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**before the
Subcommittee on Housing and Community Opportunity
Committee on Financial Services
U.S. House of Representatives**

**October 4, 2007 Hearing on
*The Reauthorization of the McKinney-Vento Homeless
Assistance Act***

Introduction

The National Coalition for the Homeless is pleased to testify before the House Financial Services Subcommittee on Housing and Community Opportunity at its hearings on reauthorization of the McKinney-Vento Homeless Assistance Act.

The National Coalition for the Homeless (NCH), founded in 1984, is a national network of people who are currently experiencing or who have experienced homelessness, activists and advocates, community-based and faith-based service providers, and others committed to a single mission. That mission, our common bond, is to end homelessness. We are committed to creating the systemic and attitudinal changes necessary to prevent and end homelessness. At the same time, we work to meet the immediate needs of people who are currently experiencing homelessness or who are at risk of doing so. We take as our first principle of practice that people who are currently experiencing homelessness or have formerly experienced homelessness must be actively involved in all of our work.

The National Coalition for the Homeless is the nation's oldest national homeless advocacy organization. NCH was the lead organization in the fight to pass the Stewart B. McKinney Homeless Assistance Act (now named the McKinney-Vento Homeless Assistance Act) during the 1980s. We remain a champion for annual appropriations for McKinney-Vento programs, including the programs administered by the U.S. Department of Housing and Urban Development. We also continue to play an active role in monitoring the administration of McKinney-Vento programs and advocating for their periodic reauthorization.

The National Coalition for the Homeless maintains a careful decision-making process in which we rely on our Board of Directors to set our public policy. Our Board of Directors includes people experiencing and formerly experiencing homelessness; community-based, faith-based, and public service providers; state and local homeless and housing coalition advocates; and representatives of philanthropy and business. Our board members represent rural, suburban, and urban communities across the nation. It is from this perspective of field experience and diversity that we offer both supportive and strengthening comments on the two HUD McKinney-Vento reauthorization measures currently before Congress – the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act, H.R. 840) and the Community Partnership to End Homelessness Act (CPEHA, S. 1518).

Homeless Emergency Assistance and Rapid Transition to Housing Act

The National Coalition for the Homeless heartily endorses the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act, H.R. 840). We urge the Financial Services Committee to use the HEARTH Act, a bipartisan measure with the support of over 75 co-sponsors, as the base legislative product for reauthorizing HUD McKinney-Vento programs.

The HEARTH Act is closely aligned with NCH's long-standing principles about homeless assistance and HUD homeless programs. Further, the bill closely follows provisions within the Bringing America Home Act (H.R. 4347 of the 109th Congress), legislation which NCH played a central role in crafting and which is the signature public policy element of our Bringing America Home campaign.

Among the provisions of the HEARTH Act that the National Coalition for the Homeless fully supports:

- **Definition of Homeless Individual.** We support the addition into the definition of homelessness applicable to HUD programs additional living arrangements that are also understood to be homeless, including in other federal law. The HEARTH Act amends the HUD definition of homelessness to include individuals and families living in motels, hotels, and campgrounds due to lack of adequate alternative accommodations, and persons sharing the housing of others due to loss of housing, economic hardship, or a similar situation. These living arrangements are typical among some homeless families, homeless youth and young adults, and homeless persons in rural areas. By excluding these living arrangements, some members of these subgroups are denied access to life-sustaining homeless assistance.

Adding these two living arrangements does nothing more than recognize that homelessness is manifest contemporarily in manners other than those contemplated by Congress when it first passed the McKinney Act 20 years ago this year. Furthermore, Congress codifies these living arrangements as homeless in other federal laws. It should do so now for HUD homeless programs.

State and local educational agencies have managed to include homeless families and unaccompanied youth living in shared housing and in motels/hotels/campgrounds in their definitions of homelessness without overwhelming the public education system. We have confidence that HUD-funded shelters, supportive services providers, and transitional and permanent housing providers could manage the addition of these subgroups equally well.

