NCDA
WASHINGTON REPORT

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FEATURED ARTICLES

APPROPRIATIONS UPDATE: CONGRESS PASSES CONTINUING RESOLUTION, VA/HUD FUNDING IN LIMBO

In what has become something of an annual tradition, Congress has again failed to pass a VA/HUD appropriations bill in time for the new federal fiscal year's October 1 start date. On September 30, with only one of the 13 annual spending bills signed into law, Congress passed and the President signed a Continuing Resolution (CR) keeping those parts of the federal government covered by the remaining 12 appropriations bills operating under FY 2004 levels. This CR is not set to expire until November 20, almost certainly setting the stage for a contentious lame duck Congressional session following the general election. Recall that the omnibus appropriations bill for FY 2004 (which included funding for VA/HUD) was not signed into law until January 23, 2004. Prior to its passage, Congress passed a total of seven stopgap CRs.

The previous year's appropriations process moved at an even slower pace: Congress passed a total of 12 continuing resolutions, with final enactment of the FY 2003 omnibus appropriations bill (including VA/HUD) not coming until February 20, 2003. We expect that the FY 2005 omnibus will be completed by the 108th Congress (and therefore in this calendar year), but there are certainly no guarantees.

One reason to believe that the 108th Congress will complete the omnibus appropriations measure during the lame duck session has to do with changes imposed by the Republican leadership in the post-Contract with America era. Assuming the GOP retains control over both houses of Congress and continues to enforce self-imposed committee chair term limits, Senator Ted Stevens (R-AK) and Representative Bill Young (R-NY) will be forced to relinquish their respective chairmanships of the Senate and House Appropriations Committees when the 109th Congress is seated in January. And if the GOP fails to retain control over one or both houses, Democrats would assume control of one or both committees. Under either scenario, the impending lame duck session represents one final opportunity for Chairmen Stevens and Young to shepherd through appropriations legislation bearing their respective imprimaturs.

Their motivations, of course, would extend beyond simple pride of ownership; exercising control over the spending bills provides one with maximum opportunity to lard those bills with the special purpose projects beloved by all but a few maverick members of Congress. (This is an especially important consideration for Chairman Young as he seeks additional funding to aid in Florida's hurricane recovery efforts.) The chairmen also espouse a practical argument for finishing the spending bills before the two men hand over their gavels: When Stevens and Young move on to new committee assignments, their staffs will go with them. In an October 1, floor speech, Stevens argued, "If the next chairmen have to continue, it's going to take months because the trained staff, the people who know the subjects, will not be there. Congress must get this done this year."

Despite the Chairmen's determination to finish the appropriations' process during the lame duck session, this task will not be easy. That difficulty applies in spades to VA/HUD funding, due to several major differences between the House and Senate versions.

FY 2005 FMRs STILL A PROBLEM FOR SOME COMMUNITIES

Even after HUD received approximately 375 public comments on the stark increases and decreases in the FY2005 Fair Market Rents (FMRs) [which were published in the August 6, 2004 *Federal Register*], the final FMRs released by HUD on October 1 pose the same problem in some areas. The FMRs published by HUD on August 6 were calculated for the first time using 2000 Census data and new metropolitan area definitions designated by the Office of Management and Budget (OMB). Because of the great public outcry, HUD did agree to not use the new OMB metropolitan area definitions in the final FMRs released on October 1. Many communities thought this would "fix" the problem, but it didn't in some areas. In those areas that once again received stark decreases or increases in their FMRs, the reason lies in the use of the new Census data and accompanying American Housing Surveys (AHS) and Random Digit Dialing (RDD) Surveys in some areas to collect rental data. The FMRs have remained relatively stable over the last decade, but with the input of the new Census data into the FMRs this year, many communities have seen increases and decreases in their FMRs for the first time in a long while.

HUD annually estimates FMRs for 354 metropolitan areas and 2,350 nonmetropolitan county FMR areas. FMRs are gross rent estimates that include the cost of all utilities, except telephone. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard-quality rental housing units. The current definition used is the 40th percentile rent, the dollar amount below which 40 percent of the standard-quality rental housing units are rented. The 40th percentile rent is drawn from the distribution of rents of all units (except for public housing units and units that are less than 2 years old) occupied by recent movers (renters who moved to their present residence within the past 15 months). Because of congressional approval, some areas use the 50th percentile rent.

