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Housing Issues in the 106th Congress

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Summary

The final 2 months of the 106th Congress saw three significant pieces of housing legislation adopted: the FY2001 budget for the Department of Housing and Urban Development (HUD), an affordable housing and homeownership bill, and community renewal legislation containing an increase in low income housing tax credits and private activity bonds.

The President signed the VA-HUD FY2001 appropriations bill, H.R. 4635, on October 27 (P.L. 106-377). The new law provides HUD with $30.6 billion for FY2001, $4.7 billion above the previous year's $25.9 billion, but $1.8 billion less than the Administration's request. All major programs received increased funding except for drug elimination grants and the HOPE program, both funded at last year's levels. The Housing Certificate Fund, primarily Section 8 rental assistance, received $13.9 billion, $2.6 billion more than the previous year. Although the House- and Senate-passed bills recommended few or no incremental vouchers, the conference report contained $483 million for 79,000 new vouchers. To increase voucher utilization, 20% of vouchers (up from 15%) can be used at assisted rental projects.

Provisions to increase both the Low Income Housing Tax Credit and private activity bonds were attached to a number of bills moving through the 106th Congress. None had become law until a tax bill, H.R. 5662, containing housing tax credit and private activity bond increases, was added to a broader appropriations package, H.R. 4577. The President signed H.R. 4577 on December 21, 2000 (P.L. 106-554). The tax credit cap will increase to $1.50 per capita in 2001 and to $1.75 in 2002. This change is expected to subsidize the construction of an additional 180,000 rental units over the next 5 years. The private activity bond cap will increase to the larger of $62.50 per state resident or $187.5 million in 2001, and $75 per resident or $225 million in 2002.

A number of affordable housing and homeownership provisions in H.R. 1776, a bill passed by the House on April 6 by 407-8, were added to a bipartisan housing authorization bill, H.R. 5640. The President signed this bill on December 27, 2000 (P.L. 106-569). Among the provisions in this wide-ranging act is the authorization to use Section 8 housing vouchers to help families accumulate downpayments to purchase homes, and to refinance FHA-insured Home Equity Conversion Mortgages for elderly homeowners. Changes were also made in programs for the elderly and disabled, and manufactured housing regulations.

Other bills during the 106th Congress that did not get enacted included proposals to address "predatory lending" to lower income homebuyers (including fraudulent appraisals, exorbitant loan fees and other onerous mortgage terms): H.R. 3901, H.R. 4213, H.R. 4250, S. 2405 and S. 2415. In addition, hearings were held on September 12, 2000 on bills proposing alternative uses for $5 billion of "excess" Federal Housing Administration (FHA) mortgage insurance program reserves: H.R. 4795, S. 2914, and S. 2997. One proposal would have used the surplus to reduce insurance premiums, while another would have subsidized new rental housing construction and provided funds for the preservation of existing rental projects.

Contents

List of Tables

Housing Issues in the 106th Congress

The HUD Budget

FY2001 Budget. On October 19, 2000, the House and Senate approved the FY2001 VA/HUD appropriations bill (H.R. 4635), providing $30.6 billion for HUD (H.Rept. 106-988). The President signed P.L. 106-377 on October 27. The approved budget provides about $4.7 billion more than the $25.9 billion enacted for FY2000. Then-HUD Secretary Cuomo called it the best budget in 20 years although the amount is $1.8 billion less than President Clinton had requested for HUD. Negotiations between Congress and Administration representatives in late September and early October resulted in a large increase in Section 8 recaptures. "Recaptures" are unused funds from a prior budget year that are taken back from public housing authorities, either to be redirected into another fiscal year's budget or as a cancelled appropriation. The $275 million of Section 8 recaptures approved by both the House and Senate increased to $1.8 billion in the conference negotiations. The reprogramming of these funds allowed more funding for a number of HUD programs, in some cases, more than the Administration's original request.

The Housing Certificate Fund, which provides rental assistance to about 3 million low-income households, received $13.9 billion, nearly $2.6 billion more than the previous year, although $187 million less than the Clinton Administration's request. The Administration had asked for 120,000 new housing vouchers in response to the rising number of low income households paying more than half of their income for rent. Both the House- and Senate-passed bills recommended few or no additional vouchers. However, the conference report included $453 million for 79,000 new vouchers.

During the 106th Congress, there were discussions about the strong economy, the resulting difficulties of using vouchers in tight rental markets, and whether a new HUD production program was needed. A number of studies indicated a growing shortage of "affordable" rental housing (households with low income who pay more than 30% of their income for shelter). For example, in March 2000, HUD sent a report to Congress, *Rental Housing Assistance — The Worsening Crisis*, which documented that a record 5.4 million unassisted very-low-income families pay over half of their income for housing or live in severely distressed housing. In June, 2000, the Center for Housing Policy released a report, *Housing America's Working Families,*[1] which stated that having a job does not guarantee a family a decent place to live at an affordable cost. Among its findings: "More than 220,000 teachers,

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[1] The Center for Housing Policy (a research affiliate of the National Housing Conference), *Housing America's Working Families,* New Century Housing, June, 2000, p. 2. Washington, D.C.

police, and public safety officers across the country spend more than half their income for housing, and the problem is growing worse."

