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TESTIMONY TO UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY
HEARING ON LEGISLATIVE PROPOSALS TO PRESERVE PUBLIC HOUSING
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Madame Chair, members of the subcommittee, thank you for the invitation to speak to you today. It is an honor to be asked to present the views of the National Housing Law Project.

The National Housing Law Project is a nonprofit national housing and legal advocacy center established in 1968. Our mission is to advance housing justice for poor people by:

- Increasing and preserving the supply of decent, affordable housing
- Improving existing housing conditions, including physical conditions and management practices
- Expanding and enforcing low-income tenants' and homeowners' rights, and
- Increasing housing opportunities for racial and ethnic minorities.

These views have been developed with the substantial assistance of members of the Housing Justice Network which is a nationwide group of over 700 legal services attorneys who work with and represent low-income residents of federally assisted housing including public housing residents and voucher participants. HJN also includes other housing advocates who work on issues of affordable housing for the lowest income families. Those members with whom we have consulted have all dealt with proposals for the demolition and disposition of public housing in their communities and in most cases, with the consequent loss of a substantial number of public housing units.

We have reviewed the Public Housing One-for-One Replacement and Tenant Protection Act, Discussion Draft, dated April 6, 2010, hereinafter Discussion Draft, and we are pleased that significant amendments to Section 18 — the provisions in the statute that permit the demolition or disposition of public housing — are being proposed and seriously considered. Issues that are the focus of the draft bill, one-for-one replacement, the residents' right to return, and relocation rights for those who are displaced, are issues that concern the NHLP, HJN and public housing residents and applicants. There

are a number of improvements that we recommend to ensure that the Discussion Draft fully and adequately addresses these and other issues.

Section 18 as currently written has been a near complete failure for residents of and low-income applicants for public housing because it has permitted the demolition and disposition of public housing without any obligation to replace those units that are lost. Prior to 1995, there was a one-for-one replacement requirement pursuant to which HUD could not approve a demolition or disposition without a plan to replace those units. In 1995, that obligation was suspended, and it was permanently repealed in 1998. As a result, there has been a substantial loss of public housing.

In 1992, the National Commission on Severely Distressed Public Housing found that six percent of the nation's public housing, or 86,000 units, were severely distressed. Since that time, significantly more units have been disposed of or demolished. Historically, there has been such a disregard of the need for public housing that there is no reliable HUD data available as to how many units have been lost. The estimates vary, as do the timeframes for those estimates. Some estimate that more than 160,000 units have been lost; others claim 120,000. Some of the disposed of or demolished units have been replaced by units that are affordable to the lowest income families at rents set at 30% of adjusted family income. Again, there is no agreement as to the numbers. In 2008, as a result of efforts by Chairman of the Financial Services Committee, Mr. Frank, and the Chairwoman of the Subcommittee on Housing and Community Opportunity, Ms. Waters, HUD provided some limited information. The HUD information showed that since 2000, HUD approved 99,000 public housing units for disposition or demolition of which 40,000 were replaced with public housing units. From this data, Mr. Frank and Ms. Waters noted that 60% of the public housing units were not rebuilt. Despite the lack of easily available and clear data, any of these figures represent a significant loss, a failure to replace desperately needed affordable housing stock, and harm to residents who lost their homes and applicants for public housing whose opportunity to be housed has diminished significantly.

NHLP believes that the vast majority of units that are severely distressed have been disposed of or demolished. HUD has said that the objective of HOPE VI, which was to address the most severely distressed public housing, has been met. NHLP believes that it is imperative to take all reasonable steps to preserve the existing public housing. To do this, there must be adequate funding of public housing. In addition, the number of public housing units that may be disposed of or demolished should be limited, and if disposition or demolition is permitted, there must be one-for-one replacement.

