July 14, 1993

Consider this fast track

Housing and Community Development Act of 1993
Highlights

Title I: FHA Multifamily Reforms

Loosen legislative restrictions on sale of unsubsidized properties
RTC Marketing demonstration of HUD-owned properties
Authorize civil money penalties against general partners and certain managing agents of multifamily housing

Title II: Enhance Program Flexibility

Subtitle A: Public and Indian Housing

18-month rent disallowance initiative
Reform public housing ceiling rents
Merge severely distressed public housing programs
Miscellaneous public housing amendments

Subtitle B: Community Planning and Development

Section 108 Loan Guarantee Amendments
- creative use of UDAG recaptures
- permit pooling of notes

HOME Amendments
Conform HOME and CDBG rules
Amend federal preference rules to add homeless
Reform HOPE 3 program

Subtitle C: Community Partnership Against Crime Program (COMPAC)

Create predictable stream of funding
Encourage comprehensive community strategies
Allow broad range of eligible activities
Link PHAs, tenants and community groups

Subtitle D: Federal Housing Administration

Create risk-sharing program with state agencies
Revise Home Equity Conversion Mortgages (HECMs)

Title III: Technical Corrections to 1990 and 1992 Acts

Apply public housing amendments to indian housing
Extend deadline for report of Occupancy Task Force
Correct errors in multifamily mortgage limits
Correct errors in FHA multifamily risk-sharing program

Federal Housing Administration Revitalization Act of 1993
Highlights

Consider this slow track

Title I: Revitalization of Federal Housing Administration Single Family Mortgage Insurance Program

Raise mortgage limits
Create no-downpayment for low- and moderate-income homebuyers in community redevelopment areas
Authorize innovative homeownership demonstrations

Title II: Miscellaneous Amendments

Strengthen Mortgagee Review Board
Impose penalties for HMDA non-compliance
Reform single family foreclosure procedures
RESPA Amendments
Public housing procurement
Tighten GSE affordable housing goals

AUTHORIZE CIVIL MONEY PENALTIES AGAINST GENERAL PARTNERS AND CERTAIN MANAGING AGENTS OF MULTIFAMILY PROJECTS

Section 115 would amend section 537 of the National Housing Act, which authorizes HUD to impose civil money penalties on FHA multifamily mortgagors. The proposal would authorize the imposition of civil money penalties against general partners and certain managing agents of multifamily mortgagors and add two additional violations.

The HUD Reform Act of 1989 authorized HUD to impose civil money penalties against a variety of participants in housing programs, including FHA multifamily mortgagors. The provisions authorizing civil money penalties against multifamily mortgagors, however, have had limited effect since the term "mortgagor" contained in the Act has been interpreted to mean the ownership entity (or, rarely, a person) that owns the project. Ordinarily, the sole asset of an ownership entity is the property held under a non-recourse mortgage. Accordingly, the mortgagor does not have assets sufficient to pay a civil money penalty.

This section would close this loophole by broadening the authority to impose sanctions against multifamily mortgagors to include general partners of partnership mortgagors, their identity of interest managing agents, and independent "fee" managing agents that fail to comply with HUD requirements to notify the Department of improper actions by the general partner.

Section 537(b)(1) authorizes HUD to impose a penalty for a violation of an agreement by a mortgagor as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of mortgage terms, or a workout agreement. The amendment to subsection (b)(1) of the Act would add general partners, but would not refer to "any agent employed to manage the property . . . ." The amendments to subsection (c)(1) would. Subsection (c)(1) differs because the violations set forth in subsection (b)(1) cannot be committed by managing agents.

The amendment to section 537(c)(1) would delete the current references to a "violation of the regulatory agreement," because the managing agent against whom penalties may be imposed under that subsection is not a party to that agreement. It is, however, appropriate to impose a civil money penalty on a managing agent for a violation of an item in the list in subsection (c)(1) because HUD requires that agent to sign a management contract that incorporates by reference the terms of the regulatory agreement.

