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Housing Issues in the 110th Congress

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Summary

In the 110th Congress, several broad, overarching issues could frame the housing debate. A recently developing issue involves the prevalence of subprime loans and the increased mortgage default and foreclosure rates that have resulted from their increased use. Congress has already held a number of hearings about subprime and predatory lending in the 110th Congress, and the issue could affect regulation of some federal housing programs. A second and ongoing issue is the current budget environment, within which Congress and the Administration have attempted to reduce discretionary spending in recent years. The President's budget request for FY2008 proposes to hold the growth in non-defense discretionary spending to 1%, less than the rate of inflation. However, the new Congress, controlled by Democrats, might not be as likely as previous Congresses to use the President's budget as a starting point in crafting its own budget. A third overarching issue is housing affordability for low-income renters.

The 110th Congress has continued efforts begun in the 109th Congress to reform oversight of the government-sponsored enterprises (GSEs) — Fannie Mae and Freddie Mac — and Federal Home Loan Banks (FHLBs). On May 24 the House passed and sent to the Senate H.R. 1427, which would create a new regulator for the GSEs. The bill would also use profits from the GSEs to create an affordable housing fund, the funds from which would be transferred to a National Affordable Housing Trust Fund (H.R. 2895), if enacted. The Senate's version of GSE and FHLB reform, S. 1100, was introduced on April 12. The Senate bill contains some provisions that are similar to those in the House bill, but also has some differences.

Another issue being considered in the 110th Congress involves potential revisions to the Federal Housing Administration (FHA) loan insurance program. Bills that would make changes to the FHA program include H.R. 1752, H.R. 1852, and S. 947. On May 3, 2007, the House Financial Services Committee passed H.R. 1852; similar to H.R. 1427, the bill would authorize the transfer of some FHA funds into an affordable housing fund.

Another agenda item for the 110th Congress is providing assistance to victims of the 2005 hurricanes. On March 7, the House Financial Services Committee approved the Gulf Coast Hurricane Housing Recovery Act of 2007 (H.R. 1227), and on March 23, 2007, the House passed the bill. In the Senate, H.R. 1227 was referred the Committee on Banking, Housing, and Urban Affairs. In addition, a similar Katrina recovery bill (S. 1668) was introduced in the Senate on June 20, 2007.

Additional legislation in the 110th Congress includes Section 8 voucher reform legislation, which was approved by the House on July 12, 2007 (H.R. 1851). In the area of subprime and predatory lending practices, a number of bills have been introduced, including S. 1222, S. 1299, S. 1386, and H.R. 2061. Two bills that would reauthorize the McKinney-Vento Homeless Assistance Act have been introduced (H.R. 840 and S. 1518). Additionally, Congress has continued to monitor implementation of a new public housing operating fund rule.

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Division abbreviations:

- ALD — American Law
- DSP — Domestic Social Policy
- G&F — Government and Finance

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Housing Issues in the 110th Congress

Introduction

In the 110th Congress, several broad, overarching issues could affect the way in which housing policy is developed. Three of these potential overarching issues are subprime lending and the resulting increase in mortgage defaults and foreclosures; a budget environment in which discretionary spending will likely be limited; and concerns about housing affordability. Within the framework of these overarching issues, proposals in the 110th Congress include the creation of a stronger regulator for Fannie Mae and Freddie Mac, the creation of an affordable housing fund, revisions to the Federal Housing Administration (FHA) loan insurance program, housing in the Gulf Coast region in the wake of the 2005 hurricanes, Section 8 voucher reform, oversight of the public housing operating fund, preservation of existing assisted housing, and reauthorization of the McKinney-Vento Homeless Assistance Act. (See the end of this report for a listing of CRS reports related to housing.)

Overarching Issues

Subprime Loans

Since the early 1990s, lenders have developed better methods for estimating the risks posed by borrowers with blemished credit profiles, with the result that lenders now offer home loans to consumers who earlier would have been denied mortgage credit. These loans are often referred to as subprime loans. Typically, loans to subprime borrowers have higher interest rates and fees than loans to prime borrowers because subprime borrowers have historically experienced higher default rates. Delinquency and foreclosure rates for subprime loans rose rapidly during the second half of 2006 and the first half of 2007. On April 11, 2007, the Joint Economic Committee issued a special report on rising foreclosures. The report predicted that subprime foreclosures would continue to rise, and recommended immediate action to minimize any costs that foreclosures can impose on surrounding communities.[1] (For more information about subprime loans, see CRS Report RL33930, *Subprime Mortgages: Primer on Current Lending and Foreclosure Issues*, by Edward Vincent Murphy.)

Although the primary causes of foreclosure are personal financial setbacks (job loss or medical calamity), the recent rise in subprime foreclosures may be partly due to imprudent underwriting standards during the housing boom that occurred between

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[1] U.S. Congress Joint Economic Committee, *Sheltering Neighborhoods from the Foreclosure Storm*, April 11, 2007, available at [http://jec.senate.gov/Documents/Reports/subprime11apr2007.pdf].

approximately 2002 and 2005. House prices rose rapidly in certain markets, which may have encouraged some borrowers in hot markets to assume more debt than was prudent. Rapidly rising prices encourage excess debt because, once in the home, the borrower earns the house price appreciation, which can then be used to refinance the house on more favorable terms. In order to take advantage of anticipated appreciation, some subprime borrowers turned to mortgage products with low introductory payments, but which risked higher future payments. Alternative terms included interest-only (I/O) periods, adjustable interest rates (ARM), and negative amortization (Neg-Am). Negative amortization loans allow borrowers to pay less than the current interest due, which results in a higher loan balance. (For more information about alternative mortgage terms, see CRS Report RL33775, *Alternative Mortgages: Risks to Consumers and Lenders in the Current Housing Cycle*, by Edward Vincent Murphy.)

The 110th Congress has held a series of hearings on subprime markets. For example, on March 27 the House Financial Services Committee held "Subprime and Predatory Mortgage Lending: New Regulatory Guidance, Current Market Conditions and Effects on Regulated Financial Institutions." The Senate Banking, Housing, and Urban Affairs Committee held "Mortgage Market Turmoil: Causes and Consequences" on March 22. After the Senate Banking Committee hearing, Chairman Dodd on April 18 convened a summit of mortgage market stakeholders to discuss ideas and propose solutions to subprime market volatility.

Securitization. Volatility in the subprime market and concerns about predatory lending, discussed later in this report, have focused attention on the financing process used in extending loans to more vulnerable borrowers. Less than half of subprime loans are originated by banks that actually retain the loans in their own portfolio. Instead, many subprime loans are originated by mortgage lenders, sold to secondary markets, pooled in special-purpose trusts, and then issued as new securities for sale to sophisticated investors. The transformation of debt into new securities, often called securitization, allows a wider array of financial institutions to fund mortgage debt. For example, a pension fund may not be able to directly fund a risky subprime loan but may be able to purchase the least-risky slices of the securitization pool. Securitization allows investors to tailor the pool slices, often called tranches, to the risk tolerance of specific investors.

The 110th Congress is examining the role of securitization in recent subprime volatility. The House Financial Services Committee held a hearing, "The Role of the Secondary Market in Subprime Mortgage Lending," on May 8. The Senate Banking Committee held a hearing on April 17, "Subprime Mortgage Market Turmoil: Examining the Role of Securitization." One concern is that securitization may have separated the up-front returns of mortgage originators from the long-term risk of securities holders. If the securitization process does not have adequate controls, mortgage originators could have the incentive to encourage borrowers to take on too much debt because the mortgage originator might not suffer losses if the borrower defaults in the future. The securitization community argues that investors are sophisticated market analysts who include contract clauses in securitization transactions to prevent mortgage originators from passing on this risk.

One proposal to address securitization would make secondary market investors liable for deceptive or predatory marketing by primary lenders. Some believe that extension of liability to the secondary market, referred to as assignee liability, would prevent secondary market investors from purposefully remaining ignorant of the marketing strategies of primary lenders. In this view, if secondary market investors were held liable, they would tighten underwriting standards and more closely monitor the practices of their lending partners. Others argue that extension of liability could create too much uncertainty for rating agencies to evaluate risks and lead to a shutdown of the secondary market.

Subprime Legislation. Although at this time there is no legislation that would federally fund a general rescue of overextended subprime borrowers, on May 3, 2007, Senators Schumer, Casey, and Brown proposed that $300 million be appropriated to help refinance subprime loans. In addition, there are a number of legislative proposals to address other aspects of subprime foreclosures. One obstacle to avoiding foreclosure is the tax code's treatment of debt forgiveness as income. H.R. 1876, the Mortgage Cancellation Relief Act of 2007, excludes forgiveness of certain mortgage debts from adjusted gross income. A change in the tax treatment of debt forgiveness may make it easier for borrowers and lenders to renegotiate loans and avoid the high costs of foreclosure proceedings.