2000 Census data provide a base year FMR and are the final rent data used in many communities, principally non-metropolitan areas.

However, HUD uses AHS rent data to provide revisions between Census years for the 44 largest metropolitan areas. The Bureau of the Census surveys 11 of these 44 major areas on a revolving basis annually (so, not every area is surveyed each year).

HUD also uses RDD telephone surveys (random telephone calls to landlords to determine current one- and two-bedroom rents) to supplement the most recent Census data in those metropolitan areas without their own Consumer Price Index (CPI). RDDs covering 24 areas were conducted in August 2004 and completed in time for publication in the October 1, 2004 *Federal Register*.

The first column of the following table identifies the 24 areas surveyed in the August 2004 RDD survey. The second column show the final FY 2005 FMRs that would have been published based on updated Census and 2001-2002 AHS and RDD surveys. The third column shows the August 2004 RDD results, trended to the middle of FY2005. The fourth column shows whether or not the RDD results were statistically different enough to justify replacing the Census or other survey estimates with the RDD results. The new RDDs have a mixed, and often unexpected, impact on final FMRs. For example, there were declines between the proposed and the final FMRs in cities such as Chicago and Boston.

Area	FY2005 FMR Without RDD	FY2005 FMR With RDD	RDD Result
Baltimore, MD	915	847	Decrease
Boston, MA	1442	1266	Decrease
Chicago, IL	979	906	Decrease
Cleveland-Lorain-Elyria, OH	703	703	No change
Detroit, MI	848	805	Decrease
Dutchess County, NY	901	942	Increase
Fort Worth-Arlington, TX	799	732	Decrease
Indianapolis, IN	655	655	No change
Kansas City, MO-KS	741	691	Decrease
Los Angeles-Long Beach, CA	1011	1124	Increase
Nassau-Suffolk, NY	1225	1225	No change
Newburgh, NY-PA	913	954	Increase
Oakland, CA	1342	1324	No change
Orange County, CA	1403	1317	Decrease
Portland-Vancouver, OR-WA	717	717	No change
Providence-Fall River-Warwick, RI-MA	663	845	Increase
Sacramento, CA	971	971	No change
San Antonio, TX	716	716	No change
San Francisco, CA	1792	1539	Decrease
San Jose, CA	1748	1313	Decrease
Seattle-Bellevue-Everett, WA	943	834	Decrease
Ventura, CA	1257	1382	Increase
Washington, DC-VA-MD-WV	1250	1187	Decrease
Westchester County, NY	1174	1259	Increase

There are an additional 22 areas in the country where HUD has begun RDD surveys that could not be completed in time for the publication of the FY2005 FMRs in the October 1, 2004 *Federal Register*. Additionally, seven areas (all located within Puerto Rico) will be surveyed beginning this month. HUD is allowing PHAs in those areas to wait, if they so choose, for completion of the RDD surveys and issuance of a notice that contains revised final FY2005 FMRs that reflect the completed RDD surveys. Areas where HUD is currently conducting RDD surveys are: Albany-Schenectady-Troy, NY; Albuquerque, NM; Atlanta, GA; Bergen-Passaic, NJ; Cincinnati, OH-KY-IN; Columbus, OH; Dayton-Springfield, OH; Denver, CO; Hartford, CT; Honolulu, HI; Houston, TX; Kauai and Maui, HI; Louisville, KY-IN; McAllen-Edinburg-Mission, TX; Nashville, TN; Newark, NJ; New York, NY; Omaha, NE-IA; Philadelphia, PA-NJ; Springfield, MA; Tulsa, OK; and Tucson, AZ.

Effects on HUD Programs

The Section 8 program and the Section 8 Moderate Rehabilitation SRO program (one of HUD's homeless assistance programs) are affected by the new FMRs because HUD uses the rents to establish payment standards for households served by these programs. In areas experiencing decreased FMRs, it is likely that new participants and families moving into new units will have to pay a greater share of their income to use their vouchers. Furthermore, private landlords may choose to terminate leases and leave the Section 8 program because of the drop in rent levels. In areas experiencing increases in FMRs, less Section 8 vouchers will be funded because the increased rents will consume more of a PHA's Section 8 funding.

