U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

July 25, 1996

Honorable Rick A. Lazio
Chairman, Subcommittee on Housing
and Community Opportunity
Committee on Banking and
Financial Services
U.S. House of Representatives
Washington, DC 20515-6052

Dear Mr. Chairman:

I am writing to inform you of the Administration's position on legislation you are currently addressing in the Conference reconciling S. 1260 and H.R. 2406, the public housing reform bills. These bills would fundamentally reform the way in which the Nation's public housing is administered. I look forward to continuing our collaboration on these bills as you move forward in the legislative Conference, and to enacting and carrying out an important piece of housing reform legislation.

The Administration strongly supports the goals of S. 1260 and HR 2406--to deregulate the Nation's 3,400 public housing agencies in a manner which will benefit public housing residents, result in economic savings to the federal government, and be fully accountable to the public. Both bills make permanent a number of critical reforms the Administration and Congress have accomplished through legislation which would otherwise expire at the end of this fiscal year. And both bills would continue the Administration's major transformation of public housing by promoting the following: 1) replacing the worst public housing with scattered site and townhouse developments and portable tenant-based assistance, especially through the permanent repeal of the one-for-one replacement requirement and facilitating demolition and conversion to tenant-based assistance or appropriate site revitalization; 2) turning around the most troubled public housing authorities, especially through enhanced powers afforded to the Department upon takeover and the required takeover of certain severely troubled PHAs; 3) infusing positive incentives to encourage work among residents, including continuation of rent modifications allowing for earned income adjustments, ceiling rents, and promoting homeownership as a means of attaining self-sufficiency; and 4) demanding responsibility from residents, through more vigorous screening, eviction, and lease enforcement provisions.

As you know from my testimony before both the House and Senate Housing Subcommittees during the past year, the Administration continues to harbor a series of very serious concerns with respect to particular provisions in both bills. These provisions would swing the pendulum too far--away from prudent national standards and appropriate federal oversight. Given reductions in public housing subsidies enacted in FY 1995 and FY 1996, and proposed for FY 1997, we remain concerned that local PHAs would be compelled to exercise this discretion in a way that disproportionately harms the Nation's poorest households, including the elderly and disabled. The Administration remains convinced, however, that our concerns can and will be addressed in the Conference, leading to the enactment of an important piece of reform legislation.

The following represents the Administration's most pressing concerns.

*I. MAJOR CONCERNS:*

**A. DISPROPORTIONATE IMPACT ON THE MOST VULNERABLE**

**1. Income Targeting in the Tenant-based Section 8 Rental Assistance Program**

Both bills unnecessarily open up income targeting in the Section 8 tenant-based assistance program to families with little or no severe housing needs. Current law targets assistance to very low-income families with incomes below 50 percent of the area median income. Moreover, federal preferences, which previously applied to 90 percent of new Section 8 recipients prior to FY 1996, have served to further target assistance to families with extremely low incomes--below 30 percent of the median income. The median income of Section 8 certificate holders is $6,900.

In contrast, HR 2406 would allow half of all Section 8 tenant-based assistance to go to relatively higher income families, with incomes up to 80 percent of the median income, while permanently eliminating federal preferences. S. 1260 would allow one fourth of all assistance to go to families with incomes at this level. The Administration believes that scarce housing resources should not be provided to households with incomes at 80 percent of the median--approximately $40,000 for families in the ten largest metro areas--who are better able to afford private market housing without any subsidy. Additionally, an 80 percent median income threshold--equivalent to 250 percent of the poverty line--exceeds the income limits for virtually all other federal means tested programs.

The Administration contends that scarce federal rental subsidies for use in the private market must be targeted to families with the lowest incomes, for the following reasons: 1) 5.3 million very low-income renters now have "worst-case housing needs," defined as paying more than 50 percent of their income toward rent or living in substandard housing units, and these families are concentrated at the lowest income levels (below 30 percent of the area median income); 2) relatively few households with incomes in the upper ranges allowed under both bills to become eligible for admission to the Section 8 program (including 17.5 million unassisted renters) have serious unmet housing needs; 3) for the first time in the history of the rental assistance program, funding for new incremental assistance has been eliminated for 2 consecutive years; 4) federal preferences have been repealed; 5) public housing income targeting is to be opened up to families with relatively higher incomes to accommodate mixed income communities, resulting in fewer subsidies available for extremely poor families; and 6) tenant-based rental assistance easily integrates families with low incomes into private, mixed-income housing of their choice and does not suffer from the income concentration problems of project-based programs.

***While the Administration supports the repeal of federal preferences, the Administration is strongly opposed to both bills' income targeting for the Section 8 program. Instead, we believe that three-fourths of all Section 8 tenant-based assistance should be targeted to extremely poor families with incomes at or below 30 percent of the area median income (approximately $11,300), with the remainder targeted to families at or below 50 percent of the area median income.***

**2. Income Targeting in public housing**

The Administration believes that both bills unnecessarily open up income eligibility in public housing to families earning incomes of up to 80 percent of the median, or approximately $40,000, in the ten largest metro areas. While the Administration believes that it is imperative to admit working families with incomes high enough to raise the average median income from the current level of 17 percent of the median ($6,420), the Administration firmly believes that mixed income communities can be attained simply through the repeal of federal preferences, proposed in both bills, coupled with allowing the admission of families with incomes of up to 60 percent of the area median, or approximately $22,700. A 60 percent upper cap, moreover, will align the program's income mix with the HOME and low-income housing tax credit programs.

The Administration also is concerned with the House bill's definitions of "income," "low-income families" and "very low-income families". All three of these definitions vest authority in the PHA, rather than the Secretary, to determine how income will be defined and what income levels will be served. As drafted, these provisions could have the effect of thwarting any income targeting otherwise set in the bill.

***The Administration supports the Senate requirement of 40 percent of new admissions for extremely low-income families in public housing; however, the Administration firmly supports an upper cap for the remaining new admissions of families with income levels no higher than 60 percent of the area median income (or on average approximately $22,700 nationally).***

***The Administration also seeks a development-by-development target that mirrors the PHA-wide target to avert substantial income segregation in particular developments. Also, the ability to define income and income-eligible families must be vested in the Secretary, and not the local PHA.***

3. **Rent charges**

a. Rent charges in public housing

The Administration strongly supports rent structures for housing assistance which encourage work and responsibility among residents. The Administration also strongly supports the Brooke amendment protections from unaffordable rent charges. Until recently, the Brooke amendment required every tenant to pay approximately 30 percent of their adjusted income toward rent. Current law, as reformed by this Congress in the FY 1996 VA/HUD Appropriation, has eliminated previous work disincentives contained in the public housing rent structure, while also ensuring that the poorest families, elderly, and disabled households are protected from unaffordable and unfair rent charges. Now, PHAs are permitted to establish earned income adjustments and ceiling rents to encourage work, and to retain and attract working families to public housing communities. Under current law, public housing residents no longer have to pay 30 percent of every dollar earned toward rent. Unfortunately, these modifications were enacted only for FY 1996 and only in the public housing arena.

***The Administration, therefore, strongly opposes the provisions in the House bill repealing Brooke amendment protections. Instead, we would support: 1) for families with incomes at or below 60 percent of the median income, requiring rent charges to be up to the Brooke amendment limitation (up to 30 percent of adjusted income); and 2) the permanent extension of the current law modifications to the Brooke amendment which encourage work.***

b. Rent Charges in the Native American Housing programs

The Administration believes that the House bill, while reforming the Nation's Native American housing programs in a positive fashion, does not address rent protections for the poor. The House bill completely removes rent protections for poor households assisted under the Native American housing programs. Neither the Brooke Amendment, nor any modified version, was included in Title VII of the House bill. The result is to remove the floor and the ceiling in Indian Housing, allowing the tribally designated housing entities (TDHE) to charge any amount for rent, regardless of whether the charge would be affordable to poor families. The Administration instead supports a provision that parallels our position for public housing residents: permitting a TDHE to charge *up to* 30 percent of monthly adjusted income. Since so much of the decent, safe and sanitary housing available on-reservation is HUD housing, the needs of this special population are best served by providing flexibility to serve the broad variety of eligible Native American families in these settings, while assuring that the housing will be affordable.

***Rents for the Native American housing programs should be required to be set by the TDHEs at up to 30 percent of adjusted income.***

c. Minimum Rents

The Administration supports the notion that every family receiving assistance should pay rent, to the extent possible. In fact, the Brooke amendment is intended to function in just this manner. The minimum rent concept applies only to families whose adjusted or gross incomes are so low that the required Brooke payment--30 percent of adjusted income--is less than the mandatory minimum.

The Administration is supportive of allowing PHAs to charge a minimum rent of up to $25, as long as it does not cause unnecessary hardship (for example, for those families awaiting public benefit eligibility determinations). HUD should have the authority, however, to require hardship exemptions.

