NCDA
WASHINGTON REPORT

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NCDA 2006 Winter Legislative, Policy, and Training Meeting:
January 24-26, 2006, at the Wyndham Hotel, in Washington, DC

FEATURED ARTICLES

- ***Congress Completes FY 06 Transportation-Treasury-HUD Appropriations Bill***
- ***Broad Eminent Domain Bill Passes in the House; The Bond Amendment gets Modified***
- ***NCDA and Local Groups Meet with CPD Assistant Secretary Pamela Patenaude***
- ***NCDA NOTES: 2006 Winter Meeting Agenda and Registration Form; 2006 Audrey Nelson Community Development Award Application***
- ***Job Announcements***
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CONGRESS COMPLETES FY 06 TRANSPORTATION-TREASURY-HUD APPROPRIATIONS BILL

Congress wrapped up the FY06 Transportation-Treasury-HUD Appropriations Act (H.R. 3058) on Friday, November 18. Conferees completed work on the measure early Friday morning and the House approved the bill by a vote of 392-31 later that afternoon. The Senate then approved the measure by unanimous consent the same day. The measure is expected to reach the President's desk this week or next for his signature. Both the House and Senate approved a continuing resolution to keep the federal government operating through December 17.

The conferees rejected the Administration's proposal to eliminate CDBG and transfer its funding to the Department of Commerce to create the Strengthening America's Communities Initiative.
The conferees agreed to $4.220 billion for the Community Development Fund with $471.6 million in set-asides, leaving $3.748 billion for CDBG formula funding. This is a reduction of $358 million from last year's formula level, an approximate 9% decrease. During the final negotiations of the conference report, conferees agreed to increase the "pork" funding under CDBG, thereby cutting the formula to accommodate this funding. In terms of pork funding, conferees agreed to $310 million for the Economic Development Initiative (EDI) special projects.

This is an increase of 18% from last year's level of $262 million. In addition, the conferees agreed to $50 million in Neighborhood Initiatives projects, another set of special projects. If you would like to see if your jurisdiction received an earmark, please go to pages 134-184 at: http://www.rules.house.gov/109/text/hr3058cr/109hr3058jes.pdf Other set-asides under the Community Development Fund include $1.6 million to HUD's Working Capital Fund (technology improvements to IDIS), $60 million to grants to Indian tribes, and $50 million to Youthbuild. The other set-asides that are normally funded under the Community Development Fund were moved to other areas of the HUD bill. Please see the chart at the end of this newsletter for a complete overview of all of HUD's programs.

This year has been a very tough one for HUD's programs. The year started with the President eliminating funding for several programs in his FY06 budget, including CDBG (and most of its set-asides, including the special earmarks), Brownfields Economic Development Initiative (BEDI), Section 108, HOPE VI, Rural Housing and Economic Development, and Youthbuild. In addition, HUD's programs were moved to a new subcommittee – Transportation, Treasury, HUD – in both the House and Senate and both subcommittees received a smaller budget allocation than most of the other subcommittees. On top of that, HUD's programs had to compete with the transportation programs within the subcommittee. Moreover, the President zeroed out funding for Amtrak, a program which is widely supported by Congress. Both the House and Senate made restoring funding for Amtrak and other transportation programs its number one priority within the subcommittee. In the end, the conferees agreed to $1.3 billion for Amtrak and $36 billion for highway programs alone, an increase of $1.6 billion from last year. Within HUD's budget, conferees' first priority was fully funding Section 8 ($20 billion for tenant-based and project-based assistance in FY06) to ensure that every household that received Section 8 continued to do so. Besides providing funding for CDBG, the conferees wanted to ensure that the remaining HUD programs that had been zeroed by the President received some level of funding.

