NCDA
WASHINGTON REPORT

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FEATURED ARTICLES

PRESIDENT SIGNS FY 2003 APPROPRIATIONS BILL

On Friday, February, 14, President Bush signed into law the mammoth $397.4 billion appropriations bill. Pundits have insisted that the President wrote the bill and the Congress filled in the gaps. This assessment is not far off the mark. The President was generally pleased with the omnibus, with the following exceptions: $3.1 billion for drought assistance; $8.8 billion in highway trust fund; $1.5 billion in election improvement equipment; and the untold billions of dollars that will be needed for Medicare payments to doctors.

Appropriators did all of this and kept the spending level close to the President's requirement, with the slight exception of the .65% across the board rescission. This rescission had to be included or the President would have vetoed the bill because of the additional spending for drought assistance, education programs and medicare payments.

Besides the across-the-board cut of .65%, the other trouble spot in the bill, at least from the local perspective, is the lack of direct funding for the 'first responders portion" of the Homeland Security funds that the President requested. This means that all the up-front costs of preparing cities for possible terrorist attacks were not funded. This puts an additional strain on local and state budgets across the country. We are hopeful that the $2.2 billion will be included in an upcoming supplemental appropriations package that is on a fast track for passage before the Memorial Day recess.

How the Budget Treats HUD Programs

The February 14 Legislative Alert has already provided a break-down of HUD's programs. The chart on the last pages of this newsletter details HUD's programs and includes amounts after the .65% cut.

REP. NEY INTRODUCES RESPONSIBLE LENDING ACT

Rep. Bob Ney (R-OH) introduced H.R. 833, the Responsible Lending Act, on February 13. The bill is co-sponsored by Rep. Miller (R-CA), Rep. Lucas (D-KY), and Rep. Gillmor (R-OH). Although Rep. Ney is the new Chairperson of the House Subcommittee on Housing and Community Opportunity, the bill is expected to go through the House Subcommittee on Financial Institutions and Consumer Credit.

H.R. 833 includes language that would strengthen the Truth in Lending Act against some predatory lending practices. Predatory lending continues to proliferate in communities across the nation, particularly in low-income and minority communities. According to HUD's report, *Unequal Burden: Income and Racial Disparities in Sub-Prime Lending in America* (April 2000), sub-prime lenders are three times more likely to solicit their loan products in low-income neighborhoods than in upper-income neighborhoods and five times more likely to do so in predominantly African American neighborhoods than in white neighborhoods. Sub-prime lending is twice as prevalent in high-income African American neighborhoods than in low-income white communities.

Predatory lending as we know it usually occurs in the sub-prime market. Most borrowers in this market have limited access to the mainstream financial sector (the prime market), yet some would likely qualify for prime loans. While predatory lending can occur in the prime market, it is deterred by competition among lenders, greater homogeneity in loan terms and greater financial information among borrowers. In addition, most prime lenders are banks, thrifts, or credit unions, which are subject to more extensive federal and state oversight and supervision, unlike most sub-prime lenders.

Common predatory lending practices in the sub-prime market include: (1) lending without regard to a borrower's ability to repay, (2) adding single premium credit life insurance and other fees into loans but not disclosing it to the borrower in advance of closing (these fees increase the loan balance and strip equity from the home), (3) "loan flipping" whereby lenders pressure borrowers into repeated refinancings over short term periods, with each successive refinancing the borrower is asked to pay more and higher fees, adding more to the loan balance and stripping further equity from the home, (4) prepayment penalties, excessive prepayment penalties ensure that the loan cannot be paid off early without paying significant fees, trapping borrowers into high-cost mortgages, (5) balloon payments, structuring the loan so that a large lump sum payment is due within a few years of the loan, (6) mandatary arbitration, mandatory arbitration clauses to resolve disputes are usually required as a condition for receiving a loan, such clauses reduce the legal rights and remedies available to victims of predatory lending. These predatory lending practices lead to reduced equity in homes, higher costs in borrowing, and foreclosures in many cases.

H.R. 833 attempts to tighten some of these predatory lending practices by including language that: (1) prohibits creditors from extending credit to consumers without regard to their ability to pay back the loan, (2) prohibits the offer or sale of single premium credit life insurance in conjunction with high-cost mortgages, (3) prohibits creditors from refinancing loans within one year of closing, thereby reducing the practice of "flipping" and (4) does not subject a high-cost mortgage to a mandatory arbitration clause that is "oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers." H.R. 833 would also require creditors to report their loans to a credit reporting agency each quarter. This would help consumers of high-cost mortgages to establish credit and allow them to enter the prime market. Currently, most sub-prime lenders do not report their loans to the credit bureau, so that these consumers will have to come back to them for their financing needs.

