

**Responses of Catherine Bishop, Charles Elsesser,
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To Questions for HOPE VI Roundtable
United States House of Representatives
Financial Services Committee**

I. Right of Return

Discuss how to address the temporary and long-term displacement of current residents of HOPE VI sites, e.g., should a PHA be allowed to place any restrictions on former tenants= rights to reoccupy the site regardless of the period of time that has transpired.

Response: Public housing authorities around the country are adopting stringent tenant screening criteria that have and will continue to prevent many displaced public housing families from returning to the newly-constructed public housing units being built in their historic communities. *See* National Housing Law Project, et al., *False HOPE: A Critical Assessment of the HOPE VI Public Housing Redevelopment Program* 25 (2002) (citing “vague, unreasonable screening policies” that prevent former residents from returning to redeveloped HOPE VI sites); Center for Community Change for ENRHONT, *A HOPE Unseen: Voices From the Other Side of HOPE VI* (2003)(criteria of requiring higher income, excellent credit or no police record used to deny re-occupancy); Wilen & Nayak, *Relocated Public Housing Residents Face Little Hope of Return: Work Requirements for Mixed-Income Public Housing Developments*, Clearinghouse Review, Nov.-Dec. 2004 (discussing work requirements and other screening practices that will prevent displaced families from returning).

Many public housing families, who saw their developments and neighborhoods rapidly decline starting in the 1980’s due to severe cutbacks in federal development and operating funds, have now been displaced to allow for the redevelopment of their former communities. But unreasonably strict screening criteria now promise to prevent these families from ever returning to their former community. This is a particularly cruel fate for families living in housing that was originally segregated who now find themselves “temporarily” relocated by housing authorities into segregated, high-poverty neighborhoods. *See, e.g., Wallace v. The Chicago Housing Authority*, 298 F. Supp. 2d 710 (N.D. Ill. 2003); 321 F. Supp. 2d 968 (N.D. Ill. 2004). Without a universal right of return, these families will be denied the opportunity to live in potentially integrated communities, which is what many of the new, mixed-income communities being rebuilt on public housing land promise to be.

It is for these reasons that the Housing Justice Network, a national organization consisting of attorneys and advocates from across the country who represent and advocate for public and subsidized-housing residents, is recommending that Congress enact a universal right of return for displaced public housing residents. In addition, the Housing Justice Network is proposing statutory changes not only to Section 24 (HOPE VI), but also to Section 18 (Demolition and Disposition of Public Housing), that would prevent any public housing agency or any other manager of replacement housing units from denying housing to any person who has been displaced through demolition or disposition (including HOPE VI and mixed-finance) by use of any eligibility, screening, occupancy or other policy or practice. As long as the resident’s tenancy or right of occupancy has not been lawfully terminated, the resident should have the right of return, regardless of the time of displacement. A copy of the Housing Justice Network’s Proposed Amendments to Section 18 is enclosed with this Response. *See* Proposed Amendment #6 (Right of Return).

II. One-for-One Replacement

Discuss any legislative or regulatory changes necessary to provide one-for-one replacement.

Response: During the last ten years, the United States has suffered a net loss of over 123,000 public housing units. *Compare* HUD's 1996 Picture of Subsidized Household data set with HUD's Resident Characteristics Report of January 31, 2007. This figure does not take into account the public housing units HUD has approved for demolition or sale, but have not yet been demolished. Nor does the figure take into account the 10,000 public housing units that HUD considers as having suffered catastrophic damage due to hurricanes Katrina and Rita. Public housing is one of few types of housing that is guaranteed to be affordable to the lowest income families. Families at these income levels are experiencing a dramatic shortage of affordable housing. The loss of public housing units must be stopped.

Therefore, the Housing Justice Network is recommending that Section 18 be amended to provide that one-for-one replacement be the rule in all demolitions and dispositions, including those conducted under Section 24, so that there will be no further "net loss" of public housing units. In addition, housing authorities should be required to construct a sufficient number of replacement units in the original public housing location, or in the same neighborhood as the original public housing location to accommodate all public housing residents who, as long as their tenancy or right of occupancy has not been validly terminated, wish to return to the community after construction of the replacement units. To accomplish both of these objectives, the Housing Justice Network is proposing that Section 18(e) be amended as follows:

"(e) Replacement units. Each public housing unit demolished shall be replaced with a newly constructed public housing unit or with a newly constructed unit that is affordable for the longest feasible term to an extremely low income family. Replacement units shall be of comparable size, unless a market analysis shows a need for three-bedroom and larger-bedroom sized units, in which case that need must be addressed, and shall be constructed on the original public housing location or in the same neighborhood as the original public housing location, and in other locations throughout the metropolitan area, consistent with the goal of expanding educational and economic opportunities. A sufficient number of appropriately sized public housing replacement units for public housing units demolished shall be constructed on the original public housing location, or in the same neighborhood as the original public housing location, to accommodate all public housing residents residing in the development who elect to remain in the community after the construction of the replacement public housing units. For the purpose of this provision, the number of public housing residents residing in the development is determined as of the date the initial public housing agency plan or a proposed amendment thereto indicating an intent to apply for a demolition application pursuant to [42 U.S.C. Sec. 1437p(b)] is or should have been presented to the resident advisory board for consideration, or in the case of a demolition application due to a natural disaster, on the date of the natural disaster."