***The Administration, therefore, opposes the minimum rent provision in the House bill. Instead, we support the Senate minimum rent requirement, of an amount not to exceed $25, but contend that there should be an exemption for hardship cases, as the House bill contains, to be determined by the Secretary.***

4. **Moving-to-Work Demonstration for the 21st century**

The Administration strongly opposes the demonstration contained in HR 2406, which functions as a back-door elimination of all program requirements, including Brooke rent protections and income targeting, for up to a half million families. The FY 1996 Appropriation permits a demonstration for up to 30 PHAs to test innovative ways to link families to work, through merging funding streams and testing new rent structures while retaining reasonable income targeting. The small size of the demonstration permits a rigorous evaluation and program replicability. In contrast, HR 2406 expands this small demonstration to 100 PHAs in each of the next 3 years, for a total of 300 PHAs, with perhaps half a million units, including all 175,000 units of the New York City Housing Authority in the first year. The provision also eliminates current law income targeting and assurances that the same number of families would be served. The Administration would entertain a limited expansion of the current law demonstration, as long as the Secretary may specify additional protections, including unit caps, income targeting, rent setting and limitations on funding consolidation.

***The Administration opposes the moving-to-work demonstration as provided in HR 2406, and remains concerned that, if enacted, perhaps half a million families, including all families residing in New York City, will be left without affordability protections or other legal protections. The absence of income targeting for the demonstration could allow PHAs merely to admit higher income, working families, rather than develop strategies to employ the two-thirds of public housing families that are not currently working. Instead, the Administration supports continued authorization of the current move-to-work demonstration, with additional protections specified by the Secretary if expanded to additional PHAs.***

5. **Payment Standard in the Tenant-based Section 8 program**

The Administration remains concerned with the unfettered discretion afforded to PHAs to alter the depth of the subsidy level in the Section 8 tenant-based assistance program. The subsidy level is based upon tenant rent contributions (currently the Brooke amendment rents) and also on the rent for the unit capped by the typical rent charged for a standard quality private rental unit of the size the family needs, or the "payment standard". The subsidy calculation is the payment standard, or lower rent for the unit, minus the family rent contribution.

Under current law, the payment standard is tied to an area's Fair Market Rent (FMR), with exceptions for exceptionally high rent sub-markets. The current law payment standard, combined with Brooke rents, ensures that assistance will be spread to the maximum number of families possible while still giving families access to a broad range of housing units. In contrast, both bills allow the payment standard to rise to 120 percent of FMRs, regardless of whether the area is a high rent area. These deeper subsidies would unnecessarily reduce the total number of families who could be assisted under the program. Additionally, allowing the payment standard to be raised above the FMR limit of current law, combined with loosened income targeting in both bills, would allow higher income families, with little or no need, to access deep and expensive housing subsidies.

***The Administration believes, instead, that the upper end of the payment standard range should remain at its current level of 100 percent of the Fair Market Rent, with exception levels for locations with unusually high market rents.***

**B. SELF SUFFICIENCY**

The Administration firmly believes that residents of public housing must assume certain responsibilities in return for the benefits of their public housing assistance. To this end, the Administration supports the many positive reforms in both the House and Senate bills which place a premium on resident self-sufficiency and on linking the PHA with existing providers of services. Additionally, both bills would toughen screening, lease enforcement and eviction requirements.

However, the Administration remains deeply concerned about the House bill's additional self-sufficiency requirements. These new sweeping provisions would fundamentally change the public housing and section 8 programs and would impose inordinate and costly burdens on 3,400 local PHAs whose budgets and administrative capacities are already stretched too thin. These provisions were added to the bill on the evening before House floor debate, without any opportunity for public review or Congressional hearings. In particular, the Administration fears that such provisions would too easily result in harmful and unintended consequences for residents.

***Instead, the Administration would strongly support authorizing language which emphasizes collaboration between federal, state and local enterprises to address welfare reform and self-sufficiency in a coordinated manner. For example, the Administration supports the provisions in both bills which require PHAs to describe in their annual plans the ways in which they plan to coordinate with other local and state welfare and service agencies. We also support the Senate provision which adds to the existing performance measurement system (PHMAP) an***

*indicator that measures the extent to which PHAs carry out self-sufficiency activities. Additionally, the Administration would support: 1) authorization of 30,000 Section 8 certificates for use with local collaborative welfare-to-work initiatives; and 2) establishment of a performance measurement indicator for the Section 8 program to measure the extent to which section 8 administrators carry out, or create linkages for, self-sufficiency activities.*

C. FEDERAL OVERSIGHT

The Administration supports the Senate bill's approach to revising the current performance measurement system--the Public Housing Management Assessment Program (PHMAP)--for oversight of public housing, by adding additional factors which measure the degree to which the PHA carries out activities promoting the self-sufficiency of residents. The Administration strongly opposes the House bill's inappropriate oversight mechanism, which establishes a new federal agency to accredit public housing agencies and providers of the "deep subsidy" programs. This structure will not reduce the size of the federal government--it will only redistribute bureaucracy. The bill, moreover, substantially removes HUD's oversight and auditing responsibilities without substituting an adequate method to assure accountability for federal funds.

Such a structure is not appropriate in an era when HUD's role in administering the public housing program is targeted more and more to turning around those PHAs that are troubled, and to revitalizing those developments and neighborhoods that are distressed. For the first time in three decades, the Administration has taken an aggressive approach to troubled public housing authorities--by placing some in receivership, instituting direct takeovers of others, or establishing innovative partnerships with others located in cities with strong local leadership. In contrast, the elimination of continuous federal oversight as proposed in the House bill could thwart the progress made by this Administration, and impede government's ability to intervene before it is too late.

*The Administration, therefore, supports the Senate bill revisions to the PHMAP system and would support the establishment of a Task Force to determine the need for and benefits from, if any, the establishment of an outside accreditation entity. Additionally, the Administration believes that it is critical to have in place systems to measure and reward good performance, by: 1) establishing a bonus pool setaside from the public housing capital fund, to reward high performing PHAs; and 2) measuring the performance of Section 8 rental assistance administrators, through the establishment of the Section Eight Management Assessment Plan (SEMAP). The Administration also supports the*

***House and Senate bill provisions for enhanced powers, the required takeover of severely troubled PHAs that are not making substantial progress, and the House provision for oversight of PHAs "at risk" of becoming troubled.***

**D. OCCUPANCY STANDARDS**

The Administration opposes the House bill's provision on occupancy standards because it would reduce protections currently afforded to families with children and to persons with disabilities under the Fair Housing Act. The provision would invite state adoption of absolute occupancy standards of two persons per bedroom regardless of the facts of a particular situation, or the existence of any health or safety justifications. Furthermore, the bill would also create a safe harbor for housing providers by imposing an absolute two person per bedroom standard in those states that do not adopt their own occupancy standards.

Enactment of this provision could result, for example, in allowing a housing provider to refuse to rent a 2-bedroom unit to a family with three children, even if: 1) the bedrooms were unusually large; 2) one of the children was an infant; or 3) a den could reasonably be used as a bedroom. HUD's current occupancy standard, which conforms to Congress's direction in the FY 1996 HUD Appropriation Act, appropriately requires HUD to determine, on a case by case basis, whether a standard is legal under the Fair Housing Act, and based upon a variety of circumstances. In contrast, the House bill does not provide for such special circumstances to be taken into account. Moreover, the bill effectively preempts the Fair Housing Act by presuming that any state-enacted occupancy standard is reasonable.

**E. DEFINITION OF "PERSON WITH DISABILITIES"**

The Administration strongly opposes the House bill's changes to the current law definition of "person with disabilities" because the changes directly conflict with Administration's goals of encouraging economic self-sufficiency, and would drastically curtail access to housing for low-income persons with disabilities. The bill drops from the definition persons who have previously been defined as "handicapped" by virtue of a substantial, long-term physical or mental impairment. This prong of the definition covers individuals who are disabled, but who are able to work in some capacity. Because this definition determines eligibility for housing resources including designated public housing, Section 811 housing, and Section 8 tenant-based assistance, the provision would unnecessarily eviscerate the ability of low-income, disabled individuals to access targeted resources merely because they work. Moreover, the provision could induce persons with disabilities to remain dependent on public benefits rather than join the work force, in order to continue eligibility for housing assistance.

**F. RESIDENT EMPOWERMENT**

The Administration strongly supports provisions in both bills which empower residents, ensure that they participate in decisions affecting their lives, and protect them from unwarranted intrusions. Additionally, we support retention of certain elements of current law which are not in either bill. The final conferenced bill must include, at least, the following:

- Reauthorization of the Tenant Opportunity Program, as provided in both bills, which provides funds to resident groups to undertake activities, including those which lead to resident self-sufficiency.
- The Senate authorization of the supportive services funding, originally authorized in the FY 1996 appropriation.
- Resident membership requirements on the public housing board, as provided in both bills, and the House bill's required plan review period for affected residents.
- Current law rights of consultation afforded to tenants in the demo/dispo process;
- The Senate bill lease and grievance procedures, as well as informal hearing appeal rights afforded to applicants in the House bill, in conjunction with eviction and admissions procedures.

**G. UNNECESSARILY DIMINISHING AFFORDABLE HOUSING STOCK IN THE SECTION 8 PROJECT-BASED PROGRAM**

The Administration has proposed a comprehensive approach to addressing the issue of Section 8 contract renewals, over-market subsidies, and the gradual reorientation of a portion of the portfolio to a mixed-income environment. The Administration believes that these issues must be handled in a structured, coherent manner, and therefore opposes the House bill's piecemeal approach to solving these problems. However, the Administration would support something less than a comprehensive solution of the Section 8 renewal and oversubsidization issues if Congress fails to address these issues comprehensively in this legislative session, and if the bill were modified to contain additional financial and resident protections.