- **Community Homeless Assistance Planning Boards.** We support the requirement that geographic areas seeking HUD McKinney-Vento funds establish community homeless assistance planning boards for the purposes of identifying service gaps, prioritizing needs, completing applications for funding to HUD, and monitoring funded projects within the geographic area. The scope of stakeholders that HEARTH indicates should be considered for inclusion in the community boards has our full support, particularly language around the expected participation of people experiencing homelessness, people formerly experiencing homelessness, and relatives of homeless persons.
- **Homeless Civil Rights.** We support the requirement that applicants for HUD McKinney-Vento funds make plans and report progress on steps taken in the geographic area of the applicant to eliminate laws that penalize persons experiencing homelessness based upon their status as homeless, or by using zoning laws, ordinances, or policies to prevent the siting of homeless facilities. We also support the requirement that applicants demonstrate efforts to assist homeless children and youth exercise their civil right to public education.

- **Eligible Activities.** We support the full scope of activities eligible for HUD McKinney-Vento funds within the HEARTH Act, including homelessness prevention (and an inclusive definition of such); supportive services (and an inclusive definition of such), without limitation on duration of the services or the subpopulation that can be provided such services; transitional housing; and permanent housing, including permanent supportive housing.
- **Emergency Shelter Grants.** We support reauthorization of the Emergency Shelter Grants program. We support the granting of flexibility to ESG grantees to use more ESG funds for homelessness prevention by repealing the current law limitation of only 30 percent of such funds for homelessness prevention. We also support the requirement that entities that receive ESG grants and serve one or more geographic areas served by a community board shall allocate ESG funds in consultation with such community boards.
- **Community Board Duties.** We support requirements that applicants for HUD McKinney-Vento funds address in their applications and progress reports compliance with the following worthy expectations:
 - Expectations that applicants demonstrate a comprehensive understanding of the extent and nature of homelessness in the geographic area and efforts needed to combat the problem of homelessness in the geographic area.
 - Expectations that applicants demonstrate the need for the types of projects proposed in the geographic area to be served and the extent to which the prioritized programs of the applicant meet such unmet needs.
 - Expectation that applicants provide in their application plans reviews of local policies and practices related to discharge planning from institutions; access to mainstream benefits and services; and zoning and land use policy and practices.
 - Expectations that applicants incorporate in their application plans the findings and recommendations of VA CHALENG assessments of the needs of homeless veterans in their geographic areas.
 - Expectations that applicants describe the degree to which homeless individuals and families in the geographic area are able to access public benefits and services, including schools, and VA benefits.
- **Grantmaking Timetable.** We support the establishment of a schedule by which the HUD Secretary shall announce the annual application for funds, announce awards decisions, and obligate and distribute awarded amounts.
- **Appeals Process.** We support the requirement that the HUD Secretary establish a timely appeal procedure for grant amounts awarded or denied.
- **Victim Protections.** We support the requirement that the HUD Secretary instruct victim service providers receiving HUD McKinney-Vento funds not to disclose for purposes of the Homeless Management Information System any personally identifying information about any client.

We are grateful that the HEARTH Act excludes the following provisions:

- **Permanent Housing Set-Aside.** Current HUD practice requires that 30 percent of funds appropriated to the McKinney-Vento account be used for the development of new permanent supportive housing units targeted to “chronically homeless” persons. NCH prefers instead that geographic areas be given maximum flexibility in the use of HUD McKinney-Vento funds for all eligible purposes, depending on the housing and service gaps in their community. We urge Congress to refrain from establishing national set-asides of funds for permanent housing, or other eligible activities, in the HUD McKinney-Vento statute.
- **Incentives and Bonuses.** Regrettably, the HUD Secretary currently uses bonuses to encourage communities to prioritize particular interventions or subpopulations over others, and in doing so discourages community use of funds for all eligible services, or for supporting those most underserved in their communities. We urge Congress to refrain from establishing incentives and bonuses that serve to limit community flexibility or suppress innovation.

