

# PRRAC

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TESTIMONY

OF

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ON

THE “STATE AND LOCAL HOUSING FLEXIBILITY ACT OF 2005,” H.R. 1999

BEFORE

HOUSING AND COMMUNITY OPPORTUNITY SUBCOMMITTEE

OF THE HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCIAL SERVICES

MAY 17, 2005

Good afternoon. My name is Philip Tegeler, and I am currently the Executive Director of Poverty and Race Research Action Council, a national civil rights policy organization based in Washington, DC. I am grateful to the members of the committee, particularly Chairman Ney and Ranking Member Waters, for this opportunity to testify.

I am here to testify on our serious civil rights concerns around the proposed housing bill, The “State And Local Housing Flexibility Act Of 2005,” H.R. 1999. We have previously summarized some of these concerns in a letter to the House Financial Services Committee dated May 10, 2005 from the Lawyers Committee for Civil Rights, the Poverty & Race Research Action Council, the National Fair Housing Alliance, and the National Housing Law Project. This letter was entered into the record at last week’s hearing and is appended to my testimony today.

Our most serious concerns are with the proposed “Flexible Voucher Program,” Title I of the bill. This proposal would place new obstacles in the path of low income families seeking to move to lower poverty communities, by restricting their long-standing right to “portability” across city and town lines, and cutting back on the rent supports needed to make those moves. The bill would also disadvantage Black and Latino applicants for Section 8, by eliminating the current system of “income targeting” of vouchers towards the most needy families. If local PHAs drop their current income targeting systems, which they will have strong incentives to do, our analysis is that hundreds of thousands of new vouchers could be shifted from poor Black and Latino families to poor white families over the next 5-10 years, because of the way that Blacks and Latinos are overrepresented in the poorest income brackets.

I have two overarching points I’d like to make before I get to the specifics. First, one of the stated purposes of this bill is to delegate decisionmaking to local housing agencies, whom the Secretary believes are capable of making better quality housing policy decisions, better suited to local needs, than Congress or HUD. Whatever the merits of this point of view, it is important to remember that there is at least one area where local discretion is an especially bad idea – and that is in the area of civil rights. One of the reasons we have federal civil rights laws is the inability of local agencies, and local majorities, to police themselves. We’ve seen this played out in numerous civil rights lawsuits and HUD investigations over the past 30 years. There are good people working in local housing agencies, I’ve gotten to know many of them, but they are also subject to a lot of local political pressure, and they need guidance, protection and enforcement from HUD to keep our larger civil rights goals in focus. This is why Congress, in 1968, and again in 1988, made it clear that state and local housing agencies have an enforceable obligation to avoid policies that discriminate on the basis of race, and that is why Congress imposed the duty on HUD to “affirmatively further fair housing,”<sup>1</sup> to take steps to promote integrated housing opportunities in all HUD programs, and to demand that local housing agencies do the same. These requirements are represented in regulations that are woven throughout the programs covered by this bill.

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<sup>1</sup> 42 U.S.C. § 3608. This duty was reaffirmed in Executive Order 12892 (January 17, 1994).

A second point relates to the other major stated goal of the bill – to save money. I want to suggest here that to the extent this bill tries to save money by forcing families into poorer and poorer neighborhoods, we are not saving money at all. The right of families to move to lower poverty, less segregated neighborhoods and better school systems should not be held hostage to budget concerns. Most families may choose to stay in higher poverty neighborhoods, but many families who choose to move experience positive improvement in their lives<sup>2</sup>, and the entire society benefits from having more diverse and representative communities. Families who choose to move out of poverty are not the cause of HUD’s budget problems – but it is these families who are hurt the most by this bill. They deserve the opportunity to seek out better opportunities for themselves and for their children. It can’t be our national housing policy to deny them that choice.

### **Background: Recent HUD Actions Restricting Choice**

The new “Flexible Voucher” proposal is the latest in a series of actions and proposals by HUD that would restrict housing choice, harm minority families, and lead to increased segregation in our largest assisted housing program. HUD began restricting housing choice in the fall of 2003 by cutting back on the use of Section 8 “exception payment standards,” which permit families to move to lower-poverty areas that have higher rents, and requiring that all requests go through the HUD headquarters. Previously, requests for payment standard increases could be submitted to the regional HUD office with a simple demographic analysis to justify higher rents in all or part of the Public Housing Agency (PHA) jurisdiction area.