Another bill, the Stopping Mortgage Transactions Which Operate to Promote Fraud, Risk, Abuse, and Underdevelopment Act (STOP FRAUD Act, S. 1222), introduced on April 25, 2007, would impose civil and criminal penalties against mortgage brokers and lenders that defraud consumers in the process of extending credit. The bill would also require lenders of home loans without certain disclosure features to go through the state judicial or administrative process in foreclosure. In addition, S. 1222 contains provisions that would allow borrowers going through foreclosure proceedings to assert defenses against assignees of the original mortgage lender.

The Borrower's Protection Act of 2007 (S. 1299) would require mortgage originators (including mortgage brokers) to verify the ability of an applicant to repay a loan. The bill would also prohibit the practice of steering borrowers to mortgage products that are not advantageous to them. Lenders and brokers would be prohibited from mischaracterizing borrowers' credit histories or the appraised value of the property securing the loan. Another provision of S. 1299 would require borrowers in rate spread mortgage transactions to make payments into escrow accounts for the purposes of paying taxes and insurance. (Rate spread mortgages are those in which the annual percentage rate meets or exceeds the rate at which institutions must report the rate under the Home Mortgage Disclosure Act.)

Another bill, the Federal Housing Finance Reform Act of 2007 (H.R. 1427), includes provisions that would require the Director of the Federal Housing Finance Agency (created by H.R. 1427) to establish standards to characterize loans as subprime, and to submit a report to Congress detailing the extent to which Fannie Mae, Freddie Mac, and the Federal Home Loan Banks are involved in purchasing subprime loans.

The Homeownership Protection and Enhancement Act of 2007 (S. 1386), introduced on May 14, 2007, emphasizes homeownership counseling and assistance. The bill would direct the Secretary of HUD to award competitive grants to enable state housing finance agencies to establish State Homeownership Protection Centers. S. 1386 would require lenders to notify borrowers of the availability of homeownership counseling and homeownership protection center services. Under special circumstances, it would allow a one-time emergency grant to help troubled borrowers to remain in their homes.

Two bills in the House of Representatives would address unfair lending practices with licensing requirements. The Predatory Mortgage Lending Practices Reduction Act, H.R. 2061, introduced by representative Stephanie Tubbs Jones on April 26, 2007,[2] requires certification of mortgage lenders specifically for subprime federally related lending. The Secretary of the Department of Housing and Urban Development would establish standards and procedures for suspension and revocation of the certification. The Fair Mortgage Practices Act, H.R. 3012, introduced by representative Spencer Bachus on June 12, 2007,[3] provides for a national system for licensing mortgage originators. This legislation would require that a person engaging in the business of a loan originator first obtain and maintain a registration as a registered loan originator or a license as a State-licensed loan originator. These bills also provide for educational requirements for mortgage originators.

The Budget Environment

Both the Administration and Members of Congress have shown increasing concern about the size of the federal budget deficit and have sought ways to reduce it. In his FY2008 budget, the President proposed to hold the growth in non-defense discretionary spending to 1% in the coming year, and to keep discretionary spending below the rate of inflation for the next five years.[4] The majority of the budget for the Department of Housing and Urban Development (HUD), the agency primarily responsible for housing, is discretionary funding, and the President requested large cuts for several programs in FY2008, including Housing for the Elderly and Disabled and the Community Development Block Grant. However, the new Congress, controlled by Democrats, unlike previous Congresses, might be less willing to use the President's budget as a starting point in crafting its own budget.[5] Both House (H.R. 3074) and Senate (S. 1789) versions of the FY2008 appropriations bills include funding levels for HUD above the President's request. The former Office of

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[2] Cosponsors of H.R. 2061 include Shelley Berkley, Alcee Hastings, Julia Carson, and Eddie Bernice Johnson.

[3] Cosponsors of H.R. 3012 include Shelley Moore Capito, Paul Gillmor, Gary Miller, Ralph Regula, Vernon Ehlers, Steven LaTourette, Deborah Pryce, and Fred Upton.

[4] *Overview of the President's 2008 Budget*, p. 5, available at [http://www.whitehouse.gov/omb/budget/fy2008/pdf/budget/overview.pdf].

[5] See, for example, Statement of Representative John Spratt, Chairman of the House Budget Committee, February 5, 2007, available at [http://budget.house.gov/news/08_budget_statement.htm].

Management and Budget Director stated that he would recommend that the President veto any appropriations bill that exceeds the President's request.[6] As a result, it is unclear whether the HUD funding bill would face a veto if the conference agreement were to exceed the President's request.

Efforts to contain discretionary spending have also increased internal pressures in the HUD budget. The cost of the Section 8 voucher program is partially pegged to housing costs, which have risen faster than inflation in recent years. As a result, the voucher program generally requires increased funding to serve the same number of people. Since HUD's overall budget has been constrained, any increases in funding for the voucher program have come at the expense of other programs. Another internal HUD budget pressure involves the contribution of the FHA insurance program. FHA collects fees from participants, and excess fees are used by Congress to offset the cost of the HUD budget. FHA's market share has been dropping in recent years, and as a result, the amount of excess fees has been declining. With fewer fees to offset the cost of the HUD budget, the President and Congress have had to find additional dollars to keep the overall budget at the same level.

Housing Affordability

The ability of low-income households to afford housing is another issue that has arisen in the 110th Congress through legislation such as the National Affordable Housing Trust Fund Act (H.R. 2895). The U.S. Housing Act of 1949 (P.L. 81-171) established a national goal of "a decent home and a suitable living environment for every American family." In the time since the enactment of P.L. 81-171, progress toward this goal is incomplete. The bipartisan, congressionally mandated Millennial Housing Commission's 2002 final report identified "affordability"[7] as "the single greatest housing challenge facing the nation." The Harvard Joint Center for Housing Studies found that between 2001 and 2004, the number of households paying more than 30% of their income toward housing increased from 31.3 million to 35.0 million (an increase from 29.4% of all households to 31.8%).[8]

Rent Burdens. In 2004, 8.4 million renter households were severely cost burdened (paying more than 50% of their income toward housing), an increase of over one million from 2001 (and an increase from 13.0% of all households to

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[6] Letter from Office of Management and Budget Director Rob Portman to Budget Committee Chairman Spratt on the Concurrent Budget Resolution, dated May 11, 2007, and reproduced by Congressional Quarterly, at [http://www.cq.com/displayfile.do?productId=4&docid=2510197].

[7] Housing is generally considered affordable if it costs no more than 30% of a family's income.

[8] Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing, 2006*, pp. 25, 39, available at [http://www.jchs.harvard.edu/publications/markets/son2006/son2006.pdf].

14.3%).[9] While moderate-income renters were not immune from severe rent burdens, low-income renters faced the greatest burdens; over 86% of severely cost burdened renters were in the bottom quintile of the income distribution. When low-income families pay such a large portion of their incomes for housing, they have little left to meet their other needs, let alone establish savings or build assets. The problem of severe rent burdens appears to be growing as the supply of low-cost rental units continues to dwindle. The Joint Center for Housing Studies' report attributes the growing affordability problem to two principal factors: land use regulations that drive up the price of housing and the growth of low wage jobs.[10] The report notes that solving the problem will be difficult and will require the cooperation of government, business, and non-profits. However, the federal government's role in addressing what HUD has termed "worst-case housing needs" — those households earning less than half the area median income and paying more than half their income for housing — is increasingly in question as deficits grow and pressure to restrain domestic spending mounts.

Housing Finance

GSE Regulation

Fannie Mae, Freddie Mac, and Federal Home Loan Bank Regulation. Fannie Mae and Freddie Mac are federally chartered, privately owned corporations charged with supporting the secondary mortgage market. They are not allowed to lend directly to homeowners, but by purchasing mortgages from the original lenders, they free up funds to be lent for more mortgages. After Fannie Mae and Freddie Mac purchase mortgages, they either package and sell them to investors, or keep them in their own portfolios. To finance their portfolios, they sell bonds and other debt to investors.

This buying and selling of existing mortgages has created a secondary mortgage market that has improved the efficiency of mortgage lending and lowered the interest rate that homeowners pay. Many economists and other analysts believe that because of their ties to the federal government, Fannie Mae and Freddie Mac (also known as government-sponsored enterprises, or GSEs) can borrow at lower interest rates than they could otherwise and that some of this advantage accrues to stockholders and employees.