The low level of incremental vouchers originally approved by the House and Senate stands in contrast to the 50,000 additional vouchers approved by Congress for FY1999 and the 60,000 for FY2000. During 2000, HUD was called upon in congressional hearings to explain why so few of these 110,000 incremental housing vouchers had been put to use. The reasons generally given were that the sustained economic growth had driven down vacancy rates, pushed up rents to levels where vouchers could not be used, and made participation in the Section 8 program less appealing to landlords who could easily fill their units with market-rate tenants and avoid the "red tape" of this program. The House VA/HUD Appropriations Subcommittee said that there was no need to put more vouchers into the pipeline until the difficulties of using the current supply were adequately resolved. Both HUD and the Subcommittee discussed options to address this matter, including increasing the fair-market rents in some expensive areas, and giving landlords more incentives to participate in the rental program. As noted, final negotiations produced an agreement for 79,000 new housing vouchers.

Prior to conference negotiations, HUD was concerned that many of its programs would either face cuts or be funded at the previous year's level. For example, as passed by the House, H.R. 4635 would have provided $50 million less for the public housing operating fund than requested and the public housing capital fund would have received $155 million less than in the previous year. The Senate bill approved funding for public housing at the Clinton Administration's requested amounts. However, the conference report provided $6.25 billion for these two funds, about $95 million above the requested amount. About 1.3 million families now live in public housing. Efforts to revitalize or replace nearly 100,000 severely distressed public housing units continue under the HOPE VI program. The conference report provided $575 million, the same as the previous year, but $50 million less than requested. Many housing organizations worry that fewer replacement units will be added than the number torn down under HOPE VI, and that not all of the replacements will be affordable to those who are displaced, since more "mixed income" communities are being built. (See CRS Report RL30589, *HOPE VI: The Revitalization of Severely Distressed Public Housing*, by Susan Vanhorenbeck.)

The Clinton Administration's FY2001 HUD budget asked for an 18% increase in homeless assistance grants, up $180 million from $1.020 billion in FY2000 to $1.2 billion in FY2001. The conference report provided $1.025 billion for homeless assistance grants and also, for the first time, funded the Shelter Plus Care program in a separate line item at $100 million. Thus, the total approved for homeless programs for FY2001 was $1.125 billion, $105 million more than the previous year, but $75 million less than requested. Programs for the elderly and disabled were funded in the conference report at close to $1 billion, up from slightly more than $900 million the previous year.

Several HUD programs provide funds for the economic stabilization or revitalization of communities, especially for areas with high unemployment and concentrated levels of poverty. The conference report approved $5 billion for Community Development Block Grants, significantly more than in either the House-or Senate-passed bills, and about $100 million more than the Administration's request. The HOME block grant program also benefitted from last minute negotiations, with the conference report providing $1.8 billion, $200-$215 million more than House and Senate-approved bills and $150 million above the Administration's original request.

Other Readings. See CRS Report RL30504, *Appropriations for FY2001: VA, HUD, and Independent Agencies,* by coordinators Dennis W. Snook and E. Richard Bourdon. For general background on housing programs, see CRS Report RL30486, *Housing the Poor: Federal Programs for Low-Income Families,* by Morton J. Schussheim.

FY2000 Budget. The President signed the VA, HUD, and Independent Agencies appropriation bill (H.R. 2684, P.L. 106-74) on October 20, 1999, providing HUD with a FY2000 budget of $25.9 billion, about $1.9 billion more than FY1999 but $2 billion less than the Administration had requested. Included in the budget were a few unusual items in the housing certificate fund: $2.2 billion of rescissions and $4.2 billion of advance funding that could not be spent until FY2001. The budget provided $10.8 billion to renew all expiring Section 8 contracts, including funds to help families where landlords decide not to continue in the Section 8 program or where contracts are terminated. For the second time in 2 years, the HUD budget included funds for an increase in the number of subsidized rental housing units for the poor: $347 million for about 60,000 additional general use vouchers. Funding for other large HUD programs included $911 million for housing for the elderly and disabled; $1.02 billion for homeless assistance grants; $1.6 billion for the HOME program; and $4.8 billion for Community Development Block Grants.

Other Readings. See CRS Report RL30304, *Appropriations for FY2000: VA, HUD, and Independent Agencies*, by Dennis W. Snook, coordinator.