As Congress fine-tunes the HEARTH Act, please consider the following recommended improvements:

- **Permanent Housing Renewals.** We strongly recommend that Congress renew expiring contracts for permanent housing through the housing choice voucher account rather than the HUD McKinney-Vento account.
- **Prevention Set-Aside.** NCH prefers that geographic areas be given maximum flexibility in the use of HUD McKinney-Vento funds for all eligible purposes, depending on the housing and service gaps in their community. Accordingly, we recommend Congress to refrain from establishing a national or local cap on the percentage or amount of funds within the McKinney-Vento account that geographic areas may use for homelessness prevention.
- **Community Board Diversity.** Congress should grant individuals and organizations the opportunity to request the HUD Secretary to take remedial action upon confirming a complainant’s allegation that a Community Homeless Assistance Planning Board established under this Act has failed to meet the membership requirements of the Act.
- **Multiple Applicants.** We urge Congress to permit multiple collaborative applicants for each geographic area, with the Secretary awarding funds to the applicant with the highest application score. Further, a community board should be granted a right to appeal the Secretary’s decision not to recognize the community board as suitable for preparing the collaborative application.

Community Partnership to End Homelessness Act

The National Coalition for the Homeless believes improvements to the Community Partnership to End Homelessness Act (CPEHA, S. 1518) are necessary to make it a stronger and more inclusive bill.

NCH has had the opportunity to comment in writing on CPEHA on at least two occasions. We submitted detailed comments on the introduced version of S. 1518 in a June 20, 2007 letter to the bill's sponsor, Senator Jack Reed (D-RI). We also submitted comments on the version as adopted by the Senate Committee on Banking, Housing, and Urban Affairs on September 19, 2007, in an October 3, 2007 letter to Committee Chairman Christopher Dodd (D-CT) and Ranking Member Richard Shelby (R-AL).

Upon comparison of our recommendations for strengthening S. 1518 as introduced with the Committee-passed version of the legislation, the National Coalition for the Homeless can only conclude that the Committee-passed version of S. 1518 not only does not address most of the requests we made to improve the original measure, it also adds new concerns for us that were not present in the original version. Examples of our concerns include:

- **Definition of Homeless Individual.** We very much appreciate the Banking Committee's responsiveness to the request of NCH and other organizations regarding the inclusion of some additional living arrangements to the definition of homelessness applicable to HUD programs. We appreciate the addition of campgrounds as a homeless living arrangement. We also acknowledge strides that the Committee has made to add some doubled-up persons and motel/hotel users to the definition. The Committee-approved amendments to the definition of homeless individual are an improvement over current law and merit our commendation.

That being acknowledged, we do not support clauses in these newly-eligible living arrangements that require people to have changed primary residences three or more times in the past year or two or more times in the past 21 days in order to be considered homeless. First, these clauses would force people to move repeatedly before they could become eligible for homeless assistance, or to delay homeless assistance to them until after they have moved repeatedly. Second, it will be difficult for homeless people to prove, and homeless service providers to verify, multiple moves.

Additional work on the fine points of this language is required to make these sub-definitions of homelessness safe for homeless persons and operable for providers.

We are also concerned about confusion that will inevitably ensue by the bill's inclusion in the definition of "at risk of homelessness," living arrangements that are recognized as homeless in other federal law definitions of homelessness. We also question why the income threshold for this at-risk population is set as low as 20 percent of area median income, when the customary standard for extremely low-income is 30 percent of area median income.

There is a simpler solution of amending the HUD definition of homeless individual – add "persons sharing the housing of others due to loss of housing or economic hardship" and

“persons living in motels, hotels, and campgrounds due the lack of an adequate alternative arrangement.” – the approach taken in the HEARTH Act.

- **Community Homeless Assistance Planning Boards.** We urged the Banking Committee to require each geographic area applying for HUD homeless assistance to form a community board to coordinate the design, execution evaluation of programs and oversee general decision making processes. Not only did the Committee fail to adopt our recommendation, it struck bill language that would give specific direction to collaborative applicants as to the range of people with whom the applicant ought to consult when developing their applications for funds, including people experiencing homelessness, homeless service providers, representatives of special populations, homeless education liaisons, representatives of the business community, representatives of philanthropies, and others.