### H. SECTION 108

The Administration opposes the House bill's restriction on Section 108 homeownership activities to no more than 50 percent of each application. Such a restriction would preclude small entities, with funding requests for just one project, from engaging in any economic development activity if the single project was housing-related.

## *II. OTHER CONCERNS*

### A. ELIMINATION OF THE 1937 ACT

At the request of the House Banking Committee, the Administration has conducted an extensive review of the implications of the repeal of the 1937 Act. We have determined that there are, at a minimum, over 500 references to the 1937 Act from other statutes, located both within and outside of the jurisdiction of the Congressional Banking Committees. Additionally, the Administration has identified a series of issues which the Conferees should address if the repeal is accepted in the Conference. Moreover, coupling the 1937 Act repeal with self implemention of virtually the entire Act, as provided in the House bill, would inhibit the ability of the Administration to ensure that the new law is carried out uniformly, with adequate guidance. The Administration, therefore, urges Congress to ensure that any repeal of the 1937 Act is done cautiously and carefully.

### B. MCKINNEY ACT

The Administration supports the intent of the House bill provision--making self-help homeownership an eligible activity for nonprofit groups seeking surplus property. However, the Administration opposes the provision's current prioritization of self-help homeownership transfers over and above all transfers under the existing McKinney Act right of first refusal for providers of services to homeless individuals and families. Instead, entities interested in engaging in self-help homeownership for low-income individuals as well as entities engaging in activities for the homeless should be afforded an equal opportunity to apply for a surplus property transfer. To this end, the Administration also opposes the House bill's complete elimination (by deeming certain transfers to be in compliance with the McKinney Act) of current law's right of first refusal to homeless groups for surplus properties with particular features and dimensions.

### C. HOME AND CDBG INCOME TARGETING

The Administration opposes the House bill's unnecessarily loosened income targeting in both the CDBG and HOME programs, allowing families with incomes even above moderate income ranges to benefit from these programs. These changes would eviscerate the low-mod benefit requirement in those programs as well as area targeting for CDBG, and, at a minimum, would immediately raise the income limit for both programs in 35 relatively higher income metropolitan areas.

### D. DISCRETION TO SETTLE LAWSUITS

The Administration opposes the House bill's provision which requires the Secretary of HUD to consult all adjacent to local governments, when settling any lawsuit involving HUD, a PHA, and a local government. This provision is an unnecessary intrusion into the executive's ability to adjudicate its own affairs. Moreover, the Justice Department represents HUD in settling lawsuits. We believe it unwise to require the Secretary of HUD to engage in particular consultations that may conflict with or duplicate the efforts of the Justice Department in this same regard. At a minimum, this provision will be extremely costly for the federal government, since it will hinder the ability to settle lawsuits in a timely and cost-effective manner. Finally, the provision is overly broad, since it would require such consultation for all matters, whether trivial or substantial.

### E. LABOR STANDARDS

The Administration believes that it is imperative that strong labor standards relating to Federally-assisted housing be maintained to protect workers, residents, and communities. Among the most important labor protections are the Davis-Bacon and related acts, which ensure that federal construction projects do not undercut the wages of workers or impair the ability of local contractors and their employees to compete. As a result, the Administration strongly opposes the provision in the House bill that would allow a waiver of Davis-Bacon protections for all Indian housing developments. We believe that developments for Native Americans warrant the same protections applicable to other developments under the Davis-Bacon and related acts.

The Administration also has other concerns regarding exemptions from the Davis-Bacon protections which will be transmitted to Conference staff separately.

**F. SINGLE AUDIT ACT**

Regardless of the oversight mechanism utilized to measure a PHA's performance, the Administration believes it is absolutely essential that PHAs continue to be covered by the Single Audit Act. The House bill's accreditation board proposal eliminates the Single Audit Act, in direct contrast to the findings of recent studies, which have determined that the Single Audit Act has improved the management of Federal funds.

***III. TECHNICAL COMMENTS AND OTHER ITEMS SUPPORTED BY THE ADMINISTRATION***

The Administration has provided Conference staff with information regarding other technical and substantive concerns, as well as lists of other provisions which we support. We intend to continue to provide additional helpful materials of this nature separately.

***IV. CONCLUSION***

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Thank you for your consideration.

Sincerely,

Henry Cisneros

Henry G. Cisneros

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 8, 1996
(House)

# STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 2406 - United States Housing Act of 1996
(Lazio (R) NY and 18 cosponsors)

The Administration supports the objectives of H.R. 2406, to streamline and strengthen public housing and to give local communities more flexibility to administer housing assistance in accord with local needs and conditions. The bill would codify and make permanent much of the Administration's agenda for transforming the Nation's public housing system by: (1) facilitating the demolition and replacement of severely distressed projects; (2) improving the most troubled public housing authorities (PHAs); (3) encouraging work; (4) getting tougher on crime; and (5) requiring the replacement of public housing assistance for certain distressed projects with portable, section 8 rental subsidies.

The Administration understands a manager's amendment will be offered that will make a number of improvements in the bill. For example, the amendment will: (1) address some of the Administration's concerns regarding rent caps and income targeting; (2) restore the essential portability feature of tenant-based section 8 rental assistance; (3) establish two public housing funds, rather than just one; (4) provide the Secretary with more oversight of public housing plans; and (5) retain a program that enhances economic opportunities for low- and very low-income persons.

While pleased with these improvements, the Administration remains opposed to H.R. 2406 unless it is amended to:

- Retain the Brooke amendment, which requires that public housing and section 8 residents pay no more than 30 percent of their income for rent, and make permanent certain PHA rent-setting flexibilities enacted in the 9th Continuing Resolution for 1996, Public Law 10499. As reported, H.R. 2406 would repeal the Brooke amendment under the guise that it inappropriately restricts the ability of PHAs to adjust rent requirements. The Administration believes that provisions in the Balanced Budget Downpayment Act I already provide PHAs with adequate rent-setting flexibility to create work incentives for residents while protecting the most vulnerable very low-income tenants against unwarranted rent increases. ✓

- Cap the minimum rent requirement at no more than $25 per month for the poorest families in public housing and allow waivers of this requirement in particular hardship cases. By placing no upper limit on the minimum rent that PHAs can charge, H.R. 2406 as reported could result in many very low-income individuals paying an extremely high percentage of their income for rent. This would effectively repeal the Brooke amendment for these households. ✓

- Maintain the income eligibility level for section 8 portable housing assistance at 50 percent of area median income and further target 75 percent of the subsidies to households with incomes below 30 percent of the area median income. By setting income eligibility at 80 percent of area median income, H.R. 2406 as reported would change the focus of this program from one that is currently well targeted to very low-income families to one that largely serves families with minimal need for assistance. ✓

- Establish an income limit for admission to public housing that is no more than 60 percent of the area median income and require that at least 40 percent of new residents in a particular public housing development have incomes below 30 percent of the area median income. These eligibility requirements would encourage PHAs to achieve a mix of incomes in their developments, while maintaining the fundamental mission of public housing -- to serve low-income Americans unable to afford decent and safe housing in the private sector. In contrast, H.R. 2406 as reported would loosen eligibility requirements to the point that the most desirable public housing developments could be rented exclusively to households with moderate-to-middle incomes. ✓

- Continue HUD's authority to ensure accountability of Federal public housing expenditures. The Administration is open to the establishment of a task force to evaluate the need for an outside entity to accredit PHAs. H.R. 2406, however, would inappropriately establish a new Federal agency for this purpose without determining whether this approach would ensure that Federal tax dollars would be spent accountably. ✓

- Revise the volunteer provisions to eliminate conflicts with the Fair Labor Standards Act (FLSA). H.R. 2406 as reported would create potential conflicts with the volunteer provisions of the FLSA by: (1) incorporating an overly broad definition of volunteers that includes individuals who receive expenses, benefits, and fees; and (2) removing protections for certain public agency employees by allowing such employees to be classified as volunteers when performing services for which they generally receive compensation.

The Administration understands that the Native American Housing Assistance and Self-Determination Act of 1996 (the Act) will be offered as an amendment to H.R. 2406. The Administration supports the objectives of the Act, which would establish a new block grant program to provide affordable housing for Native Americans. The new program would provide increased flexibility for Indian tribes and their tribally designated housing entities (TDHEs).

The Administration, however, has certain concerns with the Act and recommends that it be amended to:

- Eliminate waiver from Davis-Bacon Act requirements for contracts for construction or rehabilitation financed by grant funds provided by the Act. The Administration strongly opposes repeal of the Davis-Bacon Act, including proposals such as this that would result in piecemeal repeal of its basic coverage.

- Structure loan guarantee programs to conform with the Federal Credit Reform Act and existing OMB guidance for Federal credit programs. As drafted, certain aspects of the loan guarantee programs are contrary to Federal credit policy. For example, the Act includes a prohibition against Federal Financing Bank financing when 100 percent Federal loan guarantees would be extended to obligations issued by Indian tribes to finance authorized housing activities.

- Clarify that the Brooke Amendment applies to very low-income Native American families in rental units covered by this Act. As mentioned earlier, the Administration strongly supports the Brooke Amendment and believes that the Act's expanded flexibility for Indian tribes and TDHEs could result in very low-income Native American families being required to pay higher percentages of their incomes for rent.

