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Cover: Mercy Housing California's 10th & Mission Family Housing, San Francisco, provides 136 rental units; 91 are affordable to households earning 50% of local AMI, and the rest are for formerly homeless families in the 15-25% of AMI range.

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Choice Neighborhoods Initiative: A Work In Progress

The Department of Housing and Urban Development (HUD) continues to develop and refine the Choice Neighborhoods Initiative, its proposed successor to HOPE VI. Since early 2009, with a \$250 million request in the Administration's fiscal year 2010 budget, HUD has promoted and sought comments on the Choice Neighborhoods Initiative. HUD has been particularly interested in how the initiative should be informed and enlightened by recognition of the successes and failures of HOPE VI.¹

Secretary Promotes Choice Neighborhoods

On November 6, 2009, HUD released its draft Choice Neighborhood Initiatives Act of 2009² to a wide range of "stakeholders" nationwide. It invited those stakeholders to a November 10, 2009, in-person and webcast meeting at HUD headquarters.³ Present at HUD were over 150 resident advocates, policy analysts, public housing executives and others.

HUD Secretary Shaun Donovan described the lessons of HOPE VI from HUD's perspective and reiterated the theme of his July 14 speech,⁴ that while HOPE VI had its weaknesses, it was, by and large, a tremendous success. HOPE VI, the Secretary said, deconcentrated poverty by creating mixed-income communities; leveraged \$17.5 billion of non-federal money with a federal outlay of \$6 billion; taught public housing authorities (PHAs) how to engage in entrepreneurial partnerships with local governmental and private entities; and taught HUD that PHAs which engage residents early and well move more quickly to project completion. It also provided experience with tools for moving participants to opportunity, including how to offer services and link residents to benefits of the program.

"Let me be very clear," the Secretary said. "Public housing will remain the primary beneficiary of Choice Neighborhoods." Within that context, he said that Choice Neighborhoods will build from the HOPE VI foundation. Rehabilitation or demolition and rebuilding of public housing and other affordable housing will be a vehicle for broad neighborhood revitalization. Federal departments and agencies will develop intentional partnerships to assist local partnerships. These multi-level partnerships will combine a variety of activities, including job

¹NHLP, *Obama Administration Rolls Out Choice Neighborhoods Initiative*, 39 HOUS. L. BULL. 223 (Sept. 2009).

²To view the proposed legislation, visit <http://www.nlihc.org/doc/HUD-CNI-bill.pdf>.

³HUD Webcasts, Public Housing, Choice Neighborhoods Stakeholders Meeting, November 10, 2009, <http://www.hud.gov/webcasts/archives/ph.cfm>.

⁴*Id.*

counseling, employment, rent incentives, supportive services such as Temporary Assistance for Needy Families (TANF) and Medicaid, improved educational opportunities, and weed-and-seed anti-drug programs.

Choice Neighborhoods will also be more agile than HOPE VI, the Secretary said. It will support planning grants as well as implementation grants; engage with grantees that are not PHAs, including local governments, private nonprofit and for-profit actors; recognize that one size does not fit all while seeking long-term sustainability; and focus on ameliorating the multiple manifestations of concentrated poverty.

Finally, Secretary Donovan recognized that conflicts among the stakeholders' interests and communities must be addressed. While, for instance, one-for-one replacement would be facially guaranteed in the draft Choice Neighborhoods legislation, it means different things to different people, such as on-site versus off-site replacement, project-based vouchers versus annual contribution contract redevelopment, and vouchers versus hard units. It also raises the question of how the right-to-return will be defined and enforced.

Secretary Donovan spoke for nearly an hour and then opened the floor for questions, both live and telephonic, fielded by a panel of HUD executive staff.⁵ Attendees were offered a two-week window to submit written comments.⁶

Resident Advocates Respond

On November 20, 2009, the National Low Income Housing Coalition (NLIHC) convened a conference call of residents and resident advocates from across the country to formulate a response to the draft Choice Neighborhoods legislation. The response was signed by NLIHC and the National Housing Law Project (NHLP). The comments acknowledge the ambition of Choice Neighborhoods and applaud its vision and breadth. They thank HUD for its solicitation of input and look forward to a continuing conversation on the initiative.

Beyond that, the comments transmit the lessons of decades of sequential programs which resulted in more removal than renewal of affordable housing. They express a firm belief that the solutions must be built into the skeleton if they are to be manifested in the muscle.

If the chosen neighborhoods are proximate to good schools, transportation, other critical systems and low-poverty neighborhoods, the risk of gentrification and consequent displacement of very low- and extremely low-

income residents must be recognized. Accordingly, long-term or perpetual affordability of the resulting assisted housing, as well as the affordability of the community as a whole, must be supported. To this end, the comments recommend a pre-award assessment of housing affordability in the neighborhood to be used as a baseline for long-term interventions.

The comments question the draft bill's provision allowing purely private, for-profit entities to receive grants. While not all eligible neighborhoods that could benefit from transformation currently have local nonprofit organizations to act as grantees, the initiative should facilitate and reward partnerships and collaboration with mission-driven entities with proven capacity and commitment to housing affordability in the subject neighborhood.

