NCDA
WASHINGTON REPORT

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Audrey Nelson Awards Applications Due December 12, 2003

FEATURED ARTICLES

APPROPRIATIONS UPDATE

Congress now appears to be headed in the direction of rolling all of the uncompleted appropriations bills into one large omnibus bill, totaling $285 billion. They will use the FY04 Agriculture spending measure as the legislative vehicle to attach the remaining, unfinished spending bills. Appropriators are seeking several add-ons to this omnibus, much to the chagrin of the White House, including $1.2 billion more for the No Child Left Behind education law, $1.3 billion for election overhaul, and $1.3 billion more for veterans' medical care. Appropriators would like to offset these add-ons with unspent FY2003 supplemental appropriations funding and impose an across-the-board cut in FY04 spending (if needed). The White House wants to rescind only $200 million from the FY03 supplemental appropriations. Appropriators, on the other hand, think they can find $4 billion from the supplemental. Besides the add-ons, the White House is concerned with provisions in at least two of the spending bills, such as a provision in the Labor-HHS-Education bill that would block any Labor Department regulation that would strip eligibility for premium overtime pay from workers who are now eligible.

In addition, the White House opposes language in the Commerce-Justice-State bill that would block the FCC from implementing part of its June 2 decision to relax media ownership rules.

Appropriators are under pressure from House leadership to finish the omnibus by Friday, November 21, when the current Continuing Resolution (CR) expires. However, Congress is expected to approve a short two-day CR that will run through Sunday, November 23. Besides the omnibus, Congress is still trying to complete an energy bill and overhaul Medicare.

VA-HUD

The Senate was able to pass the FY04 VA-HUD bill on Tuesday, November 18 [the House passed their bill in July – see August 1 edition of the *Washington Report*]; however, the two versions need to be conferenced. On November 18 the Senate appointed the following conferees: Bond (R-MO), Burns (R-MT), Shelby (R-AL), Craig (R-ID), Domenici (R-NM), DeWine (R-OH), Hutchison (R-TX), Stevens (R-AK), Mikulski (D-MD), Leahy (D-VT), Harkin (D-IA), Johnson (D-SD), Reid (D-RI), and Inouye (D-HI). To our knowledge, the House has not appointed conferees to the bill yet. It is not uncommon for either house to withhold the names of conferees, or to complete the conference outside of a public process. And, due to a very tight completion schedule for the FY 2004 appropriations process, and the upcoming Thanksgiving recess, it is a good bet that the work on this bill will be done by days end. We have attached a letter to the conferees that the State and local public interest groups sent to the Hill last week.

The Senate version of the FY04 VA-HUD bill mirrors the bill passed by the Senate Appropriations Committee on September 4 [see the September 10 version of the *Washington Report* for complete details]. In addition, the Senate approved several amendments to the bill, including some relating to HUD. Senator Mary Landrieu (D-LA) sponsored an amendment to increase the amount of funds that may be used by States for technical assistance from one percent to three percent and administrative costs from two percent to three percent under CDBG. This means that states could spend up to three percent of their CDBG allocations, in any combination, on administration or technical. Senator Paul Sarbanes (D-MD) sponsored an amendment to express the sense of the Senate that housing vouchers are a critical resource and that HUD should ensure that all vouchers can be used by low-income families. However, as mentioned above none of these amendments are finalized unless they are included in the conference report that both the House and Senate must vote on.

AMERICAN DREAM DOWNPAYMENT INITIATIVE (ADDI) UPDATE

As we reported in the November 7 issue of the Washington Report, there is still some discrepancy between the House and Senate versions of the American Dream Downpayment Initiative (ADDI). At this writing, staff on both sides are still trying to come to a compromise on this program. We heard this week that they are close to settling their differences and that it is very likely that we will see legislation enacted this year. The President is pushing for passage, along with the Republican leadership in both houses, as this is the only piece of housing legislation that has received the full backing of the White House. NCDA will alert members with information on the passage of this bill, which we believe will happen before Congress adjourns for the year, as well as the passage of the HUD/VA bill. And as usual, we will post the allocations of CPD's four formula programs on our website as soon as HUD releases that information.

SENATE WRANGLES OVER INTERNET TAX MORATORIUM LEGISLATION

With the energy bill, Medicare reform, and a behind-schedule appropriations process occupying the spotlight here in Washington, it is easy to forget that work continues on a number of other critically important pieces of legislation. One such measure is S 150, the Internet Tax Non-discrimination Act of 2003. The fate of this bill, as well as the shape and form it takes, will almost certainly have serious consequences for the financial health of states and local governments.