In all, it was a very bad year for most of HUD's programs and other discretionary programs in general. NCDA and other members of the CDBG Coalition will re-group within the next couple of weeks to discuss strategy for next year. The Coalition worked tirelessly this year to ensure that CDBG was not eliminated and we appreciate the efforts of our members in helping us in this endeavor. The Coalition fought very hard to ensure the program was level funded, but with the tight budget allocation, the priority of other programs within the subcommittee, and the restoration of cuts to many programs, it was difficult. If the program is eliminated next year, we need to ensure that we obtain a strong allocation for the program when HUD's bill is marked-up in subcommittee. Ensuring a high number at the start of the appropriations process will buffer possible cuts later in the process. To try to do this, we are going to have to arrange more face-to-face visits between our members and key congressional members on the subcommittees. The Coalition will discuss this idea and others at our strategy meeting.

CDBG was not the only casualty in this year's HUD bill. The HOME program was also cut. The conferees agreed to $1.775 billion to the

HOME program in FY06, with $78 million in set-asides, leaving $1.697 billion in formula funding, a reduction of 5% from last year. Of the set-asides, $42 million was allocated to housing counseling, $1 million to the Working Capital Fund, $10 million to technical assistance, and $25 million to the American Dream Downpayment Initiative (ADDI). Funding for ADDI has consistently decreased year after year, even though the President has requested $200 million annually for the program.

The conferees agreed upon $3 million for the Section 108 loan guarantee program, which would subsidize $137.5 million in loan authority. Section 108 was funded at $6 million last year, providing nearly $275 million in loan authority. Both the President and the House proposed elimination of the program, but the program survived with a 50% cut. Both the President and the Senate proposed elimination of BEDI, but the conferees agreed upon $10 million for the program, a decrease of $14 million from last year's level of $24 million. The conference agreement includes a rescission of $10 million for BEDI from unobligated funds from prior years appropriations and, to the extent funds are unavailable, from FY 2006 funds.

The conferees agreed to $100 million for the HOPE VI program, a program that had been eliminated by the President. Conferees also provided $17 million for Rural Housing and Economic Development, another program that had been eliminated by the President. Conferees agreed to move most of the set-asides under the Community Development Fund into a new account called the Self-Help and Assisted Homeownership Opportunity Program. Former set-asides under the Community Development Fund that are now part of this new program include: National Community Development Initiative (LISC/Enterprise/Habitat), La Raza, Housing Assistance Council, National American Indian Housing Council, Self-Help and Opportunity Program (SHOP), National Housing Development Corporation, and Special Olympics. In addition, the conferees agreed to move the Section 107 account that is normally funded under the Community Development Fund to HUD's Policy Development and Research Office.

Only a few of HUD's programs received an increase from last year. The homeless assistance programs were increased by $100 million, from $1.240 billion to $1.340 billion. The Housing Opportunities for Persons with AIDS (HOPWA) program received a small increase of $7 million, from $292 million to $289 million. Section 811 and Section 202 were level funded.

Of the $1.340 billion provided to the homeless assistance programs, $238 million is provided for the renewal of the Shelter Plus Care contracts, $1 million to the Working Capital Fund, and $11.7 million to the National Homeless Data Analysis project and for technical assistance.

Finally, the conferees approved $152 million for the Office of Lead Hazard Control. Of this amount, $76.9 million is allocated to the Lead-Based Paint Hazard Control Grant Program, $48 million to target funds to areas with the highest lead paint abatement needs, $9.5 million for the Healthy Homes Initiative, and $8.8 million for technical assistance and support to State and local agencies and private property owners.

Congress is still contemplating an across-the-board cut of 1-2% for all federal programs. This cut would likely be attached to the last FY06 spending bill, which will likely be the Defense spending measure.

BROAD EMINENT DOMAIN BILL PASSES IN THE HOUSE

On November 3rd the House of Representatives passed H.R. 4128, entitled "The Private Property Protection Act of 2005." This bill, propelled by a bi-partisan group of 97 co-sponsors, overwhelmingly passed 376-38. Specifically, HR 4128 severely limits the authority of states and local governments to use eminent domain with **ANY** funds– local, state, or private– in the taking of private property for economic development activities. This very disturbing piece of legislation was drafted by House Judiciary Committee Chairman F. James Sensenbrenner, (R) from Wisconsin, one week after the *Kelo* Supreme Court decision.

