

November 24, 2009

Shaun Donovan  
Secretary  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW  
Washington, DC

Dear Secretary Donovan,

We are writing to provide comments on HUD's Choice Neighborhoods Initiative proposal. The proposal, addressing the redevelopment of public, assisted and private housing with the goal of transforming entire neighborhoods, is quite ambitious. We are grateful for your vision of a broad approach to neighborhood redevelopment that will improve the quality of life of current and future residents.

These comments represent the National Low Income Housing Coalition's and the National Housing Law Project's initial thoughts on the CNI proposal. We understand that comments were requested to HUD by November 24. Please know that we look forward to continuing a conversation with you on CNI long after we submit these first comments.

NLIHC is dedicated solely to achieving socially just public policy that assures people with the lowest incomes in the United States have affordable and decent homes. Our members include non-profit housing providers, homeless service providers, fair housing organizations, state and local housing coalitions, public housing agencies, private developers and property owners, housing researchers, local and state government agencies, faith-based organizations, residents of public and assisted housing and their organizations, and concerned citizens. The National Low Income Housing Coalition does not represent any sector of the housing industry. Rather, NLIHC works only on behalf of and with low income people who need safe, decent, and affordable housing, especially those with the most serious housing problems. NLIHC is entirely funded with private donations.

NHLP is dedicated to advancing housing justice for the poor by using the power of the law to increase and preserve the supply of decent affordable housing, to improve existing housing conditions, including physical conditions and management practices, to expand and enforce low income tenants' and homeowners' rights, and to increase opportunities for racial and ethnic minorities.

Where, and to Whom, Grant Funding Must Go

We are very concerned about how HUD would target CNI resources to certain neighborhoods. Eligible CNI neighborhoods are those with proximity to educational institutions, medical centers, central business districts, major employers, effective transportation and adjacency to low poverty neighborhoods. It is our strong sense that such neighborhoods are on the cusp of

gentrification, with or without CNI funding, and that the preservation and creation of additional affordable housing, particularly those units affordable to extremely low income households, should be the focus of these grants.

In addition to strengthening the proposal's provisions for the preservation of existing public and assisted housing in the neighborhood, we also urge the proposal to include safeguards for the currently unassisted households in these neighborhoods. These safeguards will help the neighborhood's existing residents benefit from any redevelopment.

Research on HOPE VI sites has demonstrated that HOPE VI's resulting community-level benefits are experienced by newcomers rather than residents who had been living in the neighborhood. "The degree to which neighborhood-level benefits of HOPE VI are experienced by the original low income residents of the public housing or by the original residents of the surrounding neighborhood is dependent upon the protections built into the program to limit displacement."<sup>1</sup>

To ensure there is no net loss of affordable units, and to protect the housing options of unassisted extremely low income households currently living in these neighborhoods, we recommend that CNI grantees be required to develop and adhere to a long term Affordability Plan. Such an Affordability Plan would include an initial assessment of housing affordable to extremely low and very low income households (both assisted and unassisted) in the neighborhood and the grantee's plans to meet various affordability goals over time.

Given the severe lack of affordable housing, the use of public funds, and the likelihood that rents in CNI neighborhoods would increase, the Affordability Plan should demonstrate how the number of affordable units will be maintained and expanded over the next 30 years. Grantees should also be required to identify resources and partners that would help accomplish the Affordability Plan. Finally, HUD should have the resources to monitor and enforce these plans.

While we believe that there are many types of organizations willing to take on a CNI project, we believe that eligible grantees should be limited to partnerships that have as their central focus the preservation and expansion of affordable housing for the lowest income households. The proposal provides HUD with total discretion on which entity/entities receive CNI funding, regardless of who the applicant is. We urge HUD to change these provisions to include thresholds to require the grantee to have a history of mission-driven commitment to the neighborhood in question. A for-profit company should not be eligible without partnering with nonprofit or public agencies or organizations.

For this to be accomplished over the long term, and to preserve public resources, the grant agreement must keep intact public control of existing publicly held land. We believe that there is an intrinsic value, demonstrated by protections for residents and the long-term ability to shepherd the use of public funds, in "public" housing. We urge HUD to ensure that all eligible applicants maintain publicly owned and enforceable ties to the redevelopment of any publicly owned land or housing.

### What Happens to Existing Housing Stock

After careful consideration, we believe that the exceptions to the proposal's one-for-one replacement requirement could result in a very large universe of redeveloped housing not being replaced. We appreciate HUD's statements that 100% of the existing subsidized stock would be replaced in a large majority of CNI neighborhoods. Nevertheless, the potential for loss is too great for us to support.

We are very concerned that the CNI proposal appears to remove the existing requirement for a one-for-one replacement of project-based Section 8 units upon the transfer of the contract. This requirement is set forth in the annual HUD appropriations bill and is included in the draft housing preservation bill being considered in the U.S. House of Representatives. We urge HUD to maintain this important requirement within the CNI proposal.

