Title
Privatization of Public Housing Shelved -- For Now

Permalink
https://escholarship.org/uc/item/4vw7s8vs

Author
Lakoff, George

Publication Date
2010-06-03

Peer reviewed
Privatization of Public Housing Shelved -- For Now

by George Lakoff

HUD's attempt to privatize all of America's public housing has been put on hold -- for now. You played an important role. Thousands of you signed the petition and spread the word, so that those at the House Financial Services Committee hearing on May 25 understood what the stakes were.

Barney Frank and Maxine Waters asked the right questions, and HUD's answers revealed what was hidden in the language of the bill, namely, that all public housing in America would be subject to privatization. Under the PETRA bill, public housing could result in new ownership that would take out mortgages from private banks to fix and maintain the property. In the case of budget cuts to HUD, or mismanagement by new owners, the mortgage payments would be endangered and foreclosure would be a real issue. Banks that held the mortgages could foreclose and then those banks would own what is now public housing.

Barney Frank's questions to HUD Secretary Shaun Donovan reveal that Rep. Frank understood that foreclosure would mean privatization. Donovan did not answer Barney Frank's questions. The next day Donovan stated in a blog on the Huffington Post that his PETRA bill would not allow privatization of public housing, contrary to Rep. Frank's -- and my -- understanding.

Here is Secretary Donovan refusing to answer Barney Frank's questions at the hearing of the Financial Services Committee of the House on May 25.

**Barney Frank:** Going to a Project-based section 8 is one thing, the ability to finance and put ownership at risk is another. You say in your opening statement that ownership won't change, but it might if there is a financing and then a foreclosure. How necessary is that? Is there a way to get financing without that? And, if you have a foreclosure, would you then have, well, you can have "use restrictions" but would you then have a private entity (it's almost like contract prisons), is there then a private entity standing in the shoes of government and what are the constitutional implications of that? That's what concerns me. You anticipate, under this, you could end up with a foreclosure and a private ownership of public housing, are they then required to maintain it as public housing in perpetuity? Does the tenant or anyone else have the same constitutional rights vis-a-vis that owner. In the municipality,
some have a large population in public housing, does that diminish the right of the elected or appointed officials? What is the status of a potential private owner of public housing?

**Shaun Donovan:** If I can speak broadly on this subject, this is intended to level the playing field...

**Barney Frank** (interrupts): You know we only have five minutes. I understand that, but that’s not my question. You accept the fact that there may be foreclosures and I need to know what happens in that case?

**Shaun Donovan:** Specifically, every other kind of housing can access not only private...

**Barney Frank** (interrupts): Mr. Secretary, look, we have a good working relationship, please don’t jeopardize it by not answering the question. That’s not what I asked you, you had a chance to talk about that. What happens when a private owner, we have public housing that is publicly owned, what happens, what is the status of a private owner who takes it over?

**Shaun Donovan:** So, there is a required, for any public housing building, there is a required 30 year minimum term with a use agreement initially, with renewals of any property based contract at the unilateral discretion of HUD. And so, there is no way for an opt-out to happen...

**Barney Frank** (interrupts): Stop, please. What is the legal position you have now, a private owner of what was public housing, what is the constitutional relationship with the City, what are all those implications?

**Shaun Donovan:** I’m sorry, I’m trying to answer the question...

**Frank:** No, you’re not. Please answer.

**Donovan:** The use agreement survives foreclosure...

**Frank:** Please, stop. I didn’t ask you about the opt-out. If you are living in a place that is owned by a government, you are under one set of rules, a private entity takes over, what does that do to your constitutional rights, to the relationship with the City, the Mayor can’t fire you anymore. That’s a very important set of questions.

**Donovan:** I thought you were asking about, in foreclosure, the risk of that happening...

**Frank:** Yes, because then it becomes a private owner.

**Donovan:** So, all of those current requirements about the public ownership continue and the fact that there is private financing doesn’t change that in any way...

**Frank:** Doesn’t a foreclosure transfer the ownership from a public entity to the private entity?

**Donovan:** The foreclosure, first of all, all of the requirements of affordability continue, and the transfer, any transfer of the property would be subject to the ability of HUD to have a right of first refusal on that transfer..
Frank: That's not the question. The question is that if, in fact, there is a private owner, what's the legal status of that private owner, vis-a-vis, the tenants, the rest of the city, etc. etc. That's pretty clear-cut.

Donovan: If there is a private owner of that housing, then it would still operate under all of the requirements, both for affordability and the Housing authority itself would continue to be subject to all the same appointment of commissioners and the current requirements of the public ownership of that land. And if I'm missing the question....

Frank: My time is expired.

Shortly thereafter, Rep. Maxine Waters takes up the questioning of Secretary Donovan. It is clear that she also sees PETRA as leading to privatization.

Maxine Waters: I am going to try and continue some of the discussion raised by the Chairman in relation to foreclosed properties and I'm going to go through this exercise because I think it is important to engage you on these very important issues but I am starting out with a negative feeling about TRA.