The National Coalition for the Homeless cannot support a HUD homeless assistance reauthorization measure that does not provide either safeguards or instructions that a full range of stakeholders, especially persons experiencing homelessness, will be involved in the development and monitoring of collaborative applications.

- **Emergency Shelter Grants Program.** We do not support the requirement in the Committee-passed version of S. 1518 that will restrict ESG grantees, two years after enactment, from spending more than 40 percent of their ESG awards for emergency shelter renovation, rehabilitation or conversion; essential services (and now restricted by the Committee only to essential services related to emergency shelter or street outreach); or emergency shelter maintenance or operations. We are concerned this set-aside may negatively affect the wherewithal of the nation’s emergency shelter system – the very safety net for persons experiencing homelessness.

We prefer that grantees be given maximum flexibility in the use of ESG for all eligible activities, depending on the prevention and emergency response needs in their community. National set-asides of funds for specific purposes limit such flexibility and should be removed from the bill prior to Senate passage.

- **Permanent Housing Set-Asides.** In our June 2007 letter, we expressed our preference that communities be given maximum flexibility in the use of HUD McKinney-Vento funds for all eligible purposes, depending on the housing and service gaps in their community. We recommended that national set-asides of funds for permanent housing activities be removed from the bill. The Banking Committee rejected this recommendation.
- **Selection Criteria.** The National Coalition for the Homeless objects to the Banking Committee’s decision to eliminate from the original bill many of the application selection criteria. Among the selection criteria that has “gone missing” from the Committee-approved version of S. 1518:
 - Expectations that applicants address in their application plans the needs of relevant subpopulations, to include persons with disabilities, families with children, unaccompanied youth, veterans, and persons at risk of homelessness.

- Expectations that applicants identify in their application plans an individual or body responsible for overseeing implementation of specific strategies.
- Expectation that applicants provide in their application plans reviews of local policies and practices related to discharge planning from institutions; access to mainstream benefits and services; and zoning and land use policy and practices.
- Expectations that applicants incorporate in their application plans the findings and recommendations of VA CHALENG assessments of the needs of homeless veterans in their geographic areas.
- Expectations that applicants demonstrate a comprehensive understanding of the extent and nature of homelessness in the geographic area and efforts needed to combat the problem of homelessness in the geographic area.
- Expectations that applicants demonstrate the need for the types of projects proposed in the geographic area to be served and the extent to which the prioritized programs of the applicant meet such unmet needs.
- Expectations that applicants describe the degree to which homeless individuals and families in the geographic area are able to access public benefits and services, including schools, and VA benefits.
- Specific direction on the range of persons the applicant shall consult when preparing their application (see our comments on community homeless assistance planning boards above).

The National Coalition for the Homeless urges that these selection criteria be restored to the bill before presenting S. 1518 to the full Senate for a vote.

- **Incentives and Bonuses.** NCH believes the bill's proposed High-Performing Community designation authority is too cumbersome for most communities to compete. Also, we are concerned that granting the Secretary authority to award bonuses gives HUD ability to designate priority activities at the expense of maximizing community flexibility. Our concerns with the incentive and bonus authority have been exacerbated by the Banking Committee's decision to require HUD to develop a new pro-rata need formula. This new formula is to include consideration of the best available data that targets such need amount to actual rates of homelessness. Thus, while the High-Performing Community incentive rewards geographic areas making demonstrable reductions in homelessness, the pro-rata formula change is likely to "reward" geographic areas with higher incidences of homelessness. High-performing communities could very well, then, see reductions in their pro-rata need amounts.
- **Additional Missed Opportunities.** Additional recommendations for strengthening S. 1518 that the Banking Committee chose not to implement include:
 - Interagency Council on Homelessness. While we support the reauthorization of the Interagency Council on Homelessness, we recommended that the executive director of the Council be subject to Senate confirmation, so that the public may play a role in the selection of this important position within the executive branch. We requested that the monitoring of state and local practices regarding the criminalization of homeless persons based on their homeless status be added as an ICH duty. We recommended

- that ICH be explicitly funded through the account for the Executive Office of the President, as the Council is a function of the full executive branch, not of HUD.
- Technical Assistance. We requested stronger language regarding technical assistance to project sponsors. Current wording does not permit the HUD Secretary to offer technical assistance to current sponsors.
 - Unified Funding Agencies. We recommended that this additional layer of grants administration be eliminated, as it is an additional diversion of funding from direct services to program administration. HUD should continue to make grant awards directly to project sponsors and manage such awards.
 - Program Requirements. We requested that the proposed program requirement placing limits on resident capacity in permanent supportive housing projects be removed, since this is an area of state and local jurisdiction.

