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Housing Issues in the 106th Congress

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ABSTRACT

At any given time, the Congress is likely to be concerned with a dozen or more major housing issues. Recent areas of interest include the budget for the Department of Housing and Urban Development (HUD) for FY2001, proposed increases in the Low Income Housing Tax Credit and private activity bond programs, concerns about predatory lending, proposals to block grant homeless assistance funds, possible uses of FHA program "surplus" reserves and homeownership initiatives. This report summarizes current housing issues, cites legislative proposals, and, in some cases, presents brief pro/con discussions. It will be updated periodically as issues develop and major legislation progresses.

Housing Issues in the 106th Congress

Summary

On June 21, 2000, the House passed the VA-HUD FY2001 appropriations bill, H.R. 4635, that recommends \$30.0 billion for the Department of Housing and Urban Development (HUD). This is an increase of nearly 16% or \$4.1 billion more than the \$25.9 billion enacted last year. But, it is \$2.5 billion less than the Administration's request for \$32.5 billion. The Housing Certificate Fund would receive \$13.275 billion, \$853 million less than the Administration's request. No funds are specifically designated for the 120,000 incremental rental housing vouchers that the Administration requested. However, the House-passed bill provides for 10,000 vouchers to be used with low income housing tax credit projects and another 10,000 new limited-use vouchers that could be used by public housing authorities with a 97% voucher utilization rate. While the VA-HUD subcommittee believes the \$13.275 billion approved for the Housing Certificate Fund is sufficient to renew all expiring Section 8 rental assistance contracts and protect all current tenants, the Administration is concerned that this may not be the case.

Some HUD programs would receive less funding than last year: the public housing capital fund, HOPE VI, Community Development Block Grants and the HOME programs. Programs for the homeless, the elderly, and the disabled would receive the same level of funding as in FY2000. The Senate Appropriations Committee has not yet approved a HUD budget.

In addition to deliberations over the HUD budget, other agenda items during the second session of the 106th Congress include bills to increase the Low Income Housing Tax Credit (H.R. 175/S. 1017) and private activity bonds (H.R. 864, S. 459). On July 25, 2000, a community renewal bill supported by both the Speaker of the House and the President, H.R. 4923, passed the House. This bill would phase-in an increase in both the housing tax credit and the private activity bond program. H.R. 1776, a bill containing homeownership initiatives, was passed by the House on April 6 by a vote of 417 to 8. Other bills with hearings or committee votes include H.R. 21, which would reinsure state disaster insurance programs, and H.R. 1073, which would consolidate McKinney Act homeless housing programs into a block grant to states.

Bills have been introduced to address concerns over "predatory lending" to lower income homebuyers, including fraudulent appraisals, exorbitant loan fees and other onerous mortgage terms. These include H.R. 3901, H.R. 4213, H.R. 4250, S. 2405 and S. 2415. There are also recent bills proposing alternative uses for an estimated \$5 billion of "excess" Federal Housing Administration (FHA) mortgage insurance program reserves. H.R. 4795 and S. 2914 would require HUD to make partial rebates of FHA excess reserves to certain FHA-insured homeowners. On July 27, 2000, S.2997 was introduced to establish a national affordable housing trust fund financed by excess incomes (reserves) generated by the FHA mortgage insurance program and by HUD's Government National Mortgage Association.

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Housing Issues in the 106th Congress

The HUD Budget

FY2001 Budget. On June 21, 2000, the House passed the FY2001 VA/HUD appropriations bill (H.R. 4635), recommending \$30.0 billion for the Department of Housing and Urban Development (HUD). Although this is an increase of nearly 16%, or \$4.1 billion more than the \$25.9 billion enacted for FY2000, it is \$2.5 billion less than the President's request. The Housing Certificate Fund, which provides rental assistance to about 3 million low-income households, would receive \$13.275 billion, \$853 million less than the Administration's request. While the VA-HUD Appropriations Subcommittee believes this amount is sufficient to renew all Section 8 contracts and protect tenants where landlords elect to leave the program, the Administration has expressed concern that this may not be the case. Whether the funding is adequate depends on the level of Section 8 recaptures that take place during FY2001 (the Appropriations Subcommittee expects \$2.2 billion; HUD estimates only \$1.2 billion) and how much of the \$275 million of Section 8 rescissions recommended in the House-approved bill actually occurs at the end of FY2001. (Both "recaptures" and "rescissions" 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. In recent years, HUD has had difficulty estimating the amount of unused funds.)

There is no funding in the House-approved bill specifically designated for the 120,000 incremental vouchers that the Administration requested in its FY2001 budget. The Administration says these are vital for dealing with the rising number of low income households paying more than half of their income for rent. However, as passed by the House, H.R. 4635 would fund 10,000 vouchers for use with low-income housing tax credit projects (a production program) and 10,000 limited-use incremental vouchers that could only be distributed during the first 4 months of the new fiscal year and used only by public housing authorities that have a 97% voucher utilization rate.