Regulation of Fannie Mae and Freddie Mac is split between two parts of HUD. The independent Office of Federal Housing Enterprise Oversight (OFHEO) is the safety and soundness regulator, while HUD's Financial Institutions Regulation Division establishes and monitors affordable housing lending goals. OFHEO has been the primary regulator during recent accounting problems, although the Securities and Exchange Commission (SEC) has also been involved. (For more information about accounting problems at Fannie Mae and Freddie Mac, see CRS

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[9] *State of the Nation's Housing 2006*, p. 36, Table A-6.

[10] Ibid., p. 25.

Report RS21949, *Accounting Problems at Fannie Mae*, and CRS Report RS21567, *Accounting and Management Problems at Freddie Mac*, both by Mark Jickling.)

Both Fannie Mae and Freddie Mac have statutory exemptions from filing financial documents with the SEC, but both have voluntarily agreed to make these filings. Freddie Mac announced on July 12, 2002 that it would begin filing with the SEC, but its accounting problems have prevented it from doing so. Fannie Mae filed its 2004 annual report (form 10-K) with the SEC on December 6, 2006, which was approximately 21 months late. Neither GSE is yet filing current financial statements.

On May 23, 2006, Fannie Mae signed a consent order with OFHEO agreeing to limit its portfolio of mortgages and mortgage-backed securities to $727 billion, the December 13, 2005, level. Freddie Mac agreed on July 1, 2006 to limit retained portfolio growth to 0.5% quarterly until the company can file financial reports on a timely basis. OFHEO has said that these limitations are likely to remain in place for several years.

The Federal Home Loan Bank System is comprised of 12 regional banks (the Banks) that collectively comprise the third housing GSE. Started in 1932 as lenders to the savings and loan associations that were the primary lenders for home mortgages, the Banks have undergone major changes, particularly since the cleanup of the savings and loan association failures of the 1980s. As a result, membership in the Banks has changed, today encompassing more commercial banks than savings associations and including credit unions, insurance companies, and some associated housing providers. Purposes of lending — while still primarily housing-related — now include agricultural and small business lending. The changes also have resulted in special mission set-asides for low- and moderate-income housing, special programs for community development, and a continuing responsibility for paying debt raised to fund deposit insurance payouts in the 1980s. For both mission and safety and soundness, the five-member Federal Housing Finance Board (FHFB) regulates the System. (For information on the FHLBs, see CRS Report RL32815, *Federal Home Loan Bank System: Policy Issues*, by Edward Vincent Murphy.)

On March 9, 2007, House Financial Services Committee Chairman Frank introduced H.R. 1427, the Federal Housing Finance Reform Act of 2007. The bill would change the regulation of the GSEs, consolidate oversight, and create the Federal Housing Finance Agency (FHFA) as an independent regulator with authority similar to that of bank regulators. H.R. 1427 would give the Federal Housing Finance Agency explicit authority to adjust the enterprises' risk-based capital and, in specific circumstances, to limit the size of their portfolios for limited periods of time. Hearings on the legislation were held on March 12 and March 15, 2007. On March 29, 2007, the House Financial Services Committee approved H.R. 1427 and reported it to the House floor. The House passed H.R. 1427 on May 24, 2007, and sent it to the Senate where it was referred to the Banking, Housing, and Urban Affairs Committee. On April 12, 2007, Senator Hagel introduced S. 1100, The Housing Enterprise Regulatory Reform Act of 2007. The Senate bill does not have an affordable housing fund. The Banking Committee has not acted on either bill. (For more information about GSE reforms in H.R. 1427 and S. 1100, see CRS Report RL33940, *H.R. 1427 and S. 1100: Reforming the Regulation of Government-*

Sponsored Enterprises, by Mark Jickling, Edward Vincent Murphy, and N. Eric Weiss.)

Affordable Housing Fund. H.R. 1427 would also create an affordable housing fund, which would be funded by contributions from Fannie Mae and Freddie Mac based on a percentage of their total mortgage portfolios (essentially, mortgages retained in portfolio plus those guaranteed and sold regardless of the form, such as mortgage backed securities). The primary purpose of the fund in H.R. 1427 would be to increase housing opportunities for extremely low- and very low-income homeowners and renters. Specifically, the funds could be used for the production, preservation, and rehabilitation of rental and homeownership housing, as well as for related infrastructure costs.

In the first year of the Affordable Housing Fund, money would be allocated to areas affected by the 2005 hurricanes. In years two through five, H.R. 1427 would distribute the funds to the states and recognized Indian tribes using a formula to be developed by HUD. The states would develop plans to further distribute the funds to for-profit, not-for-profit, and faith-based organizations. The bill would end the requirement for Fannie Mae and Freddie Mac to contribute money to the fund after five years.

National Affordable Housing Trust Fund. The affordable housing fund portion of the GSE reform bill includes a provision requiring that the affordable housing funds be transferred to a National Affordable Housing Trust Fund upon enactment of such a trust fund. A National Affordable Housing Trust Fund would provide a dedicated source of revenue to support affordable housing. A coalition of low-income housing organizations, led by the National Low Income Housing Coalition, has advocated establishment of such a trust fund for several years. Legislation to create a National Affordable Housing Trust Fund using a portion of Federal Housing Administration receipts as the dedicated source of revenue was introduced, but not enacted, in the 106th, 107th, and 108th Congresses. Since FHA receipts are currently deposited in the U.S. Treasury, diverting them to a housing trust fund would count as new spending. In the 109th and 110th Congresses, the NLIHC advocated including an affordable housing fund provision funded by non-federal resources in GSE reform legislation.

The most recent National Affordable Housing Trust Fund bill was introduced on June 27, 2007, by House Financial Services Committee Chairman Frank and several bipartisan cosponsors. The National Affordable Housing Trust Fund Act of 2007 (H.R. 2895) proposes to use affordable housing funds created by the GSE and FHA reform bills (discussed below) to provide formula grants to states and localities and competitive grants to Indian Tribes. The funds could be subgranted to for-profit and non-profit organizations for the creation, rehabilitation, or financial support of rental housing as well as downpayment and closing cost assistance for first-time homebuyers. The bill would require that all funds be used to benefit families at or below 80% of local area median income, and that 75% of all funds would have to be used to benefit families at the higher of 30% of local area median income or the poverty line. The bill has been referred to the House Financial Services Committee; no companion legislation has been introduced in the Senate.

FHA Reform

The Federal Housing Administration (FHA), an agency within HUD, oversees a variety of mortgage insurance programs that insure lenders against loss from loan defaults by borrowers. Through FHA insurance, lenders make loans that otherwise may not be available to borrowers, and enable borrowers to obtain loans for home purchase and home improvement, as well as for the purchase, repair, or construction of apartments, hospitals, and nursing homes. The programs are administered through two program accounts — the Mutual Mortgage Insurance/Cooperative Management Housing Insurance fund account (MMI/CMHI) and the General Insurance/Special Risk Insurance fund account (GI/SRI). The MMI/CMHI fund provides insurance for home mortgages. The GI/SRI fund provides insurance for more risky home mortgages, for multifamily rental housing, and for an assortment of special-purpose loans such as hospitals and nursing homes. (For more information on FHA, see CRS Report RS20530, *FHA Loan Insurance Program: An Overview*, by Bruce E. Foote and Meredith Peterson.)

In 1934, FHA was established to provide consumers with an alternative during a lending crisis. Since then, FHA has insured more than 34 million properties. In recent years, however, its market share has been dropping. In 1991, FHA loans accounted for about 11% of the market; by 2004, that share had dropped to about 3%.[11] The mortgages insured through the FHA program are also judged to have become increasingly risky.[12] Default rates and the amounts of insurance claims have grown even as participation in the program has declined, raising the need to both increase participation in the program and improve its financial stability by ensuring that participants are credit-worthy.[13]

To date, three bills to reform FHA have been introduced in the 110th Congress: the 21st Century Housing Act (S. 947, by Senator Clinton), the Expanding American Homeownership Act (H.R. 1752, by Representative Biggert), and the Expanding Homeownership Equity Act (H.R. 1852, by Representative Waters). Each of these bills aims to make FHA loans more marketable by increasing the loan amount insured under the program, making it easier for low-income borrowers to get FHA loans without down payments, and pricing mortgage insurance premiums according to borrower risk.

FHA mortgage limits are set on an area-by-area basis, and under current law, loans on one-family homes are limited to the lesser of 95% of the median home price for an area, or 87% of the conforming loan limit for Freddie Mac and Fannie Mae. All three bills — H.R. 1852, H.R. 1752, and S. 947 — would increase the FHA limit

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[11] Alan Greenspan and James Kennedy, *Estimates of Home Mortgage Originations, Repayments, and Debt on One-to-Four-Family Residences*, Federal Reserve Board. September 2005, available at [http://www.federalreserve.gov/Pubs/feds/2005/200541/200541pap.pdf].