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May 8, 1996
12:30 pm draft

**"Managers" Amendment to HR 2406**
**Summary**

Late in the evening of May 7, 1996, the day before the HR 2406 is scheduled to come up on the Floor, the Majority Housing Subcommittee circulated a 115-paged proposed amendment to the House public housing reform bill. The description of this amendment was circulated at 12:10 am on the morning of May 8, 1996. Note that this amendment has not been embraced by all the bill's managers, and reflects only the positions of the Chairman.

The troubling components of this amendment include:

1. **Public Housing Income Targeting:** Targets 30 percent of the portfolio to families below 30 percent of the median income. Continues to open up the remainder of vacancies to families up to 80 percent of the median income, which, in the top 10 metro areas, is over $40,000 or 250% of the poverty line.

2. **Section 8 Income Targeting:** Targets 50 percent of tenant-based Section 8 assistance to families below 60 percent of the median income, with the remaining half of all slots opened up to families up to 80 percent of the median income. Especially when worst-case housing needs are rising to their highest level yet -- 5.3 million families -- the amendment's targeting would be a complete, and harmful, reversal of current policy that directs scarce portable tenant-based subsidies for use in the private market to families with the greatest need. Instead, assistance would be opened up to 17.4 million families, a majority of whom need no assistance to afford housing in the private market or have any other serious housing problems.

3. **Brooke Rent Protections:** Retains Brooke for current and prospective families with incomes below 30 percent of the area median income, and for *current* elderly and disabled families at all income levels. Continues to repeal Brooke for 1) all very-low income families between 30 and 50 percent of the median income, 2) for all prospective elderly and disabled families, whose incomes are above 30 percent of the median; and 3) For all low income families with incomes above 50 percent of the median income.

4. **Back-door Brooke Repeal:** Adds a demonstration to the bill which allows 100 PHAs each year for 3 years, and which must include New York City immediately, to eliminate Brooke merely by creating a plan oriented to self-sufficiency. New York, for example, has 175,000 units. Unlike the demonstration passed by Congress in April as part of the omnibus appropriation, this demonstration appears to: 1) eliminate any income targeting, 2) unnecessarily increase the number of PHAs and units in the demonstration above the level permitted in the FY 1996

appropriation -- 30 PHAs (thereby impeding the ability to adequately monitor and evaluate the results); 3) require adherence to any other elements of the Act, such as the Fair Housing laws.

5) **Time Limits for Public Housing which penalize Work:** For the first time in the history of federal housing assistance, requires every adult member of a household with children to sign leases agreeing to time limits. Because time limits would be triggered upon residents working and attaining self-sufficiency, they would operate to penalize work and residency by working families.

6) **Federal Oversight:** The amendment fails to ameliorate the bill's relinquishment of federal accountability to the taxpayer by continuing to place oversight outside of the agency responsible for administering the public housing program. It would set up a brand new federal agency. It would not reduce the bureaucracy -- but would recreate it and add to it. Additionally, in the very first year of the new public housing system, the amendment places some oversight responsibility in the hands of a private entity called the "National Center for Housing Management".

7) **One-Strike:** Makes amendments to the toughened standards for admission and eviction of residents, originally enacted as part of the Housing Opportunity Program Extension Act of 1996. The Administration is currently unclear as to the effect or need for these amendments. While the Department is supportive of extending similar provisions to the assisted housing portfolio, such provisions should be analogous.

8) **Occupancy Standards:** Significantly weakens the laws governing occupancy standards by prohibiting federal occupancy standards and declaring any occupancy standards established by states to be presumptively reasonable, regardless of their content.

9) **Mark-to-Market:** Allows any owners of any Section 8 project-based assisted housing to opt out of the program (for 40 percent of their units) and raise rents on residents, as long as contract rents exceed FMRs. This means that those properties in good neighborhoods, with high value -- likely to be the only affordable housing in those neighborhoods -- will be unnecessarily lost. There needs to be a systemic solution that does not aggravate the overall needs of the portfolio.

10) **CDBG/HOME:** Diminishes income targeting in both the CDBG and HOME programs -- redirecting limited federal resources to relatively higher income beneficiaries.

Seems to make important moves in the following:

- **Minimum rents:** Allows minimum rents to be at least $25 and no more than $50, with exceptions for hardship.

May 8, 1996
1:00 pm

## HUD's Top Concerns on HR 2406 and Manager's Amendment

| Provision | Current Law | HR 2406 | Manager's amendment | HUD |
|---|---|---|---|---|
| Rents | 1. Brooke amendment<br>2. Earned income adjustments allow PHAs to encourage work through more flexible rent structures, at PHA's (financial) risk.<br>3. Ceiling rents allow PHAs to price units competitively with the market, allowing for retention of mixed income occupancy. They cannot be lower than operating costs<br>(Minimum rent, earned income, and ceiling rent adjustments expire at end of fiscal 1996). | 1. Repeals Brooke: No limit on rent charges.<br>2. Requires PHAs to make certain adjustments for earned income.<br>3. Contains ceiling rent provisions that are different from current law, as enacted on 1/26/96 (e.g. does not require operating costs as floor).<br>Retains Brooke for current and prospective families with incomes below 30 percent of the area median income, and for *current* elderly and disabled families at all income levels. | Repeals Brooke for:<br>1) All low-income families with incomes above 30 percent of the median income, except current elderly and disabled households.<br>2) All families in New York City.<br>3) All families in 300 PHAs that will be part of a move to work demo. (Back-door repeal of Brooke).<br>Retains Brooke for current and prospective families with incomes below 30 percent of the area median income, and for *current* elderly and disabled families at all income levels. | *Protect the very low-income, vulnerable, and families with worst case housing needs, while addressing mixed income occupancy through other means.*<br><br>1. Retain Brooke amendment.<br>2. Permanently enact earned income adjustments and ceiling rent provisions as authorized under current (post-Jan. 1996 CR) law. |

| Provision | Current Law | HR 2406 | Manager's amendment | HUD |
|---|---|---|---|---|
| **Minimum Rents** | Requires PHAs and the Secretary to charge every public housing and Section 8 resicent a minimum rent of at least $25 and no more than $50. | Requires every public housing and Section 8 resident to pay a minimum rent of at least $25. There is no upper limit to what a PHA or Section 8 landlord may charge for a minimum rent. | At least $25, no more than $50, with PHA exceptions for hardship. | *Eliminate minimum rent requirements which fall disproportionately on those with the lowest incomes and the most vulnerable.*<br><br>Allow PHAs to charge minimum rents of up to $25. Ensure that there are provisions allowing waiver of minimum rents in particular cases of hardship. |
| **Income Targeting for public housing** | 1. 75-85 of all new admissions below 50 percent of the median income.<br>2. 15-25 can go up to 80 (but usually don't because of federal preferences).<br>3. Project by project targeting is 75 percent of new admissions in each project must have incomes below 50 percent of the median. | 1. 25 percent of new admissions below 30.<br>2. 75 percent can go up to 80.<br>3. No project by project percentage requirement. | 30 percent below 30 percent of the median income. The remaining 70 percent of the portfolio would now be opened up to families with incomes up to 80 percent (or, in the top 10 metro areas, over $40,000 or 250% of the poverty line) | *Ensure targeting to those most in need while attaining mixed income occupancy. Avert potential for project income segregation. Targeting must be limited to NEW Admissions only, otherwise, it will be years before poor families would be eligible for assistance.*<br><br>1. 40 below 30<br>2. 60 can go up to 60 (not 80).<br>3. Project-by-Project: 40 below 30. |

| Provision | Current Law | HR 2406 | Manager's amendment | HUD |
|---|---|---|---|---|
| **Income Targeting for Section 8** | 100 percent below 50. | 100 percent below 80. (No targeting whatsoever.) | 50 below 60, remainder below 80. No targeting to extremely low income households | *Target portable assistance to those with the lowest incomes.*<br>1. 75 percent below 30 percent of the area median.<br>2. 100 percent below 50 |
| **Time Limits for Public Housing** | Federal housing assistance has never been time-limited | N/A | Requires all adult members of families with children to sign lease agreements agreeing to a specific date for termination of housing assistance, tied to self-sufficiency. Could discourage work (by terminating assistance upon attainment of self-sufficiency) and is likely to discourage working families from entering public housing and becoming vital components of mixed income communities. | Oppose time limits: low-wage working families need assistance to afford private housing in many markets. |

| Provision | Current Law | HR 2406 | Manager's amendment | HUD |
|---|---|---|---|---|
| **Funding Structure** | Programs are separately funded. | One fund, based initially on sum of formulas for capital and operating. | 2 funds, no bonus pool. | *Need to control outlay expenditures while ensuring adequacy of funding for both capital and operating needs as distinct.*<br><br>1. Two funds.<br>2. Ability to flex up to 10 percent between funds.<br>3. Bonus pool as a reward for superior performance. |