If you recall, in June, the Supreme Court ruled 5-4 in supporting the City of New London, CT's right to invoke eminent domain in the taking of land that included a one-acre parcel on which there were several modest, well maintained homes to pave the way for a large scale, high-end commercial development, that included an office park and hotel complex. The US Supreme Court, concurring with the Connecticut Supreme Court which ruled that the City of New London had correctly exercised its Constitutional right to invoke eminent domain in the taking of private property for a public use. And, in this case, the public use was defined as creating jobs and expanding the local tax base through economic development activities. Many across the country did not share the views of the City of New London or the US Supreme Court, particularly Rep. Sensenbrenner. In this bill economic development means..."the taking of private property, without consent of the owner, and conveying or leasing such property from one private person or entity to another private person or entity for commercial enterprise carried on for profit, or to increase tax revenue, tax base, employment, or general economic health...." The bill also includes some commonly accepted exceptions, such as road, airport, hospital, or military base construction; sighting public utilities, taking properties that pose an immediate health and safety threat, etc. The following is a synopsis of the bill.

Prohibition of States and Local Governments to use Eminent Domain for Economic Development

No state or political subdivision (local government) of a state shall exercise eminent domain, or allow the exercise of such power by any person or entity to which such power has been delegated, over property to be used for economic development or over property that is subsequently used for economic development, if the state or local government receives federal economic development funds during any fiscal year in which it does so.

A violation by a state or local government shall render the state or local government ineligible for any federal economic development funds for a period of two years following a final judgment on the merits by a court of competent jurisdiction that such violation has occurred, and any federal agency charged with distributing those funds shall withhold them for a 2-year period, and any such funds distributed to the state or local government shall be returned or reimbursed to the appropriate federal agency or authority of the federal government.

A state or local government shall not be ineligible for any federal economic development funds, if the state or local government returns all real property the taking of which was found by a court of competent jurisdiction to have constituted a violation of this act, and replaces any other property destroyed and repairs any other property damaged as a result of such violation.

Right of Property Owners to Bring Action Against States and Local Governments

A property owner who feels that he or she is a victim under the provisions of this act may bring action against the state or local government in federal court ***within seven years*** following the conclusion of the taking of the property in question and the subsequent use of the condemned property for economic development.

In the Senate

On the Senate side there is a companion bill, S 1313, introduced by Texas Senator John Cornyn that already has 30 co-sponsors. Hearings have been held, however no legislative action has been scheduled. The Senate version of HR 4128 is even more broad, or loose in that it provides even less clarity on what is a federal economic development program. This could be a good thing, in that perhaps Congress is attempting to respond to media and citizen pressure to address the eminent domain issue by passing legislation that forces states to define economic development as well as what constitutes a public use. However it is clear that these two bills seek to limit, if not prohibit, the taking of property through eminent domain with federal funds for economic development.

Typically, the Senate acts with much more deliberation before proposing legislation, particularly when the effects could have considerable impact on local determination. And, the Senate has so many other issues to consider, such as nominees to the Supreme Court, appropriations bills, Patriot Act re-authorization, etc., before scheduling time to address an issue that is, and has always been left to the states and local governments.

How is Economic Development Defined, and what Programs are Covered?

The language in this bill is wide open and therefore left to interpretation. In this bill, using the worse case scenario would mean that any federal funds that are used in a taking of private property that is subsequently used for economic development would be subject to the requirements of this legislation. The language does not address a taking that includes a transference of property from one private party to another, then used for economic development. It goes beyond that. Instead, any property that is taken using federal funds for any economic development activity (excluding the exceptions) would fall within the restrictions and therefore may lead to a loss of federal "economic development" funds for two years.

Does this include CDBG, HOME, EDA grants? It seems very likely. EDA programs would most likely be covered except for technical assistance and the excluded activities. CDBG and HOME funds are often a major funding source in mixed-use developments. Mixed-use developments could involve a taking of private property to provide the project site for mixed income housing projects that include retail opportunities, a child care centers, all of which create jobs and the opportunity to expand the local tax base. Is this project an economic development project? Under HR 4128, in the broadest interpretation, yes.