The Internet Tax Non-discrimination Act would amend the Internet Tax Freedom Act in such a way as to make permanent a ban (which expired on November 1) on taxes on Internet access. The primary motivation behind the original ban was to reduce what is known as the "digital divide," i.e. the gap in computer and Internet usage between the rich and the poor. This new bill would make such a tax ban inapplicable to any tax on Internet access that was generally imposed and enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either: (1) a provider of Internet access services had a reasonable opportunity to know that an agency has interpreted and applied such tax to internet access services; or (2) a State or political subdivision generally collected such tax on charges for Internet access. This grandfathering exception would expire after October 1, 2006.

This is not an issue with a direct connection to community development or affordable housing, but it is not difficult to see how this legislation could impact the fiscal bottom lines of local governments. When there is less money in the coffers, priorities change, projects are canceled or scaled back, and resources are shifted. State and local governments across the country are already facing budget shortfalls; a reduced ability to collect taxes on certain telecommunications services will only serve to make a gloomy financial outlook even bleaker.
In a recent press release, the TeleCommUnity Alliance, a "coalition of cities and counties dedicated to preserving local governments' interests in federal telecommunications policymaking," expressed serious reservations about S 150. The alliance has argued that the industry is misrepresenting the concerns of local governments by falsely claiming that local governments are seeking to tax email. According to the alliance, S 150 is akin to a Trojan horse in that industry will use what appears to be a simple extension of the Internet moratorium in order to avoid paying certain taxes that it has traditionally paid in the past.

Montgomery County, Maryland, Council Member Marilyn Praisner, Chair of the TeleCommUnity Alliance, had this to say: "Local governments are not opposed to the extension of the Internet Tax moratorium. But we are opposed to S 150 as it would expand the types of services and companies that are exempt from taxes. We are concerned that S 150 threatens local governments' existing rights to collect fair rent for the use of the public's rights-of-way and to use broad based and nondiscriminatory taxes to support local government's first responders, make local infrastructure investments and operate our schools."

Companies trafficking in Internet-based telephone services are understandably licking their chops over this legislation. Although their lobbyists have attempted to spin the bill as an effort to relieve consumers' tax burdens, the true impetus behind their support is the industry's desire to exempt itself from as much taxation as possible by bundling voice services with Internet services. Qwest CEO Richard Notebart tipped industry's hand on November 4 when he enthusiastically expressed support for S 150, declaring that "the Qwest Internet phone service also would be exempt from sales tax if Congress, as expected, extends and expands a tax ban on Internet access to include Internet telephone service." (A recent *Washington Post* editorial compared embracing this interpretation to believing "that a shopper who pays tax on a pair of slacks should then be exempt from being taxed on a shirt bought with it.")

Some Congressional supporters of the legislation argue that Notebart's interpretation of the bill's potential effect on the taxation of voice services is an overreach. Opponents of S 150 are adamant, however, that technological advances in the marketplace will lead to the inability of state and local governments to collect taxes on telephone service. A November 5 letter of findings produced by the Congressional Budget Office (CBO) at the request of Senator Lamar Alexander (R-TN) buttresses this claim. According to the letter, "if technological change shifts traditional telecommunication services to the Internet, those services—for example local and long distance phone calls—could be included, for free (free from taxation) when a customer purchases Internet access." The letter states that CBO lacks sufficient information to estimate the anticipated revenue losses, "but we believe they could grow to be large." The letter also points out that the inclusion "of content (movies, music, and written works) with Internet access in response to the tax exemption provided by this bill" could result in additional revenue losses, since such content is currently subject to sales and use taxes under existing law.

A bipartisan group of senators has been working to make needed changes to S 150. Senator Alexander has been a particularly forceful advocate for state and local governments on this issue. Senator Alexander has worked with other senators to craft an amendment (Alexander/Carper) that would simply extend the existing moratorium for two additional years, giving policymakers more time to study the long-term effects of altering states' and local governments' ability to collect taxes on currently taxed telecommunications services.