Section 104 of H.R. 833 concerns many groups because it includes language that preempts State and local predatory lending laws that are stronger in language regarding curbing predatory lending than the language that is proposed in H.R. 833. Section 104 also preempts State or local laws that establish criminal penalties for creditors who provide high-cost mortgages as well as laws that prohibit these creditors from conducting other business activities with the State or local government. Many States and local units of government already have ordinances and laws in place that provide much greater protection for consumers regarding predatory lending than what is proposed in H.R. 833. Preempting these laws will offer less protection to consumers in these States and cities and create the possibility of higher incidences of predatory lending practices in these areas. H.R. 833 also does not address the issues of prepayment penalties and yield-spread premiums, perhaps the two most widely used predatory lending practices. It also limits the amount of damages that can be paid to a consumer under a class action lawsuit to the actual damages incurred as part of the financing, thereby limiting the loss to the creditor.

Last year, Senator Paul Sarbanes (D-MD), ranking member of the Senate Banking Committee, introduced S. 2438, the Predatory Lending Consumer Protection Act of 2002, aimed at curbing predatory lending practices by strengthening the Home Ownership and Equity Protection Act (HOEPA). HOEPA is the key federal protection for borrowers of certain high-cost loans by requiring lenders to provide additional disclosures and by restricting certain terms and conditions that may be offered for such loans. While the current HOEPA law provides some protections for borrowers, it covers few loans in the sub-prime market – only about 1%. It does not cover home purchase or home equity and home improvement loans that are structured as open-end credit lines. Lenders often structure many high cost loans in order to avoid compliance with HOEPA's requirement. The Sarbanes bill would have provided for a more comprehensive definition of "high cost" mortgages under HOEPA, thereby triggering a more comprehensive set of protections for borrowers. Additional protections under S. 2438 would have included: additional disclosures to borrowers, restrictions on the financing of fees and points, prohibitions on up-front payment or financing of single-premium credit insurance, limitations on prepayment penalties, and prohibitions on balloon payments. S 2438 would have sought to increase enforcement of HOEPA and the Truth in Lending Act by increasing civil remedies, expanding the right of rescission and curbing the use of mandatory arbitration to avoid liability for violations. Senator Sarbanes is expected to introduce this legislation again this year.

NCDA and other national interest groups are in discussions on H.R. 833 and will likely mount a campaign to oppose at least Section 104 of the bill. We encourage you to do the same as you correspond with your congressional members. NCDA and other interest groups strongly favor the Sarbanes bill.

HOUSE COMMITTEE AND SUBCOMMITTEE SET AGENDAS

At a recent meeting of the Campaign for Housing and Community Development Funding, of which NCDA is a participant, Clinton Jones, Senior Legislative Counsel for the House Committee on Financial Services, provided his thoughts on the year ahead for the House Committee on Financial Services and the Subcommittee on Housing and Community Opportunity.

According to Clinton, the Subcommittee will focus most of its attention this year on HUD's proposal to block grant the Section 8 program. The Subcommittee is awaiting HUD's legislative language before it officially reacts to the proposal. Like the Administration, some of the Subcommittee members are concerned with the amount of Section 8 funds that have been recaptured in past years. Whether it's an accounting problem within HUD or specific to the public housing agencies, no one likes the idea of these funds being rescinded and used for non-housing programs, which has happened in some years. Also, this continued surplus indicates that there are management problems within the program, whether at HUD or with the PHAs. He told the group that he is keeping an open mind about improvements to the Section 8 program and wants to hear perspectives from all groups involved in the program.

Clinton told the group that the Committee/Subcommittee will hold at least four hearings this spring on the following issues:

- *Real Estate Settlement Procedures Act (RESPA) Reform*. The Committee on Financial Services held a hearing on Tuesday, February 25, on HUD's proposed RESPA rule. The panel included groups from both the lending industry and consumer advocacy groups. A final rule is expected to be published this spring.

- *HUD's FY 2004 Budget*. The Subcommittee will hold a hearing on March 4 on HUD's proposed FY 2004 Budget. Secretary Martinez will represent HUD before the Subcommittee to answer questions on the proposed budget.

- *Faith-Based Initiative*. The Committee plans to hold a hearing on the Administration's Faith-Based Initiative. No date has been set, but the hearing is expected to occur in late March or early April. This hearing is being called at the urgence of Rep. Barney Frank (D-MA), the ranking member on the Committee on Financial Services. NCDA has requested to testify at this hearing.