In the HOME program, participating jurisdictions must annually establish maximum monthly rents and allowances for utilities for HOME-assisted rental projects. The HOME program is affected by the fluctuations in the FMR due to the fact that the HOME program rents are based on the lower of the FMR or the relevant income-based rent level (30% @ 50% or 65% AMI). In cases where the FMR is lower than the relevant income-based rent limit, the FMR dictates the rent limit, and so a new statistical area that produces lower FMR calculations will negatively affect rental project revenue. With HUD's push to require participating jurisdictions to repay funds from HOME-assisted projects that go into foreclosure during the required HOME affordability period, a drop in rental income could have dire consequences for some projects.

Decreasing FMRs will also leave some communities short in funding for Shelter Plus Care renewals. This may result in termination of assistance to some tenants or possible non-participation in the program by landlords. The Shelter Plus Care program is one of HUD's homelessness assistance programs that provide permanent housing to the chronically homeless. A shortage in funding will put a dent in HUD's desire to end chronic homelessness within ten years.

Rent Exceptions

Upon approval by HUD, a PHA may exceed the published FMRs by up to 20 percent, but for no more than 50 percent of an FMR area. According to HUD, such requests must document the program-related need for the higher rents and show that the requested rent does not exceed the 40th percentile rent of units in the exception area. To be considered for FMR revisions, the PHA must include statistically valid rental housing survey data that justifies the recommended changes. HUD prefers that the rental data be obtained through a well-conducted RDD survey. HUD's regulations in *24 CFR 888.113* provide the procedures by which HUD may make exceptions to established FMRs.

What Can You Do?

HUD is continuing to accept public comments on the FY2005 FMRs through November 5, 2004. HUD will consider these comments in determining revisions that may be needed to the FY 2005 FMRs. Any such revisions will be announced in a subsequent FY 2005 *Federal Register* notice.

If you are concerned with the impact of your communities' published FY2005 FMRs, we strongly encourage you to send a letter to HUD before the November 5 comment period expires. Please refer to the October 1, 2004 *Federal Register* for the name and address of the person at HUD to send your letter. The more letters HUD receives on this issue, the more likely it will be amenable to helping those communities that are facing stark changes in their FMRs. NCDA and other national interest groups plan to forward a letter to HUD asking them to work with those areas experiencing problems in their FMRs.

If you are not located in a community that uses the 50th percentile, you may want to consider contacting your congressional representatives to ask them to increase your percentile to this level. This will require the insertion of statutory language into a bill that is enacted by Congress. With the congressional year almost at an end, this may be impossible for this year, but it doesn't hurt to try.

HUD SECRETARY ENTERS POLITICAL FRAY WITH CONTROVERSIAL COMMENTS ON RACE

HUD Secretary Alphonso Jackson ignited a minor firestorm on September 29 when he lashed out against civil rights leaders and the Democratic Party. Singling out Jesse Jackson, NAACP Chairman Julian Bond, and NAACP President Kweise Mfume, the HUD Secretary claimed, ``They have made a living telling black people they are victims [and] as long as they keep them in victim mode, they have liberals who will take care of them." Jackson went on to argue that the Bush campaign should focus on pursuing the votes of blacks younger than 40, since older blacks have "been conditioned that if you are Republican and white, you hate black people."

Jesse Jackson dismissed the HUD Secretary's comments, suggesting that Alphonso Jackson should spend more time worrying about the nation's affordable housing crisis and less time running interference for the Secretary's longtime friend President George W. Bush. "His analysis has nothing to do with his job assignment," Jesse Jackson was reported as saying.

In a September 12 editorial in USA Today entitled "Black leaders with no regard for the facts vilify GOP," Alphonso Jackson complained

that he had been booed for 30 seconds during a speech before the National Baptist Convention after Senator John Kerry had been applauded during a speech before the Congressional Black Caucus. In the piece,
Jackson wrote that "America's 'black political leaders' have built their careers on an ideology of black victimization." He argued that President Bush's "policies have done more for the black community than those of any other modern-era president." In his 727 word editorial piece, Jackson made only a passing reference to HUD initiatives: he pointed out that black homeownership has risen above 50% for the first time in history. Jackson devoted more of his editorial to the "No Child Left Behind" act than to current federal housing policy.