Table 1. Department of Housing and Urban Development Appropriations

(budget authority in billions; net after rescissions)

FY1996	FY1997	FY1998	FY1999	FY2000	FY2001
$19.13	$16.30	$21.44	$24.08	$25.94	$30.62

Source: Budget levels remain uncertain until all program experience has been recorded, and any supplemental appropriations or rescissions have been taken into consideration; thus, FY1996-00 figures are from budget submissions of subsequent years. Estimates for FY2001 are from the House Appropriations Subcommittee on VA, HUD, and Independent Agencies.

Low Income Housing Tax Credits and Private Activity Bonds

Housing Tax Credits. The Low Income Housing Tax Credit (LIHTC), a 1986 provision in the federal tax code, has become the major engine for subsidizing the production of assisted rental housing affordable to lower income households. At least 800,000 new and rehabilitated units have been supported over the program's 14-year history. A 1997 General Accounting Office study found that this program, combined with funds from other federal housing programs, was helping households with very low incomes, averaging about $13,300 per year. These are families with incomes equal to about 37% of the area median, considerably lower than the households with 50% to 60% of the median that the program was generally intended to serve.

With the robust economy reducing vacancy rates and pushing rents higher, housing tax credits are being increasingly called upon to help prevent the loss of the existing stock of federally-assisted rental units, rather than to increase the overall supply of affordable rental units. An increasing number of tax credits are being used to encourage Section 8 landlords with expiring contracts not to leave the program. More tax credits are also being used to convince Section 8 landlords to participate in the "mark-to-market" program. And more tax credits are being used with HUD's HOPE VI program which is tearing down some of the worst big city high rise public housing projects, and replacing them with lower-density mixed income apartment complexes.

These new uses for housing tax credits, along with reports about the difficulties tenants are having using housing vouchers in tight rental markets, help explain the strong congressional support for increasing the annual supply of tax credits. H.R. 175 (N. Johnson) and the identical S. 1017 (Mack) had more than 450 co-sponsors. These bills would have increased the annual amount of federal tax credits that state housing finance agencies can distribute to developers, from $1.25 per person in the state, to $1.75, and would also have indexed the limit to inflation. This would have raised the yearly supply of tax credits by 40%. An identical proposal was included in President Clinton's FY2001 budget request, but without indexing for inflation.

Several modified versions of these bills were added to other legislation moving through Congress. On December 15, 2000, the House and Senate passed H.R. 4577 (H. Rept.106-1033), the Consolidated Appropriations Act of 2001, incorporating the provisions of a tax bill, H.R. 5662. It will increase the housing tax credit cap to $1.50 for 2001 and $1.75 thereafter, with indexation for inflation beginning in 2003. There will also be a $2 million state minimum starting in 2001, with inflation protection beginning in 2003. This law also modifies the criteria for allocating housing credits among projects, requiring community revitalization plans, public housing waiting lists, special housing needs, and other factors to be taken into consideration. There are also additional responsibilities for housing credit agencies, including the requirement for a comprehensive market study of the housing needs of low-income households and for regular site visits to monitor noncompliance with habitability standards. It is estimated that an increase in the cap to $1.75 will result in an additional 30,000 tax credit units a year at a cost of $1 billion over 5 years and $6 billion over 10 years.

Issues and Concerns. In terms of apartments produced, the LIHTC has been very successful, as builders and investors have responded to this tax incentive, although the extent, if any, to which these units would have been produced in the absence of the tax credit, is not known. But no program of this size and complexity is free of concerns. Some observers worry that some of the more unfortunate results of past housing programs could surface later in this program.

For example, there is concern that some of the early tax credit projects will be converted to market-rate units after their 15th year of service, as the law allows under certain conditions, creating an issue similar to landlords who "opt out" of HUD's Section 8 assisted rental program. A recent report by the Joint Center for Housing Studies of Harvard University and the Neighborhood Reinvestment Corporation, *Expiring Affordability of Low-Income Housing Tax Credit Properties: The Next Era in Preservation*, estimates that 15-year affordability restrictions will end for the first 23,000 tax credit units in 2002. The report concludes: "Lack of monitoring or insufficient funds for property repair or purchase will place even properties for which there is interest in preserving affordability at risk of market conversion, reduced income-targeting, or disinvestment and decline" (p. 37).

There are also questions about whether the cost of producing tax credit rental units is reasonable relative to alternative ways of helping low income households with their housing needs. New construction is almost always more expensive than the use of existing apartments, and some observers think it is inappropriate to put low income households in new units while moderate income households nearby in less desirable housing struggle without assistance. The General Accounting Office is currently conducting a study to compare the costs of tax credit apartments with other existing federal rental housing programs.