| Provision | Current Law | HR 2406 | Manager's amendment | HUD |
|---|---|---|---|---|
| **Federal Oversight: Secretary's Powers in Reviewing Plans** | Secretary has basic approval responsibility for all public housing programs, including Comp Grant. Most programs are governed by explicit mandate. | Virtually eliminates Secretary's ability to oversee program and review PHA plan. | Ok | *Especially where PHAs are given discretion, Secretary must be afforded with sufficient plan review powers to ensure accountability in spending taxpayer dollars, and suitable protection of the poor in accordance with national objectives.*<br>1. Ensure that review powers at least mirror those under current law in reviewing public housing comp. grant plans.<br>2. Ensure that plans can be rejected if they are inconsistent with federal law. |
| **Federal Oversight: Accreditation** | Secretary oversees all programs. | Sets up a new federal agency to become an accreditation board to monitor, accredit, and evaluate public housing, tenant-based Section 8 AND project-based Section 8 housing programs. | Retains the Accreditation Board in HR 2406, but makes some amendments which involve use of other outside entities in developing standards in the first year. | *Revise existing performance evaluation system (PHMAP) while commissioning a task force to look into the appropriate role, if any, of a new entity charged with overseeing public housing.* |

| Provision | Current Law | HR 2406 | Manager's amendment | HUD |
|---|---|---|---|---|
| **Troubled public housing authorities** | 1. Process for identifying troubled management, and for improvement, but no hard triggers requiring HUD to take action. Also, lack of enhanced powers for receivers or HUD upon takeover of a troubled PHA.<br>2. No distinction between troubled and "chronically" troubled PHAs. | 1. Institutes an important process in improving troubled PHAs, setting a hard trigger, and providing enhanced powers upon takeover.<br>2. Within 6 months of enactment, requires takeover of all "chronically" troubled PHAs (troubled for 3 years). | | *Chronically troubled PHAs should be treated the same as all troubled PHAs: Given one year to improve, or else taken over by HUD or a receiver.*<br><br>At a minimum, the provision for chronically troubled must exempt those already in receivership or HUD takeover, and those already making satisfactory progress. |

| Provision | Current Law | HR 2406 | Manager's amendment | HUD |
|---|---|---|---|---|
| **Linking Residents to Jobs: public housing and Section 8** | Variety of jobs/supportive services programs available for linking residents to jobs. No funding for program of targeted economic development -- explicit linkages to jobs for public housing residents. | Requires description of linkages with state welfare agencies in PHA plan. Allows PHA performance to be measured in this regard. Continues variety of programs. | 1. Requires self-sufficiency and moving to work in a way that could penalize working families and moving to work by terminating their assistance. Will discourage working families from moving into public housing and mixed income occupancies.<br>2. Establishes a move to work demo for 100 PHAs, which must include New York City (with over 175,000 units) which is oriented toward work and self-sufficiency, but has no constraints that would protect residents as they make the transition. | *1. Authorize move-to-work demonstration, and $5 million in funding, oriented to linking families in public housing to jobs. This should be limited to no more than 30 phas, to enable the Dept. to monitor and evaluate results, and ensure that families aren't harmed by discretion. Also, program must require reasonable rents, and target assistance to very low income households.*<br>*2. Authorize new Section 8 certificates for a welfare-to-work demo, designed to link Section 8 households to jobs, education, and training, through coordination amongst housing agencies, state and local welfare reform efforts. Program would include an opportunity counseling" component.* |

| Provision | Current Law | HR 2406 | Manager's amendment | HUD |
|---|---|---|---|---|
| **Homeownership opportunities for public housing residents** | N/A | Attempts to facilitate homeownership through PHA plan, eligible entities. Requires downpayment from resident's own resources. | Seems to facilitate homeownership for both public housing and Section 8 assisted residents. However, places no constraints on the amount of operating subsidies that could be used in connection with homeownership, even after a resident has purchased a home. | *Make Homeownership a viable option for certain public housing and Section 8 residents, by ensuring workability of provision.*<br><br>1. Clarify eligibility for homeownership option.<br>2. Permit sale to other entities for ultimate resale to tenants;<br>3. allow use of HQ reserve for technical assistance for homeownership programs;<br>4. Ensure that operating subsidy can be used temporarily for additional public housing units developed with proceeds from sales to tenants. |
| **Section 8 Tenant-based assistance: Portability** | Tenant-based Section 8 assistance is completely portable | Eliminates portability | Restores portability | *Section 8 choice-based assisted housing must retain portability feature.* |

| Provision | Current Law | HR 2406 | Manager's amendment | HUD |
|---|---|---|---|---|
| **Section 3: Economic Opportunities for Low- and Very-Low Income Persons** | PHAs and their contractors and subs are required to make best efforts to provide training and jobs to residents and other very-low income community residents in awarding/spending public housing Mod, HOPE VI, and Operating funds. | Eliminates Section 3 requirement and merely requires PHAs to make best efforts to enter into agreements with contractors and subs to provide residents with training, job opportunities and internships. | Seems to restore program | *Retain current law, since it ensures that federal dollars benefit low-income families in the creation of job and training opportunities at NO ADDITIONAL COST to the federal government. Simplify where necessary.* |

DRAFT: July 9, 1996
6:00 pm

Letter to the Conferees

Dear Conferee:

I am writing to inform you of the Administration's position on legislation you are currently addressing in the Conference reconciling S. 1260 and H.R. 2406, the public housing reform bills. These bills would fundamentally reform the way in which the Nation's public housing is administered. I look forward to continuing our collaboration on these bills as you move forward in the legislative Conference, and to enacting and carrying out an important piece of housing reform legislation. what

The Administration strongly supports the goals of S. 1260 and HR 2406 -- to deregulate the Nation's 3,300 public housing agencies in a manner which will result in economic savings to the federal government and be fully accountable to the public. Both bills make permanent a number of critical reforms the Administration has initiated through legislation which would otherwise expire at the end of this fiscal year. And both bills would continue the Administration's major transformation of public housing by promoting the following: 1) replacing the worst public housing with scattered site and townhouse developments and portable tenant-based assistance, especially through the permanent repeal of the one-for-one replacement requirement and the mandatory demolition/conversion to tenant-based assistance or site revitalization; 2) turning around the most troubled public housing authorities, especially through enhanced powers afforded to the Department upon takeover and the "death penalty" for severely troubled PHAs; 3) infusing positive incentives to encourage work among residents, including continuation of rent modifications allowing for earned income adjustments, ceiling rents, and promoting homeownership as a means of attaining self-sufficiency; and 4) demanding responsibility from residents, through more vigorous screening, eviction, and lease enforcement provisions. why is this the goal?

As you know from my testimony before both the House and Senate Housing Subcommittees during the past year, however the Administration continues to harbor a series of very serious concerns with respect to particular provisions in both bills. These provisions would swing the pendulum too far -- towards unfettered control by local



is strongly opposed
has very serious concerns

bureaucracies and away from prudent national standards and appropriate federal oversight. Given reductions in public housing subsidies enacted in FY 1995 and FY 1996, and proposed for FY 1997, we remain concerned that local PHAs would be compelled to exercise this discretion in a way that disproportionately harms the Nation's poorest households, including the elderly and disabled. The Administration remains convinced, however, that our concerns can and will be addressed in the Conference, leading to the enactment of an important piece of reform legislation. why?

The following represents the Administration's most pressing concerns.

***I. MAJOR CONCERNS:***

**A. DISPROPORTIONATE IMPACT ON THE MOST VULNERABLE**

1. **Redirecting scarce federal housing assistance under the tenant-based Section 8 program away from those with the most severe housing needs to those with little or no needs.**

Both bills unnecessarily open up income targeting in the Section 8 tenant-based assistance program to families with little or no severe housing needs. Current law targets assistance to very low-income families with incomes below 50 percent of the median income. Moreover, federal preferences, which previously applied to 90 percent of new Section 8 recipients prior to FY 1996, have served to further target assistance to families with extremely low incomes -- below 30 percent of the median income. The average median income for Section 8 certificate holders is: $6,900.

In contrast, HR 2406 would allow half of all Section 8 tenant-based assistance to go to relatively higher income families, with incomes up to 80 percent of the median income, while permanently eliminating federal preferences. S. 1260 would allow one fourth of all assistance to go to families with incomes at this level. The Administration believes that households with incomes at 80 percent of the median -- approximately $40,000 for families in the ten largest metro areas -- can afford to pay for private market housing without any subsidy. Additionally, an 80 percent median income threshold -- equivalent to 250 percent of the poverty line -- exceeds the income limits for virtually all other federal means tested programs.

The Administration contends that scarce federal rental subsidies for use in the private market must be targeted to families with the lowest incomes, for the following reasons: 1) 5.3 million families now have "worst-case housing needs," defined as families paying more than 50 percent of their income toward rent or living in substandard housing units, and these families are concentrated at the lowest income levels; 2) relatively few households with incomes in the upper ranges allowed under both bills to become eligible for admission to the Section 8 program (including 17.5 million unassisted renters) have serious unmet housing needs; 3) for the first time in the history of the rental assistance program, funding for new incremental assistance has been eliminated for 2 consecutive years; 4) federal preferences have been repealed; 5) public housing income targeting is to be opened up to families with relatively higher incomes to accommodate mixed income communities, resulting in fewer subsidies available for extremely poor families; and 6) tenant-based rental assistance easily integrates families with low-incomes into private, mixed-income housing of their choice and does not suffer from the income concentration problems of project-based programs.