There are a number of policy reasons why disposition or demolition of public housing should be curtailed. First, studies have shown that the lack of affordable housing for extremely low income and very low income families is extraordinarily severe and is increasing. HUD's 2007 report to Congress, Affordable Housing Needs 2005, found that there were only 40 affordable unassisted units per 100 extremely low income households and 77 units affordable and available for rent for every 100 very low income renter households. Both of these figures represent a decrease from the ratio in 2003. There is no evidence that these ratios have improved since that time.

Second, studies have shown that in many situations, residents of public housing do not want to move. "Evidence from resident interviews suggests that whenever they have been asked, a majority of resident express a desire to stay in their public housing communities."¹

¹ Goetz, Testimony to United States House of Representatives, Committee on Financial Services, Subcommittee on Housing and Community Opportunity, July 29, 2009

Third, removing affordable housing from the current stock, even temporarily awaiting rebuilding, does not make sense in the current economic situation. Currently, there is an increased need for affordable housing. As HUD recognizes, homeless populations are increasing dramatically.²

There are a number of ways to forestall the loss of public housing units. Mr. Frank and Ms. Waters have repeatedly called for a moratorium on HUD approvals of requests to dispose of or demolish public housing until such time as the necessary tools and resources are provided to preserve public housing. We applaud this effort.

Secretary Donovan responded to the most recent request, noting that the HUD staff would “review more closely the decisions that will be made regarding the approval of any demolition or disposition. Specifically, we believe that such activities need to be viewed through the lens of the number, location, and affordability of units returning to the inventory. No approvals will be forthcoming without such a close review.” To date, however, we have not seen any new guidelines posted regarding this more rigorous review. We urge the Committee to request information and documentation of this “new” review process.

We support many of the principles of the Discussion Draft. However, as noted below, we are recommending several improvements to ensure that these and other principles are achieved. We support the following principles:

1. For every public housing unit that is disposed of or demolished, there must be a requirement of one-for-one replacement. There should be no exceptions to the one-for-one replacement requirement. Thus, we support the Discussion Draft’s proposal that all dispositions or demolitions of public housing or units converted from public housing are subject to the one-for-one replacement requirement.
2. The replacement units should be public housing or comparable to public housing and thereby affordable to the lowest income families. Thus, we support the Discussion Draft with modifications as noted below.
3. Location of Replacement Units. At least one-third of any units disposed of or demolished must be replaced on-site or in the neighborhood. In addition, as noted below, the Discussion Draft should also provide that the one-third should be increased, if necessary, to accommodate all families who wish to return to the site or neighborhood.
4. Any resident, who is displaced due to the disposition or demolition, must be provided with an absolute preference to reside in any replacement units without any further rescreening. Thus, we support the Discussion Draft proposal regarding this issue. In addition, any tenant who expresses a desire to return to the original site or the neighborhood should be permitted to do so and have a priority for any replacement units located on site or in the neighborhood.
5. Dislocation should be minimized, and therefore, any off-site replacement units should be available for occupancy prior to the relocation of residents.

² Peter S. Goodman, U.S Offers a Hand Page, April 19, 2010 “From July to September of last year, the number of people turning to emergency homeless shelters and other transitional housing for the first time increased by 26 percent in seven major metropolitan areas surveyed by HUD. New York had a 32 percent increase. Cleveland suffered a jump of 31 percent. The number of homeless families expanded last year in 19 of the 25 cities surveyed by the United States Conference of Mayors’ Task Force on Hunger and Homelessness.”

6. HUD must take a more active role in substantively reviewing any application for disposition and demolition. Advocates have been repeatedly told in a variety of contexts that under the current statutory scheme, a public housing agency that is seeking to demolish or dispose of public housing may, in the vast majority of cases, do so with HUD approval and that there is very little that HUD may do to stop the demolition or disposition of public housing once the application is complete and the PHA has certified that it has complied with the minimum requirements set forth in the statute. The provisions in the Discussion Draft that require that the Secretary to make findings supported by substantial evidence will give HUD more authority to review and stop a demolition or disposition that is not consistent with the statute.
7. Residents must be given an active role in any planning for disposition and demolition and the implementation of any approved disposition and demolition plan. We support this aspect of the Discussion Draft which provides that HUD will not approve an application for disposition or demolition unless it provides for the active involvement and participation of residents in the planning and implementation of a disposition and demolition, as well as the plans for resident relocation and unit replacement.
8. Residents must be notified by the PHA of the intent to submit an application, of the approval of any application, and of relocation rights. We support this aspect of the Discussion Draft with changes as noted below.
9. Displaced residents should be provided with critical relocation services and benefits and mobility counseling. The relocation plan should be submitted with the disposition and demolition application. We support this aspect of the Discussion Draft with changes as noted below.
10. The provisions of the proposed law should be enforceable by the residents.

