



August 31, 2021

The Honorable Nancy Pelosi
Speaker of the House
United States House of Representatives
H-232, U.S. Capitol
Washington, DC 20515

The Honorable Charles Schumer
Majority Leader
United States Senate
S-221, U.S. Capitol
Washington, DC 20510

The Honorable Maxine Waters
Chairwoman of the House Financial
Services Committee
2221 Rayburn House Office Building
Washington, DC 20515

The Honorable Sherrod Brown
Chairman of the Senate Committee on
Banking, Housing, and Urban Affairs
713 Hart Senate Office Building
Washington, DC 20002

Dear Speaker Pelosi, Majority Leader Schumer, Chairwoman Waters, and Chairman Brown,

RE: Necessary Terms and Conditions of Public Housing Capital Funds in Reconciliation

The upcoming reconciliation package provides a historic opportunity to repair and preserve the nation's supply of public housing. Our organizations strongly support at least \$70 billion to preserve public housing, as proposed by House Financial Services Committee Chair Maxine Waters (D-CA) in her "Housing is Infrastructure Act." If enacted, this investment would significantly address public housing's unmet capital needs. To ensure renters and communities can benefit from this investment for years to come, Congress must guarantee that a **robust investment in public housing capital comes with a guarantee that public housing will continue to serve the needs of poor families**. Additional protections are needed to ensure our nation does not lose critical public housing stock and ensures long-term affordability.

Public housing provides affordable homes to 950,000 families across the country – primarily Black and Latino households with extremely low incomes, people with disabilities, and older adults; but the growing capital backlog led to the deterioration of hundreds of thousands of units that were consequently lost to demolition, disposition, or conversion. The backlog is so extensive that approximately 10,000 units are lost annually. Entire communities are at risk of *permanently* losing site-based, deeply subsidized affordable housing.

To ensure that new capital funds result in the long-term preservation of public housing and stability for the residents and communities they serve, the following terms and conditions are necessary:

- **Continued Public Housing Authority ownership or substantial control.** Public housing authorities' use of capital funds must be conditioned upon the guarantee of long-term, deep affordability, by requiring an ongoing public ownership interest. When housing authorities play a primary role in ownership, it ensures greater public oversight of critical assets. Therefore, housing authorities receiving these funds for a development must be required to retain fee ownership pursuant to a long-term ground lease or act as a

sole general partner or managing member of the converted property. Housing authorities could also maintain substantial control through a housing authority-controlled non-profit entity.

- **One-for-one preservation of units.** Housing authorities using these capital funds for a development cannot be allowed to demolish or dispose of public housing units without committing to a one-for-one replacement of those units (not including a de minimis exception for certain properties, or due to future, unanticipated events such as fire or natural disaster). Replacement units must continue to be deeply subsidized and meet the needs of the existing public housing families and/or waitlist households with respect to unit size, accessibility requirements, and location. This will ensure homelessness and housing instability does not increase in communities, and that families are provided housing choice.
- **Deep and long-term affordability.** Housing authorities applying these capital funds for developments must commit to providing rehabilitated or replaced deeply subsidized units for no less than 55 years.
- **No involuntary displacement of tenants or changes to their existing rights.** Similar to the Rental Assistance Demonstration (RAD) program requirements, housing authorities should not use this funding as a basis for re-screening, termination of assistance, or eviction of existing households and shall not consider those households whose housing is rehabilitated or replaced with these funds as new admissions. Public housing tenants in developments receiving these capital funds should retain their existing rights and protections, also similar to the RAD program requirements.
- **Section 3 requirements.** Housing authorities using capital funds must adhere to Section 3 requirements for rehabilitation or new construction.
- **Priority for capital improvements that address health and safety concerns.** Housing authorities receiving capital funds must commit to primarily using the funds to address unmet health and safety concerns in the units of residents.
- **Rural and smaller housing authorities.** Capital fund allocations should be based upon a formula that considers the needs of smaller and rural housing authorities, where public housing may be one of few, if not the only available deeply affordable site-based housing. Funding for technical assistance for these housing authorities is essential.
- **Choice-mobility rights for all tenants in redeveloped properties.** Many existing public housing developments are located in high-poverty, segregated neighborhoods, and current and future public housing residents should not be required to remain in these concentrated areas as a condition of receiving federal housing assistance. The Choice-mobility provisions of the RAD program, however, permits families to trade their public housing units for a portable Housing Choice Voucher. This choice-mobility option should be a term and condition attached to a housing authority's receipt of capital funds for a development and be an available option for public housing residents in those

developments. This option also opens public housing units to families on the waitlist. Choice-mobility options are critical to the Biden administration's Racial Equity Agenda.

These terms and conditions can be prescribed in a manner consistent with Section 313(b)(1) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344) ("The Act"). The Act sets forth six tests for matters to be considered extraneous under the Byrd rule. Provisions will be considered extraneous if they:

- Do not produce a change in outlays or revenues;
- Produce changes in outlays or revenue which are merely incidental to the non-budgetary components of the provision;
- Are outside the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;
- Increase outlays or decrease revenue if the provision's title, as a whole, fails to achieve the Senate reporting committee's reconciliation instructions;
- Increase net outlays or decrease revenue during a fiscal year after the years covered by the reconciliation bill unless the provision's title, as a whole, remains budget neutral; and
- Contain changes to Social Security programs.

Applying these tests here, there are no changes to Social Security and the matter is within the jurisdiction of the committees. These terms and conditions are necessary to prescribe how the outlays will be made, and should not be considered extraneous. There is some precedent for imposing terms and conditions in a reconciliation package impacting public benefits programs. For example, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) fundamentally overhauled the nation's social welfare policies, including a five-year lifetime limit on Temporary Assistance to Needy Families (TANF), flexibility to the states to design their own programs, imposition of a work requirement on recipients, enhancement of child support enforcement, enactment of policies to discourage out-of-wedlock births, and making certain immigrants not eligible for SNAP, TANF, and Medicaid until five years after they have achieved qualified immigrant status. The proposed terms and conditions to public housing funding are minor in comparison to PRWORA's changes and are directly tied to the proposed funding allocation.

These terms and conditions are necessary to ensure that Congress' major financial investments in our nation's public housing programs are used in a manner that protect the investments, the assets, and people who rely upon public housing for shelter. Please contact NHLP's Government Affairs Director, Noelle Porter (nporter@nhlp.org) if you have additional questions or suggestions.

Sincerely,

National Housing Law Project
National Low Income Housing Coalition
Shriver Center on Poverty Law
National Alliance of HUD Tenants
Poverty and Race Research Action Council