*While the Administration supports the repeal of federal preferences, the Administration is strongly opposed to both bills' income targeting for the Section 8 program. Instead, we believe that three-fourths of all Section 8 tenant-based assistance should be targeted to extremely poor families with incomes at or below 30 percent of the area median income (approximately $11,300), with the remainder targeted to families at or below 50 percent of the area median income.* 3/4

*Additionally, the Administration remains opposed to the Section 8 payment standard range set in both bills. This provision is especially harmful when coupled with loosened income targeting by unnecessarily allowing for deeper, more costly subsidies to higher income families in locations that are not exceptionally high rent areas. Instead, the upper end of the payment standard range should remain at its current level of 100 percent of the Fair Market Rent, with exception levels for locations with unusually high market rents.* 7

**2. Income Targeting in public housing**

The Administration believes that both bills unnecessarily open up income eligibility in public housing to families earning incomes of up to 80 percent of the median, or approximately $40,000, in the ten largest metro areas. While the Administration believes that it is imperative to admit working families with incomes high enough to raise the average median income from the current level of 17 percent of the median ($6,420), the Administration firmly believes that mixed income communities can be attained simply through the repeal of federal preferences, proposed in both bills, coupled with allowing the admission of families with incomes of up to 60 percent of the area median, or approximately $22,700. A 60 percent upper cap, moreover, will align the program's income mix with the HOME and low-income housing tax credit programs.

Additionally, the Administration remains concerned with the House bill's definitions of "low income families" and "very low income families", and the provision regarding adjusted income. All three of these provisions vest authority in the PHA, rather than the Secretary, to determine how income will be defined and what income levels will be served. As drafted, these provisions could have the effect of thwarting any income targeting otherwise set in the bill.

***The Administration supports the Senate requirement of 40 percent of new admissions for extremely low-income families in public housing; however, the Administration firmly supports an upper cap for the remaining new admissions of families with income levels no higher than 60 percent of the median (or approximately $22,700).***

***Additionally, the Administration seeks a development-by-development target that mirrors the PHA-wide target to avert substantial income segregation in particular developments. Also, the ability to define income and adjusted incomes must be vested in the Secretary, and not the local PHA.***

**3. Rent charges**

a. Rent charges in public housing

The Administration strongly supports rent structures for housing assistance which encourage work and responsibility among residents. The Administration also strongly supports the Brooke amendment protections from unaffordable rent charges. Until recently, the Brooke amendment required every tenant to pay approximately 30 percent of their adjusted income toward rent. Current law, as reformed by this Congress in the FY 1996 appropriations context, has eliminated previous work disincentives contained in the public housing rent structure, while also ensuring that the poorest families, elderly, and disabled households are protected from unaffordable and unfair rent charges. Now, PHAs are permitted to establish earned income adjustments and ceiling rents to encourage work, and to retain and attract working families to public housing communities. Under current law, public housing residents no longer have to pay 30 percent of every dollar earned toward rent. Unfortunately, these modifications were enacted only for FY 1996 and only in the public housing arena.

***The Administration, therefore, strongly opposes the provisions especially in the House bill repealing Brooke amendment protections. Instead, we would support 1) the Senate bill's retention of Brooke amendment protections, but for families with incomes at or below 60 percent of the median income; and 2) the permanent extension for both public housing and the Section 8 program of the current law modifications to the Brooke amendment which encourage work.***

b. Rent Charges in the Native American Housing programs

The Administration believes that the bill, while reforming the Nation's Native American housing programs in a positive fashion, does not address rent protections for the poor. The House bill completely removes rent protections for poor households assisted under the Native American housing programs. Neither the Brooke Amendment, nor any modified version, was included in Title VII of the House bill. The result is to remove the floor and the ceiling in Indian Housing, allowing the tribally designated housing entities (TDHE) to charge rents that are less than 30 percent of a family's adjusted income, or more than 30 percent. The TDHE could therefore charge any amount for rent, regardless of whether the charge would be affordable to poor families. The Administration instead supports a provision that parallels our position for public housing residents: permitting a TDHE to charge *up to* 30 percent of monthly adjusted income, as determined by the TDHE. Since so much of the decent, safe and sanitary housing available on-reservation is HUD housing, the needs of this special population are best served by providing flexibility to serve the broad variety of eligible Indian families found in these settings.

***Rents for the Native American housing programs should be set by the TDHEs at up to 30 percent of adjusted income.***

c. Minimum Rents

The Administration supports the notion that every family receiving assistance should pay rent, to the extent possible. In fact, the Brooke amendment is intended to function in just this manner. The minimum rent concept applies only to families whose adjusted or gross incomes are so low that the required Brooke payment -- 30 percent of adjusted income -- is less than the mandatory minimum.

The Administration is supportive of allowing PHAs to charge a minimum rent of up to $25, as long as it does not cause unnecessary hardship (for example, for those families awaiting public benefit eligibility determinations). HUD should have the authority, however, to require hardship exemptions.

***The Administration, therefore, opposes the minimum rent provision in the House bill. Instead, we support the Senate minimum rent requirement, of an amount not to exceed $25, but contend that there should be an exemption for hardship cases, as the House bill contains, to be determined by the Secretary.***

**4. Moving-to-Work Demonstration for the 21st century.**

The Administration strongly opposes the demonstration contained in HR 2406, which functions as a back-door elimination of all program requirements, including Brooke rent protections and income targeting, for up to a half million families. Current law, as enacted in the FY 1996 appropriations context, permits a demonstration for up to 30 PHAs to test innovative ways to link families to work, through merging funding streams, testing new rent structures, and engaging in extensive modelling and evaluation. Reasonable income targeting is retained and rent charges are circumscribed. In contrast, HR 2406 expands this small demonstration to 100 PHAs in each of the next 3 years, for a total of 300 PHAs, with perhaps half a million units, including all 175,000 units of the New York City Housing Authority in the first year. The provision also eliminates current law income targeting and rent protections. The Administration would entertain a limited scale expansion of the current law demonstration, as long as additional guidance regarding unit caps, income targeting, rent setting and permissible funding consolidation is provided.

***The Administration opposes the moving-to-work demonstration as provided in HR 2406, and remains concerned that, if enacted, perhaps half a million families, including all families residing in New York City, will be left without affordability protections or other legal protections. The absence of income targeting for the demonstration could allow PHAs merely to admit higher income, working families, rather than develop strategies to employ the two-thirds of public housing families that are not currently working. Instead, the Administration supports continued authorization of the current move-to-work demonstration, with additional guidance provided by the Secretary if expanded to additional PHAs.***

**B. SELF SUFFICIENCY**

The Administration firmly believes that residents of public housing must assume certain responsibilities in return for the benefits of their public housing assistance. To this end, the Administration supports the many positive reforms in both the House and Senate bills which place a premium on resident self-sufficiency and on linking the PHA with existing providers of services. Additionally, both bills would toughen screening, lease enforcement and eviction requirements.

However, the Administration remains deeply concerned about the House bill's additional self-sufficiency requirements. These new sweeping provisions would fundamentally change the public housing and section 8 programs and would impose inordinate and costly burdens upon 3,400 local PHAs whose budgets and administrative capacities are already stretched too thinly. These provisions were added to the bill on the evening before House floor debate, without any opportunity for public review or Congressional hearings. In particular, the Administration fears that such provisions would too easily result in harmful and unintended consequences.

*Instead, the Administration would strongly support authorizing language which emphasizes collaboratives of federal, state and local enterprises to address welfare reform and self-sufficiency in a coordinated manner. For example, the Administration supports the provisions in both bills which require PHAs to describe in their annual plans the ways in which they plan to coordinate with other local and state welfare and service agencies. We also support the Senate provision which adds to the existing performance measurement system (PHMAP) an indicator that measures the extent to which PHAs carry out self-sufficiency activities. Additionally, the Administration would support: 1) authorization of 30,000 Section 8 certificates for use with local collaborative welfare-to-work initiatives; and 2) establishment of a performance measurement indicator for the Section 8 program to measure the extent to which section 8 administrators carry out, or create linkages for, self-sufficiency activities.*

C. FEDERAL OVERSIGHT

The Administration supports the Senate bill's approach to revising the current performance measurement system -- the Public Housing Management Assessment Program (PHMAP) -- for oversight of public housing, by adding additional factors which measure the degree to which the PHA carries out activities promoting the self-sufficiency of residents. The Administration strongly opposes the House bill's inappropriate oversight mechanism, which establishes a new federal agency to accredit public housing agencies and providers of the "deep subsidy" programs. This structure will not reduce the size of the federal government -- it will only redistribute bureaucracy. The bill, moreover, completely removes HUD's oversight and auditing responsibilities without substituting an adequate method to assure accountability for federal funds.

Such a structure is not appropriate in an era when HUD's role in administering the public housing program is targeted more and more to turning around those PHAs that are troubled, and to revitalizing those developments and neighborhoods that are distressed. For the first time in three decades, the Administration has taken an aggressive approach to troubled public housing authorities -- by placing some in receivership, instituting direct takeovers of others, or establishing innovative partnerships with others located in cities with strong local leadership. In contrast, the elimination of continuous federal oversight as proposed in the House bill could thwart the progress made by this Administration, and impede government's ability to intervene before it is too late.