III. Comprehensive Reform

Is there a way to integrate the housing component of HOPE VI with other public services such as education, given the jurisdictional restrictions in Congress?

Response: Yes. As shown above, Congress can require housing authorities to build replacement housing units “on the original public housing location or in the same neighborhood as the original public housing location, and in other locations throughout the metropolitan area, *consistent with the goal of expanding educational and economic opportunities.*” Emphasis added. This will ensure that in locating replacement housing units, housing authorities must further the goal of expanding educational and economic opportunities. In addition, if the housing component of HOPE VI is consistent with Section 3 hiring requirements, local residents will be able to learn new skills and obtain jobs at public housing redevelopment sites.

IV. Selection Criteria

Provide input on the existing selection criteria and whether it should be modified to reflect any lessons learned.

Response: Currently, Section 24(e)(3) allows the Secretary the discretion not to apply the statutory selection criteria in awarding HOPE VI grants in cases of “demolition only,” “tenant-based assistance only,” “or other specific categories of revitalization activities.” The list of selection criteria should be reviewed to determine which criteria are essential and must be considered for any grant award. At a minimum, Section 24(e)(3) needs to be modified to be consistent with the “no net loss” language in Proposed Amendment #4 and the right of return language in Proposed Amendment #6; Sections 23(e)(2)(I), (e)(2)(J) and (e)(2)(K) would have to be amended or eliminated.

V. Definition of “Severely Distressed”

Provide ideas on whether a definition of the term “severely distressed” is needed and, if so, how the term should be defined.

Response: HUD has employed various interpretations of the “severely distressed” standard for years. As described in the *False HOPE* report, early GAO and OIG audits of the program faulted HUD for shifting away from the most severely distressed public housing sites and towards smaller sites with more potential to attract private investment. HUD did not dispute these findings but instead argued that its practices were consistent with the intent of Congress.

If HOPE VI is going to be responsible for the demolition of another 80,000 units, meaningful standards must be put in place to ensure that the program targets the right units so that viable units are not needlessly lost and program funds are not wasted. Below is a proposed statutory amendment to establish such standards.

The proposed amendment would tie the “severely distressed” requirement to lists of “distressed” public housing units that public housing authorities must create for purposes of required conversion under Section 33. Only public housing units that a public housing authority has previously designated as “distressed” for required conversion purposes would be eligible for HOPE VI funds.

Under this proposal, the statute should be amended both by inserting the following text at the end of the current Section 24(b):

except that the Secretary shall not make any grant under this section involving any revitalization, demolition or conversion to other use of public housing units unless such public housing units fully satisfy the definition of severely distressed public housing set forth in subsection (j)(2).

and by deleting the word “and” at the end of the current subsection (j)(2)(A)(iv), deleting the word “or” at the end of the current subsection (j)(2)(A)(v), and adding the following new subsection (j)(2)(A)(vi):

contains only units that were identified as distressed pursuant to section 1437z-5(a)(2) of this title at least one year prior to the application for grant funds under this section; or

There are several advantages to this approach. Most important is that it would add some objective rigor to the definition of “severely distressed.” It would make clear that some public housing is not severely distressed (i.e., those that are not identified) and not threatened by HOPE VI. Further, the identification of units as “distressed” for Section 33 (required conversion) purposes has real consequences, namely that the public housing authority would eventually be required to take the units off-line even if it does not receive HOPE VI funds. (The purpose of the “one year prior” provision in the proposed language is to give residents notice and to prevent manipulation of the definition, such as through retroactive identification of units as “distressed.”)

The link to Section 33 is also textually defensible. Section 33 states that HUD standards regarding distressed public housing “shall take into account the criteria established in the Final Report of the National Commission on Severely Distressed Public Housing (August 1992).” 42 U.S.C. § 1437z-5(a) (2). The HOPE VI program was created in large part to implement the recommendations made in this 1992 report.

As with the proposed no net loss provision, this proposed language would impose a clear statutory directive upon HUD that should be privately enforceable against HUD via the Administrative Procedure Act.

VI. Grant Award Amount

Comment on what the appropriate grant amount should be to effectively and expeditiously carry out a HOPE VI revitalization plan.

Response: All HOPE VI grant amounts should be sufficient to provide one-for-one replacement as recommended in response to Question II above, as well as additional resources for adequate relocation assistance and social services.

VII. Matching Requirement

Provide input on whether there should be local flexibility or regulatory waiver authority to meet the local matching funds requirement.

Response: No comments at this time.