There have been several studies completed this year supporting anecdotal evidence that there is a shortage of affordable housing, and that the shortage is growing worse. For example, in March 2000, HUD sent a report to Congress, *Rental Housing Assistance – The Worsening Crisis*, which documents 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 It emphasizes that having

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, (continued...)

a job does not guarantee a family a decent place to live at an affordable cost. Among its findings: “More than 220,000 teachers, police, and public safety officers across the country spend more than half their income for housing, and the problem is growing worse.”

While the level of incremental vouchers in the House-approved appropriations bill for FY2001 stands in contrast to the 50,000 additional vouchers approved by Congress for FY1999 and the 60,000 for FY2000, it highlights an emerging issue. HUD has been called upon in recent congressional hearings to explain why so few of these 110,000 incremental housing vouchers have been put to use. The reasons generally given are that the sustained economic growth has driven down vacancy rates, pushed up rents to levels where the value of vouchers are often inadequate, and made participation in the Section 8 program less appealing to landlords. The House VA/HUD Appropriations Subcommittee has said that there is no need to put more vouchers into the pipeline until the difficulties of using the current supply are adequately resolved. Both HUD and the Subcommittee have discussed options to address this matter, including increasing the value of vouchers in some expensive areas, and giving landlords more incentives to participate in the rental program.

HUD has expressed general disappointment with the House recommendations for the FY2001 agency budget because many of its programs would either face cuts or be funded at last year’s level. For example, as passed by the House, H.R. 4635 would provide \$2.8 billion for the public housing capital fund for FY2001, \$100 million less than appropriated last year. The public housing operating fund would receive \$3.1 billion, the same as in FY2000. Efforts to revitalize or replace nearly 100,000 severely distressed public housing would continue under the HOPE VI program. But many housing organizations worry that fewer replacement units will be added than the number torn down, and that not all of the replacements will be affordable to those who are displaced, since more “mixed income” communities are being built. (See *Chicago Hope*, National Journal, 4/22/2000.) Included in the House recommendations is \$565 million for the HOPE VI program, \$10 million less than approved last year. About 1.3 million families now live in public housing.

The Administration’s FY2001 HUD budget asked for an 18% increase in homeless assistance grants, up \$180 million to \$1.2 billion. The House recommends \$1.02 billion, the same level as last year. The House also recommends the same level of funding as last year for housing programs for the elderly and disabled, at \$911 million. 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 House provides \$4.5 billion for Community Development Block Grants, about \$300 million less than last year. Close to \$1.6 billion is recommended for the HOME block grant program, slightly less than last year’s funding.

Other Readings. See CRS Report RL30504, *Appropriations for FY2001: VA, HUD, and Independent Agencies*, by coordinators Dennis W. Snook and E. Richard

¹ (...continued)
D.C.

Bourdon. See also, 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 Denny 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 | \$25.86 | \$32.46* |

Source: Budget levels remain uncertain until all program experience has been recorded, and any supplemental appropriations or rescissions have been taken into consideration; thus, FY1996-99 figures are from budget submissions of subsequent years. Estimates for final FY2000 appropriations are from preliminary estimates of the House Committee on Appropriations, and include the effects of the 0.38% across-the-board reduction imposed by P.L. 106-113. House Subcommittee on VA, HUD, and Independent Agencies.

*Proposed by the President.

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 producing assisted rental housing affordable to lower income households. At least 750,000 new and rehabilitated units have been added 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.

Housing advocates say there is a great need to build more affordable apartments, especially with the robust economy reducing vacancy rates and pushing rents higher.

H.R. 175 (N. Johnson) and the identical S. 1017 (Mack) would increase the annual dollar limit on the federal tax credits that states can distribute to developers from the current formula – \$1.25 per person in the state to \$1.75, and index the limit to inflation. This would raise the yearly supply of tax credits by 40%, enough to produce an estimated 30,000 additional apartments a year. An identical proposal was included in the President's FY2001 budget request.

Several modified versions of these bills have been added to other legislation moving through Congress. The President and the Speaker of the House agreed to support a number of economic development initiatives on May 22. On July 24, 2000, a bill was introduced by Rep. J.C. Watts containing many of these initiatives – H.R. 4923, the Community Renewal and New Markets Act of 2000. H.R. 4923 passed the House on July 25. It would increase the housing tax credit cap by 10 cents a year from 2001 through 2004, from \$1.25 to \$1.65, then to \$1.70 in 2005, and to \$1.75 in 2006 and thereafter. Beginning in 2001, each state would receive a minimum annual tax credit allocation of \$2 million. The cap would be indexed for inflation after 2006.

