

*Energy Performance Contracting Financing* - CLPHA is pleased the bill enables a housing authority to receive the full financial benefit for reductions in utilities costs resulting from energy conservation improvements. This provision provides a real incentive for housing authorities to reduce energy consumption while also increasing the likelihood that there will be long-term program savings. Furthermore, the ability to access upfront capital without the necessity of a third party guarantee will reduce the costs of energy conservation measures and encourage lenders to loan directly to housing authorities.

This is one that the NHA is currently taking advantage of and believes that these changes will enable us to do even more. We have really changed our mindset about green building and green practices. Everything we build now we are looking to make as energy efficient as possible. We are installing renewable energy sources onsite to lessen the cost to the development and the residents. New Jersey has very generous state incentives that allow us to put solar power in many developments that may not make financial sense in other states. These types of incentives could be federalized and made easier to monetize for a non-profit public entity such as a housing authority. Right now, we have to go through some gyrations to get the benefit for the incentive program. It is similar to the hoops we have to jump through to see the value of the tax-credit program. When you are a non-profit and don't generate large taxes that need to be offset, you have to go to a market to sell the credits. The market for the solar credits is still not mature and changes could be made to

strengthen or expand the market – or allow us to bypass the market altogether by converting the SRECs (Solar Renewable Energy Credits) to grants.

*Requirements for Properties with Housing Tax Credits* – This provision allows public housing and converted units using tax credits the option to retain ownership and to maintain an active management role. We agree with the importance of maintaining the role of PHAs and ensure the long-term affordability of housing assisted by this provision.

***Grants in Lieu of Housing Tax Credits***

This provision authorizes a housing tax credit exchange for rehabilitation of qualified public housing units. CLPHA has previously recommended making tax credit equity available to public housing on an expedited basis and we strongly support this provision.

***Capital Fund Flexibility***

CLPHA has long advocated the repeal of the so-called “Faircloth Amendment” which prohibited the development of new public housing in many communities. Given the scarcity of affordable housing in communities all across the country, this repeal is long overdue. We thank the authors for including this provision in the bill.

***Grants for Conversion of Public Housing Projects to Assisted Living Facilities***

CLPHA is pleased the bill includes this new grant authority which also includes an authorization for appropriations. The language in the bill conforms closely to that found in the original authorizing statute for the federal elderly assisted housing program. To be consistent with the assisted housing language and to provide greater clarity, however, we recommend including the phrase, “which may be provided by third parties” before the period at the end of the subsection (d) Funding for Services. This would ensure that licensed third party providers may provide services, particularly when a State does not require licensure by a facility.

In closing, CLPHA would like to thank the Subcommittee for holding this hearing and express our commitment to working with Congress on these issues. We believe that through cooperation and collaboration, we can be successful in preserving, protecting and expanding affordable housing opportunities. Thank you for your consideration of our remarks.