Others wonder about how well developers, investors, and state allocating agencies are following the complex requirements of this program. The Internal Revenue Service (IRS) is concerned about noncompliance among early tax credit projects that have now passed the 10-year credit period (by which time all awarded tax credits have been claimed by the investor) and may no longer feel compelled to abide by program rules. While the IRS considers overall compliance with program requirements to be good, there has been a significant increase in the number of violations reported by IRS field agents. The agency has conducted a broad criminal investigation of low-income housing tax credit projects suspected of illegal activities. (*Housing and Development Reporter*, June 26, 2000). The Affordable Housing Finance magazine (housingfinance.com) reported on charges of favoritism and self-dealing in the awarding of housing tax credits in Texas. In November, 2000, a member of the Texas Department of Housing and Community Development was convicted in the U.S. District Court of bribery, theft, mail fraud, and conspiracy to defraud the government of low-income housing tax credits. (*Housing Affairs Letter*, November 10, 2000).

Other Readings. CRS Report RS20337, *The Low Income Housing Tax Credit: Current Issues and Proposed Legislation*, by Richard Bourdon.

Private Activity Bonds. Housing tax credit supporters also urged passage of companion legislation that would increase the allowed annual state sale of tax-exempt private activity bonds. Proceeds from the sale of these bonds are frequently used in conjunction with the LIHTC program. (Businesses and individuals who buy these bonds in effect lend money at below-market interest rates because they do not have to pay federal income tax on the interest they earn on these bonds.) The annual limit of bonds that each state could sell, imposed in 1986, was the greater of $50 per capita or $150 million. This cap was scheduled to be gradually increased to $75 per capita or $225 million over a 5-year period beginning in 2003. H.R. 864 (Houghton) and S. 459 (Breaux) would have increased the cap to $75 per capita or $225 million in 2001 and indexed it to inflation. A tax bill, H.R. 5662, containing an increase in the private activity bond cap, was added to a broad appropriations measure, H.R. 4577, and passed by the House and Senate on December 15. President Clinton signed the bill on December 21, 2000 (P.L. 106-554). Under the new law, the $50 per capita or $150 million cap for each state (whichever is greater), will increase to $62.50 per resident or $187.5 million in 2001 and $75 per resident or $225 million in 2002. The caps will be indexed for inflation in 2003.

Housing for the Elderly and Disabled

A number of bills were introduced in the 106th Congress to make changes to HUD's Section 202 housing program for the elderly and to the Section 811 program for the disabled. H.R. 202 (Lazio), Preserving Affordable Housing for Senior Citizens, would have restructured the financing of existing housing projects for senior citizens with the goals of both reducing the costs to the government and preserving such housing. Projects that were funded with direct loans and project-based rental assistance before 1990 would be converted to a program of nonrepayable capital grants (in effect, debt forgiveness). Section 8 contracts would be cancelled. Instead, these projects would be put under 5-year renewable assistance agreements. A revised H.R. 202 incorporated provisions found in H.R. 425 (Vento), H.R. 1336 (Lazio), H.R. 1624 (LaFalce), S. 1319 (Bond), and the original H.R. 202. A portion of this revised H.R. 202 became Title V of the FY2000 VA/HUD appropriations act, H.R. 2684, signed by the President on October 20, 1999 (P.L. 106-74).

Under Title V, public housing authorities are allowed to make rental assistance payments on behalf of a family that uses an assisted living facility as a principal place of residence and that uses the supportive services made available by the facility. But these payments can only be used to cover the cost of renting the dwelling and not for the supportive services. Provisions in the new law also protect existing residents of federally assisted housing from having to move out when rents are increased.

As enacted, Title V did not include provisions for federal matching grants for the preservation of elderly and disabled housing projects that were found in H.R. 425 and S. 1318. Another bill, S. 2733 (Santorum), introduced on June 15, 2000, also contained the preservation matching grant. The Senate Banking Subcommittee on Housing and Transportation held a hearing on S. 2733 on July 18, 2000. Under the bill, existing Section 202 housing for seniors and Section 811 housing for the disabled could be converted to assisted living facilities. Optional matching grant funds could be used to leverage money for additional housing construction of apartments for the elderly and disabled. Supporters said that this legislation would also have given tenants an opportunity to stay in their current homes rather than having to move into an expensive nursing home.

During the second session of the 106th Congress, there was additional legislation adopted that made changes to HUD's programs for the elderly and disabled. On December 27, 2000, President Clinton signed H.R. 5640, the American Homeownership and Economic Opportunity Act of 2000 (P.L.106-569). Under Title VIII, the prepayment of mortgages for Section 202 properties will be allowed if the sponsor (owner) continues the low-income use restrictions. The prepayment and refinancing at lower interest rates allows sponsors to build equity in their project. Upon refinancing, the HUD Secretary must make available at least 50% of the annual savings resulting from reduced Section 8 or other rental housing assistance payments in a manner that is favorable to tenants, such as increasing supportive services, rehabilitation modernization, and retrofitting of structures.