HUD NEWS

On September 9, HUD/CPD issued a notice (CPD Notice 04-10) concerning how to work with Faith-Based Organizations (FBOs) for all of CPD's programs. Basically, it states that funding and participation of FBOs must occur on an equal basis; a level playing field. The notice clarifies eligible and ineligible costs and activities (and clarifies that grantees must set up a cost allocation policy that differentiates between eligible and ineligible costs for capital improvements that applies to the grantee and all subrecipients, faith-based or otherwise.) and clarifies who eligible applicants are (especially CBDOs). It does ***not*** state that you cannot continue to require that all applicants be 501 (c) (3) organizations.

At the 30th anniversary celebration of the CDBG program conference, during a session on FBOs, the HUD attorney on the panel said that so long as you require that ***all*** subrecipients be 501(c)(3)s you can continue to require FBOs to attain such status because this requirement is consistent with the "level playing field" concept. (Actually what he said was that this was a reasonable position to take, because the concept had yet to be challenged in court).

In any case, there is ***no*** basis for HUD Field Offices to insist (as some have done) that grantees can no longer require FBOs to be 501(c)(3)s. The Notice just says that you can't require them to be secular. In fact the Notice says that CBDOs, faith-based or secular, ***must*** be 501(c)(3)s, in accordance with 24 CFR 92.2.

One of the panel members pointed out that it is in the FBO's interest to form a 501(c)(3), since if they don't grantees have access to ***all*** of the FBO's financial records. If they form a 501(c)(3), you can only monitor those records that apply to HUD/grantee funds. Again, so long as your city's funding policies apply to all subrecipients uniformly, it seems that you will pass the level playing field test.

One final issue the Notice addresses is whether FBOs may discriminate in hiring on the basis of religion. Unlike the FBO rule, the Notice says that several conflicting pieces of legislation apply. It says, "both the CDBG and HOME programs contain statutory provisions imposing nondiscrimination requirements on all grantees and their recipients, subrecipients, subgrantees, and contractors." It further says, ". . . faith-based organizations administering CDBG or HOME funded activities should be aware that the nondiscrimination provisions normally apply to employees administering the activities but clearly not to employees not involved in the activity." But it also says that these provisions may conflict with other civil rights statutes and that ". . .future court rulings could define more specifically the application of these laws to faith-based organizations."

It appears that HUD's lawyers heard us (NCDA and others) and took our concerns seriously. The very prompt analysis on this notice came from Steve Gartrell of Newton, Massachusetts, who attended the Faith-based session at HUD's 30th anniversary celebration with NCDA staff. A copy of the notice is included as an attachment to this edition of the *Washington Report*.

NCDA NOTES

NCDA CONTINUES WORK ON THE PERFORMANCE MEASURES WORKING GROUP

As we have been reporting, at the direction of the NCDA' Board of Directors, the Executive Committee has committed time and energy to participate in a series of meetings with the other state, local and county practitioner groups whose members administer CPD's four formula programs to come to consensus with HUD and OMB on what a performance measurement system should look like for the grantees. The Performance Measures Working Group (PMWG) consists of the Council of State Community Development Agencies (COSDCA), the National Association for Housing and Redevelopment Officials (NAHRO), the National Association for County Community Economic Development (NACCED), NCDA, HUD and OMB.

COSCDA took the lead on this effort, largely because it has been an unfortunate practice of the federal government, particularly HUD, to leave out or disregard state community development agencies and concerns in the creation of programs and the regulations that govern them. COSCDA's leadership wanted to ensure that their concerns– those of states as sovereign entities and the small cities they serve– were taken into consideration with the creation of any performance measurement system. COSCDA's Board of Directors instructed its staff to convene a summit of state, local, and county practitioner groups as well as HUD and OMB to get the collective "buy-in" on their concept paper with assurances from HUD and OMB that whatever the group collectively agreed to would be the performance measurement system that ***all*** grantees would use.

Upon agreement from all parties, several meetings were held to determine what data would be collected that would get HUD and OMB the performance indicators they needed and that grantees could use to better tell the story of how they are spending funds within CPD's four formula programs.

PMWG's mission was to ensure that whatever system it developed would not duplicate any existing efforts, would not be unduly burdensome, would collect data that would have real meaning to grantees; would provide grantees with adequate time to work with subrecipients to gear up for the new system, and, most importantly, would ensure that there would be somewhere to put the newly collected data since IDIS is currently not capable of handling it.

Attached to this newsletter is the essence of over two years worth of work that has gone into creating a list of performance measures indicators that will give grantees, HUD, OMB and other interest parties information onhow grantees are spending their CDBG, HOME, ESG and HOPWA dollars. We ask for your comments on this latest version of the concept paper. Your feedback is critically important as we move forward with this process.