The comments also question the strength of the draft bill's one-for-one replacement provisions, pointing out that the bill would provide wide latitude in the location of replacement outside the neighborhood, would allow up to 50% of replacement to be accomplished through vouchers, and would fail to require the replacement of project-based vouchers upon contract expiration. The comments call for the reconstruction of significant proportions of demolished units on their original sites and the maintenance of "publicly owned and enforceable ties to the redevelopment of any publicly owned land or housing." Historically, this has been a critical safeguard of long-term affordability, particularly in gentrifying neighborhoods.⁷

To minimize disruption of families and critical support systems, the comments recommend that a "build-first" condition be applied wherever possible and that consideration be given to maximizing the continuity of children's school terms and school placement.

The draft bill would allow the use of funds for a broad range of neighborhood improvement projects. The comments encourage a more directed approach, consistent with the Administration's and the Senate's FY 2010 Budget pronouncements.⁸ The coordination of inter-departmental and inter-agency organizational and financial resources at the federal level should be leveraged to facilitate a broad range of coordinated neighborhood improvements.⁹ Grantees should be able to rely upon these additional non-HUD resources in developing their plans. Additionally, grantees should be rewarded with competitive points for tapping local governmental and non-governmental

⁵The panel's moderator was Jonathan Harwitz, Deputy Chief of Staff for Budget and Policy. The panelists were Assistant Secretary for Public and Indian Housing Sandra Henriquez; Assistant Secretary for Community Planning and Development Mercedes Márquez; Assistant Secretary for Fair Housing and Equal Opportunity John Trasviña; and Deputy Assistant Secretary for Multifamily Housing Carol Galante.

⁶Comments were submitted to choiceneighborhoods@hud.gov.

⁷Public ownership of the land and/or the improvements is seen as a vehicle for ensuring residents' due process protections, permanent affordability for residents below 30% of AMI, regulatory oversight and enforcement, and public participation in the consideration of any future major modification or redevelopment of the housing.

⁸See Office of Management and Budget, The President's Budget for Fiscal Year 2010, Department of Housing and Urban Development, <http://www.whitehouse.gov/omb/budget/fy2010/assets/hud.pdf>; S. Rept. No. 111-69 (2009).

⁹Including transportation infrastructure, workforce development, educational programs and institutions, and the other necessary components of transformation.

resources to support comprehensive neighborhood transformation projects that address neighborhood placement of and access to educational institutions, child care and medical care facilities, transportation infrastructure, job development services, environmental concerns and the like. The very limited amounts of housing money available should be used for housing.¹⁰

The draft bill lists as an eligible activity “work incentives, including incentives using rents.” The comments call for the maintenance of Brooke Amendment rents and an affirmative commitment to Section 3 employment compliance by grantees.

The comments call for strengthening the “right of return” in the bill, including prohibiting rescreeing of former residents and protecting resident mobility choice by precluding waiver of the project-based voucher program’s mobility function. With respect to mobility, the comments call for advanced notice to residents of their long-term housing options, flexibility to allow residents to change their minds regarding their selection of options as the transformation progresses, and intensive mobility counseling and support services for affected and displaced residents.

The comments promote significant strengthening of the draft bill’s public and assisted housing resident involvement provisions. The comments support engagement of residents and other community members in the development and amendment of the transformation plan, the public hearing process and all phases of implementation and monitoring. Further, the comments support a set-aside of 5% of the contract total for technical assistance and support for resident activities.

The comments pointed out the danger of failing to provide specific definitions for certain criteria and standards, including “concentration of extreme poverty,” “severely distressed housing,” “long-term viability,” “potential for long-term viability,” “inappropriately high population density,” “significant contributing factor,” and “critical community improvements.”

Finally, the comments urged HUD to make funding available for transformation of rural communities as well as urban.

Other Federal Stakeholders

Noticeably absent from HUD’s presentations on Choice Neighborhoods were prospective partners at the Departments of Transportation, Labor, Education, Energy, Health and Human Services, and their relevant agencies. We recognize that breaking down silos which have been laboriously constructed and defended is not easy and

¹⁰According to Secretary Donovan, since 1993, HOPE-VI has been allocated \$6 billion in funding. See *supra* note 3. In 2003 alone, HOPE-VI received \$574 million. Pub. L. No. 108-7, div. K, tit. II, 117 Stat. 11, 488 (2003). In the best case scenario, Choice Neighborhoods will receive \$250 million in FY 2010. See *supra* note 7.

FY 2010 HUD Appropriations

On December 16, President Obama signed the Fiscal Year 2010 HUD appropriations bill (H.R. 3288) into law as a part of the Consolidated Appropriations Act. Pub. L. No. 111-117 (Dec. 16, 2009). The bill contained a total of \$46.059 billion in budget authority for the Department of Housing and Urban Development (HUD). The following is a list of funding levels for major HUD programs.