Also under Title VIII, Section 202 sponsors can form limited partnerships with for-profits, and compete for low income housing tax credits. This will allow owners to build bigger developments and achieve economies of scale. In addition, private nonprofit housing providers can use all sources of financing, including federal funds, for amenities, relevant design features, and construction of affordable housing for seniors. With the HUD Secretary's approval, project reserves can be used to retrofit obsolete or unmarketable units.

There are also similar provisions that allow for-profit limited partnerships to participate in the Section 811 program for the disabled, and permit them to compete for low income housing tax credits. Tenant-based rental assistance provided under the Cranston-Gonzalez National Affordable Housing Act can be provided by a private nonprofit organization as well as by a public housing agency as under previous law. The amount of this tenant-based assistance is capped at 25% of the yearly appropriation for Section 811 housing to assure that money remains available for construction of affordable housing for the disabled. Project reserves can be used to reduce the number of dwelling units in a Section 811 project to retrofit obsolete or unmarketable units.

Other Readings. CRS Report RL30247, *Housing for the Elderly: Legislation in the 106th Congress*, by Susan Vanhorenbeck.

Increasing Homeownership

There has been strong bipartisan support for efforts to increase the homeownership rate, particularly for moderate-income households and minorities. H.R. 1776, the American Homeownership and Economic Opportunity Act of 2000 (Lazio) contained a wide variety of such initiatives. It passed the House on April 6, 2000, amended, by a vote of 417 to 8. On December 27, 2000, President Clinton signed into law H.R.5640, the American Homeownership and Economic Opportunity Act of 2000 (P.L. 106-569). This bill contains a number of homeownership provisions, some that were in H.R. 1776. Under this new law, up to one year of Section 8 rental assistance can be used as a downpayment on the purchase of a home. There is a 3-year pilot program to demonstrate the use of Section 8 vouchers by the disabled to become homeowners.

Also under the new law, there is clarification that homeowners may cancel their private mortgage insurance when the equity in their home reaches 20% of their remaining debt. The law allows for the refinancing of home equity conversion mortgages (HECMs) for elderly homeowners, with the HUD Secretary given the discretion to reduce the single premium payment to an amount to be determined by an actuarial study to be conducted. An Indian Lands Title Report Commission is to be created to find ways to facilitate home mortgages on Indian trust lands.

Other Readings. See CRS Report RS20527, *HR. 1776 and S. 1452: The American Homeownership and Economic Opportunity Act of 2000*, by Richard Bourdon.

Manufactured Housing Industry Reforms

The manufactured housing industry, which builds homes in factories rather than at building sites, plays a significant role in providing affordable housing to lower-income households, particularly to the elderly. There are presently about 9 million manufactured homes. The average cost of a new unit in 1998 was $43,800, not counting the land, compared with $136,425, excluding land, for a new site-built home. According to the American Association of Retired Persons (AARP), 44% of manufactured home owners are age 50 and above. The industry has been regulated by HUD since 1974, although the staff that oversees manufactured housing has declined from a peak of 34 to less than a quarter of that number in recent years. In 1990, Congress established a national commission and pushed it to forge consensus on key reform issues, but this effort collapsed in 1994 over a proposal that installation defects be covered by a 5-year retailer warranty.

In October 1999, the Housing and Transportation Subcommittee of the Senate Banking Committee held hearings on S. 1452. The American Association of Retired Persons testified that "the 1974 Act is not working well for the manufactured housing industry nor for the owners of these homes" and emphasized the failure to enforce the construction standards as now written. HUD's Assistant Secretary for Housing William Apgar said his agency had worked with industry representatives and consumer groups for over a decade in an effort to update the code to reflect changes in the technology that have transformed the industry. But, he noted, "numerous legislative initiatives have failed as consumers and manufacturers have wrangled over how best to regulate this industry." A vice president of Fleetwood Enterprises, representing the industry's two national trade associations, agreed that "the Act has not kept pace with the rapid evolution of the industry and its products"and said these associations enthusiastically supported the proposed reforms.

On April 6, 2000, the House passed H.R. 1776, a major homeownership bill that also contained reforms to HUD's manufactured housing regulations. On May 2, 2000, the Senate passed S. 1452, a bill to revise the Manufactured Housing Safety Standards Act of 1974. H.R. 5640, an affordable housing and homeownership bill that became law on December 27, 2000 (P.L. 106-569), included most of the proposed changes to the manufactured housing regulations in the above mentioned bills.

Under the new law, a "consensus committee"of 21 members will be established to represent producers of manufactured housing (7), users of manufactured housing (7), and the general interest and public officials (7). The purpose of the committee will be to make recommendations to the HUD Secretary for developing, amending and revising the Federal Manufactured Home Construction and Safety Standards Act and the enforcement regulations. A two-thirds vote will be required to adopt proposed standards. States will have 5 years to adopt a dispute resolution program for manufacturers, retailers, and installers to address the correction or repair of defects in manufactured homes reported within 1 year after the date of installation.