Could your programs fit into this format? Remember, these indicators were chosen because the working group determined them to be measures that grantees would probably most often use and that could be aggregated on a national level. It is also important to note that there will be many indicators for some program activities that don't show up here. However, there will be an "other" category so that grantees wont be forced to collect two sets of data– one for HUD and anther for the city council and the mayor, or the governor and the state legislature.

Please send your comments by October 15th to chandra@ncdaonline.org

ATTACHMENTS AND JOB ANNOUNCEMENTS

Please access the attachments below by going to NCDAonline (http://ncdaonline.org).

- *HUD 's FBO Notice (CPD 04-10)*
- *The Terrance Duvernay HOME Awards of Excellence Application*
- *PMWG Paper*

U.S. Department of Housing and Urban Development

Program	FY04 Enacted	FY05 President's Request	FY05 House Appropriation	FY05 Senate Appropriation
Community Development	$4.921 billion	$4.618 billion	$4.711 billion	**$4.950 billion**
Fund				
Set-Asides:	$72 million	$72 million	$69 million	**$72 million**
Native American CD Grants	$35 million	$30 million	$33.5 million	**$35 million**
NCDI	$52 million	$35 million	$36.7 million	**$51 million**
Section 107	$3.3 million	$3 million	$3.2 million	**$3.3 million**
Housing Assistance Council	$2.5 million	$2 million	$2.4 million	**$2.5 million**
Native Am. Indian Council	$5 million	$0	$4.8 million	**$0**
NHDC	$5 million	$0	$4.8 million	**$0**
National Council of La Raza	$27 million	$65 million	$26 million	**$25 million**
SHOP	$65 million	$65 million	$62 million	**$65 million**
Youthbuild	$0	$0	$2 million	**$0**
Special Olympics	$278 million	$0	$136.5 million	**$126 million**
EDI Special Purpose Grants	$21 million	$0	$20.5 million	**$22 million**
Neighborhood Initiatives	$4.9 million	$1 million	$4.7 million	**$500 thousand**
Working Capital Fund	$0	$10 million	$0	**$0**
Development Challenge	$0	$5 million	$0	**$0**
Grants	***$570.7 million***	***$288 million***	*$406.1 million*	***$402.3 million***
Faith Based Pilot	$4.350 billion	$4.330 billion	$4.305 billion	**$4.547.7 billion**
Total Set-Asides				
Formula Grants				
HOME	$2.006 billion	$2.084 billion	$1.920 billion	$2.050 billion
Set-Asides:				
ADDI	$87.5 million	$200 million	$85 million	$50 million
Housing Counseling	$40 million	$0	$38 million	$45 million
Technical Assistance	$18 million	$18 million	$17.4 million	$18 million
Working Capital Fund	$2.1 million	$2 million	$2 million	$0
Total Set-Asides	***$147.6 million***	***$220 million***	***$142.4 million***	*$113 million*
Formula Grants	$1.858 billion	$1.864 billion	$1.776 billion	$1.937 billion
HOPWA	$295 million	$295 million	$282 million	$295 million
Rural Housing & Econ.Dev.	$25 million	$0	$24 million	$25 million
Round II EZ/ECs	$14.9 million	$0	$14.250 million	$0
Section 108	$7.282 million	$0	$7 million	$6.325 million
Brownfields	$24.8 million	$0	$24 million	$25 million
HOPE VI	$149 million	$0	$148 million	$150 million
Public Housing Operating Fund	$3.579 billion	$3.573 billion	$3.425 billion	$2.610 billion
Public Housing Capital Fund	$2.696 billion	$2.674 billion	$2.580 billion	$2.7 billion
Indian Housing Block Grant	$650 million	$647 million	$622 million	$650 million
Section 202	$774 million	$773 million	$741million	$773.8 million
Section 811	$249 million	$249 million	$238 million	$250 million

Homeless Programs	$1.260 billion	$1.282 billion	$1.206 billion	$1.260 billion
Fair Housing	$47.7 million	$47.7 million	$46 million	$47.7 million
Lead Hazard Control	$174 million	$139 million	$167 million	$175 million
Housing Certificate Fund	$19.257 billion	$18.466 billion	$20 billion	$20.7 billion
Samaritan Initiative	$0	$50 million	$0	$0