We anticipate that very few CNI grants will be awarded in the coming years. If this is the case, we hope that HUD accepts only the best applicants. One clear measure of excellence is an applicant's ability to replace all of its lost units, whether through redeveloped hard units or through project-basing vouchers.

The three conditions in the proposal that must be met in order for a CNI applicant to replace up to 50% of its hard units with vouchers (at least 80% of vouchers issued over the last 24 months to comparable families were successfully leased within 120 days of issuance; existing vouchers are widely dispersed geographically; and, there is a relatively high vacancy rate within the market area with rent and utility costs not exceeding the applicable payment standard), while potentially good measures, are not stringent enough and could result in a significant loss in housing units. The proposal allows project-based vouchers to replace lost housing units, which would allow or require the termination of the project-based voucher contract if the units were not occupied by the intended families. We think this flexibility alone is sufficient to address markets where there are claims that there might be a sufficient supply of existing hard units.

We also believe that there should be a requirement to rebuild some of the redeveloped housing on the original site, unless certain extenuating circumstances are met. Many public and assisted housing projects are on very desirable properties that have been home to families for long periods of time. Without some requirement for redevelopment on site, and certainly within a closer proximity to the original site than 25 miles as proposed by HUD, there really is no opportunity for residents to continue to reside in their communities. The lack of such a provision in the CNI proposal will foreclose the opportunity of the displaced households from benefitting from the now choice neighborhoods.

As we read the proposal, the replacement housing requirements are not structured in a way to require any deeply affordable housing back on site or near the original site. Consistent with our recommendation for each CNI grantee to develop and abide by a long term Affordability Plan for the neighborhood, we urge the proposal to be altered to encourage redevelopment on site

where appropriate and to maximize residents' ability remain in their neighborhood. At the very least, a sufficient number of replacement units should be built on-site or in the existing neighborhood to accommodate residents who wish to remain.

We are also very concerned that the CNI proposal appears to remove the existing requirement that project-based Section 8 tenants have replacement housing built first before they are required to move, as set forth in the annual HUD appropriations bill. Involuntary relocation, even when temporary, can destroy the social networks that extremely low income families depend upon for their survival. Such relocation has been linked to a wide range of social ills. CNI should include requirements that limit or avoid displacement of residents. These should include preferences for CNI applications that have phased redevelopment, so that resident moves are fewer and closer to home. Where phased redevelopment is impossible because demolition is necessary, such preferences could apply to applicants that build first and construct replacement housing prior to demolition. Certainly, any redevelopment should acknowledge the school calendar and minimize moves during the school year.

We also believe that the ability of grantees to use CNI funding on eligible activities such as "construction, acquisition or rehabilitation of affordable housing..." is not a well-targeted use of scarce federal housing resources. The proposal allows the HUD Secretary to establish the affordability and use restrictions of such housing, potentially allowing housing that is unaffordable to ELI and VLI households to benefit from CNI resources. This issue is but a piece of the proposal's potential use of HUD funds for rather generic purposes. Other eligible, but not required, uses of CNI funds are for parks, improvement of transit, gardens, and partnering with local educators. We urge HUD to focus its limited resources on the housing issues of neighborhoods and to continue its work to bring other federal agencies and departments on board to participate in neighborhood revitalization.

We are concerned about the use of CNI funds for "work incentives, including incentives using rents...." To protect residents from unaffordable rents, we urge HUD to expressly require that redeveloped units and other HUD assistance associated with a CNI grant (e.g., project-based vouchers and tenant-based vouchers) comply with the Brooke rule.

#### What Happens to Residents

As stated above, without additional requirements that at least some units be built on site, there can be no right of residents to return. The proposal does provide that "each resident who wishes to return to the on-site or off-site replacement housing may return if the resident was lease-compliant at the time of departure from the housing subject to rehabilitation or demolition, and continued to remain lease-compliant during the relocation period." The proposal continues to say that a "returning resident shall be provided a preference for occupancy of on-site or off-site replacement units before such units are made available to any other eligible households." We urge HUD to change the wording away from strictly "lease-compliant" as the term is vague and could be abused. Any existing tenant whose tenancy or

right of occupancy has not been validly terminated should have a right to return. We also urge the CNI proposal to explicitly prohibit original residents from being rescreened for eligibility.

With regard to the use of project-based vouchers as replacement housing, we urge the proposal to prohibit the HUD Secretary from waiving the project-based voucher program's mobility function. As the proposal is drafted, the HUD Secretary would currently have such waiver authority. The mobility feature of project-based vouchers is one more way to provide residents with choice.

Regarding choice, it is very unclear to us, under the CNI proposal, when residents would be notified of the potential to redevelop their housing. In addition to public participation in the development and implementation of a transformation plan (discussed below), we urge the proposal to better detail when residents must be notified of their future housing choices (on-site, off-site, the ability to access a tenant-based voucher). We also strongly support the ability of residents to change their minds as the transformation plan is implemented.