***The Administration, therefore, supports the Senate bill revisions to the PHMAP system and would support the establishment of a Task Force to determine the need for and benefits from, if any, the establishment of an outside accreditation entity. Additionally, the Administration believes that it is critical to have in place systems to measure and reward good performance, by 1) establishing a bonus pool setaside from the public housing capital fund, to reward high performing PHAs; and 2) measuring the performance of Section 8 rental assistance administrators, through the establishment of the Section Eight Management Assessment Plan (SEMAP). The Administration also supports the House and Senate bill provisions for enhanced powers and the "death penalty" in connection with severely troubled PHAs, and the House provision for oversight of PHAs "at risk" of becoming troubled.***

### D. OCCUPANCY STANDARDS ?

The Administration strongly opposes the House bill's provision on occupancy standards because it would reduce protections currently afforded to families with children and to persons with disabilities under the Fair Housing Act. The provision would invite state adoption of absolute occupancy standards of two persons per bedroom regardless of the facts of a particular situation, or the existence of any health or safety justifications. Furthermore, the bill would also create a safe harbor for housing providers by imposing an absolute two person per bedroom standard in those states that do not adopt their own occupancy standards.

Enactment of this provision could result, for example, in allowing a housing provider to refuse to rent a 2-bedroom unit to a family with three children, even if: 1) the bedrooms were unusually large; 2) one of the children was an infant; or 3) a den could reasonably be used as a bedroom. HUD's current occupancy standard, which conforms to Congress's direction in the FY 1996 HUD Appropriation Act, appropriately requires HUD to determine, on a case by case basis, whether a standard is legal under the Fair Housing Act, and based upon a variety of circumstances. In contrast, the House bill does not provide for such special circumstances to be taken into account. Moreover, the bill



Today
HUD generally presumes 2 person/bedroom std reasonable, but recognizes that special circumstances should be considered in making a determination

effectively preempts the Fair Housing Act by presuming that any state-enacted occupancy standard is reasonable.

**E. DEFINITION OF "PERSON WITH DISABILITIES"**

The Administration strongly opposes the House bill's changes to the current law definition of "person with disabilities" because the changes directly conflict with Administration's goals of encouraging economic self-sufficiency, and would drastically curtail access to housing for low-income persons with disabilities. The bill drops from the definition persons who have previously been defined as "handicapped" by virtue of a substantial, long-term physical or mental impairment. This prong of the definition covers individuals who are disabled, but who are able to work in some capacity. Because this definition determines eligibility for housing resources including designated public housing, Section 811 housing, and Section 8 tenant-based assistance, the provision would unnecessarily eviscerate the ability of low-income, disabled individuals to access targeted resources merely because they work. Moreover, the provision could induce persons with disabilities to remain dependent on public benefits rather than join the work force, in order to continue eligibility for housing assistance.

**F. RESIDENT EMPOWERMENT**

The Administration strongly supports provisions in both bills which empower residents, ensure that they participate in decisions affecting their lives, and protect them from unwarranted intrusions. We believe that the final conferenced bill must include, at least, the following:

- Reauthorization of the Tenant Opportunity Program, as provided in both bills, which provides funds to resident groups to undertake activities, including those which lead to resident self-sufficiency.

- The Senate authorization of a new resident self-sufficiency program, originally authorized in the FY 1996 appropriation.

- Resident membership requirements on the public housing board, as provided in both bills, and the House bill's required 60-day plan review period for affected residents.

- Rights of notification and consultation afforded to tenants in the House demo/dispo process; and rights of first refusal afforded to tenants in the homeownership process.

- Continued due process rights afforded to residents in the House bill in conjunction with eviction and admissions procedures.

**G. UNNECESSARILY DIMINISHING AFFORDABLE HOUSING STOCK IN THE SECTION 8 PROJECT-BASED PROGRAM:**

The Administration has proposed a comprehensive approach to addressing the issue of Section 8 contract renewals, over-market subsidies, and the gradual reorientation of a portion of the portfolio to a mixed-income environment. The Administration believes that these issues must be handled in a structured, coherent manner, and therefore opposes the House bill's piecemeal approach to solving these problems. However, the Administration would support something less than a comprehensive solution of the Section 8 renewal and oversubsidization issues if Congress fails to address these issues comprehensively in this legislative session, and if the bill were modified to contain additional financial and resident protections. Additionally, the bill should ensure that the Secretary has ultimate authority to approve or disapprove an owner's decision to opt out of Section 8 assistance.

**H. SECTION 108**

The Administration opposes the House bill's restriction on Section 108 homeownership activities to no more than 50 percent of each application. Such a restriction would preclude small entities, with funding requests for just one project, from engaging in any economic development activity if the single project was housing-related. Additionally, this restriction would preclude homeownership zones -- large scale single home tract development -- a critical component of redeveloping urban centers and abandoned brownfields.

***II. OTHER CONCERNS***

**A. ELIMINATION OF THE 1937 ACT**

At the request of the House Banking Committee, the Administration has conducted an extensive review of the implications of the repeal of the 1937 Act. We have determined that there are, at a minimum, over 500 references to the 1937 Act from other statutes, located both within and outside of the jurisdiction of the Congressional Banking Committees. Additionally, the Administration has identified a series of issues which the Conferees should address if the repeal is accepted in the Conference. Moreover, coupling the 1937 Act repeal with a ban on new regulations, as provided in the House bill, would inhibit the ability of the Administration to ensure that the new law is carried out uniformly, with adequate guidance. The Administration, therefore, urges Congress to ensure that any repeal of the 1937 Act is done cautiously and carefully.

B. **MCKINNEY ACT:**

The Administration supports the intent of the House bill provision -- making self-help homeownership an eligible activity for nonprofit groups seeking surplus property. However, the Administration opposes the provision's current prioritization of self-help homeownership transfers over and above all transfers under the existing McKinney Act's right of first refusal for providers of services to homeless individuals and families. Instead, entities interested in engaging in self-help homeownership for low-income individuals as well as entities engaging in activities for the homeless should be afforded an equal opportunity to apply for a surplus property transfer. To this end, the Administration also opposes the House bill's complete elimination (by deeming certain transfers to be in compliance with the McKinney Act) of current law's right of first refusal to homeless groups for surplus properties with particular features and dimensions.

**C. DISCRETION TO SETTLE LAWSUITS**

The Administration opposes the House bill's provision which requires the Secretary of HUD to consult all adjacent to local governments, when settling any lawsuit involving HUD, a PHA, and a local government. This provision is an unnecessary intrusion into the executive's ability to adjudicate its own affairs. At a minimum, this provision will be extremely costly for the federal government, since it will hinder the ability to settle lawsuits in a timely and cost-effective manner. Finally, the provision is overbroad, since it would require such consultation for all matters, whether trivial or substantial.

**D. LABOR STANDARDS**

The Administration believes that it is imperative that strong labor standards relating to Federally-assisted housing be maintained to protect workers, residents, and communities. Among the most important labor protections are the Davis-Bacon and related acts, which ensure that federal construction projects do not undercut the wages of workers or impair the ability of local contractors and their employees to compete.

The House bill also contains numerous exceptions to the Davis-Bacon Act coverage for individuals who "volunteer" their services. These provisions, especially, must be revised to be consistent with the Fair Labor Standards Act and the Federal Acquisition Streamlining Act.

**E. SINGLE AUDIT ACT**

Regardless of the oversight mechanism utilized to measure a PHA's performance, the Administration believes it is absolutely essential that PHAs continue to be covered by the Single Audit Act. The House bill's accreditation board proposal eliminates the Single Audit Act, in direct contrast to the findings of recent studies, which have determined that the Single Audit Act has improved the management of Federal funds.

***III. TECHNICAL COMMENTS AND OTHER ITEMS SUPPORTED BY THE ADMINISTRATION***

The Administration intends to provide the Conferees with information regarding other technical and substantive concerns, as well as lists of other provisions which we support, under a separate cover.

ADDITIONAL PARAGRAPH TO BE INSERTED IN LETTER

extra last page on payment standard

**Payment Standard in the Tenant-based Section 8 program**

The Administration remains concerned with the unfettered discretion afforded to PHAs to alter the depth of the subidy level in the Section 8 tenant-based assistance program. The subsidy level is based upon tenant rent contributions (currently the Brooke amendment rents) and also on the typical rent charged for a standard quality private rental unit of the size the family needs, or the "payment standard". The subsidy calculation is the payment standard minus the family rent contribution.

Under current law, the payment standard is tied to an area's Fair Market Rent (FMR), with exceptions for exceptionally high rent sub-markets. The current law payment standard, combined with Brooke rents, ensures that assistance will be spread to the maximum number of families possible while still giving families access to a broad range of housing units. In contrast, both bills allow the payment standard to rise to 120 percent of FMRs, regardless of whether the area is a high rent area. These deeper subsidies would unnecessarily reduce the total number of families who could be assisted under the program. Additionally, allowing the payment standard to be raised above the FMR limit of current law, combined with loosened income targeting in both bills, would allow higher income families, with little or no need, to access deep and expensive housing subsidies.

DPC Comments/Concerns with HUD Conferee Letter on HR 2406 and S 1260

**General Message:** DPC would like to discuss inclusion of language that articulates a bottom line. We believe it is important to be clear that there are positions that we will not support in a final bill. We understand that there may be strategic reasons why this message cannot be stated in the letter, but we need to know what those are. If there is no strong reason not to include a bottom line, we believe it would be helpful to articulate it.

**Self Sufficiency/Time Limits:** Per discussion with Lori Bamberger of HUD, DPC would like to participate in a meeting/discussion of why time limits are different for housing assistance than for welfare before taking a position.

**Title V McKinney:** DPC supports language added to McKinney concerns that says that we oppose (4)(a) and (4)(b) of Section 506. (Jacquie Lawing of CPD is drafting language.)

