

August 4, 2021

The Honorable Marcia L. Fudge, Esq.
Secretary U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Dear Secretary Fudge,

On behalf of the National Center for Housing & Child Welfare (NCHCW), I write to offer our deepest appreciation for all that you have done to inspire and support the staff of the U.S. Department of Housing and Urban Development (HUD). The HUD workforce has been unceasing in their efforts to distribute housing resources expediently - particularly for households that are struggling to escape homelessness during the pandemic. We are infinitely grateful to the Office of Public and Indian Housing (PIH) staff who are preparing the Federal Register Notice that will prompt the implementation of the **Fostering Stable Housing Opportunities Act** (FSHO). FSHO will immediately carry forward your legacy of ending homelessness among youth aging out of foster care and closing the racial wealth gap for generations to come.

Today, I write with wonderful news about a related matter, HUD's thirty-year-old **Family Unification Program (FUP)** which provides housing choice vouchers to prevent family separation and accelerate reunification for children who are involved with the child welfare system.

As HUD Secretary you have the immediate authority, granted by Congress in the Cranston-Gonzales Affordable Housing Act of 1990, to tap Tenant Protection Vouchers to provide FUP Housing Choice Vouchers on demand, in increments as small as one at a time, anywhere in the country to families who are eligible for FUP.

We are so pleased to share this information in response to the President's call to action and the appeal made on the President's behalf by Senior Advisor Gene Sperling on August 2, 2021. Specifically, Mr. Sperling called on all of us "to do everything in our power to look for every potential legal authority we can have to prevent evictions" and to conduct an all-agency review to uncover and use "all federal authorities – whatever federal authority that we have – to prevent evictions."ⁱ

As you exercise your existing authority to issue FUP vouchers on demand, you will not only meet the President's call to stabilize housing for vulnerable people during the alarming surge of the Delta Variant you will address an equally troubling problem – family separation among families who are entangled in the child protection system because they are too poor to provide suitable housing for their children.

In 2019, 9,502 families were separated by child welfare agencies because they lacked adequate housingⁱⁱ. This number is far too high and yet in the face of Covid-19, the figure is expected to double as local eviction moratoria and landlords' patience expire. For a variety of reasons almost entirely attributable to systemic racism, Black and Latino families are over-represented in eviction proceedings and on the caseloads of child welfare agencies. Thus, we predict that the longstanding interaction of eviction court and family courtⁱⁱⁱ that leads to the disproportionate removal of minority children from their parents will be exacerbated by the pandemic.

Families of color are over-represented in the child welfare system. When their children are removed, they are more likely than their white peers to experience multiple placements and experience longer stays, less likely to be reunited with their birth families, more likely to experience group care, less likely to establish a permanent placement, and more likely to age out alone to experience poor social, behavioral, and educational outcomes.^{iv}

Foster care placement is an immoral and costly remedy to this imminent Covid-19 housing crisis – both in terms of the cost to the state and the emotional toll levied upon the children and parents. Meeting housing needs to prevent family separation is not only the right thing to do it is the fiscally prudent approach to keeping children safe.

One will never calculate the emotional toll levied upon children, but the cost to the American taxpayer will be severe, and misplaced. With an average annual cost of \$18,000^v per child in out-of-home care the government will expend \$462 million on foster care. The NCHCW 2018 cost analysis used a fair market rent for a two-bedroom unit (\$1,295/month or \$15,540/year) and assumed no contribution from the family towards the rent (and an estimated \$5,000 annually for evidence-based housing search assistance and in-home services paid for through the Promoting Safe and Stable Families Program (Title IV-B of Social Security Act) the cost of housing and in-home services to help families secure and keep their housing. We calculated a total of cost for housing plus services (shared by HUD and HHS) at \$195 million annually. This means that by keeping families together and safe, the American taxpayers would save an average of \$267million annually. This is an average savings of \$13,000 per child or \$28,000 per family annually.

The Potential of the Tenant Protection Account to Keep Families Together and Safe

History

The Cranston-Gonzales Affordable Housing Act was signed into law in 1990 by President George H. W. Bush and it included multiple preferences to child welfare including Section 8 (both voucher and certificate funds), private subsidized units, and public housing. This seismic shift in affordable housing law also established FUP, the Family Self Sufficiency Program (FSS) and the Tenant Protection Account. FUP is one of the four original eligible purposes of Tenant Protection Vouchers (TPVs). Congress reminds HUD in each appropriations act^{vi} that FUP is an eligible use of Tenant Protection Account.