[12] Senate Appropriations Committee, report to accompany H.R. 5576, the Transportation, Treasury, Housing and Urban Development Appropriations Act 2007, 109th Cong., 2nd sess., S.Rept. 109-293, July 26, 2006.

[13] Ibid.

to the lesser of 100% of the area's median home price, or 100% of the Freddie Mac limit. Both H.R. 1752 and H.R. 1852 would increase the maximum loan term from 35 to 40 years, while S. 947 would increase it to 50 years.

Under current law, FHA borrowers must pay an up-front insurance premium of 1.5% of the loan amount for mortgages made after January 1, 2001. Borrowers must also pay an annual premium of either 0.50% or 0.55% of the loan for eleven or thirty years, depending on the amount of the down payment. In the 110th Congress, H.R. 1852 as introduced would allow FHA to increase its up-front premium to 3%, and would have increased the annual premium to 0.75%. As amended, however, the bill would maintain the current annual premium at 0.55%. Without annual premium pricing flexibility, FHA may still have to rely on its current up-front premium pricing to collect its insurance fees. FHA would argue that mimicking present industry premium collection practices without greater annual premium pricing flexibility would be difficult. (For more information about this issue, see CRS Report RS22662, *H.R. 1852 and Revisiting the FHA Premium Pricing Structure: Proposed Legislation in the 110th Congress*, by Darryl E. Getter.)

Except for veterans of the armed forces, present law requires borrowers to make a down payment of at least 3% of the acquisition cost of the property in order to obtain an FHA-insured loan. H.R. 1752 and S. 947 would give FHA the discretion to base the down payment amount on the likelihood that the borrower will default. Under H.R. 1752, the original down payment requirement would be temporarily reinstated whenever the percentage of claims against the FHA insurance fund increases by at least 25% over the claims rate for the previous calendar year. H.R. 1852 would exempt first-time home buyers from the 3% down payment requirement.

Each of the three FHA reform bills would allow FHA to set mortgage insurance premiums based on the risk that the borrower poses to the FHA insurance fund. H.R. 1752 and H.R. 1852 would then permit FHA to reduce the insurance premiums for borrowers who establish a record of timely mortgage payments. The payments would be reduced after a five-year period under H.R. 1752 and after a three-year period under H.R. 1852.

The present eligibility requirements for FHA-approved lenders are set by regulation, not by statute. The regulation permits independent mortgage brokers to become FHA-approved lenders, but they must have a minimum net worth of $250,000, and they must be sponsored by lenders. H.R. 1752 would place the requirements for mortgage brokers in statute by amending the National Housing Act. The bill would also change the eligibility requirements to permit mortgage brokers to become FHA-approved lenders if they are licensed in the state where the property is located, they post a $75,000 surety bond, and they meet other FHA requirements.

Under present law, HUD may insure no more than 275,000 home equity conversion mortgages (HECMs), a limit that HUD has already reached. The maximum mortgage limit for HECMs is set on an area-by-area basis. H.R. 1752 and H.R. 1852 would amend the National Housing Act to remove the limit on the number of HECMs that may be insured, and provide that the national mortgage limit for HECMs would be 100% of the Freddie Mac limit. H.R. 1752 would permit HECMs to be used for the purchase of a one- to four-family home by an elderly borrower who would occupy one of the units as a principal residence. (For more information on HECMs, see CRS Report RL33843, *Reverse Mortgages: Background and Issues*, by Bruce E. Foote.)

The loan limits for various FHA multifamily housing programs are set by statute, but HUD may, by regulation, increase those limits. The limits may be increased by up to 140% in any geographic area where the construction costs exceed the national average, and on a project-by-project basis, HUD may increase the limits by up to 170% where justified by costs. S. 947, H.R. 1752, and H.R. 127 (the FHA Multifamily Loan Limit Adjustment Act of 2007, introduced by Chairman Frank) would amend the law to permit HUD to increase the limits by up to 170% on an area-by area basis and by up to 215% on a project-by-project basis.

On May 3, 2007, the House Financial Services Committee approved H.R. 1852 and reported it to the House floor. Members made a number of amendments to H.R. 1852 during markup, including an increase in funds for housing counseling grants, from $42 million to $100 million per year, and a cap on loan origination fees made on reverse mortgages. In addition to these amendments, and to the other provisions discussed above, the bill would create a National Housing Trust Fund with approximately $250 million that would be garnered from the FHA program. The fund would provide down payment assistance to low-income borrowers.

Predatory Lending

As discussed earlier in this report, the subprime mortgage market has made it possible for borrowers with poor credit, low income, or little savings to qualify for mortgage loans. The subprime market may be considered a dual market. There is "good" subprime lending that opens up credit opportunities for higher-risk borrowers, and there is "predatory" subprime lending. (Although prime loans may also be predatory loans, they are most often subprime loans.) Under "good" subprime lending, the loans are made with terms that appropriately compensate the lender for the enhanced risk posed by the borrowers, and the terms include a reasonable return to the lender. The loans are marketed in a manner that is fair to borrowers and understandable by borrowers.

Predatory subprime lending is the opposite of good subprime lending. Predatory lenders make loans on terms that overcompensate the lenders for the risk posed by the borrowers. The loans are marketed on terms that are not fair to the borrowers or understandable to the borrowers. The loans are often actively and purposely marketed to low-income minorities and the elderly.[14]

[14] National Predatory Lending Task Force, *Curbing Predatory Home Mortgage Lending: A Joint Report*, U.S. Department of Housing and Urban Development and U.S. Department of Treasury, June 2000, p. 69, available at [http://www.huduser.org/Publications/pdf/treasrpt.pdf].

The Home Owner Equity Protection Act (HOEPA), P.L. 103-325,[15] provides federal prohibitions on certain predatory lending practices. Twenty-five states and several municipalities have enacted similar statutes that sometimes offer much broader protections than those afforded under HOEPA. (See CRS Report RL32784, *Predatory Lending: A Comparison of State Laws to the Federal Home Ownership and Equity Protection Act*, by Kamilah M. Holder and Kate M. Manuel.) Varying requirements among state and local statutes that seek to limit predatory lending have led many in the lending community to call for a uniform federal statute. The challenge, from a public policy standpoint, is how to limit predatory lending without at the same time restricting the ability of lenders to make loans that are legitimately priced according to borrower risk.[16]

The 110th Congress has begun to examine the practices of predatory lending. The Senate Banking Committee held a hearing on February 7, 2007, entitled "Preserving the American Dream: Predatory Lending Practices and Home Foreclosures." In addition, legislation has have been introduced in the 110th Congress that contains provisions intended to address lending practices that could be considered predatory. Two of these bills are H.R. 1289 and H.R. 2061.

The Community Reinvestment Modernization Act of 2007 (H.R. 1289) would amend the Community Reinvestment Act of 1977 (CRA) to provide that if a regulated financial institution is found to have engaged in a credit practice, such as predatory lending, that negatively affects a community or neighborhood, the loans would not count toward determining whether the institution is meeting the credit needs of the entire community, and the CRA rating of the institution would be reduced accordingly. The bill would also allow limits to be placed on the ability of the institutions to sell their loans to Fannie Mae, Freddie Mac, and Ginnie Mae.

The Predatory Mortgage Lending Reduction Act (H.R. 2061) would amend the Real Estate Settlement Procedures Act of 1974[17] to prohibit any person from providing mortgage lending services or mortgage brokerage services in connection with a subprime federally related mortgage loan unless such a person were certified by HUD as having been adequately trained with regard to subprime lending. H.R. 2061 would also make it illegal to engage in any unfair or deceptive act or practice when providing mortgage lending or mortgage brokerage services on a subprime federally related mortgage loan. HUD, the Federal Reserve, and the Federal Trade Commission would be able to jointly issue interpretive rules, statements of policy, and regulations defining such acts and practices. Violators would be subject to a civil

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[15] Subtitle B of Title I of the Riegle Community Development and Regulatory Improvement Act, P.L. 103-325; 15 U.S.C. § 1601 et seq.

[16] Some groups argue that state and local predatory lending laws result in a reduction of the availability of credit to those who need the loans. A report by the Center for Responsible Lending suggests that state and local laws work to reduce predatory lending, and that such laws increase the availability of credit to those in need of it. Wei Li and Keith S. Ernst, *The Best Value in the Subprime Market: State Predatory Lending Reforms*, The Center for Responsible Lending, February 23, 2006, available at [http://www.responsiblelending.org/pdfs/rr010-State_Effects-0206.pdf].

[17] 12 U.S.C. §2610.

penalty of up to $10,000 for the first violation and up to $20,000 for subsequent violations.

The Predatory Mortgage Lending Reduction Act would also amend the Consumer Credit Protection Act[18] to add a title cited as the "Consumer Fairness Act." The title would declare as unenforceable a provision in any consumer contract or transaction that requires binding arbitration to resolve any controversy arising out of the contract. An exception would be made for a written agreement entered into after the controversy that calls for binding arbitration of the controversy.