H.R.4923 would also incorporate a number of programmatic changes (reforms) to the low income housing tax credit program found in H.R. 2400 (N. Johnson). These changes include modification to the criteria that agencies use for allocating housing credits to developers' projects competing for the credits, the addition of certain responsibilities to housing tax credit agencies, and changes to the "carryforward rules" that have to do with unused tax credits that agencies have not distributed. A minimum wage bill, H.R. 3081(Lazio), that passed the House on March 9, 2000, also contains an increase in housing tax credits that is identical to that in H.R. 4923.

In terms of apartments produced, the LIHTC has been very successful, as builders and investors have responded to this tax incentive. 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.

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 some landlords who are now "opting 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 Internal Revenue Service (IRS) is also 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.

Another concern is whether the cost of producing the tax credit units is reasonable relative to alternative ways of helping low income households with their housing needs. The General Accounting Office is conducting a study to compare the costs of tax credit apartments with other existing federal rental housing programs. They hope to complete their report by the end of September.

There are also questions about how well developers, investors, and state allocating agencies are following the complex requirements of this program. 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 IRS is now conducting a broad criminal investigation of low-income housing tax credit projects suspected of illegal activities. (*Housing and Development Reporter*, June 26, 2000). In addition, the Affordable Housing Finance magazine (housingfinance.com) has recently run a series of articles on charges of favoritism and self-dealing in the awarding of housing tax credits by the Texas Department of Housing and Community Development. Investigations are being conducted by the FBI, and one board member has been indicted in the U.S. District Court for bribery, theft, mail fraud, and money laundering for allegedly taking money and property in exchange for voting to approve an application for low-income housing tax credits.

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 have 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 current annual limit of bonds that each state can sell, imposed in 1986, is the greater of \$50 per capita or \$150 million. Under current law, this cap will 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 (Breau) would increase the cap to \$75 per capita or \$225 million in 2001 and index it to inflation. H.R. 4923, the community renewal bill introduced by Rep. J.C. Watts that the House passed on July 25, 2000, contains a phased-in increase in the private activity bond cap. The current \$50 per capita/\$150 million cap for each state would increase by \$5 per capita or \$15 million each year beginning in 2001 and reach \$75 per capita and \$225 million by 2007. The bill does not index the cap to inflation.

H.R. 3081, the minimum wage bill, would also increase the bond cap to \$70 per capita or \$210 million in 2004 and to \$75 or \$225 million in 2007.

Housing for the Elderly and Disabled

There are a number of bills that would 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 restructure 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 passed the House on September 27, 1999, and later became law as Title V of the FY2000 VA/HUD appropriations act.

Under Title V of the FY2000 VA/HUD appropriations law (P.L.106-74), 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 are found in H.R. 425 and S. 1318. Another bill, S. 2733 (Santorum), introduced on June 15, 2000, also contains 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 say that this legislation would also give tenants an opportunity to stay in their current homes rather than having to move into an expensive nursing home.

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

Increasing Homeownership

H.R. 1776, the American Homeownership and Economic Opportunity Act of 2000 (Lazio) contains a wide variety of homeownership initiatives. It passed the House on April 6, amended, by a vote of 417 to 8. Grants would be available to state and local governments to develop strategies for the removal of barriers to affordable housing. Up to 1 year of Section 8 rental assistance could be used as a downpayment on the purchase of a home. There would be several pilot programs, one to help law enforcement officers buy a home with no downpayment in high crime areas and another to demonstrate the use of Section 8 vouchers by the disabled to become homeowners. The use of Community Development Block Grants and HOME funds would be made more flexible to allow downpayment assistance, help with closing costs, and to subsidize mortgage rates to help certain uniformed municipal employees purchase a home.

FHA foreclosed homes held for more than 6 months could be offered to local governments and community development corporations for \$1 for use in homeownership programs or neighborhood revitalization efforts. Also included in this legislation are reforms to the federal manufactured housing program (described below). H.R. 1776 would establish a commission to find ways to facilitate home mortgages on Indian trust lands. A similar but less encompassing bill, S. 1333 (Wyden) is pending in the Senate.

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

Manufactured Housing Industry Reforms

On April 6, 2000, the House passed H.R. 1776. Title 11 would establish a “consensus committee” of 21 members representing producers of manufactured housing (7), users of manufactured housing (7), and general interest and public officials (7) 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. States would have 5 years to adopt an installation program that included (1) installation standards, (2) the training and licensing of installers, and (3) the inspection of the installation of manufactured homes. During these 5 years, HUD and the consensus committee would 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. States would also have 5 years to adopt a dispute resolution program for the timely resolution of disputes between manufacturers, retailers, and installers regarding the responsibility to correct or repair defects in homes reported by owners during the year following installation. Also required would be the state issuance of appropriate orders for the correction or repair of these defects. In states not adopting their own dispute resolution program, HUD could contract with an appropriate agent in the state to implement such a program.