Other Suggestions On Strengthening and Improving the HOPE VI Program:

I. Increase Resident Participation in the HOPE VI Process.

Public housing residents should have enforceable rights to participate at every stage of the HOPE VI process. HUD has endorsed the concept of resident participation, but residents have meaningful participation only at the pre-application stage. HOPE VI redevelopment activities, as actually carried out, often vary dramatically from what public housing authorities originally propose in their applications and what they have described to residents and the public. Residents must have a mechanism to be involved as critical decisions are made in the execution of projects. If Congress is interested in fuller participation of residents, we can suggest further language to accomplish this.

II. Require HUD to Issue HOPE VI Regulations.

HUD should issue formal HOPE VI regulations. Congress created the HOPE VI program in 1992. To date there have been no published regulations governing the program. Instead, the program has been governed by NOFAs which change every year.

III. Make All HOPE VI Documents Available On-Line.

HOPE VI documents should be made available on-line for all redevelopment sites. The documents that should be made available include (a) HOPE VI applications; (b) Grant Agreements; (c) Revitalization Plans (drafts and approved original)(d) Community and Supportive Services Plans; (e) Relocations Plans; (f) Project financial and budget documents showing how funds are used; (g) Quarterly progress Reports; (h) National aggregate summary of quarterly progress report data; and (i) Any amendments or proposed amendments to documents described above

IV. Make Section 18 Universally Applicable.

Of the over 135,000 public housing units approved for demolition or disposition by HUD over the last 10 years, only about 78,000 have been demolished pursuant to HOPE VI. This is because most of the redevelopment of public housing units occurring today is through mixed-finance or other mechanisms—not HOPE VI. Accordingly, the Housing Justice Network is proposing that Section 18 be made applicable to all demolitions and dispositions, regardless of the program under which the unit is being demolished, including HOPE VI and mixed-finance. See Proposed Amendment #1 (making Section 18 applicable to the demolition of any public housing unit, including HOPE VI and mixed-finance).

V. Implement Fair Housing Requirements.

Because public housing authorities have utilized discriminatory practices in the demolition, relocation and reconstruction processes, Section 24, and Section 18 need to be amended to require the Secretary to obtain and analyze data on the potential impact on residents of the proposed demolition or disposition and be required to disapprove any proposed demolition or disposition application that fails to affirmatively further fair housing. See Housing Justice Network's Proposed Amendment #2, enclosed herewith.

VI. Make Section 18 Privately Enforceable.

Currently, many residents are denied access to the courts to enforce the requirements of the United States Housing Act. *See, e.g. Anderson et al v. Jackson et al*, No. 06-3298 (E.D. La, Feb. 6, 2007 at 11)(denying the right of New Orleans public housing tenants to privately enforce Section 18. “Therefore, Sec. 1437p does not unambiguously confer rights on the plaintiffs, and they cannot maintain a private cause of action under that law.”) Accordingly, Section 18 needs to be amended to allow any affected person to enforce this section against public housing authorities and others pursuant to 42 U.S.C. Sec. 1983. If Section 18 is made universally applicable to all types of demolitions, including HOPE VI and mixed-finance (as suggested in Proposed Amendments #1), residents affected by those developments would also be afforded a private right of action. In any case, Sections 18 (Demolition and Disposition), 24 (HOPE VI) and 35 (mixed-finance) should be made privately enforceable. *See* Housing Justice Network’s Proposed Amendment #7, enclosed herewith.

VII. Make the Uniform Relocation Act Mandatory.

Currently, Section 24 does not require the Uniform Relocation and Real Property Acquisition Act (URA) to be applied in HOPE VI redevelopments, and Section 18(g) explicitly exempts the URA from being applied in demolition and disposition activities under that section. However, HUD has issued detailed guidance making clear that the URA does apply to HOPE VI. *See* Notice CPD 02-08 (Sept. 17, 2002) (revised by Notice CPD 04-02 (Feb. 3, 2004)). Accordingly, if the URA is to apply to all demolition and disposition, not just those pursuant to Section 24, the United States Housing Act needs to be amended to require the URA to apply in all cases. *See* Housing Justice Network’s Proposed Amendment #5, enclosed herewith.

VIII. Make the Amendments Effective on the Date of Enactment, Except for Public Housing Authorities in Receivership.

According to the HUD SAC website, as of February 9, 2007, the New Orleans Housing Authority, which is in receivership, has 14 demolition/disposition applications pending with HUD, including the proposed demolition of C.J. Pete, B.W. Cooper Extension., Saint Bernard, Lafitte, B.W. Cooper, and Saint Bernard Extension. To ensue that amendments to the United States Housing Act relating to demolition and disposition apply to these public housing developments, the Housing Justice Network is recommending that the amendments be effective on the date of enactment, except for public housing authorities in receivership. For those public housing authorities, the amendments would apply to any demolition or disposition application pending with the Secretary on or after January 1, 2007. *See* Housing Justice Network’s Proposed Amendment #8, enclosed herewith.

Respectfully submitted this 12th day of February, 2007,

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