For residents that do choose to access a voucher, comprehensive relocation assistance must be provided to households. This includes extension of search terms and, at the option of the household, the ability to change their minds and live in public or assisted housing, either existing or replacement.

There is a strong case to be made for intensive case management for displaced households and the inclusion of "appropriate service coordination, support services..." among required activities is to be commended. Where displaced families live and how they fare should be a central focus of CNI. As Susan Popkin of the Urban Institute testified before the House Committee on Financial Services in June, "...despite its very real accomplishments, the HOPE VI program's record in meeting the needs of the original residents who endured the worst consequences of the failures of public housing is mixed. While many ended up relocating with vouchers to better housing in safer neighborhoods or moving into the new developments, too many others were simply relocated to other, traditional public housing. The residents who ended up in these developments were disproportionately the most vulnerable - those who had been most damaged by the distressed environment and were least able to cope with the challenges of relocation. With so many troubled families concentrated in one place, the remaining traditional developments have the potential to become even worse than the distressed communities these families came from.... Incorporating intensive case management and permanent supportive housing for the most vulnerable into Choice Neighborhoods and any other comprehensive redevelopment effort is one way to ensure these initiatives truly meet the needs of *all* public housing families."<sup>ii</sup>

We would also urge HUD to give some preference to CNI applicants that commit to comply with HUD's Section 3 program to provide economic and employment opportunities to low and very low income individuals. In addition, HUD should make clear that failure to comply will result in reduction or removal of CNI funding.

## Resident Involvement and Participation

Among CNI's required activities is resident involvement in planning and implementation of the transformation plan. The bill also states that inclusive local planning will be one of 16 criteria on which HUD will determine selection into the CNI program. Beyond these important references, there is nothing else in the CNI proposal that requires any specific outreach, the timing of such outreach, the consideration of such comments, etc. We urge HUD to include specific outreach requirements of CNI grantees to residents of public and assisted housing and residents of the impacted neighborhood.

The proposal should include public hearing requirements to ensure resident and community participation in the planning process for the CNI transformation plan and in all stages of the transformation plan's development and implementation, including any significant changes or amendments to the transformation plan. CNI applicants should have to demonstrate engagement and consultation with all types of impacted public and assisted housing residents as well as unassisted community members. Federal, standard notice requirements should also be in place regarding any relocation of residents, resident choices, replacement housing, and services that are available to residents.

We also believe the proposal can be strengthened by explicitly allowing the "up to 5%" that can be used for technical assistance to be used for resident and community education and participation efforts. Such funds could go to organizations that are independent from the potential grantee to encourage uninhibited participation.

## Definitions

While we understand the need for discretion and flexibility in any national program, we also believe that more structure is needed to ensure the best use of scarce federal funds.

The terms that are associated with any eligible neighborhood, "concentration of extreme poverty," "severely distressed housing", and "potential for long-term viability" are themselves not well-defined. The definition of "long-term viability" seems particularly subjective. We are also unsure what an "inappropriately high population density" is and how it could be determined that a property is a "significant contributing factor" to the physical decline or disinvestment in a surrounding neighborhood. An engineer or architect's certification of severe distress would seem a more possible measure. Furthermore, how these three characteristics would be weighted in HUD's decision-making process is not defined.

Similarly, we do not know what boundaries might encompass "critical community improvements."

We also urge HUD to provide rural areas with access to the CNI program proportionate to their corresponding areas of extreme poverty, severely distressed housing, and potential for long term viability. In rural areas, Census tracts may not neatly line up with rural communities and

we recommend that HUD ensure the data collected to identify eligible CNI neighborhoods work in all areas, including rural areas.

As noted above, the proposal allows the HUD Secretary to define affordable housing in private housing owned are purchased with CNI funds. For such units, ELI income targeting requirements should apply, as should the Brooke rule.

Regarding location of off-site replacement housing, the proposal requires such housing to offer access to a variety of facilities and services comparable to an undefined universe. Should this be comparable to the CNI eligible neighborhood or to other, already revitalized areas? The proposal is unclear in its intentions.

Thank you for this opportunity to comment on HUD's CNI proposal. We look forward to working with HUD on the progression of this proposal.

Sincerely,

National Housing Law Project  
National Low Income Housing Coalition

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<sup>i</sup> Goetz, E. (2009). *Academic Perspectives on the Future of Public Housing, House Financial Services Committee*. University of Minnesota: Center for Urban and Regional Affairs.

<sup>ii</sup> Popkin, S. (2009). *Academic Perspectives on the Future of Public Hosuing, House Financial Services Committee*. Washington, D.C.: The Urban Institute.

cc: Senator Christopher Dodd  
Senator Robert Menendez  
Representative Barney Frank  
Representative Maxine Waters  
Senator Patty Murray  
Representative John Olver