H.R. 2061 would also amend the Community Development Banking and Financial Institutions Act of 1994[19] to authorize the Community Development Financial Institutions Fund to make grants to nonprofit community development corporations for the education and training of borrowers and community groups regarding predatory lending practices.

In addition, the bill would make a number of changes to HOEPA. It would

- require that lenders that enter into high-cost mortgages establish and maintain a best-practices plan in accordance with regulations that the Federal Reserve Board would be directed to prescribe. All employees, subcontractors, and agents involved in such loans would be trained in the best-practices plan of the lender, and the lender would be required to periodically review and evaluate their performance.

- prohibit lenders from imposing or collecting fees on high-cost mortgages if they had not been previously disclosed. It would also prohibit lenders from imposing or collecting a previously disclosed fee in excess of the amount disclosed, unless the charge were reasonable and could not have reasonably been foreseen (as determined by regulations the Federal Reserve Board would be required to provide).

- require that all disclosures of charges and fees on high-cost mortgages be separately enumerated and clearly labeled and described. It would also require that disclosure of the right of rescission regarding high-cost mortgages be provided in plain language before the mortgage is executed.

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[18] 15 U.S.C. §1601 et seq.

[19] 12 U.S.C. §4701 et seq.

Housing After the 2005 Hurricanes

Hurricanes Katrina, Rita, and Wilma, which struck Gulf Coast states in the fall of 2005, had an enormous effect on the housing stock in that region. Studies estimate that the hurricanes and their related flooding damaged 1.2 million housing units in Louisiana, Mississippi, Florida, Texas, and Alabama.

- Of the 1.2 million damaged housing units, more than 305,000 were severely damaged.[20] Severe damage includes real or personal property loss above certain dollar thresholds.[21]

- Louisiana, specifically New Orleans, had the highest percentage of severely damaged units; approximately 67%, or 204,737 renter- and owner-occupied homes with severe damage were located in Louisiana.[22]

- Of the 305,000 severely damaged units in all five affected states, most were owner occupied — about 63% or 193,000 homes.[23]

- More than half of the 193,000 severely damaged, owner-occupied units lacked flood insurance (55%) and about a quarter of them lacked any insurance (23%).[24]

- Approximately 112,000 rental units in the five affected states were severely damaged.[25]

- Of the 112,000 severely damaged rental units, 13%, or approximately 14,500 units, were HUD subsidized.

On February 6, 2007, the House Financial Services Committee held a hearing to discuss federal housing efforts in response to the 2005 hurricanes. Much of the discussion at that hearing focused on the slow pace of rebuilding, as well as the future of the damaged federally assisted housing stock. On March 7, 2007, the Committee approved the Gulf Coast Hurricane Housing Recovery Act of 2007 (H.R.

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[20] CRS analysis of data found in U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Current Housing Unit Damage Estimates: Hurricanes Katrina, Rita, and Wilma*, February 12, 2006, available at [http://www.huduser.org/Publications/pdf/GulfCoast_HsngDmgEst.pdf].

[21] For a detailed breakdown of damage that qualifies as severe, see ibid., pp. 4-5.

[22] Ibid.

[23] Ibid.

[24] Ibid.

[25] Testimony of HUD Deputy Secretary Roy A. Bernardi before the House Committee on Financial Services Hearing "Federal Housing Response to Hurricane Katrina" February 6, 2007, (hereafter "Katrina Hearing"), available at [http://www.house.gov/apps/list/hearing/financialsvcs_dem/htbernardi020607.pdf].

1227), which was subsequently approved by the full House on March 21, 2007. (For more information, see the "Legislation" section below.)

Rebuilding

Although private insurance will pay some of the cost of rebuilding housing in the affected states, federal funds are part of the effort as well. Thus far, the federal response includes $15.3 billion paid out under the National Flood Insurance Program; $10.4 billion in Small Business Administration (SBA) disaster loans; $6 billion from the Federal Emergency Management Agency (FEMA) in the Individuals and Households Assistance Program; $4.8 billion in reimbursements to Alabama, Louisiana, and Mississippi for activities such as debris removal; and nearly $975 million approved in Community Disaster Loans. FEMA has also approved housing and rental assistance including travel trailers, mobile homes, and personal housing repairs for 1.6 million households.[26] Additional funds include more than $16 billion in Community Development Block Grant (CDBG) funds to the five affected states (Louisiana, Mississippi, Florida, Texas, and Alabama) to help with rebuilding efforts.[27] (For more information, see CRS Report RL33761, *Rebuilding Housing After Hurricane Katrina: Lessons Learned and Unresolved Issues*, by N. Eric Weiss.)

Many Members of Congress have expressed displeasure at the perceived slow pace of rebuilding after Katrina.[28] While there are indications that the pace of rebuilding is quickening,[29] many areas have not been rebuilt and many families are still displaced. According to FEMA, 90,000 families still lived in temporary housing and 35,000 families are still receiving rental assistance 17 months after the storm.[30] Factors behind the delay include the length of time it took to develop and approve rebuilding plans, the pace of infrastructure repairs in the neighborhoods and surrounding communities, the decisions on the future of damaged public housing units, and the size and timing of private insurance settlements to homeowners seeking to return to those neighborhoods.

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[26] Federal Emergency Management Agency, By the Numbers — One Year Later: FEMA Recovery Update for Hurricane Katrina, August 22, 2006, available at [http://www.fema.gov/news/newsrelease.fema?id=29109]. All numbers are as of August 18, 2006.

[27] See P.L. 109-148 and P.L. 109-234.

[28] See Opening Remarks of Honorable Maxine Waters, Katrina Hearing, available at [http://www.house.gov/apps/list/hearing/financialsvcs_dem/oswaters020607.pdf]; and David Hammer, "Senate Democrats vow to fix disaster recovery," *New Orleans Times Picayune*, January 29, 2007, available at [http://www.nola.com/newslogs/tpupdates/index.ssf?/mtlogs/nola_tpupdates/archives/2007_01_29.html#231017].

[29] Brookings Institution, Katrina Index: Tracking Recovery of New Orleans and the Metro Area, in collaboration with the Greater New Orleans Community Data Center, January 2007, [http://www.gnocdc.org/KI/KatrinaIndex.pdf].

[30] Statement of David Garratt, Acting Director of Recovery, Federal Emergency Management Agency, Department of Homeland Security, Katrina Hearing, available at [http://www.house.gov/apps/list/hearing/financialsvcs_dem/htgarratt020607.pdf].

Another rebuilding issue involves the rehabilitation and/or rebuilding of federally assisted housing in areas damaged by the 2005 hurricanes. At the February 6, 2007 hearing before the House Financial Services Committee, HUD Deputy Secretary Roy Bernardi testified that of the 5,100 occupied public housing units damaged in New Orleans during Hurricane Katrina, nearly 2,000 were habitable and approximately 1,200 are occupied or would be shortly.[31] However, members of the Financial Services Committee questioned HUD's plans to demolish the approximately 4,100 units in the four largest public housing developments and replace them with mixed income housing. HUD's demolition plans have been met with opposition from tenant organizations and low-income housing advocates, and several lawsuits have been filed.[32] Provisions included in H.R. 1227 (discussed below) are designed to limit HUD's ability to demolish public housing.

Oversight

As noted earlier, Congress has appropriated tens of billions of dollars toward hurricane recovery and relief. Given its large investment, Congress has conducted several oversight hearings and requested many oversight reports on how effectively and efficiently the recovery and rebuilding money is being spent.

Much of the assistance provided to displaced families immediately after Hurricane Katrina was in the form of individual and household direct assistance from FEMA. The Government Accountability Office (GAO) has found that system to be fraught with waste, fraud, and abuse.[33] In response to these and other concerns, Congress has enacted several pieces of legislation aimed at improving the flexibility and accountability of FEMA, and may consider others in the 110th Congress.[34]

In addition to concerns about waste, fraud, and abuse, Congress has expressed concern about the slow pace of spending in the funding it has provided for helping families rebuild their homes. Congress twice appropriated CDBG funds to Gulf Coast states affected by the 2005 hurricanes to help rebuild homes and infrastructure. The first amount disbursed was $11.5 billion and the second amount was nearly $5.2 billion. Each state that received funds — Louisiana, Mississippi, Florida, Texas, and Alabama — was required to develop and have approved by HUD a plan for how it would use the funds. HUD approved the state plans in the late spring and early summer of 2006, so funds have begun to be released to households and to local

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[31] Deputy Secretary Bernardi's testimony is available at [http://www.house.gov/apps/list/hearing/financialsvcs_dem/htbernardi020607.pdf].