**Occupancy Standards/Disability Definition:** Proposed language that clarifies and strengthens our position is attached.

**Vice President Gore's Remarks**
**Public Housing Conference**
**(as prepared)**

Thank you for coming here today from all over this country to work on the reinvention of public housing — a reinvention that deals with a lot more than bricks and mortar — a reinvention that deals with the lives of 3 million of the poorest Americans — moving them from welfare to work — from hopelessness to hope — from fear to security.

Together, we are transforming the most dangerous, desolate and desperate slums in this country into thriving neighborhoods — setting the stage for the resurrection of our inner cities.

The partnership that is reinventing public housing joins the White House, HUD and Congress with all of you here today — public housing residents, local housing authorities, state and local governments, and the private real estate developers. It's a partnership that transcends differences of party, of geography, of race, of levels of government. It's a partnership that gets things done.

This partnership is new. In years past, Washington told people around the country what to do, dictating wisdom from on high. And, let's be honest: some of that wisdom ... really wasn't very wise. A lot of mistakes were made.

High-rise public housing turned into isolated ghettos of poverty. And the old rules kept you from getting rid of them. Every demolished unit had to be replaced with a new one. But since there wasn't enough money for that, almost nothing got demolished and replaced.

Admission policies pushed *working* families out of the housing, filling it with the poorest of the poor. Rent rules killed people's incentive to work, by making them pay more rent as their incomes rose.

In the end, public housing became a place where few people worked, few fathers lived with their families, and role models were scarce. The most successful men around were drug dealers and gang members.

Federal micromanagement and regulations even kept you from focusing your time and attention on the problems — forcing you to spend thousands of hours filling out forms and reports.

All that happened before reinvention. So when we came into office, it was pretty obvious that a new approach was needed. We took it.

We created a partnership with you at the state and local level because we came to a revolutionary conclusion: not every good idea is born in Washington. (*You* knew that all along, *didn't* you?)

We realized that public housing residents and people working to help them know local conditions best. And so we listened to what you had to tell us. Then we joined you as allies instead of adversaries, to improve public housing.

Together, we've accomplished a lot:

- Like the demolition of over 30,000 units that were nothing but *warehouses* for the poor. That's more than came down in the previous *12* years. We're replacing them with townhomes and garden apartments — and with housing vouchers so people can find a place on the private market.

- We've cracked down on crime and drugs. President Clinton's "One Strike and You're Out" guidelines let you keep drug dealers and other criminals from moving into public housing, and evict those already there. And HUD's Operation Safe Home has resulted in thousands of arrests of gang members and drug dealers, and confiscation of their guns and drugs.

- We're encouraging residents to get jobs. They can go to work to keep a bigger share of their income. And we repealed the rules that restricted public housing to the very poor, so now working families can live there too.

These initiatives are about more than public housing. They're about better and safer lives — about brighter futures. Let me give you an example.

Annie Antoine lives in a new public housing community in Cleveland, called Renaissance Village. It's a model of what we all want in public housing — ninety townhouses with their own front and back doors. A fence surrounds the Village, and it's brightly lit at night.

There's no crime at the village — a far cry from the high-rise public housing Annie Antoine used to live in. She says that was plagued by drugs, prostitutes, and killings. She says that moving into Renaissance Village "was like going from hell to heaven."

But as nice as it is, Annie and the other residents don't see Renaissance Village as the end of the line. There are training and education programs for all ages. And already, five families have gotten on their feet and moved out onto the private economy.

Out in St. Louis, Charlene Moore has the same goal. She's the mother of six and was a long-time resident of the now-demolished Vaughan project. Charlene's helping to plan the new townhouse community, where construction is just beginning. Already it's changed her life. She's back in school studying administration and business. And she has a job with the new project developer waiting for her when she finishes school.

Stories like Annie's and Charlene's are being repeated again and again. But we're determined to make those stories downright commonplace.

And that's why I've come here today. I'm going to tell you what we want to do for the rest of this century to *accelerate* the reinvention of public housing — to *intensify* the Clinton Administration's program to make public housing a doorway to opportunity — instead of a dead-end to welfare.

First, we'll demolish more high-rise public housing — a *lot* more.

These crime-infested monuments to a failed policy are killing the neighborhoods around them. They act as magnets for drug dealers, vandals, and gun-toting gangs. By tearing them down and replacing them with apartments and townhomes, we lay the foundations for vibrant neighborhoods that will bring our inner cities back to life.

I'm announcing today that we plan to demolish 100,000 units of high-rise public housing around the country through the year 2000. That's the 30,000 units approved already, plus 70,000 more. This is clearly an historic federal commitment.

Second, we're giving local housing authorities a new tool to keep drug dealers and other criminals *out*.

For the first time, the 3,400 public housing authorities around the nation will gain access to criminal records on file with the FBI's National Crime Information Center. The access is authorized under legislation signed by President Clinton that's part of the President's One Strike and You're Out policy. Housing authorities will use the crime databank to determine if applicants for public housing are convicted criminals.

Third, we're launching a new initiative to help public housing residents get jobs and become self-sufficient. In my role as head of the Community Empowerment Board, I am calling on all Cabinet Departments — primarily Labor, Commerce, Education, and Health and Human Services — to work together with HUD and with you to provide education and job training programs for public housing residents.

We want to make public housing into virtual Campuses of Learners. The first model campus is in Denver's North Lincoln Park development, and others will be named soon. To live at a Campus of Learners, adults and school-age children need to enroll in an education program involving computer technology, job training, and comprehensive support services. People will live at a campus for up to five years to complete their training, just as students live on a college campus for a limited time. (As all you parents of college students know, five years is the typical time it takes to get a four-year degree.)

And finally, I challenge the governor of every state to review all their public housing laws and regulations. Get rid of the rules that keep common sense and hope out of public housing. Give housing authorities the flexibility to work with the private sector to finance and develop new affordable housing. Work with us in partnership to complete the reinvention.

So that's our direction for the future. We'll continue bringing down the monuments of hopelessness and replace them with homes on a human scale.

We'll make all public housing a place where law-abiding people can live in peace and get the education and training they need to get jobs, become self-supporting and move into the private housing market.

I know that these are just the kind of changes that many of you had been wanting to make for decades. We will continue to make them together.

Let's keep our partnership strong. We in the federal government will keep listening. We'll keep finding ways to become an even better partner — ways to give you more opportunity to make the improvements you've been wanting to make. We ask you to seize those opportunities — *eagerly*.

That's the essence of reinvented government. Government that's a strong partner. Government that provides more opportunities and responsibilities. Government that helps people and communities solve their own problems.

Thank you all for being such great partners.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

May 8, 1996

The Honorable Rick Lazio, Chairman
House Subcommittee on Housing and Community Opportunity
Cannon House Office Building, Room 314
Washington, D.C. 20515

Dear Chairman Lazio:

I am writing to clarify the Department's position on The United States Housing Act of 1996 (H.R. 2406), which is scheduled for House floor debate later this week.

The Department fully supports the objectives of H.R. 2406: to streamline and strengthen public housing and to give local communities more flexibility to administer housing assistance consistent with local needs and conditions.

The Department is particularly interested in making permanent a series of far-reaching reforms to the basic laws governing public housing. These reforms include:

repealing the one-for-one replacement rule;

revising the modernization program to allow for demolition and replacement;

repealing admission policies so that public housing agencies can create preferences for working families;

changing rent rules to end the discouragement of people who work and to help working families remain in public housing; and

strengthening admission and eviction standards to enhance the Department's crackdown on gangs and crime in public housing.

These reforms have already been included as part of the FY 1996 appropriations law. They remain effective, however, only for the fiscal year ending September 30, 1996. Public housing agencies have consistently told the Department that their ability to implement these provisions depends upon providing greater certainty in the law. By making these reforms permanent, H.R. 2406 will provide the certainty necessary for public housing agencies to move forward.

page two

H.R. 2406, however, contains a series of reforms to rent and income targeting provisions which the Department cannot support. The bill repeals the 27-year old Brooke amendment (requiring that public housing and Section 8 residents pay 30 percent of their income for rent) and provides minimal income targeting in both the public housing and Section 8 programs. I believe that these provisions would expose very low income residents to substantial rent increases and redirect scarce Federal resources from families with the greatest need for housing assistance to others with more housing alternatives.

I understand that you have filed a manager's amendment which, inter alia, (1) retains Brooke protections for all residents (existing and prospective) with incomes below 30 percent of area median; (2) retains Brooke protections for all existing residents who are elderly or have disabilities; (3) establishes a demonstration to give 300 high performing PHAs greater flexibility in the setting of rents; (4) gives PHAs the discretion to grant "hardship exemptions" to those residents who cannot pay minimum rents mandated by the bill; (5) requires PHAs to target at least 30 percent of their public housing units to families with incomes below 30 percent of area median; and (6) requires PHAs to target at least 50 percent of their Section 8 rental assistance to families with incomes below 60 percent of area median.

I believe such an amendment represents movement in the right direction. Yet, as illustrated by the attached Statement of Administration Policy, major differences remain on what rent policies and income targeting should govern public housing and Section 8. I look forward to working closely with you in any future House/Senate conference on this important legislation.

Sincerely,

Henry

Henry Cisneros

Thank you for your work to pass a Housing Bill – it is important to give the local leaders who are providing housing across the nation permanent statutes to work with – we look forward to working with you on the remaining issues.