First, Page 11 of your draft discusses properties in foreclosure or bankruptcy. It is my understanding that in the event of a foreclosure or bankruptcy, that a use restriction would remain on the property, meaning that this property has to be utilized in the same manner. However, you have language on page 12, lines 1-5, stating that the Secretary can modify this requirement if the units are not physically viable, financially sustainable, or, if necessary, to generate sufficient lender participation. The section goes on to require the Secretary to transfer the contract for assistance to other properties if he makes such a finding. I have a few questions about this. Why would a property not be physically viable? Isn't it the point of TRA to allow public housing agencies access to private markets so they can rehabilitate their properties?

Second, by financially unsustainable, I assume you mean that the debt on the property exceeds the net operating income needed to make the property run in the black. How would a property get to be in this position in the first place, also, if the property is in foreclosure, isn't it by definition financially unsustainable? If the Housing Authority was unable to service the debt because, let's assume the rents were insufficient, wouldn’t the investor have the same problem?

Third, It seems that you want to be able to waive the use restrictions entirely if you find that it presents an impediment to lenders making loans to Housing Authorities, knowing that you could waive the Use Restrictions. It seems to me that lenders would make waiving the Use Restrictions a condition of their participation. I think this position renders the Use Restriction meaningless. Can you explain under what condition you would grant such a waiver?
And, Fourth, if the Use Restriction is waived, what happens to the tenants of that property? Do they have to move, do they receive enhanced vouchers? When the contract is transferred, what kind of property is it transferred to? Is it transferred to a property across town, next door, in the suburbs, on and on and on?

I know I threw a lot of questions at you, but there are hundreds more about this TRA. You want to take a stab at some of those, Mr. Secretary?

Donovan: Happy to do that. First of all, we currently have new affordable housing that is developed in this way. We have long experience on how to protect properties in foreclosure from losing that housing. TRA would enhance our ability to do that in a number of ways.

First of all, there would be a required Use Agreement that would survive the foreclosure, as you said. In addition to that, however, we also would have a right of first refusal in order to ensure that if the current Housing Authority or owner is not able to keep up that property, if we don't believe that they have the capacity to do that, that we could direct the property to a different public owner or to an owner we are sure will be able to preserve it. So, that is a very important tool to be able to be sure that the property is preserved in the long term. The specific provision you asked about, about transferring assistance, the truth is that we currently have properties that are currently under severe distress that we will not be able to preserve, even today. We have already lost about 150,000 units of public housing because of the inability to preserve them...

Waters: Mr. Secretary, my time is just about up and I will talk with you some more about this, but I want you to know that this experiment I consider very dangerous, and, as I've said over and over again, I am not about to be a part of privatizing public housing. I think that there are a lot of problems with this experiment and I would like you to really think about some of the questions you are going to hear today and, if you are still interested in pursuing it, map out a time over the next two years where you can meet with residents, you can talk with advocates, you can have more hearings, you can flush all of this out, rather than try to move with something this tremendous, this big. Thank you.

Later on in the hearing, Waters introduced the petitions in opposition to PETRA into the Congressional Record. For full details, go to the website of the Financial Services committee financialservices.house.gov.

More than 2500 of you signed the petition, which has gone into the Congressional Record. More signatures will be sent to Rep. Maxine Waters. To sign, go to:


Here is a website, with letters, background information, and alternative proposals:
http://lacehh.wordpress.com/
The PETRA legislation brings up two important framing questions.

1. Should public housing be considered infrastructure (frame A) or real estate (frame B)? As infrastructure, the usual way to finance maintenance is through government bonds. If the government defaults on the bonds, it still keeps the public property. As real estate, real estate is financed through private bank mortgages. If a mortgage isn't paid, the bank takes the property and it is clearly private. The PETRA bill finances maintenance through private bank mortgages. It is using frame B.

2. Here is language from the PETRA bill on page 30 (on the HUD Website):

(ii) PROJECTS AND UNITS OWNED BY PUBLIC HOUSING AGENCIES.--The
Secretary may consider a project or unit owned by a public housing agency to include a project or unit owned by an entity in which the agency or its officers, employees or agents hold a significant direct or indirect interest and which has among its purposes the ownership or management of affordable housing.

Let's parse that a bit. Consider a project or unit owned by an entity in which the agency or its officers, employees or agents hold a significant direct or indirect interest and which has among its purposes the ownership or management of affordable housing.

This gobbledygook language actually says that the Secretary of HUD can consider private (or privatized) property, no longer legally owned by the government, as if it were "owned by a public housing agency". This is linguistic trickery by which private, or privatized, property can be called "public." Given this trickery, Donovan can claim that all privatized property is still "public," because the PETRA bill allows him to call it that and "consider" it as such. It is basically lying with language.

Let us praise Barney Frank and Maxine Waters for calling privatization "privatization."

But don't take them for granted. Shaun Donovan is still Secretary of HUD.