Obviously, the impact of this legislation on state and local governments' ability to undertake redevelopment activities through eminent domain could be disastrous. The Congress is exerting tremendous control over a state or local government's ability to govern itself in the best interests of its citizens, even if the funds used to complete the eminent domain action are not federal dollars. We do not expect this bill to go any further than it already has this year. However, with such broad political support in the Congress and across the nation, it is without a doubt that the Congress will take up legislation that addresses the use of eminent domain in taking private property for economic development.

In the mean time, before Congress has a chance to pass broad sweeping legislation on eminent domain, community development practitioners, must be mindful of what is going on in their state legislatures on this issue. It is without a doubt that states will seek to define the conditions under which local governments can invoke eminent domain activities. It will be up to you to advise your Mayors, County Executives, City Managers and City Councilors of how harmful, to any revitalization effort, an overly restrictive eminent domain statute can be. Hopefully, cooler heads will prevail.

The Bond Amendment Gets Modified

Lastly, the Bond Amendment to the TTHUD Appropriations bill was a good compromise before the language was changed through a last minute amendment. The new text reads as follows:

Sec 726. Of the TTHUD Appropriations Bill– "No funds in this Act may be used to support any federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use.

Provided, That for purposes of this section, public use shall not be construed to included economic development that primarily bene-fits private entities:

Provided further, That any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water- and wastewater-related infrastructure),other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of ~~blight~~ AN IMMEDIATE THREAT TO PUBLIC HEALTH AND SAFETY ~~(including areas identified by units of local government for recovery from natural disasters)~~ or brownsfields as defined in the Small Business Liability Relief and Brownsfields Revitalization Act (Pub. Law 107-118) shall be considered a public use for purposes of eminent domain:

Provided further, That the Government Accountability Office, in consultation with the National Academy of Public Administration, organizations representing state and local governments, and property rights organizations, shall conduct a study to be submitted to the Congress within 12 months of the enactment of this Act on the nationwide use of eminent domain, including the procedures used and the results accomplished on a state-by-state basis as well as the impact on individual property owners and on the affected communities."

As you can see by the struck-out language, this change allows local and state governments to invoke eminent only when there is an imminent threat to public health and safety, or when it is used for one of the exceptions identified in this amendment.

This amendment has become law, or will become law when the President signs it. This law will apply to all programs covered by the TTHUD bill and may likely become part of all the yet to be passed Appropriations bills.

Still, there will be a need to define what "an immediate threat tot public health and safety" is, and if there will be a standard definition. Many states have defined what and immediate threat is, however, it is a given that all states will not have the same language. It is our belief that the rule making process to be undertaken by the federal agencies administering the affected programs will define what an immediate threat to public health and safety will be. We will keep you updated on this issue, and provide as much guidance as we can.

NCDA AND LOCAL GROUPS MEET WITH ASSISTANT SECRETARY PATENAUDE

Last week members of the Performance Measures Working Group (PMWG) met with CPD Assistant Secretary Pamela Patenaude to discuss the progress of the performance measures project. After two years of hard work, the new outcome reporting framework will become mandatory by October 1, 2006. HUD has produced two documents, an official notice and a guidance piece that is targeted for a December release. The notice will include the list of indicators originally outlined in the proposed notice that was sent out earlier this year to grantees, with a minor few changes. The changes are based on feedback received by HUD from the five forum sessions that were held over the summer. Included in the notice will be a schedule of upcoming training sessions on the system. HUD suggests that both general administrative staff of CDBG, HOME, ESG, and HOPWA attend the sessions, along with staff responsible for IDIS to ensure continuity of reporting and guidance to subrecipients. The guidance piece will provide suggestions, sample data collection forms and other useful information that will help grantees smoothly transition to the new system.