- Tenant based rental assistance - \$18.184 billion, of which \$16.339 billion is for contract renewals and \$120 million is for tenant protection vouchers.
- Project based rental assistance - \$8.552 billion, of which \$394 million comes from an advance appropriation for FY 2011.
- Public housing operating fund - \$4.775 billion.
- Public housing capital fund - \$2.5 billion.
- HOPE VI - \$135 million.
- Choice Neighborhoods Initiative - \$65 million.
- Native American Housing - \$700 million.
- Housing Opportunities for Persons with AIDS - \$335 million.
- Community Development Fund - \$4.45 billion, of which \$3.99 billion is for CDBG formula grants and \$150 million is for Sustainable Communities Initiative.
- HOME Investment Partnership program - \$1.825 billion.
- Homeless Assistance Grants - \$1.865 billion.
- Housing for the Elderly (Section 202) - \$825 million.
- Housing for Persons with Disabilities (Section 811) - \$300 million.
- Fair Housing and Equal Opportunity - \$72 million.

A chart of the FY 2010 budget for selected HUD programs has been posted on the National Low Income Housing Coalition’s website at <http://www.nlihc.org/doc/FY10-chart-12-17-09.pdf>. A more detailed article on FY 2010 HUD appropriations will appear in the February issue of the Bulletin.

we applaud HUD's ongoing efforts to bring to the table the federal players whose organizational, logistical and financial engagement is so integral to the transformation vision. Hopefully, we will see evidence of these partnerships in the coming months.

Choice Neighborhoods Initiative Demonstration

December 17, 2009, as this article went to press, President Obama signed the Consolidated Appropriations Act, 2010 in which Congress appropriated up to \$65 million for a Choice Neighborhoods Initiative demonstration program to be used for the "transformation, rehabilitation and replacement housing needs of both public and HUD-assisted housing and to transform neighborhoods of poverty into functioning, sustainable mixed income neighborhoods with appropriate services, public assets, transportation and access to jobs, and schools, including public schools, community schools, and charter schools".¹¹ What is learned by the demonstration program will, presumably, influence any permanent program.

It is encouraging that the demonstration initiative includes provisions which are responsive to a number of the concerns raised by resident advocates. While it allows for-profit developers to apply for funding, it requires that such applicants "apply jointly with a public entity," and it requires that such grantees create partnerships with local organizations including assisted housing owners, service agencies and resident organizations. The demonstration provides that housing developed pursuant to the initiative be subject to "an additional period of affordability determined by the Secretary, but not fewer than 20 years." This provision recognizes a concern which was not addressed in the initial draft bill for the permanent program. Advocates encourage the Secretary to require affordability periods significantly longer than 20 years to ensure housing remains available to low-income residents in the "choice neighborhoods." The bill also provides that "grantees ... undertake comprehensive local planning *with input from residents and the community*". (*Emphasis added*) Hopefully, the Secretary will provide substance to this mandate in the NOFA. The bill requires that the NOFA include "protections and services for affected residences and performance metrics." If such metrics include a pre-award assessment of housing affordability and provisions for maintaining the long-term affordability of the neighborhood, then the initiative appears responsive to two additional resident concerns.

At the same time, the demonstration raises a significant unknown. The bill provides that "use of funds made available for this demonstration under this heading shall

not be deemed to be public housing notwithstanding section 3(b)(1) of such Act". Section 3(b)(1) of the United States Housing Act of 1937¹² states that: "'public housing' means low-income housing, and all necessary appurtenances thereto assisted under this chapter other than [Section 8] [and]... includes dwelling units in a mixed finance project that are assisted by a public housing agency with capital or operating assistance." This language is ambiguous and could be interpreted to mean either that the money made available is not public housing money or that the resulting housing will not be public housing. Given the Secretary's declaration that "Public housing will remain the primary beneficiary of Choice Neighborhoods,"¹³ the latter seems improbable. While it is understandable that not all housing resulting from the initiative will be "public housing," it seems equally unlikely that none would be public housing. We encourage Secretary Donovan to clarify the meaning and intent of this language in the NOFA or by issuing guidance or regulations.

Is This a New HUD?

Secretary Donovan's HUD offers promise of a new way of doing business, and, more optimistically, a new vision of what that business is. The November 10 Choice Neighborhoods stakeholders meeting is an example of HUD bringing together individuals and agencies who will play a role in both new and existing programs to discuss the substance, directions, objectives, resources, constraints and opportunities represented by diverse yet interrelated programs supporting affordable housing. While voucher residents were not included in that meeting, more recently HUD has initiated a process to engage a nationally representative group of public and subsidized housing residents in dialogue with HUD on these and other issues. Now, the Choice Neighborhoods demonstration project illustrates responsiveness to resident and community concerns. There is ample evidence that HUD is seeking dialogue with stakeholders. As existing programs evolve and new programs gain definition and momentum, residents and advocates should embrace this new opportunity for constructive engagement to ensure their perspectives are heard and considered by HUD. This may be the opportunity we have been seeking to influence policymaking before it is set. ■

¹¹Consolidated Appropriations Act, 2010, HR 3288, 3288-48 (December 17, 2009), at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3288enr.txt.pdf. Except as otherwise specified in the Act, the demonstration is subject to the statutory provisions of the HOPE VI program.

¹²Codified at 42 U.S.C. § 1437a (b)(1).

¹³Note 4 *supra*.