HUD awarded an average of 3,560 vouchers to public housing authorities each year between 1992 and 2001 from the Tenant Protection Fund. In fact, even during years when regular Section 8 vouchers were not awarded, HUD kept its commitment to provide vouchers for FUP from the Tenant Protection Fund.

However, a disturbing pattern emerged beginning in FY 2002 and FY 2003. During those fiscal years, HUD opted not to fund FUP, even though the Tenant Protection Fund had carryover funds in those years of \$18 and \$33 million respectively. *In addition, in 2004 HUD suggested, in the document provided to the Hill entitled ‘HCF BA Needs for FY2005,’ that \$170 million was available in the Tenant Protection Fund for rescission.*

When made aware of this pattern, Sens. Murray and Bond decided to quickly allocate \$20 million for FUP in FY2008, rather than direct HUD to spend funding from the Tenant Protection Account. Congressional appropriators included \$15 million in FY2010 and FY2011. This most recent allocation of \$30 million includes a combination of FY2017 (\$10 million) and FY2018 (\$20 million) appropriations. Congress has continued to support FUP with generous allotments in recent years, but the family portion has been reduced to \$5 million. The good news is that FUP remains an eligible use of the Tenant Protection Account.

Since the enactment of the Tenant Protection Account, the HUD Secretary has the discretion to deliver Tenant Protection Vouchers on an as-demand basis. One of HUD’s more recent approaches to improving the conditions of public housing (implemented by Secretary Donovan), The Rental Assistance Demonstration Program (RAD), for example, is distributed in this manner. However, HUD elects to deliver other special purpose vouchers, including FUP for families through a haphazard and unpredictable array of costly competitive notices.

A FUP competitive award of \$5 million is due out in the end of August for families. However, there will be communities that will not receive vouchers and thus, the families in those communities will suffer. **We are requesting that you use your authority to issue approximately \$20 million to serve a portion of the remaining families through the TPV mechanism through a non-competitive notice.**

HUD administers RAD and other demolition/displacement vouchers “on demand.” PHAs simply determine how many vouchers they will need to help households in their community re-locate to or remain in affordable housing. Once this figure is calculated, PHAs request funding from HUD and HUD distributes the funding. The amounts distributed are simply reported by HUD via the Federal Register. A cursory overview of the RAD Federal Register Notice (linked [here](#)) shows that in 2019, shows the programs and the considerable range of resources distributed through this expedient, and efficient “as needed, non-competitive” basis in increments as small as one voucher.

“The FY 2016 awardees announced in this notice were provided HCVP tenant protection voucher (TPV) funds on an as-needed, non-competitive basis, i.e., not consistent with the provisions of a Notice of Funding Availability (NOFA). TPV awards made to PHAs for program actions that displace

families living in public housing were made on a first-come, first-served basis in accordance with PIH Notice 2007-10, “Voucher Funding in Connection with the Demolition or Disposition of Occupied Public Housing Units,” and PIH Notice 2016-04, “Implementation of the Federal Fiscal Year (FFY) 2016 Funding Provisions for the Housing Choice Voucher Program.” Awards for the Rental Assistance Demonstration (RAD) were provided for Rental Supplement and Rental Assistance Payment Projects (RAD—Second Component) consistent with PIH Notice 2012-32 (HA), REV-2, “Rental Assistance Demonstration—Final Implementation, Revision 2.” Announcements of awards provided under the NOFA process for Mainstream, Designated Housing, Family Unification (FUP), and Veterans Assistance Supportive Housing (VASH) programs will be published in a separate **Federal Register** notice.”

HUD is an excellent position to publish a Notice offering FUP vouchers on a non-competitive basis without delay. Due to the yeoman’s work conducted by Deputy Assistant Secretary Danielle Bastarache and her PIH Team including Becky Primeaux, Steven Durham, Ryan Jones, and Michelle Daniels to create the blueprint for this type of distribution mechanism for FUP youth vouchers (or FYI TPVs), PIH can issue a notice based on **PIH Notice 2019-20 (HA)**.