In states not adopting their own dispute resolution program, HUD could contract with an appropriate agent in the state to implement such a program. During these 5 years, HUD and the consensus committee will also be charged with developing a "model" manufactured housing installation program. In states not adopting an installation program, HUD could contract with an appropriate agent in those states to implement the "model" installation program. This legislation also encourages innovation and cost-effective construction techniques, and calls for the establishment of practical and uniform federal construction standards to protect owners of manufactured homes from unreasonable risk of personal injury and property damage.

Homeless Assistance Programs

H.R. 1073, the Homeless Housing Programs Consolidation and Flexibility Act (Lazio) would consolidate seven McKinney Act homeless assistance programs into a block grant to states. The bill was voted out of the Housing and Community Opportunity Subcommittee of the House Banking Committee with minor amendments on April 15, 1999, although no further action occurred during the 106th Congress. The issue of block granting homeless assistance funds could come up in the 107th Congress. Several significant homeless provisions were approved as part of the VA-HUD FY2001 appropriations bill (H.R. 2684, P.L. 106-377, October 27,2000). These are summarized at the end of this homeless section.

On May 23, 2000, the Subcommittee on Housing and Transportation of the Senate Banking Committee held hearings on "the most appropriate means to consolidate homeless programs at HUD." The purpose was also to hear from the GAO on the results of several of their completed studies on federal homeless programs. One report found that there are 50 federal programs with funds that can assist the homeless, with 16 programs targeted exclusively at the homeless.[2] Since 1987, Congress has appropriated over $12 billion under the HUD McKinney programs. At the hearing and elsewhere, there has been some frustration expressed over evidence showing that despite the strong economy, the number of homeless has not declined, and may even have increased. Subcommittee Chairman Allard said "this hearing was to begin a discussion on how we do better."

On July 27, 2000, Senator Allard introduced S. 2968, the Local Housing Opportunities Act, an omnibus housing bill that would consolidate and reform many current HUD programs. It would consolidate HUD homeless assistance funds into the McKinney Homeless Assistance Performance Fund, initially distributing funds according to the CDBG block grant formula. Every three dollars of federal block grant money would have to be matched with one dollar of state or local money, although there is a liberal definition of the match, including salaries paid to staff, volunteers, and the value of a lease on a building.

Converting to a block grant means homeless funds would be distributed to states and localities based on a formula. Most of the McKinney Act homeless assistance is now awarded to metropolitan areas on a competitive basis. According to HUD,

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[2] U.S. General Accounting Office, *Homelessness: Coordination and Evaluation of Programs are Essential*, February 1999 (GAO/RCED-99-49).

there were about 3,000 applications in 1999, with 1,835 applicants receiving funds. A number of jurisdictions complain that this process is very time consuming and the uncertainty of winning funds makes long-range planning difficult. They maintain that a formula-based distribution would assure that more communities receive at least some funds. Opponents argue that giving funds to all communities based on a static formula may not reflect changing needs in local areas or special situations. They believe that the automatic distribution of funds would reduce the incentive to be creative and results-oriented.

At the May 23, 2000 hearing, the then-HUD Deputy Assistant Secretary Fred Karnas Jr. testified that over the years, HUD has worked with local governments and their non-profit partners to refine their efforts to attack homelessness. He said that HUD strongly opposed moving to a formula-based process of distributing homeless assistance funds because it believed its current "Continuum of Care" approach balances local decision-making and flexibility with strong national performance goals, and that this has proven very successful.

Some nonprofit organizations that administer services to the homeless worry that a block grant approach would lessen HUD involvement in the McKinney programs, suggesting more comfort with HUD's stewardship of these funds than with some state or local jurisdictions. Some advocacy groups for the homeless cite an increasing number of jurisdictions that they say are becoming overly harsh on the homeless, treating them like criminals in some cases. (For a survey of cities and how they have changed their laws, see "Outlawing Homelessness," *ShelterForce*, National Housing Institute. July/August, 1999.) Maria Foscarinis, Executive Director of the National Law Center on Homelessness and Poverty, says that non-profit organizations are vulnerable to being denied funds for homeless assistance because their advocacy may have been critical of local government actions. The conflict in late 1999 between the HUD Secretary and the Mayor of New York City over the awarding of homeless grants gives an example of the tensions that can surface over the allocation of homeless assistance. In this publicized case, the HUD Secretary temporarily took control of $60 million of the city's federal homeless funds, citing a federal district court ruling that found the city had improperly tried to prevent a group from receiving homeless assistance after they had criticized the Mayor's "get-tough approach to homeless people."