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 for the past 26 years, although the staff that oversees manufactured housing has declined from a peak of 34 to eight professionals today. 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.

On October 5, 1999, the Housing and Transportation Subcommittee of the Senate Banking Committee held hearings on S. 1452 (Shelby), The Manufactured Housing Improvement Act. 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 has 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 support passage of S. 1452.

On March 8, 2000, the Senate Banking Committee adopted S. 1452, as amended (Rpt. 106-274), that conforms to compromises to H.R. 1776, as passed by the House Banking Committee. This legislation would encourage 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. Like Title 11 of H.R. 1776, S. 1452 would encourage states to adopt installation and dispute resolution programs.

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 has occurred.

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 on 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 \$11 billion under the HUD McKinney programs. At the hearing and elsewhere, there has been some frustration expressed over evidence showing that 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. A case has to be made for funds. According to HUD, there were about 3,000 applications last year, 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

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

communities receive at least some funds. Opponents argue that the use of a 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, 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. HUD strongly opposes moving to a formula-based process of distributing homeless assistance funds because it believes 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.”

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

The Community Reinvestment Act (CRA)

The 1977 Community Reinvestment Act contains incentives for banks to meet the credit needs of lower income and minority neighborhoods that have often been underserved by lenders who take deposits in these same neighborhoods. Changes were made to the CRA when Congress passed H.R. 10 and S. 900 in October 1999, financial services modernization legislation, which the President signed (P.L. 106-102) on November 12, 1999 (the Gramm-Leach-Bliley Act).

The use of the CRA by community groups has focused on obtaining loans for the renovation or sale of housing in low-income neighborhoods. Lenders (banks and thrifts or “depository institutions”) who receive poor CRA ratings from periodic examinations by government regulatory agencies can be denied the right to merge with other institutions, or pursue other goals. Community groups have been increasingly able to negotiate credit commitments for housing and neighborhood

revitalization goals by threatening to challenge merger proposals before government regulators. While community development groups believe the CRA has been crucial in efforts to revitalize inner city areas, claiming that an additional \$10 billion of lending has occurred because of this law, some in Congress and elsewhere think questionable loans are being made under political pressure (see “The Community Reinvestment Act: Looking for Discrimination That Isn’t There,” *Policy Analysis*. Cato Institute, October 6, 1999). In addition, some small lenders have long complained about the cost of regulatory compliance.

The CRA was put in the spotlight last fall when proposed changes to it threatened to derail major financial services modernization legislation, H.R. 10 and S. 900. One provision would have protected smaller banks and thrifts from community group “challenges” if they had received “satisfactory” ratings from regulatory agencies during the previous 3 years. Community groups feared that the proposed changes would “effectively gut CRA incentives for banks to do right by the communities where they do business” (National Low Income Housing Coalition). The President threatened to veto any bill that weakened the CRA.

However, compromises were made and the President signed P.L. 106-102 in November 1999. Under this new law, some small non-metropolitan depository institutions will face less frequent routine CRA compliance examinations if they have previously received an “outstanding” rating. Depository subsidiaries of a financial holding company will be required to maintain a CRA rating of “satisfactory” as will national banks having financial operating subsidiaries. More disclosure and reporting of agreements will be required. The Federal Reserve was to do a study on the profitability of CRA-related loans. On July 17, 2000, the Fed released its report, finding that CRA loans have generally been profitable, although the loans fail to perform as well as regular ones. It cautioned policy makers not to draw conclusions about the law’s effectiveness because the report only covered lending during 1999, a period of economic boom that might not be representative of longer periods. The report also noted that many of the banks’ responses did not include hard numbers.

Other Readings. CRS Report RS20197, *Community Reinvestment Act: Regulation and Legislation*, by William Jackson.

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. On June 21, 2000, the House Resources Committee reported out H.R.1142 (Young) 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.

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.) H.R. 21 is 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 have been predictions of hurricanes of increased intensity along the East Coast and Florida in the immediate years ahead. 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 is made that limited federal reinsurance would improve the effectiveness of these state efforts.

H.R. 21 would provide a federal reinsurance program to facilitate the pooling and spreading of risk of catastrophic financial losses from natural disasters. It would be activated when residential losses for a state program reached \$2 billion. The program would sunset 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 have recently been introduced to address predatory lending, including S. 2415 (Sarbanes) and the identical H.R. 4250 (LaFalce). 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 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 is 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 have also been 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 earlier this year that the FHA Mutual Mortgage Insurance Fund had a record economic value of \$16.6 billion, 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. HUD Secretary Cuomo said recommendations 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 are 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.

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, Rep. 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