There are several provisions of the Community Partnership to End Homelessness Act that enjoy NCH support. Among them:

- **Permanent Housing Renewals.** We strongly support the legislation's proposal to renew expiring contracts for permanent housing through the housing choice voucher account rather than the HUD McKinney-Vento account.
- **Supportive Services.** We thank the Banking Committee for clarifying language in the original measure such that the use of homeless assistance funds for supportive services to individuals and families who in the prior 6 months have been homeless but are currently residing in permanent housing shall not be construed to apply to individuals and families occupying permanent housing units funded through the homeless assistance program.
- **Administrative Expense Limit.** The Committee's decision to set an administrative expense limit for project sponsors at 7 percent, while lower than our recommended 10 percent, is an improvement over current policy.
- **Victim Protections.** We support the requirement that the HUD Secretary instruct victim service providers receiving HUD McKinney-Vento funds not to disclose for purposes of the Homeless Management Information System any personally identifying information about any client.
- **Grantmaking Timetable.** We support provisions that establish the schedule by which the HUD Secretary shall announce the annual application for funds, announce awards decisions, and obligate and distribute awarded amounts.
- **Appeals Process.** We support the requirement that the HUD Secretary establish a timely appeal procedure for grant amounts awarded or denied.
- **Findings and Purpose.** We support the comprehensive findings and purpose enumerated in S. 1518. These are important sections of a bill as they are used by the executive branch, the courts, and the public to interpret Congressional intent.

Additional Recommendations for Strengthening HUD McKinney-Vento Programs

As the HEARTH Act and CPEHA make their ways through Congress, we urge the following additions or improvements to both bills:

- **Increase Authorization Level.** We urge Congress to double the authorization and appropriations for HUD McKinney-Vento programs to \$3 billion annual. While the HEARTH Act provides a welcome increase in the authorization level for HUD McKinney-Vento programs to \$2.5 billion in FY 2008, and CPEHA to \$2.2 million in FY 2008, these levels fall short of the \$3.0 billion doubling goal of national homeless organizations, as expressed in a joint document “10 Steps to Help Prevent and End Homelessness Right Now,” issued in connection with the 20th Anniversary of the McKinney-Vento Homeless Assistance Act.
- **Protect Housing Choice Voucher Tenants.** We recommend that as renewal contracts for permanent housing projects initiated with HUD McKinney-Vento funds are transferred to the Housing Choice Voucher fund, additional budget authority be granted at such sums as may be necessary in order to protect current voucher holders and persons on voucher waiting lists from being displaced or unserved by the transfer.
- **Manage the Homeless Management Information System.** NCH seeks a vigorous body of law to protect confidentiality of data about clients served with homeless assistance funds. We hope to curb the adverse impact that the Homeless Management Information System (HMIS) is having on community and provider ability to direct limited resources to actual housing and services for homeless persons. Finally, we are concerned that data collected through HMIS is not sufficiently reliable or valid for purposes of calculating estimates of homelessness incidence and prevalence or for determining the pro-rata estimate of need.