The HUD-VA appropriations bill for FY2001 that was signed into law by President Clinton on October 27, 2000 (H.Rept. 106-988), contained several homeless provisions. The Shelter Plus Care program that funds annual rental assistance contracts for families moving from homelessness to permanent housing was established under a separate account, at a level of $100 million for the renewal of contracts expiring in FY2001 and FY2002. In addition, government entities receiving homeless funds will be required to implement a coordinated discharge system for individuals leaving institutions or health care facilities with the goal of preventing an immediate return to homelessness. Third, at least 30% of all federal homeless funds must be used for permanent housing, with the hope of moving away from a system of temporary approaches to one of long-term solutions to homelessness.

On October 30, 2000, President Clinton signed H.R. 5417 into law (P.L. 106-400) to rename the Stewart B. McKinney Homeless Assistance Act as the "McKinney-Vento Homeless Assistance Act" to honor the recently deceased Representative Bruce Vento of Minnesota.

Other Readings. See CRS Report RL30442, *Homelessness: Recent Statistics and Targeted Federal Programs*, by M. Ann Wolfe.

Property "Takings"

Property owners sometimes feel that the value of their property has been unfairly reduced without just compensation by local zoning and land-use regulations. Some believe they have been victims of an illegal "taking" under the Fifth Amendment of the Constitution. H.R. 1142 (Young), the Landowners Equal Treatment Act of 1999 proposed to ensure that landowners receive treatment equal to that provided to the federal government when property must be used. The House Committee on Resources held hearings on April 14, 1999. On June 21, 2000, the Committee reported out H.R. 1142 by a vote of 27 to 11, largely along party lines. This legislation would insure that private property owners are compensated when their land must be used by the federal government as habitat for endangered or threatened species. Opponents fear changes like these could undermine environmental laws and local authority. No further action occurred. See H.Rept. 106-1011.

Reinsurance of State Disaster Insurance Programs

On March 15, 2000, the House Banking and Financial Services Committee reported, as amended, H.R. 21, the Homeowners Insurance Availability Act (Lazio). (See H.Rept. 106-526.) There was no further action on this bill in the 106th Congress.

H.R. 21 was intended to address the problems of homeowners who find it difficult or impossible to buy affordable insurance if they live in areas susceptible to hurricanes, floods, and earthquakes. There had been predictions of hurricanes of increased intensity along the East Coast and Florida in the immediate years ahead. (Although there was notably little hurricane activity in the year 2000.) During the 1990s, unusually expensive natural disasters have put a strain on some insurance markets, leaving some homeowners without coverage and increasing their risk of mortgage default. Some states have stepped in to help, but the case was made that limited federal reinsurance would improve the effectiveness of these state efforts.

H.R. 21 would have provided a federal reinsurance program to facilitate the pooling and spreading of risk of catastrophic financial losses from natural disasters. It would have been activated when residential losses for a state program reached $2 billion. The program would have ended after 10 years unless the U.S. Treasury found that the private market for catastrophic coverage was still inadequate.

Other Readings. CRS Report RS20442, *Homeowners' Insurance Availability Act of 1999 (H.R. 21),* by Rawle O. King.

Predatory Lending

A number of bills were introduced in the second session of the 106th Congress to address predatory lending, including S. 2415 (Sarbanes) and the identical H.R. 4250 (LaFalce). None were adopted.

Predatory lending is characterized by mortgage refinancings, home equity loans, and home repair loans with unjustifiably high interest rates, excessive fees, balloon payments, arbitrary call provisions, prepayment penalties, and the imposition of other onerous terms. Senator Sarbanes, in introducing the Predatory Lending Consumer Protection Act of 2000 on April 12, 2000, said these lenders target lower income families, the elderly, and often uneducated homeowners for their abusive practices. "They target people with a lot of equity in their homes; they underwrite the property without regard to the ability of the borrower to pay the loan back. They make their money by charging extremely high origination fees, and by packing other products into the loan, including upfront premiums for credit life insurance, or credit unemployment insurance, and others, for which they get significant commissions but are of no value to the homeowner." These loans have grown rapidly in minority neighborhoods, often stripping away the wealth of owners that may have taken them decades or a lifetime to accumulate.

Predatory lending was the principal subject when then-HUD Secretary Cuomo spoke before the Senate Appropriations VA-HUD Subcommittee on March 30, 2000. He said that the FHA had already taken a number of steps to eliminate predatory lending practices from its programs so that many of the worst abuses are now found in the conventional loan market (loans not insured by the government). Amendments made to the Truth in Lending Act by the 1994 Home Ownership and Equity Protection Act (HOEPA) have prevented some abuses but, by other accounts, the Act needs to be strengthened and expanded. HUD convened a national task force that held hearings in Washington, Atlanta, Los Angeles, New York, and Baltimore. A joint report by HUD and the Treasury Department issued June 21, 2000, *Curbing Predatory Home Mortgage Lending*, urges Congress to adopt legislation that would restrict abusive terms and conditions on high-cost loans, prohibit harmful sales practices in mortgage markets, improve consumer literacy and disclosures, and prohibit government-sponsored enterprises from purchasing loans with predatory features and establishing predatory lending as a factor in Community Reinvestment Act (CRA) evaluations.