[32] See Julia Cass and Peter Whoriskey, "New Orleans to Raze Public Housing: Many Units Closed Since Katrina to Be Demolished, Despite Protests," *The Washington Post*, December 8, 2006.

[33] U.S. Government Accountability Office, *Unprecedented Challenges Exposed the Individuals and Households Program to Fraud and Abuse; Actions Needed to Reduce Such Problems in Future*, GAO Report GAO-06-1013, September 2006.

[34] For more information, see CRS Report RL33729, *Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions*, coordinated by Keith Bea.

communities.[35] At the House Financial Services Committee Hearing on February 6, 2007, HUD Deputy Secretary Roy Bernardi testified that approximately $1.2 billion in CDBG funds had been expended. Committee members expressed concern at the slow disbursement rate, particularly regarding the Louisiana "Road Home" program, in which only 400 claimants had received funds.

Ongoing Housing Assistance

Currently, both HUD and FEMA provide ongoing rental assistance through two programs to tenants displaced by the 2005 hurricanes. HUD provides rental assistance through the Disaster Voucher Program (DVP) to households that lived in HUD-assisted housing or were homeless prior to Hurricanes Katrina and Rita. FEMA provides rental assistance to any other tenant or homeowner in need of housing assistance. Beginning on September 1, 2007, however, HUD will assume administration of the FEMA rental assistance program for the program's duration. This new arrangement was announced on April 26, 2007.[36]

Although both the HUD and FEMA programs provide rental assistance to disaster victims, they operate independently. HUD provides DVP rental assistance through vouchers. The voucher is similar to a Section 8 voucher, and may be used to help pay for rent anywhere in the country as long as a landlord is willing to accept it. One year after Hurricane Katrina, HUD estimated that 25,000 households had been assisted through DVP;[37] at the February 6 hearing before the House Financial Services Committee, Assistant Secretary Bernardi testified that about 12,000 families were still participating in the program. DVP was originally scheduled to end September 30, 2007, at which time families were expected to transition back onto the programs from which they were initially displaced. However, the FY2007 supplemental appropriations act (P.L. 110-8) extended the period of DVP availability to December 31, 2007. There are remaining questions regarding what will happen to families who were homeless before the storm and those whose homes are still under construction. Provisions included in H.R. 1227, The Gulf Coast Hurricane Housing Recovery Act (discussed below) would further extend the length of time families could receive DVP assistance. (For more information about DVP see CRS Report RL33173, *Hurricane Katrina: Questions Regarding the Section 8 Voucher Program*, by Maggie McCarty.)

FEMA began providing short-term rental assistance to disaster victims just after Hurricanes Katrina and Rita struck; after six months, in February of 2006, FEMA began to convert the short-term assistance to longer-term rental assistance (up to 18

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[35] Office of the Federal Coordinator for Gulf Coast Rebuilding, *Continuing Progress: A 1-Year Update on Hurricane Recovery and Rebuilding*, August 2006, available at [https://www.dhs.gov/xlibrary/assets/GulfCoast_Katrina1yearFactSheet.pdf].

[36] See HUD News Release, Housing assistance extended for Gulf Coast hurricane victims for another 18 months, April 26, 2007, available at [http://www.hud.gov/news/release.cfm?content=pr07-051.cfm], and HUD, Fact Sheet: Providing Continued Assistance for Gulf Coast Hurricane Victims, available at [http://www.hud.gov/news/releases/pr07-051.cfm], accessed April 30, 2007. Hereinafter "HUD News Releases."

[37] *Continuing Progress: A 1-Year Update on Hurricane Recovery and Rebuilding*.

months). The assistance has been extended twice more since then. On February 28, 2007, President Bush extended the assistance for an additional six months. And with the April 26, 2007, announcement of HUD's administration of the program, assistance was extended through March 1, 2009. A floor amendment added to H.R. 1227 would provide for otherwise income-eligible families still receiving rental assistance or living in trailers to transfer into the Section 8 voucher program upon expiration of their FEMA assistance.

Although HUD will assume administration of FEMA's rental assistance program, FEMA will continue to administer the trailer program. It has begun offering tenants an opportunity to purchase their trailers. Beginning in March 2008, families receiving rental assistance and living in trailers will be required to pay a portion of the cost of their housing. Each month, the amount they are required to contribute will increase, with an exemption made for the elderly and disabled.[38]

Legislation

On March 21, 2007, the House approved the Gulf Coast Hurricane Housing Recovery Act of 2007 (H.R. 1227). The bill contains a wide range of provisions, including those that would make modifications to, and increase reporting on, assistance provided in earlier supplemental appropriations acts. The bill would also clarify the treatment of certain federally assisted properties. Key provisions are summarized below.

CDBG-related provisions would

- authorize and fund a pilot program in Louisiana to acquire certain individual properties for the purpose of aggregating them and making them available for development.
- prohibit FEMA from withholding hazard mitigation funds from Louisiana based on a provision in the Louisiana Road Home program that penalizes families who do not agree to live in the state.
- require quarterly reports from GAO on CDBG spending.
- make other changes to the treatment of CDBG funds for purposes of (1) individual eligibility for other disaster-related assistance and (2) meeting match requirements in other programs.

Public and Assisted Housing related provisions would

- require HUD to conduct a survey of displaced New Orleans public housing residents to determine their interest in returning.
- require the Housing Authority of New Orleans (HANO) to make available for occupancy by August 1, 2007, the greater of 3,000 public housing units or a number of units sufficient to house families wishing to return.

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[38] See HUD News Releases.

- prohibit HANO from demolishing or disposing of public housing without a plan to replace each unit with a public housing (or other comparable) unit.
- guarantee a right of return to all New Orleans public housing residents wishing to return.
- place restrictions on the demolition and disposition of other public housing units in the disaster areas and require PHAs to offer a right of return for displaced families.
- authorize such sums as necessary to rehabilitate, repair, and/or redevelop public housing in New Orleans, including the cost of providing supportive services to tenants.
- authorize the extension of the Disaster Voucher Program through January 1, 2008, and permit families to transfer their DVP vouchers to the regular voucher program upon expiration of the DVP program.
- clarify the allocation of FY2007 Section 8 voucher renewal funding for disaster-affected areas.
- direct the Secretary to approve feasible proposals to preserve project-based rental assistance connected to damaged privately owned multifamily rental properties.
- authorize such sums as necessary to supply replacement vouchers for public housing or private multifamily project-based rental assistance units that will not be rebuilt.
- authorize such sums as necessary to create 4,500 new project-based vouchers for use in supportive housing for the homeless, seniors and persons with disabilities in the Hurricane-affected regions, 3,000 of which would be available for the state of Louisiana, upon request.

Other provisions would

- authorize a transfer of funds from FEMA to HUD to be used to reimburse landlords for damages incurred as a result of their participation in FEMA's city lease program.
- give the Secretary of HUD the authority to either take title of or make insurance payments on behalf of certain FHA-insured single-family properties that did not have hazard or flood insurance.
- provide for otherwise income-eligible FEMA housing assistance recipients to transfer to the Section 8 voucher program upon termination of their FEMA assistance.
- require GAO to study the distribution of federal funds to Gulf Coast states.
- commend Americans for the rebuilding efforts.

Several of these provisions proved controversial during both committee markup and floor consideration. Amendments were considered, but rejected, that would have struck the authorization of additional vouchers and would have limited the amount of funds authorized for rebuilding public housing.

On June 20, 2007, the Gulf Coast Housing Recovery Act of 2007 (S. 1668) was introduced in the Senate. The bill contains many of the same provisions as H.R. 1227, including a pilot program to use CDBG funds for development in Louisiana, a requirement that the Housing Authority of New Orleans make at least 3,000 public housing units available to residents, and the extension of the Disaster Voucher Program (to June 30, 2008), together with the right of tenants to covert DVP vouchers to regular vouchers. The bill was referred to the Senate Banking Committee.

Housing Assistance

Federally Assisted Housing Funding and Reform

Section 8 Voucher Reform. The Section 8 voucher program provides portable housing subsidies to low-income families to enable them to find rental housing in the private market. Since 2003, HUD has advocated the abolishment of the existing Section 8 housing choice voucher program and its replacement with a new program. Part of the Administration's rationale for advocating major program changes was a desire to curb cost growth in the program. However, the effects of earlier program reforms, market changes, and recent funding allocation changes[39] have all worked together to limit growth in the cost of a voucher within the structure of the current program. The other rationale for program reform has to do with reducing administrative complexity in the program and providing the public housing authorities (PHAs) that administer the program with more flexibility. It is generally agreed, by the Administration, low income housing advocates, and PHA industry groups, that the voucher program is too complex and administratively burdensome. However, the Administration, low-income housing advocates, and PHA industry groups do not necessarily agree about the best way to reduce that complexity without compromising the level of assistance provided to low-income tenants.