- *Flood Insurance*. This issue surfaced last year and is one that Chairman Oxley wants to see final legislation on this year. The Committee on Financial Services will hold a hearing on this issue some time this spring in hopes of having final legislation enacted by October.

Clinton also told the group that "the budget will dictate the policy" of the committees this year because the funding in the FY04 budget is so tight. Because of this, expect no new housing programs or initiatives this year, including initiatives to expand housing production. Clinton told the group that the climate is no longer there to focus on housing production, particularly the development of a National Housing Trust Fund. Clinton chastised those groups involved in the National Housing Trust Fund because he told them that they missed a great opportunity last year to push forward the production program that was included in H.R. 3995, Rep. Roukema's large omnibus housing bill. Rep. Roukema included the housing production proposal favored by NCDA, NACCED, and NACo, which focused on implementing an affordable housing production proposal within the HOME program. This program was later replaced with the National Housing Trust Fund by Democrats on the Subcommittee, on a day when not all of the Republicans were present to vote against the Fund. During full committee mark-up of the bill, the National Housing Trust Fund proposal was replaced by a Republican-sponsored amendment which created a matching grant program to State and local government housing trust funds. In the end, the bill was not enacted due to time running out at the end of the congressional session. But

Clinton makes a good point. Because of the friction between the various groups over the issue of an affordable housing production program, nothing was enacted.
Besides the Section 8 program, Rep. Bob Ney (R-OH), Chairperson of the Subcommittee on Housing and Community Opportunity, would also like to focus attention on homeownership, Colonias, FHA reform, and HUD's Public Housing Operating Fund.

SENATOR CLINTON MAY PROPOSE LEAD ABATEMENT TAX CREDIT

Last week, NCDA staff was contacted by staff from Senator Hilary Clinton's office to get the "sense of local governments" on a possible lead abatement tax credit. This tax credit is by no means a sure thing. We suspect that this proposed program might be included in an alternative Democratic economic stimulus package, but we cannot confirm that at this time.

The crux of the tax credit is to allow a $1,500 credit or 50% of the per unit cost, for abatement, without any income qualification. It would also allow a $1,500 or 50% of the per unit costs for window replacement. Senator Clinton is very concerned about the impact of lead poisoning on children. NCDA staff informed Mrs. Clinton's staff that we would work with them in crafting language for the proposal. *Note: If members have any ideas that could help make this proposal a reality or ideas on how this tax credit would work in your communities, please contact Chandra Western.*

NCSHA RELEASES REPORT DETAILING POTENTIAL NEGATIVE IMPACT OF BUSH DIVIDEND PROPOSAL ON LOW INCOME HOUSING TAX CREDIT PROGRAM

The National Council of State Housing Agencies (NCSHA) has released a report, prepared by Ernst & Young, examining the possible effects of President Bush's proposal to eliminate the taxation of dividends on the Low Income Housing Tax Credit (LIHTC) program. The report concludes that the proposal, in its current form, would have a surprisingly powerful and negative impact on what is widely considered to be one of the most important engines driving the production of affordable rental housing.

The report, entitled "The Impact of the Dividend Exclusion Proposal on the Production of Affordable Housing," was prepared on behalf of LIHTC allocators at NCSHA's request. In a letter to new Treasury Secretary John Snow that accompanies the report, NCSHA makes clear that it (along with Ernst & Young) has no official position on the dividend proposal itself, but Executive Director Barbara Thompson is careful to describe the LIHTC, rightly or wrongly, as the "only significant producer of affordable rental housing." The report also contains information assessing the dividend proposal's impact on Bush's proposed Homeownership Credit, the Historic Preservation Tax Credit, and the New Markets Tax Credit.

The report calls the LIHTC program the "leading tool for the development of affordable rental housing." Since 1986, more than one million affordable rental units have been created through the program, with approximately 115,000 new units created each year. The program works by "placing development and investment responsibility in the hands of the private sector, with government providing the subsidy and program oversight." The program now accounts for up to 40 percent of all apartment production annually. Each year, according to NCSHA, this construction generates approximately $8.8 billion of income for the economy, creates 167,000 jobs, and produces $1.35 billion in revenue "for cash-strapped local governments."