The legislation by Senator Sarbanes and Representative LaFalce was intended to expand HOEPA and fill in the perceived gaps:

- It would lower HOEPA's interest rate and total fee "triggers" to extend protections to greater numbers of high cost mortgage refinancings, home equity loans and home improvement loans.
- It would expand HOEPA to restrict practices that facilitate mortgage "flipping" and equity "stripping" - restricting the financing of fees and points, prepayment penalties, single-premium credit insurance, balloon payments and call provisions.
- It would prevent lenders from making loans without regard to the borrower's ability to repay the debt, encourage credit and debt

counseling and require new consumer warnings on the risk of high-cost secured borrowing.

- It would encourage stronger enforcement of consumer protections by strengthening civil remedies and rescission rights and increasing statutory penalties for violations.

Similar predatory lending bills were also introduced: S. 2405 (Schumer), H.R. 3901 (Schakowsky), H.R. 4213 (Ney).

Other Readings. Congressional distribution memorandum, "Comparison of Predatory Lending Legislation" by Bruce Foote. August 2, 2000.

Use of Surplus FHA Reserves for Affordable Housing

The accounting firm of Deloitte & Touche reported in2000 that the FHA Mutual Mortgage Insurance Fund had a record economic value of $16.6 billion at the end of FY 1999, more than $5 billion above previous estimates. (The fund was close to bankruptcy in the recession of 1990, with a negative value of $2.7 billion.) Since this report, HUD and various housing groups have discussed how this surplus might be used to increase affordable housing opportunities. A number of bills were introduced to address how the surplus might be used. None of these bills were adopted during the 106th Congress.

Then-HUD Secretary Cuomo said recommendations for using the surplus could include subsidizing the construction of new affordable rental housing, funding for new rental assistance vouchers, and homeownership initiatives. A new study by Housing America and the National Training and Information Center, *A New Direction: How FHA Surpluses Can Solve America's Housing Crisis*, said, "Since FHA revenue has increased due to the economic prosperity that has contributed to the affordable housing shortage, it is only appropriate to use the FHA funds to mitigate and even reverse such impacts." The report says that the $5 billion could produce over 200,000 units of affordable housing.

On July 27, 2000, Senator John Kerry introduced S. 2997, the National Affordable Housing Trust Fund Act. The housing trust fund would receive income generated by the main FHA mortgage insurance program that was in excess of the amount necessary to maintain a capital ratio of 3% for the preceding fiscal year (that some consider a safe level of reserves). Similarly, certain excess income from HUD's Government National Mortgage Association would be directed into the housing trust fund. Currently, the excess income from these programs is returned to the federal Treasury and used to fund general government activities, and thus, perceived as lost to housing use. (However, accounts are maintained by the Treasury on whether these programs are running a surplus or deficit, much like the net balance of the Social Security Trust Fund.) Under S. 2997, money "transferred" into the housing trust fund would be used to build rental housing for extremely low-income families and to promote homeownership for low-income families. The Committee on Banking, Housing, and Urban Affairs Subcommittee on Housing and Transportation held hearings on the FHA surplus on September 12, 2000.

While not necessarily disagreeing about the need to address the issue of affordable housing, some in Congress are uncertain about the desirability of using the surplus reserves or profits from the FHA insurance business (assuming they are as large as the estimates) to pay for other housing programs. Some believe that if the economy were to turn downward, with unemployment increasing substantially from the current level, that the FHA surplus would rapidly be reduced. Among other alternatives being considered is to reduce the FHA mortgage insurance premiums since they are paid by many minorities, first-time buyers, and others of moderate incomes. On July 12, 2000, then-Representative Lazio, chairman of the House Housing and Community Opportunities Subcommittee, introduced H.R. 4795, the Homeowners Rebate Act of 2000, which would require HUD to rebate FHA excess reserves to certain FHA-insured homeowners. An identical bill, S. 2914, was introduced by Senator Allard.

On October 31, 2000, HUD announced a Homebuyer Savings Plan that the agency says will save more than one million homeowners with FHA-insured mortgages more than $1 billion annually in insurance costs. Under the plan, the FHA up-front insurance premium was reduced from 2.25% to 1.5% of the original loan amount. The plan also eliminated entirely FHA's annual premium of .5% on all loans once homeowners build 22% equity in their home (modeled after private mortgage insurance cancellation legislation passed by Congress in 1998). Under the third part of the plan, current FHA borrowers will receive a refund on premiums paid when they sell their home or refinance their loan. HUD Secretary Cuomo said that none of the FHA's $16 billion in reserves will go to pay for this premium cut and that the economic value of FHA's insurance fund is expected to grow to $34 billion by 2006.