In the 109th Congress, a bipartisan Section 8 voucher reform bill was approved by the House but not enacted before the end of the Congress (H.R. 5443). A similar bill, the Section 8 Voucher Reform Act of 2007 (H.R. 1851), has been introduced in the 110th Congress. The bipartisan bill is sponsored by Chairwoman Waters of the subcommittee of jurisdiction in the House, and is cosponsored by Chairman Frank of the full committee and the Ranking Members of both the full committee (Representative Bachus) and the subcommittee (Representative Biggert). It would change the way income is calculated for the purposes of eligibility and rent-setting (for the voucher program, as well as public housing and project-based Section 8) and adopt a new method for allocating voucher funds, among other changes. On May 25, 2007, the House Financial Services Committee passed H.R. 1851 with a number of amendments. Among them were provisions to expand the Moving to Work program (renamed the Housing Innovation Program) and authorization of up to 20,000 new incremental vouchers in each of the next five years. On July 12, 2007, the bill was approved by the full House.

The President's FY2008 budget request indicates that HUD will submit its reform proposal, although, to date, one has not been introduced. (For more

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[39] For more information, see CRS Report RS22376, *Changes to Section 8 Housing Voucher Renewal Funding, FY2003-FY2006*, by Maggie McCarty.

information, see CRS Report RL33270, *The Section 8 Housing Voucher Program: Reform Proposals*, by Maggie McCarty.)

Public Housing Operating Funds. In January 2007, HUD began using a new formula to distribute public housing operating funds to public housing authorities. Under the new formula, some PHAs' eligibility for funding increased, and others decreased. However, any funding increases will be reduced and any funding decreases will be further deepened if the appropriations provided by Congress are not sufficient to fund all PHAs at their full eligibility levels.

Operating funds make up the difference between what tenants pay in rent and the cost of running public housing. The amount a PHA receives is based on a set of allowable expenses set by HUD. PHAs calculate their budgets by totaling up the allowable expenses for all of their units and subtracting the amount they receive in tenant rents. HUD then adds together all of the agencies' budgets and compares the total to the amount Congress appropriated for the operating fund that year. Typically, Congress appropriates less than the full amount that PHAs qualify for under the formula, so HUD applies an across-the-board cut to agencies' budgets, called a proration. The 2006 proration was 86%.

The new funding formula for FY2007, established by HUD through regulation with input from PHA industry groups, adopts new allowable expense levels. It also requires PHAs to adopt a new form of property management — called asset-based management — by FY2011. Some agencies qualify for a higher budget under the new allowable expense levels and others face reductions, although both increases and decreases will be phased in. Those that face a decrease can transition to asset-based management sooner to help limit their losses. However, the magnitude of gains and losses under the new formula will depend on how much is appropriated for the operating fund and, subsequently, how low a proration HUD will set.

The President requested $3.5 billion for operating funds in FY2007, the same amount that was provided in FY2006. According to HUD estimates, the requested FY2007 funding level would have led to a 79% proration. PHA advocacy groups protested that HUD's request was insufficient to meet their needs. For FY2007, the 110th Congress provided an additional $300 million for the operating fund above FY2006 levels (P.L. 110-5). According to HUD, that funding level will be sufficient to increase the proration level to about 83%.[40] (For more information, see CRS Report RS22557, *Public Housing: Fact Sheet on the New Operating Fund Formula*, by Maggie McCarty.) For FY2008, the Administration has requested $4.0 billion in operating funds, which, according to HUD's Congressional Budget Justifications, would result in a proration level of about 80%.

Asset-Based Management. The new operating fund rule also contained a requirement that PHAs convert to a new type of management, called asset-based management, by 2011. Currently, PHAs are able to centrally manage their public

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[40] HUD, Operating Fund Proration Percentage for CY 2007 at Proposed Appropriation Levels, available at [http://www.hud.gov/offices/pih/programs/ph/am/of/estprorationexpl07.pdf]

housing stock, meaning a PHA can receive funding, budget, and provide services for all of their units in the same way, on a portfolio-wide basis. Under asset-based management, PHAs will receive funding and will be required to budget for their units on a project-by-project basis. As noted earlier, PHAs that are slated to lose funding under the new operating fund rule can convert to asset-based management before the 2011 deadline in order to limit their losses. In order for PHAs to limit their losses in 2008, they must prove that they have converted to asset-based management by the deadline set by HUD.

There have been two main controversies surrounding this process, with the first concerning the deadline. HUD's initial guidance stated that PHAs must prove that they have converted to asset-based management by April 15, 2007 in order to stop their losses in the first year.[41] A subsequent draft notice published by HUD stated that the deadline was October 15, 2007.[42] HUD then published a statement on its website that the April 15 deadline was the correct deadline. PHA advocacy groups actively lobbied for HUD to use the October 15, 2007, deadline, and asked Members of Congress to support legislation requiring HUD to use that deadline.[43] On April 10, 2007, HUD announced that it was postponing the deadline to October 15, 2007.[44]

The second controversy surrounds how PHAs should demonstrate that they have converted to asset-based management. HUD published preliminary guidance in September 2006.[45] PHA industry groups have argued that HUD's guidance is "overly prescriptive," and have lobbied for HUD to make modifications. On January 16, 2007, the Chairmen of the Senate Banking and House Financial Services Committees sent a letter to HUD asking the Department to suspend implementation of the conversion to asset-based management until after the authorizing committees have "had the opportunity to look into the issue further." As noted previously, HUD has since announced that it is postponing the deadline to October 15, 2007. HUD has also announced the launch of a new help desk designed to address questions and issues PHAs may encounter in the transition to asset-based management.[46]

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[41] HUD, PIH Notice 2006-14, Operating Fund Program Final Rule: Transition Funding and Guidance on Demonstration of Successful Conversion to Asset Management to Discontinue the Reduction of Operating Subsidy, issued March 22, 2006.

[42] HUD, "Public Housing Operating Fund Program; Revised Transition Funding Schedule for Fiscal Year 2008 Through Fiscal Year 2012," 71 *Federal Register* 68404, November 24, 2006.

[43] Letter from Council of Large Public Housing Authorities, National Association for Housing and Redevelopment Officials, and Public Housing Authorities Directors Association to HUD Secretary Alphonso Jackson, dated December 6, 2006.

[44] HUD's website, accessed April 18, 2007, at [http://www.hud.gov/offices/pih/programs/ph/am/].

[45] HUD, PIH Notice 2006-35, Operating Fund Program Final Rule: Transition Funding and Guidance on Demonstration of Successful Conversion to Asset Management to Discontinue the Reduction of Operating Subsidy — Extension of Stop Loss Deadline to April 15, 2007, issued September 25, 2006.

[46] HUD's website, accessed April 18, 2007, at [http://www.hud.gov/offices/pih/programs/

HOPE VI Reauthorization. The HOPE VI program provides competitive grants to PHAs for the demolition and/or revitalization of distressed public housing. HOPE VI has been popular with many Members of Congress, but it has been criticized by the Administration, which argues that grantees spend money too slowly, and by tenant advocates, who argue the program displaces more families than are housed in new developments. Reflecting these criticisms, HUD has requested no new funding for HOPE VI each year since FY2004. Congress has continued funding the program, although at lower levels than in previous years (the current appropriation is $99 million, compared with $570 million in FY2003).

The statute authorizing the HOPE VI program includes a sunset clause. The sunset date was September 30, 2006. However, the FY2007 funding bill (P.L. 110-5) then provided an extension of the HOPE VI program through the end of FY2007. Reauthorization legislation considered in the 109th Congress varied from extensive program reforms to bills that only amended the date in the sunset clause. On March 8, 2007, the HOPE VI Improvement and Reauthorization Act of 2007 (S. 829) was introduced by Senator Mikulski and Senator Martinez. It would reauthorize the program through FY2013 and, according to the sponsors' press release, make "several improvements to ensure grants are cost-efficient, and effective at improving resident and community life."[47] (For more information, see CRS Report RL32236, *HOPE VI Public Housing Revitalization Program: Background, Funding, and Issues*, by Maggie McCarty.)

Assisted Housing Preservation

For the 110th Congress, Representative Frank, the Chairman of the House Financial Services Committee, has stated that preservation of affordable housing will be on the Committee's agenda.[48] Housing preservation involves efforts to maintain the affordable nature of federally assisted housing. When many HUD-assisted and Low Income Housing Tax Credit (LIHTC) housing projects were developed, building owners entered into contracts in which they agreed to serve low-income families through reduced rents and/or federal rent subsidies for a certain number of years in exchange for government assistance in developing the property. Depending on the assisted housing program, the duration of these contracts, or "use restrictions," is between 15 and 50 years.[49] In recent years, these contracts have begun to expire or, in some cases, property owners have chosen to pay off their mortgages early and end

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[46] (...continued)
ph/am/helpdesk.cfm].