Ernst & Young's report offers a thorough explanation of the LIHTC program's inner workings, but its conclusion regarding the dividend proposal's impact on the program is brief and to the point:

As a result of the currently structured proposal, we estimate that the number of affordable housing units produced each year would fall by approximately 40,000 units, or 35 percent of program production, affecting over 80,000 tenants annually.

The predicted decline in production can be attributed to the decline in Housing Credit pricing that would result from the dividend proposal. Under the Bush plan, shareholders in corporations that pay tax on all of their income would receive full relief from the tax on dividends. Shareholders in corporations that participate in congressionally authorized tax incentive programs such as the LIHTC program, however, would not be fully relieved of those taxes, "either through continued taxation of dividends or, more commonly, continued capital gains tax on the ultimate disposition of their shares." The net effect would be a diminished incentive to invest for those corporations that currently participate in the LIHTC and similar programs, since they would achieve greater relief by withdrawing from such programs. The Ernst & Young report includes a possible solution that, if adopted, would essentially allow corporations to treat Housing Credits as taxes paid, "similar to the proposed treatment of foreign tax credits."

There is much more to the report, including discussions of other possible negative consequences of the dividend proposal. You can download the report from NCSHA's homepage at http://ncsha.org. NCDA is working with NCSHA and other public interest groups to raise awareness about the dividend's proposal's probable negative impact on affordable housing. We will of course keep you informed as we move forward with this effort.

REPRESENTATIVE MILLER RESURRECTS BROWNFIELDS BILL

After it failed to move in the Senate during the 107th Congress, Representative Gary Miller (R-CA) has reintroduced the "Brownfields Redevelopment Enhancement Act" in the House. The bill, HR 239, would decouple the Brownfields Economic Development Initiative from the Section 108 Community Development Loan Guarantee program, clarifies that brownfields redevelopment is an eligible CDBG activity (something that is not really in doubt), authorizes the establishment of a national brownfields redevelopment pilot program, and amends the Housing and Community Development Act of 1974 to permit the use of CDBG funds to administer Renewal Communities. In a sign that the Republican-controlled House is not taking the Administration's proposed elimination of the BEDI program seriously, the bill was reported out of the House Financial Services Committee without incident on February 13.

HUD NEWS

HUD RELEASES LOW-MOD DATA

HUD officials have informed us that the low-mod data that localities use for area benefit projects will be released next week, perhaps as early as Monday. Also HUD has said that grantees will have approximately 60 days after the start of their program years to incorporate these new figures into the programs. This means that on the date your program year begins, grantees will have approximately 60 days to obligate funds using the old figures, but after that the new figures must be incorporated into programs. This information is particularly relevant to early grantees. Grantees beginning their program years on or after July 1, may not be faced with this problem. We will post these figures on NCDAonline.org as soon as we receive them.

HUD has also informed us that they are almost ready to release the 2003 allocation figures. All the programs except HOME have been completed. As soon they get the final amounts for the HOME program, they will get these numbers out as well. The problem with the HOME program is, as always, the number of consortia, and recaptured funds. As soon as we get these figures they too will go up on our website. Most likely we will see these next week also.

NCDA NOTES

NCDA MEETS WITH RHODE ISLAND SENATOR CHAFEE'S STAFF

On Thursday February 13, NCDA staff met with Legislative Director Deborah Brayton and Legislative Assistant, David Morgenstern. This meeting resulted from a request from the Senator Chafee's office to provide a list of housing and community development priorities the Association would be pursuing this legislative session. NCDA staff are always eager to provide information and promote our agenda when Congressional members request meetings. The meeting with David and Deborah lasted approximately 45 minutes. David mentioned that the Senator is very concerned about brown-fields and the problem of lead paint. Chandra Western presented Ms. Brayton with a framed 2003 CD Week poster as well as the list of legislative priorities approved by NCDA's Board of Directors. It was a good meeting, especially since both parties were familiar with the programs being discussed.

THE FAITH -BASED PROPOSED RULE

Attached to this news letter is an analysis of HUD's Faith-based proposed rule. Included in this analysis are concerns raised by NCDA's members. **Please send comments on this rule to HUD by March 7, 2003.** NCDA will incorporate additional concerns in its comments on the rule as we receive them.

JOB ANNOUNCEMENTS AND ATTACHMENTS

To access the attachments below, please go to NCDAonline (http://ncdaonline.org).