Each member of the PMWG will hold a forum at one of their national meetings to brief their members on the performance measures framework. ***NCDA's will hold its forum at its Winter Legislative, Policy and Training Meeting in January. The forum will be held on Tuesday, January 24, 2006, from 1-4 p.m. at the Wyndham Hotel, in Washington, DC.***

During the meeting with Assistant Secretary Patenaude, the primary message that she conveyed to the PMWG members was that HUD Secretary Jackson is fully supportive of the performance measures project and is committed to ensuring that the appropriated funding remain available to implement the system, including funding training sessions and retrofitting IDIS to accommodate the new indicators. Ms. Patenaude has committed to quarterly meetings with the interest groups in the same fashion as those convened by former Assistant Secretary Roy Bernardi. Ms. Patenaude also apologized for not being able to discuss or answer questions about the budget or the ongoing appropriations process, but committed herself or her staff to attending the NCDA 2006 Winter Legislative, Policy and Training Meeting being held on January 24-26, 2006. The preliminary agenda and registration form is attached to this newsletter.

Deputy General Council, Nelson Bregón briefed the group on the rescissions in FY 2005 funding that the Congress has already agreed to that will be used to offset costs of the rebuilding efforts for Hurricanes Katrina and Rita. The total rescission from FY 05 is $17 billion of which $2.2 million will come from HUD. There will be $3.5 million in Section 108 credit subsidy funds rescinded from FY 05 and previous years' allocation that will result in a loss of approximately $145 million for approximately 19-20 projects. Mr. Bregón indicated that the Section 108 office has suspended all activity until Congress completes its work on the rescission package, the FY 06 appropriations bills and the across the board spending cut before any more Section 108 projects can be finalized.

NCDA NOTES

2006 NCDA WINTER LEGISLATIVE POLICY, AND TRAINING MEETING AT THE WYNDHAM HOTEL IN WASHING-TON, DC – JANUARY 24-26, 2006

The 2006 NCDA Winter Legislative, Policy and Training Meeting is fast approaching. It is NCDA's intent to build on our successes in saving the CDBG Program by recognizing the efforts of the CDBG Coalition, showcasing outstanding community development achievement with the return of the Audrey Nelson Community Development Achievement Awards, and moving forward with the grantee designed performance measures reporting system.

This meeting will be packed with opportunities to meet with your congressional delegations to thank them for their continued support of the CDBG program and to urge them to increase funding for the program next yearc hear from HUD Headquarters staff on the new initiatives they will implement in the upcoming year, and get a sense from Congressional staff of their legislative priorities, particularly those that will affect the housing and community development programs that we administer.

Conference participants will also be provided with the opportunity to provide input on the Association's legislative and regulatory agenda for the second half of the 109th Congress. This is a meeting that you won't want to miss. An agenda and registration form is attached. Please book your hotel rooms early. The tourism industry has made a complete recovery and hotel rooms are at a premium in Washington. We cannot promise any additional rooms at the conference rate once our room block has been exhausted. So please register early!!

AUDREY NELSON COMMUNITY DEVELOPMENT ACHIEVEMENT AWARDS

Next year NCDA will once again present the Audrey Nelson Community Development Achievement Awards to member communities that provide outstanding service to low-income persons and neighborhoods. 2006 marks the 19th Anniversary of these awards.

The awards will be presented at a breakfast on January 25, 2006 on Capitol Hill. The deadline for applications is **December 9th**. Please send your application to the attention of Karen Parker. An application packet is included with this newsletter.

JOB ANNOUNCEMENTS AND ATTACHMENTS

Go to NCDAonline (http://ncdaonline.org) to view the attachments below.

- Winter Meeting Agenda and Registration Form
- Audrey Nelson Award Application Packet