In the same way, HUD’s decision in April of 2004 to retroactively cut voucher funding in PIH Notice 2004-7 increased incentives for PHAs to adopt policies that discourage or prohibit families from moving to higher-rent areas, including across the board reductions in payment standards that restrict the choice of available neighborhoods. This was followed by changes in Fair Market Rents that lowered allowable rents in many parts of the country.

HUD further restricted mobility in a guidance issued in July of 2004 that would permit PHAs to restrict voucher holders’ portability rights, where PHAs make a showing of financial hardship.<sup>3</sup> In spite of evidence that these restrictions were taking choice away from families,<sup>4</sup> HUD reissued this guidance in early 2005.

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<sup>2</sup> See, for example, Margery Turner and Delores Acevedo-Garcia, “Why Housing Mobility? The Research Evidence Today,” *Poverty & Race* (Jan./Feb. 2005).

<sup>3</sup> In August 2004, several civil rights and housing policy organizations, including the National Council of La Raza, the Center on Budget & Policy Priorities, the Lawyers Committee for Civil Rights, Massachusetts Law Reform Institute and PRRAC, sent a letter to Secretary Jackson challenging this new policy on fair housing grounds and demanding that HUD be the funder of last resort for families who seek to move to lower poverty neighborhoods (see [www.prrac.org/policy.php](http://www.prrac.org/policy.php)).

<sup>4</sup> Initial surveys by NAHRO and the Center on Budget & Policy Priorities showed that, because of these new restrictions, PHAs around the country were denying families the right to move.

At the same time, HUD has chosen not to seek funding for renewal of contracts for many small agencies doing “mobility counselling,” which is the hard work of finding housing for poor families in lower poverty neighborhoods.

### **The Proposed Bill: Restricting Housing Choice and Mobility**

In House Bill 1999, HUD would be taking the next step in stripping away some of the features that make the Section 8 voucher program a vehicle for opportunity for families. The bill as currently drafted would restrict the ability of families to move to communities of their choice and would impede their ability to move to lower-poverty (and higher-rent) neighborhoods, in two ways.

First, the bill would continue a version of the new voucher budgeting system (begun in the 2004 fiscal year) that limits Public Housing Agencies (PHAs) to a fixed sum of funds for the year, based on the prior year’s housing voucher budget, with no right to receive extra funds when costs for individual vouchers increase.<sup>5</sup> This funding system, which replaced a system that paid agencies for the actual cost of vouchers in use, creates a financial conflict on the local level between the number and the quality of housing placements. In other words, since apartments in higher poverty neighborhoods are more likely to have lower rents, an agency will face pressure to serve more families by approving tenancies in those areas rather than paying the higher cost of subsidies for families to move to housing located in higher opportunity areas. This system has already led to reductions in allowable rents across the country, and denials of family moves to higher cost areas, and it will lead inevitably to more segregation. HUD knows that the problem could be ameliorated with a special reserve fund for moves to lower poverty areas, but such a reserve fund does not appear in the bill.

Second, the bill appears to restrict the long-standing right of Section 8 families to use their vouchers across jurisdictional lines (for example, moving from city to suburb). The language of the bill suggests that city and suburban housing authorities must “agree” on a system for transferring vouchers (“portability”) before families can move. If this interpretation of the bill is correct, it would give suburban government officials (or city officials) the authority to simply say “no” to additional city families seeking to rent private apartments in suburban towns. The fair housing consequences of such a rule would be very serious and could lead to extensive local litigation.

Finally, by removing the program’s current focus on the poorest city residents, the proposal to eliminate income targeting would steer new vouchers away from the most deeply segregated and poverty concentrated neighborhoods, undermining the voucher program’s core goal to deconcentrate poverty. Architects of the successful “*Gautreaux*” and “Moving to Opportunity” housing mobility programs have called for a much stronger targeting of vouchers to these severely segregated neighborhoods. Yet HUD’s proposal would lead us in exactly the opposite direction, taking away an important opportunity for families in our poorest, most opportunity deprived neighborhoods.

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<sup>5</sup> The new bill would base funding on each PHA’s share of national voucher funding in the 2005 fiscal year.