Senator Alexander has been motivated in part by his stringent opposition to unfunded mandates. The aforementioned CBO letter states that S 150 "would create intergovernmental mandates as defined in the Unfunded Mandates Reform Act. We estimate that those mandates would impose costs on state and local governments in at least one of the next five years that would exceed the threshold established in that act ($60 million in 2004, increasing to $66 million in 2008)." In the letter, CBO identifies three major impacts, "each of which would, by itself, exceed the threshold." As mentioned above, one area of impact would involve lost revenues due to the industry shifting traditional services such as local and long distance calls to the Internet and/or bundling content such as movies and music with Internet access. The other impacts are described in the letter as follows:

> "Revenue losses of $80 million to $120 million per year, starting in 2007, to state and local governments that are already taxing Internet access and were covered by the 'grandfather clause' contained in the Internet Tax Freedom Act. Some of these taxes on DSL services…
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> "Other states are currently imposing taxes on charges for the portions of DSL services they do not consider Internet taxes. Those states would lose at least $40 million in sales and use taxes on

DSL services in 2004, and at least $75 million by 2008…"

Council Member Praisner has praised Senator Alexander's efforts: "We believe the manner in which Senator Alexander framed the issue is the correct formulation of the question before the Senate. Sen. Alexander challenged his colleagues that 'unless they want to transfer responsibilities for local schools, colleges, prisons, sate parks and roads to Washington D.C.,…[they have] no business telling state and local governments how they can pay the bill for legitimate services."

On November 7, Senator Dianne Feinstein (D-CA) took up this theme on the Senate floor while speaking in support of the Alexander/Carper amendment. Senator Feinstein spoke at length about the groundswell of concern emanating from local governments in her state. Some highlights:

> "Here in my hand are some of the letters. This issue has energized cities in my State like no other. City mayors are incensed that we would pass a law without knowing with certainty how it would impact local revenues…
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> "I have received letters from…cities, county administrators, police officer associations, firefighter associations, all of whom are concerned about this bill—and I cannot answer their questions about it…
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> "California has a passionate interest in maintaining unfettered access to the Internet. We have a globally recognized concentration of high-tech and telecommunications firms. We provide much of the infrastructure required to gain access to the Internet and many of the services that make the Internet so useful. However, we have to make sure that maintaining tax-free access to the Internet does not inadvertently destroy the budgets of cities and counties throughout my State and the Nation…"
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> If this bill's definition of telecommunications services is interpreted in an overly broad way, as many of us think will be, it will negatively impact local budgets. It will lead to the possibility of reduced preparedness in our firehouses and our police stations and less money for our schools, and it will do so at a time when States and cities face large budget deficits."

An aggressive lobbying campaign by the U.S. Conference of Mayors and others has created hope that S 150 will be scrapped or at least sufficiently amended. In recent days, it has become clear to supporters of a permanent moratorium that their position is untenable. The Alexander/Carper position of simply extending the status quo seems to have enough support to win out, but the Republican leadership is now said to be considering including a simple six-month extension of the existing moratorium in the omnibus appropriations package. The most revenue-friendly outcome would be to simply allow the moratorium to expire altogether, but that option seems unlikely. We will continue to monitor this issue.

NCDA NOTES

NCDA BRINGS BACK THE AUDREY NELSON AWARDS BREAKFAST

In recognition of the 30th anniversary of the CDBG program, NCDA's Board of Directors has elected to bring back the Audrey Nelson Awards breakfast, which will be held in the Dirksen Senate Office Building on January 22, 2004, from 9-10:30 a.m.. Along with awards to communities for their exemplary projects, NCDA will also honor a select group of Senators who have, over the years, consistently supported housing and community development programs, particularly the CDBG program. They are; Senators Christopher Bond (MO), Barbara Mikulski (MD), Wayne Allard (CO) and Jack Reed (RI). This will be a great event, one you wont want to miss!

NCDA EXPANDS AUDREY NELSON AWARDS TO RECOGNIZE 30TH ANNIVERSARY OF THE CDBG PROGRAM

At the request of the Board of Directors, this year's Audrey Nelson Community Development Awards competition featured relaxed eligibility requirements. In the past, nominated projects needed to have a clear focus on CDBG. This year, eligible projects will include housing projects that do not necessarily involve CDBG and comprehensive projects with unusual circumstances that may or may not rely on CDBG funds.

To bring attention to the 30 years of the CDBG program, the Board felt it was important to emphasize that CDBG has become a catalyst for all types of community development projects and programs. Therefore we have expanded the types of projects that can be submitted. This year, we will consider projects from as far back as 1998, due to the expanded nature of the awards competition. We know of some outstanding projects that did not have CDBG as it focus, but still embodied the objectives of the CDBG program. Those projects should be recognized. The 30th anniversary of the CDBG program and the National Community Development Week Campaign is the perfect opportunity to do so.

Applications will be accepted from October 17 through December 12, 2003, with notification by December 29, 2003.