[47] Press release from the office of Barbara Mikulski, *Mikulski Introduces Legislation To Continue, Strengthen Hope VI Program,* March 8, 2007 [http://mikulski.senate.gov/record.cfm?id=270346].

[48] Remarks of Representative Barney Frank at the Office of Thrift Supervision Housing Forum, National Press Club, December 11, 2006, p. 72, transcript available at [http://www.ots.treas.gov/docs/4/48982.pdf].

[49] Programs in which assisted housing preservation is an issue are the Section 221(d)(3) program, the Section 236 program, the Section 202 and 811 programs, the Section 515 rural housing program, and the Low Income Housing Tax Credit Program.

the use restrictions. Contracts for rental assistance, including project-based Section 8 rental assistance, have also begun to expire. By 2005, nearly 200,000 formerly assisted housing units were no longer subject to use restrictions due to mortgage prepayment or expiration of project-based rental assistance.[50] The mortgages on a further 2,328 HUD properties, representing 237,000 housing units, are expected to mature by 2013.[51] These properties make up 21% of the total number of properties with HUD mortgages.

Previous Legislative Efforts to Preserve Affordable Housing. Beginning in 1987, Congress started to enact legislation to help preserve affordable rental housing. Congress first attempted to address the problem through the Emergency Low-Income Housing Preservation Act (ELIHPA).[52] The act temporarily prevented owners of Section 221(d)(3) and Section 236 developments from prepaying their mortgages without approval from HUD. In 1990 Congress enacted the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA) as part of the Cranston-Gonzalez National Affordable Housing Act (P.L. 101-625). The program created incentives for building owners to continue offering affordable housing through the Section 221(d)(3) and Section 236 programs. LIHPRHA has not been funded since FY1997 (P.L. 104-204), but during the 1990s it is estimated to have preserved 100,000 units of Section 221(d)(3) and Section 236 housing.[53]

In 1997, the Multifamily Assisted Housing Reform and Accountability Act (MAHRA, P.L. 105-65) created the Mark-to-Market program. The program applies to owners of multifamily housing projects with project-based Section 8 rental assistance contracts in which the rent collected is considered above-market. Mark-to-Market allows those owners to renew their rental assistance contracts with HUD, although at a lower rate, while also restructuring their outstanding debt on the property. The program is designed both to ensure that HUD pays reasonable market rents for subsidized properties and to provide incentives for owners of assisted properties to renew their contracts with HUD. The FY2007 yearlong continuing resolution (P.L. 110-5) extended the Mark-to-Market program through the end of FY2011.

Preservation Legislation. H.R. 44, the Stabilizing Affordable Housing in the Future Act, has been introduced in the 110th Congress. The bill would require HUD to maintain rental assistance contracts on multifamily units it manages or owns

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[50] National Housing Trust, *HUD-Assisted, Project-Based Losses by State*, March 2, 2005, available at [http://www.nhtinc.org/prepayment/State_Loss_Report.pdf].

[51] U.S. Government Accountability Office, *More Accessible HUD Data Could Help to Preserve Housing for Low-Income Tenants*, GAO-04-20, January 2004, p. 4, available at [http://www.gao.gov/new.items/d0420.pdf].

[52] ELIHPA was part of the Housing and Community Development Act of 1987 (P.L. 100-242).

[53] Emily Achtenberg, *Stemming the Tide: A Handbook on Preserving Subsidized Multifamily Housing*, Local Initiatives Support Corporation, September 1, 2002, p. 2, available at [http://www.lisc.org/content/publications/detail/893].

due to mortgage default or foreclosure. In cases where HUD-owned or HUD-managed property is no longer able to be rehabilitated, H.R. 44 would permit HUD to contract with owners of other properties to make project-based rental assistance payments for existing tenants. Another provision would require that in cases where HUD disposes of multifamily properties, the property must be appraised according to industry standards (another bill in the 110th Congress, H.R. 655, would do the same).

The Mark-to Market Extension Act (H.R. 647/S. 131) would make eligible for the program certain properties where rent is not considered above-market, as long as the HUD Secretary determines that debt restructuring is necessary to preserve the property. The bill would also allow the Secretary to waive the rent limits established in the Mark-to-Market statute when it enters into rental assistance contracts with property owners in federally declared disaster areas. In most cases, the law limits the rent levels set in the rental assistance contract extensions to those of comparable properties in the area.

Housing Tax Incentives

Low-Income Housing Tax Credit Modifications. The Low Income Housing Tax Credit (LIHTC) was created by the Tax Reform Act of 1986 (P.L. 99-514) to provide an incentive for the acquisition and development or rehabilitation of commercial property for affordable housing for renters. These federal housing tax credits are awarded to developers of qualified projects. Sponsors, or developers, of real estate projects apply to the corresponding state housing finance authority for LIHTC allocations for their projects. Developers either use the credits or sell them to investors to raise capital (or equity) for real estate projects. The tax benefit reduces the debt and/or equity that the developer would otherwise have to incur. With lower financing costs, tax credit properties can potentially offer lower, more affordable rents.

Legislation introduced in the 109th Congress, but not enacted, proposed changes in the LIHTC. Proposals ranged from changing the name of the credit to the Affordable Housing Tax Credit, increasing the allocation amounts for all states, deeper targeting of the tax credit to low-income communities, and other administrative modifications. It is expected that similar changes to the LIHTC may be proposed in the 110th Congress.

The LIHTC and HUD Assisted Housing Programs. The LIHTC may be used in combination with other HUD assisted housing programs to fund affordable housing. HUD programs that allow use of the LIHTC in combination with HUD grants include the HOME Investment Partnerships program, the Section 202 and Section 811 programs, the Housing Opportunities for Persons with AIDS program, and the McKinney-Vento Supportive Housing Program. Representative Frank, Chairman of the House Financial Services Committee, has indicated that the Committee would like to work with the House Ways and Means Committee in order to improve the compatibility between the LIHTC and HUD programs in the 110th Congress.[54]

Homelessness

In recent years, the federal government has taken concrete steps to end homelessness among those who are chronically homeless — defined as disabled individuals who have been homeless for long periods of time. Disabilities include mental illness, physical illness including HIV/AIDS, and addiction to alcohol and drugs. In 2002, President Bush established an initiative to end chronic homelessness within ten years. The result of the initiative has been the revival of the Interagency Council on Homelessness (until 2002 it had not been funded for six years), and a concerted effort among states and communities to develop ten-year plans to end homelessness (currently 53 states and territories and 224 cities and counties have developed ten-year plans). Government agencies have made efforts to coordinate housing and supportive services to serve the chronically homeless, with the Departments of Housing and Urban Development, Health and Human Services, and the Department of Veterans Affairs collaborating on several programs to address the needs of the chronically homeless.

In the 110th Congress, two bills have been introduced that would reauthorize the McKinney-Vento Homeless Assistance Act. The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2007 (H.R. 840) was introduced on April 14, 2007, and the Community Partnership to End Homelessness Act of 2007 (S. 1518) was introduced on May 24, 2007. On June 21, 2007, the Senate Banking Committee held hearings regarding reauthorization of McKinney-Vento.

The two bills, H.R. 840 and S. 1518, are similar in that they would both consolidate many of the homeless housing programs that exist in current law and codify the system through which the funds are distributed (the President has also urged the consolidation of these three programs in his last six budgets). Both bills would also allow a greater portion of funds to be used for homelessness prevention activities, although they would each make funds available differently.

Among the differences in the bills are the way in which "homeless individual" is defined; H.R. 840 would expand the scope of HUD's definition to include families and individuals who are sharing another's housing due to loss of their own housing or economic hardship, while S. 1518 would retain the current definition. However, S. 1518 would change the definition of chronically homeless to include families with an adult member who has a disability (currently only unaccompanied individuals are included). The Senate bill would also create a separate process for rural communities to apply for grants, while in the House bill, rural communities would be part of the same application process as non-rural areas. The House bill would authorize the homeless assistance grants at $2.5 billion for FY2008, and the Senate bill would provide an authorization level of $1.8 billion. However, in S. 1518, permanent

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[54] Remarks of Representative Barney Frank at the Office of Thrift Supervision Housing Forum, National Press Club, December 11, 2006, p. 70, transcript available at [http://www.ots.treas.gov/docs/4/48982.pdf].

housing contracts would be renewed through the Section 8 program rather than through the funds made available for the homeless assistance grants. (For more information on the homeless assistance grants, see CRS Report RL33764, *The HUD Homeless Assistance Grants: Distribution of Funds*, by Libby Perl.)

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