Concerns and suggested amendments

1. The one for one replacement requirement must state that the replacement units must be rental units. The replacement units must be rental units to ensure that in the future the lowest income families continue to have available affordable rental units. In addition, it is important to provide for those families who are displaced and to ensure that they are financially able to live in the replacement units for which they will receive a priority. Homeownership is generally not within the reach of the current residents of public housing, and those HOPE VI developments that offered homeownership options most often were unable to provide homeownership units to returning public housing residents.

We suggest that the following language (in italics) be included in the Discussion Draft.

“(e) REPLACEMENT UNITS.—

“(1) REQUIREMENT TO REPLACE EACH UNIT.—

Except for demolition pursuant to subsection (g),

each public housing dwelling unit demolished or disposed of after January 1, 2005, shall be replaced with a newly constructed, rehabilitated, or purchased public housing *rental* unit or

with a newly constructed, rehabilitated, or purchased *rental unit that is assisted* through project-based assistance that is subject to requirements regarding eligibility for occupancy, tenant contribution toward rent, and long-term affordability restrictions that are consistent with such requirements for public housing dwelling units, except that subparagraphs (B) and (D) of section 8(o)(13) of the United States Housing Act of 1936 (relating to percentage limitation and income mixing requirement of project-based assistance) shall not apply with respect to vouchers used to comply with the requirements of this paragraph.

2. Location and number of the on-site replacement units. The location of the on-site replacement units should be expanded to include replacing units in the neighborhood and should anticipate that more than one-third of the residents may want to return to the former site or neighborhood. There will be situations in which more than one-third of the residents will want to return to the former site or neighborhood. This reality should be anticipated and planned for. In some situations, increasing the density on site may not be appropriate. Thus, expanding the location of where replacement units may be constructed or rehabilitated to the site as well as the neighborhood would be beneficial to those who wish to return.

We suggest that the additional following language (in italics) be included in the Discussion Draft.

“(B) INCREASE TO ACCOMMODATE RESIDENTS ELECTING TO REMAIN.—More than one-third of all replacement units for public housing units demolished shall be public housing *rental* units constructed on the original public housing location or in the same neighborhood *to accommodate all public housing residents residing in the development who elect to remain in the neighborhood in replacement public housing units.*

In addition, the exception for units not built on site should be limited to where the land “otherwise is *environmentally* unsuitable for the construction of housing.” If the provision is not so qualified, it could be argued that the land is not suitable for the construction of housing because of, for example, plans to develop a park or a commercial development. Paragraph (f)(3)(B) - Require the public housing agency to obtain from each resident information regarding his or her desire to remain in their neighborhood.

Paragraph (h)(3) - Require that PHAs notify residents of their right to occupy a replacement unit on the original site or in their original neighborhood, or in another neighborhood.

3. Location in other areas. This provision should be modified to eliminate the requirement that replacement units must be built within the jurisdiction of the public housing agency and in areas having a low concentration of poverty. Public housing agencies seeking to place housing outside their jurisdiction that are not so barred by state or local law should not be prohibited from doing so by federal law. Restricting the replacement housing to low-poverty areas makes it significantly more difficult to rebuild the replacement housing and minimizes the key elements that the housing should be placed in areas that further economic and educational opportunities. Such opportunities may be available in communities other than low-poverty areas.

We suggest that the additional following language be included in the Discussion Draft.