U.S. Department of Housing and Urban Development

Program	FY05 Enacted Level	FY06 President's Request	FY06 Enacted Level
Community Development Fund	$4.660 billion	$0	$4.220 billion
Set-Asides:			
EDI Special Purpose Grants	$262 million	$0	$310 million
Neighborhood Initiatives	$42 million	$0	$50 million
Youthbuild	$61.5 million	$0	$50 million
Native American Block Grant	$68.4 million	($58 million)*	$60 million
Working Capital Fund	$3.4 million	$0	$1.6 million
Brownfields	($23.8 million)*	$0	($10 million)*
SHOP	$25 million	($30 million)**	($20 million)*
NCDI	$33.5 million	$0	($30 million)**
(LISC/Enterprise/Habitat)	$3.3 million	$0	($3 million)**
Housing Assistance Council	$2.3 million	$0	($1 million)**
Nat. Am. Indian Hsg. Council	$4.8 million	$0	($2 million)**
Nat. Housing Dev. Corp.	$4.8 million	$0	($4 million)**
National Council of La Raza	$1.8 million	$0	($1 million)**
Special Olympics	$43 million	($29 million)***	($20.6 million)***
Section 107 (University Prog.)	*$555.8 million*	*$0*	*$471.6 million*
Total Set-Asides			
	$4.105 billion	**$0**	**$3.748 billion**
Formula Grants			
Brownfields	$23.8 million	$0	$10 million
Section 108	$6 million	$0	$3 million
HOME Program	**$1.896 billion**	**$1.941 billion**	**$1.775 billion**
Set-Asides			
ADDI	$50 million	$200 million	$25 million
Housing Counseling	$42 million	($42 million)*	$42 million
HOME/CHDO TA	$17 million	$10 million	$10 million
Working Capital Fund	$2 million	$1 million	$1 million
Total Set-Asides	*$110.3 million*	*$211 million*	*$78 million*
Formula Grants	**$1.785 billion**	**$1.730 billion**	**$1.697 billion**

Program	FY05 Enacted Level	FY06 President's Request	FY06 Enacted Level
Self-Help/Assisted Homeown. Opport. Program Account			
SHOP	Funded under CD Fund	$30 million	$20 million
NCDI	Funded under CD Fund	$0	$30 million
(LISC/Enterprise/Habitat)	Funded under CD Fund	$0	$3 million
Housing Assistance Council	Funded Under CD Fund	$0	$4 million
La Raza	Funded Under CD Fund	$0	$2 million
National Housing Dev. Corp.	Funded Under CD Fund	$0	$1 million
Native Am. Ind. Hsg. Council	Funded under CD Fund	$0	$1 million
Special Olympics			
Total		**$30 million**	**$61 million**
EZs/ECs	$10 million	$0	$0
Homeless Assistance Grants	$1.240 billion	$1.440 billion	$1.340 billion
Elderly Housing (Section 202)	$741 million	$741 million	$742 million
Housing for the Disabled (Section 811)	$238 million	$120 million	$239 million
Tenant-Based Rental Assistance	$14.766 billion	$15.845 billion	$15.574 billion
Project-Based Rental Assistance	$5.298 billion	$5.072 billion	$5.09 billion
Public Housing Capital Fund	$2.58 billion	$2.33 billion	$2.46 billion
Public Housing Operating Fund	$2.438 billion	$3.407 billion	$3.6 billion
HOPE VI	$143 million	$0	$100 million
Native Am. Hsg. Block Grant	$621 million	$583 million	$630 million
Native Haw. Hsg.Block Grant	$8.8 million	$8.8 million	$8.8 million
Indian Hsg. Loan Guarantee	$4.9 million	$2.6 million	$4 million
Native Haw. Loan Guarantee	$992 thousand	$882 thousand	$900 thousand
HOPWA	$282 million	$268 million	$289 million
Rural Hsg. & Econ. Dev.	$24 million	$0	$17 million

Program	FY05 Enacted Level	FY06 President's Request	FY06 Enacted Level
Fair Housing	$46 million	$32 million	$46 million
Lead Hazard Control	$167 million	$119 million	$152 million****
Faith-Based Prisoner Re-Entry	$0	$25 million	$0

* Funded as a separate program
** Funded under the Self-Help Assisted Homeownership Opportunity Program Account
*** Funded under Policy Development & Research. Includes funding for Alaska Native and Native Hawaiian Institutions, Tribal Colleges and Universities, Historically Black Colleges and Universities, and Hispanic Serving Institutions.
****$76.9 million for the lead-based paint hazard control grant program, $8.8 million for Operation LEAP, $8.8 million for TA, $9.5 million for Healthy Homes Initiative, and $48 million to initiative to target fund to areas with highest abatement needs.