JOB ANNOUNCEMENTS/ ATTACHMENTS

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

Winter Legislative and Policy Meeting Agenda
Letter to the Conferees

FY 2004 HUD BUDGET

Program	FY 2003 Enacted (Includes Recision)	FY 2004 President's Request	FY 2004 Passed the House	FY 2004 Senate Appro. Committee
Community Dev Fund **(CDBG)**	$4.9049 billion	$4.732 billion	$4.959 billion	$4.950 billion
*Section 108 Credit Limit	$273.2 million	$0	$0	*$275 million
Section 108 Operating	{$6.283 million}	$0	$0	{$6.325 million}
Set-asides:				
Indian Block Grant	$70.5385 million	$73 million	$72 million	$72.5 million
Housing Asst. Council	$3.2785 million	$3 million	$3.3 million	$3.3 million
Nat. Am. Indian Council	$2.3844 million	$2 million	$2.4 million	$2.6 million
Tribal Colleges/Univ.	$0	$3 million	$0	$0
Wellstone Comm. Center	$8.9485 million	$0	$0	$0
Capacity Building-NCDI	$32.287 million	$30 million	$33.25 million	$35.5 million
Section 107	$48.780 million	$38 million	$43 million	$52.5 million
Technical Assistance	$0	$3 million	$0	$0
EDI Spec. Purpose Grts.	$259.303 million	$0	$137.5 million	$140 million
Youthbuild	$59.610 million	$65 million	$65 million	$60 million
Neighborhood Init. .	$41.826 million	$0	$21 million	$21 million
Self Help Housing	$25.233 million	$65 million	$28 million	$12 million
Habit for Humanity	[$4.222 million]	[$5 million]	[$5 million]	$0
National Hous. Dev.	$4.967 million	$0	$5 million	$0
National La Raza.	$4.967 million	$0	$5 million	$0
Hawaiian Block Grant	$0	$0	$9.5 million	[$10 million]
Working Capital Fund	$3.3379 million	$5 million	$4.9 million	$4.9 million
Colonias Gateway Init.	$0	$16 million	$0	$0
Total Set-asides	**$565.371 million**	**$303 million**	**$420 million**	**$404.3 million**
Net Formula Allocation	$4.339 billion	$4.429 billion	$4.53865 billion	$4.5457 billion
HOME	$1.9124 billion	$2.197 billion	$2.0641 billion	$1.975 billion
Set-asides:				
Downpayment Assist.	$74.512 million	$200 million	$125 million	$50 million
Housing Counseling	$39.740 million	[$45 million]	$40 million	$40 million
Information Systems	$1.0928 million	$2 million	$2.1 million	$0
TA	$11.922 million	$16 million	$18 million	$18 million
Lead Hazard Demo.	$0	$25 million	$0	$0
Total Set-asides	$127.267 million	$ 243 million	$185.1 million	**$108 million**
Net Formula Allocation	**$1.7851 billion**	**$1.954 billion**	$1.8791 billion	**$1.867 billion**
Homeless grants	$1.217 billion	$1.325 billion	$1.242 billion	$1.325 billion
Set-asides	$ 219.6 million	$ 211 million		
Total Homeless Grants	**$997.374 million**	**$1.114 million**	$1.242 billion	$1.325 billion

Program	FY 2003 Enacted (Includes Recision)	FY 2004 President's Request	FY 2004 Passed the House	FY 2004 Senate Appro. Committee
Housing Certificate Fund	$17.111 billion	$16.864 billion	$18.431 billion	$18.4336 billion
Brownfields	$24.837 million	$0	$25 million	$25 million
HOPWA	$290.102 million	$297 million	$297 million	$291 million
Rural Housing and Economic Dev.	$24.837 million	$0	$25 million	$25 million
Public Housing Capital Fund	$2.7122 billion	$2.641 billion	$2.712 billion	$2.641 billion
Public Housing Operating Fund	$3.577 billion	$3.574 billion	$3.6 billion	$3.576 billion
HOPE VI	$570.269 million	$0	$50 million	$195.115 million
Section 202 Elderly	$777.910 million	$783 million	$773 million	$783.286 million
Section 811 Disabled	$248.375 million	$251 million	$251 million	$250.515 million
Lead Hazard Control	$174.856 million	$136 million	$130 million	$175 million
EZ/EC	$29.805 million	$0 million	$15 million	$0

[ ] included in Section 107 TA account
() Part of the CDBG Formula, not a set-aside
* Not classified as a set-aside, Section 108 Loan Authority