“(4) LOCATION IN OTHER AREAS.—Any replacement housing units provided in addition to dwelling units provided pursuant to paragraph shall be provided in a manner that furthers economic and educational opportunities for residents.

4. Any proposal to dispose of or demolish public housing should make every effort to minimize displacement and prevent multiple moves. Temporary relocation should be minimized. Numerous studies have documented the link between involuntary relocation and a wide range of personal and social ills, including the onset of depression, the aggravation of mental illness, increased substance abuse, domestic violence, marital breakdown, accidents and disease,³ decreased academic performance,⁴ and homelessness.⁵ Moreover, many public housing residents are “hard to house” -- elderly, disabled, or otherwise ill-equipped to navigate the private housing market -- and are at risk of losing their temporary housing before permanent housing is built. If the goal is to improve living conditions for existing residents, uprooting them from their support systems and forcing them into an unfamiliar and often unstable housing situation should be minimized.

To address this issue, any replacement off-site housing should be available prior to any relocation of residents. If housing is to be replaced off-site, there should be no physical constraint on the construction, rehabilitation, or purchase of such units prior to relocation of the residents. It is important not to have any unnecessary lag in the production of the replacement units, especially in light of the enormous need for such housing. Development of on-site replacement housing often takes three, five, or even ten years to complete the financing, vacate the property, clear the land, and construct the replacement units. Such delays should be anticipated with off-site replacement housing and coordinated with relocation efforts. No relocation should begin until such off-site replacement housing is available.

5. Any replacement units should maintain essential rights of applicants which require at a minimum:
 - a. rents set at 30% of a family’s adjusted income;
 - b. targeting at least 40% of the new admittees to applicants with income at or below ELI (30% of AMI), or if the housing is project-based vouchers, to 75% at or below ELI;
 - c. that a PHA may establish priorities that are consistent to the housing need;
 - d. that victims of domestic violence cannot be discriminated against;
 - e. that applicants may designate an alternate contact person or entity; and that applicants who are denied get an informal hearing before an individual who did not make the original determination.

³ Bartlett, “The Significance of Relocation for Chronically Poor Families in the USA” (1997).

⁴ Hartman, “Student Mobility: How Some Children Get Left Behind” (2003).

⁵ Center for Community Change, “A HOPE Unseen: Voices from the Other Side of HOPE VI” (2003).

6. The replacement units should have the same number of bedrooms as those units that are slated for disposition and demolition, unless a market analysis shows that units with a greater number of bedrooms than the number being replaced are needed.

We suggest that the following language be included in the Discussion Draft.

“(4) SIZE.—

“(A) IN GENERAL.—Replacement units shall have the same number of bedrooms, unless a market analysis shows a need for units with a greater number of bedrooms or there is a need for other sized units to serve families displaced as a result of the demolition or disposition, in which case such need shall be addressed.

7. Mobility counseling: residents who are displaced should be provided with the opportunity to access mobility counseling and that counseling should contain the following elements.

We suggest that the following language be included in the Discussion Draft.

“(8) HOUSING MOBILITY COUNSELING.— In order to maximize the housing choices of displaced residents, each public housing agency shall provide comprehensive housing mobility counseling to assist those families who wish to voluntarily move to low-poverty and non-racially concentrated neighborhoods throughout the metropolitan area. Such programs shall include:

(A) one-on-one housing counseling, search assistance and post-move counseling;

(B) active landlord recruitment incentives;

(C) use of exception rents;

(D) community tours and comprehensive community introductions on local schools, shopping, transportation, religious and health resources;

(E) credit repair and other training/education sessions.

Finally, we hope that the Committee will consider amending Section 3. The Discussion Draft entitled Earnings and Living Opportunities Act, sponsored by Nydia Velasquez, is worthy of consideration by this Committee and could be included in any final bill dealing with the preservation of public housing.

Thank you for the opportunity to testify. We are very encouraged that many policies that NHLP supports have been included in this Discussion Draft. We look forward to working with you and your staff to continue to improve the Discussion Draft.