- *2003 National Community Development Week Products Flyer*
- *Faith-based Proposed Rule Analysis*
- *Member Listserv Announcement*

FY 2003 HUD PROGRAM FUNDING

Program	FY 2002 Enacted	FY 2003 President's Request	FY 2003 Enacted	FY 2003 (-).65% Cut
Community Dev Fund (CDBG)	$5.0 billion	$4.732 billion	$4.937 billion	$4.9049 billion
Set-asides:				
Indian Block Grant	$70 million	$73 million	$71 million	$70.5385 million
Housing Asst. Council	$3 million	$3 million	$3.3 million	$3.2785 million
Nat. Am. Indian Council	$3 million	$2 million	$2.4 million	$2.3844 million
Tribal Colleges/Univ.	$3 million	$3 million	0	0
Wellstone Comm. Center	0	0	$9 million	$8.9485 million
Capacity Building-NCDI	$29 million	$30 million	$32.5 million	$32.287 million
Section 107	$43 million	$39 million	$49.1 million	$48.780 million
Technical Assistance	0	$3 million	0	0
EDI Spec. Purpose Grts.	$294 million	0	$261 million	$259.303 million
Youthbuild	$65 million	$65 million	$60 million	$59.610 million
Neighborhood Init. .	$42	0	$42.1 million	$41.826 million
Self Help Housing	$22 million	$65 million	$25.25 million	$25.233 million
Habit for Humanity	[$4 million]	[$5 million]	[$4 .25million]	[$4.222 million]
National Hous. Dev.	$5 million	0	$5 million	$4.967 million
National La Raza.	$5 million	0	$5 million	$4.967 million
Hawaii Homeland	$10 million	0	0	0
Working Capital Fund	$14 million	$3 million	$3.4 million	$3.3379 million
Colonias Gateway Init.	0	$16 million	0	0
Section 108 Credit Limit	{$609 million}	{$275 million}	{$275 million}	{$273.2 million}
*Section 108 Operating	$15 million	$7 million	$6.325 million	$6.283 million
Total Set-asides	**$659 million**	**$303 million**	**$569 million**	**$565.371 million**
Net Formula Allocation	***$4.341 billion***	***$4.429 billion***	***$4.368 billion***	$4.339 billion
HOME	$1.846 billion	$2.084 billion	$1.925 billion	$1.9124 billion
Set-asides:				
Downpayment Assist.	$50 million	$200 million	$75	$74.512 million
Housing Counseling	$20 million	0	$40 million	$39.740 million
Information Systems	$17 million	$1 million	$1.10 million	$1.0928 million
TA	$12 million	$12 million	$12 million	$11.922 million
Total Set-asides	$87 million	$213 million	$128.1 million	$127.267 million
Net Formula Allocation	***$1.747 billion***	***$1.871 billion***	***$1.7969 billion***	***$1.7851 billion***
Homeless grants	$1.123 billion	$1.130 billion	$1.225 billion	$1.217 Billion
Set-asides	$ 119 million	$ 7 million	$ 221.1 million	$ 219.6 million
Total Homeless Grants	***$1.00 billion***	***$1.123 billion.***	***$1.0039 billion***	***$997.374 million***
Housing Certificate Fund	$15.641 billion	$17.527 billion	$17.223 billion	$17.111 billion
Brownfields	$25 million	$25 million	$25 million	$24.837 million
Smart Growth	0	$25 million	0	0

Program	FY 2002 Enacted	FY 2003 President's Request	FY 2003 Enacted	FY 2003 (-).65% Cut
HOPWA	$277 million	$292 million	$292 million	$290.102 million
Rural Housing and Economic Dev.	$25 million	0	25 million	$24.837 million
Public Housing Capital Fund	$2.843 billion	$2.843 billion	$2.730 billion	$2.7122 billion
Public Housing Operating Fund	$3.5 billion	$3.530 billion	$3.6 billion	$3.577 billion
HOPE VI	$574 million	$574 million	$574 million	$570.269 million
Section 202 Elderly	$783 million	$783 million	$783 million	$777.910 million
Section 811 Disabled	$241 million	$251 million	$250 million	$248.375
Lead Hazard Control	$110 million	$126 million	176 million	$174.856 million
EZ/EC	$45 million	0	$ 30 million	$29.805 million

[ ] included in NCDI amount
** Not classified as a set-aside*

For a complete list of the CDBG set-asides, go to the NCDA web site, click on Important Links and go the Thomas Congressional site. Click on Congressional Record Text. Go to the search window and type in: H707-1276. This will get you to a page that shows the Congressional Record. Go to the House of Representatives section and click on H707-1276. This will put you to a page that shows the Conference report, click on Conference Report. Scroll down to page 1240. This begins the section where you find CPD programs. Pages 1240-1252 are the set a-sides.