## **Eliminating the Current Income Targeting System Could Lead to Loss of Vouchers for Black and Latino Families**

Currently, the Section 8 program requires that PHAs distribute at least 75 percent of their vouchers in each fiscal year to "extremely low-income families" (earning 30 percent or less of the area median income). This income-targeting requirement has meant that Black and Latino families, who are disproportionately concentrated in the extremely low-income bracket,<sup>6</sup> have been successful in receiving the majority of vouchers.<sup>7</sup>

The proposed bill, S. 771, would alter drastically the "income targeting" of vouchers to the most needy families in the Section 8 program, a step which, if adopted by Congress and implemented by local PHAs, could result in a huge loss of vouchers for Black and Latino families.

According to the proposed legislation, at least 90 percent of vouchers could go to families with incomes up to 60 percent of Area Median Income.<sup>8</sup> This change would give housing authorities the incentive and the ability to distribute vouchers to higher-income poor households rather than lower-income (largely minority) households, as the former require fewer subsidy dollars and thus enable a limited pool of funds to reach a larger number of families.

Based on data from the 2000 Census and Area Median Income data maintained by the National Low Income Housing Coalition, we can anticipate the racial impact of these proposed changes. Currently, an average of 40.9% of all vouchers in the United States go to non-Hispanic Blacks, and 16.3% go to Hispanics.<sup>9</sup> Assuming a turnover of approximately 230,000 vouchers annually, we would expect about 94,000 Black and 37,000 Latino families to receive new vouchers annually under the current targeted system.<sup>10</sup> However, if income targeting were altered as proposed in the forthcoming HUD bill, and if local PHAs eliminate the current system of income targeting, then we would expect only about 65,000 Black and Latino families to receive vouchers next year—a loss of about 65,000 vouchers. Over the next 5-10 years these policies could shift over 300,000 vouchers away from very low income Black and Latino families.<sup>11</sup>

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<sup>6</sup> Nationally, 30 percent of median income is \$16,950 for a family of four, which is roughly equivalent to the poverty threshold. See: Center on Budget and Policy Priorities, "Introduction to the Housing Voucher Program" (Washington, DC: 2003), p. 3. In 1999, Black and Hispanic households were three times more likely to live below the poverty line than White households. See: Joseph Dalakar and Bernadette D. Proctor, *Poverty in the United States: 1999* (United States Census Bureau, Washington, DC: September 2000), p. v.

<sup>7</sup> See: Deborah J. Devine, et. al, *Housing Choice Voucher Location Patterns: Implications for Participants and Neighborhood Welfare* (Washington, DC: January 2003), esp. p. 91, Table A-3.

<sup>8</sup> The remaining 10 percent of vouchers could be available to any families that meet the eligibility standard for the program (incomes not exceeding 80 percent of area median income).

<sup>9</sup> Devine et al., *Housing Choice Voucher Location Patterns*, 91.

<sup>10</sup> This also assumes that turnover is similar throughout the country and that distribution of vouchers mimics distribution of population.

<sup>11</sup> The analysis set out in this paragraph is summarized in detail in "Civil Rights Implications of the 2005 Flexible Voucher Proposal," available on PRRAC's website, at [www.prrac.org/policy.php](http://www.prrac.org/policy.php)

## **Other Civil Rights Implications of the Bill**

The other sections of the proposed bill also have important civil rights implications, which are addressed in our letter to the Committee last week along with the Lawyers Committee for Civil Rights (appended to this testimony). First, we are troubled by both the potential for PHAs under the bill to transfer their Section 8 funds to help subsidize their public housing stock. This would give housing agencies the “flexibility” to take away the only funds available for free choice throughout the city and region and transfer them to units that are often located in the most segregated urban neighborhoods. Congress should not give PHAs this flexibility. Second, the Moving to Work proposal (Title III of the bill) could permit waivers of the crucial site and neighborhood standards, which prevent PHAs from clustering their units in low-income neighborhoods. These regulations were adopted pursuant to the Fair Housing Act in response to early litigation challenging the siting of public housing in already segregated neighborhoods, and local agencies need these regulations to help resist the enormous political pressure they face to choose the path of least resistance in siting assisted housing. It is important to clearly exempt such fair housing-based regulations from the Moving to Work program.

### **Conclusion: HUD’s duty**

We understand that this proposed bill was originally drafted by HUD, and yet HUD is under a clear mandate from Congress to be the lead agency on fair housing, and to promote fair housing, housing integration and housing choice in all of its programs. Congress should hold HUD accountable to this mandate and reject the proposed bill.