In 2019, HUD issued PIH Notice 2019-20 (HA) which implemented a proposal written by the youth in partnership with NCHCW staff that urged HUD to activate the TPVs for youth leaving foster care. HUD tapped administrative discretion to establish the Foster Youth to Independence Program with vouchers drawn from the Tenant Protection Account within just four months of the youth notifying HUD of their regulatory authority. The PIH team met regularly with youth and included youth from ACTION Ohio in the implementation and training involved with expanding FYI nationwide. As a result, nearly 1,500 youth have obtained their own apartments and are building successful futures for themselves.

This is an ideal time to increase the availability of FUP vouchers for families in a similar manner. Federal entitlement funding is available to public child welfare agencies to cover the costs of housing search assistance and intensive case management to assure that households who receive Housing Choice Vouchers will lease-up quickly despite a tight housing market that is stacked against households with children. Additionally, over 300 PHAs nationwide already have a FUP Memorandum of Understanding with their local public child welfare agency to facilitate referrals and partnership. Drawing FUP vouchers from the TPV will allow other sites that do not yet have FUP to quickly establish a letter of intent and reunite families in a similar fashion that sites undertook to tap FYI.

It would be irresponsible of me to close this letter without acknowledging that families should never be referred to child protective services (CPS) to access housing assistance or other poverty-related resources. We will continue to work closely with the U.S. Department of Health and Human Services Children’s Bureau to reimagine the training of mandated reporters so that families in need are not referred to CPS due to homelessness and are instead served by Community Action Agencies and other appropriate human services organizations.

That said, at this time in American history, we must be honest and proactive on behalf of the children and families who are already entangled with child welfare and meet their housing needs accordingly. Together we can arm frontline child welfare and housing authority workers, the unsung heroes of the pandemic, with what they need to truly keep families together and safe.

We are so excited to share this news that HUD can act quickly to prevent evictions using existing resources and authority. I look forward to hearing from your staff to further discuss tapping the Tenant Protection Account on behalf of child welfare families. I can be reached at rwhite@nchcw.org or 202-270-7336. Thank you for all you are doing to improve the lives of our most vulnerable neighbors throughout the country.

With admiration and appreciation,



Ruth White, MSSA
Executive Director

cc: General Deputy Assistant Secretary, Dominique Blom
Special Advisor to the President, Gene Sperling
Jennifer Cannistra, Deputy Assistant Secretary for Policy, ACF
Aysha E. Schomburg, Associate Commissioner, US Children's Bureau
Sherry Lachman, Associate Director for Education, Income Maintenance and Labor,
Office of Management and Budget

ⁱ <https://www.c-span.org/video/?513862-1/white-house-calls-governors-mayors-extend-eviction-moratoriums>

ⁱⁱ U.S. Department of Health and Human Services, Children's Bureau. (2020). Adoption and Foster Care Analysis and Reporting System (AFCARS) report 27. Retrieved from <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport27.pdf>

ⁱⁱⁱ Clifford, S. and Silver-Greenberg, J. (2017, July 21). "Foster care as punishment: The new reality of "Jane Crow." *The New York Times*. <https://www.nytimes.com/2017/07/21/nyregion/foster-care-nyc-jane-crow.html>; Washington Post Editorial Board. (2021, March 1). You can lose your kids, home, and freedom without ever seeing a lawyer. It's a profound injustice. *The Washington Post*. <https://www.washingtonpost.com/opinions/2021/02/26/noncriminal-cases-right-to-lawyer-representation/?arc404=true>

^{iv} Cénat, J.M., McIntee, S., Mukunzi, J., Noorishad, P. (2021). *Overrepresentation of Black children in the child welfare system: A systematic review to understand and better act*. Children and Youth Services Review, 120, 105714, <https://doi.org/10.1016/j.childyouth.2020.105714>.