If Congress decides to allow HUD to retain the HMIS, which it has never expressly authorized, we urge that a statutory framework for governing and controlling it be established. Statutory language on HMIS should accomplish the following:

- Distinct funds should be authorized and appropriated separate from HUD McKinney-Vento Homeless Assistance programs for the implementation and execution of HMIS.
- Use of HMIS as the data source for determining the pro-rata estimate of need and as a source for a homeless incidence and prevalence estimate should be prohibited.
- Consumers and providers should have the opportunity to opt out of participation in HMIS and to review and correct HMIS data.
- Project sponsors who collect equivalent data outside of HMIS should remain eligible for funds.
- The HUD Secretary should be required to instruct any providers receiving HUD McKinney-Vento funds not to disclose for purposes of HMIS any personally identifying information about any client. (Current law and the HEARTH Act extend

- this responsibility to victim service providers only. We support this language, but ask Congress to widen the scope to all providers.)
- Data sharing between providers should be prohibited without client consent.
 - HMIS data should be encrypted and audit trails should be established.
 - Law enforcement shall not have access to HMIS data without a search warrant.
 - Collaborative applicants and project sponsors should be required to train staff on HMIS policies and procedures.
 - Criminal and civil penalties for persons who knowingly and willingly disclose HMIS data should be established.
 - Congress should ensure non-preemption of state privacy laws more vigorous than federal HMIS law.
 - Protections on academic researcher use of data should be established.
 - An independent evaluation of HMIS should be conducted to assure its efficacy.
- **Expand Sources of Match.** We request that donated real and personal property be made eligible as matching contributions, in addition to cash and donated services.
 - **Maintain Current Level of Non-Federal Effort.** A requirement should be established that funds appropriated and made available for all eligible activities under the HUD McKinney-Vento program shall be used to supplement, and not supplant, other Federal, State, and local public funds use for such activities.
 - **Establish a Transition Period.** Project sponsors and tenants should be assured continuity of funds and housing and services during the transition period from the homeless assistance program as currently configured and any new or re-designed program(s) that result from reauthorization. Tenants of housing projects currently receiving HUD McKinney-Vento funds should not be displaced as a result of any changes in funding to the project. Further, project sponsors of permanent housing units must retain funding for the full 20 years for which they are required to keep the units affordable.
 - **Enact Criminal Justice Grant Conditions to Spur De-Criminalization of Homelessness.** We urge Congress to bar geographic areas with laws that penalize persons experiencing homelessness based upon their status as homeless, or by using zoning laws, ordinances, or policies to prevent the siting of homeless facilities, from receiving formula funds through the Edward Byrne Memorial Justice Assistance Grant Program until such laws are repealed.
 - **Homelessness Prevention.** Congress should authorize and appropriate funds separate from HUD McKinney-Vento for a major homelessness prevention initiative. As one possibility, we encourage consideration of the establishment and appropriation of funds for an emergency rent relief fund, whereby HUD would assist individuals and families at risk of losing their housing by making grants available to local units of government and nonprofit organizations to establish local funds for emergency payments to prevent evictions (See Section 304 of H.R. 4347 of the 109th Congress). The original version of S. 1518 offers a second option for consideration.

- **Rural Homeless Assistance.** Congress should authorize and appropriate funds separate from HUD McKinney-Vento for a rural homeless assistance grant program. A targeted homeless assistance program would ensure greater access of rural communities to federal homeless assistance resources. We prefer that this proposed rural homeless assistance program be administered by the U.S. Department of Agriculture, which has greater competency in working with rural communities.

Conclusion

The National Coalition for the Homeless congratulates the sponsors and staff of both the HEARTH Act and CPEHA for their efforts to develop reauthorization measures for HUD McKinney-Vento programs. We are heartened that both bills have attracted high numbers of co-sponsors, an indication of Congress's concern with and intention to reduce homelessness.

After comparing the HEARTH Act to CPEHA, the National Coalition for the Homeless concludes that H.R. 840 is the legislative product that aligns more closely with our long-standing position on homeless assistance and on the appropriate role of HUD McKinney-Vento programs in responding to the emergency condition of homelessness in the United States. Accordingly, we call on Congress to use the HEARTH Act as its base legislation for developing a HUD McKinney-Vento reauthorization measure worthy of enactment into law.

The National Coalition for the Homeless looks forward to continuing to work with Congress in developing a HUD McKinney-Vento reauthorization measure that is fully protective of people experiencing homelessness and highly responsive to their diverse shelter, housing and support services needs.