^v NCHCW Cost Analysis (2021)

^{vi} See for example: “**Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2015**” which states: “(2) \$110,000,000 shall be for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to section 18 of the Act, conversion of section 23 projects to assistance under section 8, the **family unification program under section 8(x) of the Act**, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act, HOPE VI and Choice Neighborhood vouchers, mandatory and voluntary conversions, and tenant protection assistance including replacement and relocation assistance or for project-based assistance to prevent the displacement of unassisted elderly tenants currently residing in section 202 properties financed between 1959 and 1974 that are refinanced pursuant to [Public Law 106–569](#), as amended, or under the authority as provided under this Act: *Provided*, That when a public housing development is submitted for demolition or disposition under section 18 of the Act, the Secretary may provide section 8 rental assistance when the units pose an imminent health and safety risk to residents: *Provided further*, That the Secretary may only provide replacement vouchers for units that were occupied within the previous 24 months that cease to be available as assisted housing, subject only to the availability of funds: *Provided further*, That any tenant protection voucher made available from amounts under this paragraph shall not be reissued by any public housing agency, except the replacement vouchers as defined by the Secretary by notice, when the initial family that received any such voucher no longer receives such voucher, and the authority for any public housing agency to issue any such voucher shall cease to exist;” see also, **Transportation, Housing and Urban Development, and Related Agencies**

Appropriations Act, 2018

which states: “(2) \$75,000,000 shall be for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to section 18 of the Act, conversion of section 23 projects to assistance under section 8, the **family unification program under section 8(x) of the Act**, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act, HOPE VI and Choice Neighborhood vouchers, mandatory and voluntary conversions, and tenant protection assistance including replacement and relocation assistance or for project-based assistance to prevent the displacement of unassisted elderly tenants currently residing in section 202 properties financed between 1959 and 1974 that are refinanced pursuant to [Public Law 106–569](#), as amended, or under the authority as provided under this Act: *Provided*, That when a public housing development is submitted for demolition or disposition under section 18 of the Act, the Secretary may provide section 8 rental assistance when the units pose an imminent health and safety risk to residents: *Provided further*, That the Secretary may only provide replacement vouchers for units that were occupied within the previous 24 months that cease to be available as assisted housing, subject only to the availability of funds: *Provided further*, That of the amounts made available under this paragraph, \$5,000,000 may be available to provide tenant protection assistance, not otherwise provided under this paragraph, to residents residing in low vacancy areas and who may have to pay rents greater than 30 percent of household income, as the result of: (A) the maturity of a HUD-insured, HUD-held or section 202 loan that requires the permission of the Secretary prior to loan prepayment; (B) the expiration of a rental assistance contract for which the tenants are not eligible for enhanced voucher or tenant protection assistance under existing law; or (C) the expiration of affordability restrictions accompanying a mortgage or preservation program administered by the Secretary: *Provided further*, That such tenant protection assistance made available under the previous proviso may be provided under the authority of section 8(t) or section 8(o)(13) of the United States Housing Act of 1937 ([42 U.S.C. 1437f\(t\)](#)): *Provided further*, That any tenant protection voucher made available from amounts under this paragraph shall not be reissued by any public housing agency, except the replacement vouchers as defined by the Secretary by notice, when the initial family that received any such voucher no longer receives such voucher, and the authority for any public housing agency to issue any such voucher shall cease to exist: *Provided further*, That the Secretary may provide section 8 rental assistance from amounts made available under this paragraph for units assisted under a project-based subsidy contract funded under the “Project-Based Rental Assistance” heading under this title where the owner has received a Notice of Default and the units pose an imminent health and safety risk to residents: *Provided further*, That to the extent that the Secretary determines that such units are not feasible for continued rental assistance payments or transfer of the subsidy contract associated with such units to another project or projects and owner or owners, any remaining amounts associated with such units under such contract shall be recaptured and used to reimburse amounts used under this paragraph for rental assistance under the preceding proviso;” See also, **FY 2019 Transportation, and Housing and Urban Development, and Related Agencies Appropriations Bill** : which states: (2) \$85,000,000 shall be for section 8 rental assistance for relocation and replacement of housing units that are demolished or

disposed of pursuant to section 18 of the Act, conversion of section 23 projects to assistance under section 8, **the family unification program under section 8(x)** of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t)...”; See also, **FY 2021 Transportation, and Housing and Urban Development, and Related Agencies Appropriations Bill**: \$125,000,000 shall be for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to section 18 of the Act, conversion of section 23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act, Choice Neighborhood vouchers, mandatory and voluntary conversions, and tenant protection assistance including replacement and relocation assistance or for project-based assistance to prevent the displacement of unassisted elderly tenants currently residing in properties financed under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) between 1959 and 1974 that are refinanced pursuant to Public Law 106-569 or under the authority as provided under this Act”