These changes would substantially affect the wording of the introductory language of subsection (c)(1). The amended language would read as follows:

"(C) **OTHER VIOLATIONS FOR WHICH PENALTY MAY BE IMPOSED.**

"(1) Violations. -- The Secretary may also impose a civil money penalty under this section on (A) any mortgagor of property that includes 5 or more living units and that has a mortgage insured, coinsured, or held pursuant to this Act, (B) the general partner of the partnership mortgagor, (C) any agent employed to manage the property that is an identity of interest entity of the general partner, or (D) any independent fee management entity, under contract with the mortgagor or general partner, that fails to notify the Secretary, as required by the Secretary, that it has been instructed by the mortgagor or general partner to engage in activities that are contrary to regulations and requirements of the Secretary. A penalty may be imposed under this section for knowingly and materially taking any of the following actions:".

The amendment to section 537(c)(1) would also add two provisions, contained in the HUD regulatory agreement, that were omitted in the current statute. These would allow civil money penalties for: (1) failure to use project income to maintain the project, and (2) failure, by a general partner, to provide management acceptable to HUD.

HUD could impose a civil money penalty on an independent fee management entity only if the entity failed to notify HUD, as HUD requires. The Department intends to exempt an independent fee management entity from a civil money penalty for one of the specified violations only if it advises HUD before or during the time the entity commits the violation.

Conforming changes would be made to sections 537(d)(1)(B), (e)(1), and (f) and to the heading of section 537.

Subsection (b) would apply the amendments made by subsection (a) only to --

(1) violations that occur on or after the effective date of this proposal; and

(2) in the case of a continuing violation (as determined by HUD), any portion of a violation that occurs on or after that date.

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ASSUMPTION OF ENVIRONMENTAL REVIEW RESPONSIBILITIES UNDER 1937 ACT PROGRAMS

Section ~~217~~ 207 would authorize HUD to permit PHAs (including IHAs) participating in programs under the U.S. Housing Act of 1937 to have States (including Indian tribes) and units of general local government assume all of the environmental review responsibilities that HUD now performs in connection with the expenditure of HUD funding. The Secretary would issue regulations to guide the performance of these reviews, and would consult with the Council on Environmental Quality/Office of Environmental Quality before issuing the regulations. The regulations would also provide for selection of the appropriate unit of general local government to perform the reviews. The programs for which HUD intends to permit States and units of general local government to assume these responsibilities are the Public Housing Development, Section 8 Moderate Rehabilitation, Section 8 Project-Based Certificate, and Comprehensive Grant programs.

This proposal would permit HUD to establish environmental review procedures under the covered programs that are similar to those that now apply to entitlement cities and counties and to States under the Community Development Block Grant (CDBG) program and assistance recipients under the McKinney Act Homeless Assistance programs. Under section 104(g) of the Housing and Community Development Act of 1974, these grantees are authorized to assume environmental review and related functions for projects carried out with covered assistance. Upon completion of reviews and any other necessary actions under NEPA and related environmental authorities, these entities certify NEPA compliance and consent to Federal court jurisdiction and treatment as the responsible Federal official for purposes of enforcement of the environmental requirements. The Federal funds for the project that is receiving the environmental review are released only after the recipients have submitted the certification to HUD. HUD may not release the funds if the recipient commits the funds before submitting the certification. Under this proposal, since the PHAs, as the recipients, are not general purpose governmental agencies and may not have the capacity to conduct environmental reviews, the State or appropriate unit of general local government would assume the environmental review responsibilities.

In the case of the Comprehensive Grant program, aside from the environmental review responsibilities that are placed on HUD under current law, HUD does not perform any detailed programmatic reviews, either on-site or in-office, of individual development projects that PHAs/IHAs propose for funding under the Comp Grant program. Instead, HUD provides funds to PHAs/IHAs under a formula allocation process, similar to that of the CDBG program, and conducts a general review of the activities which the PHAs/IHAs plan to fund with the annual grant. Because PHAs/IHAs may want to fund a number of individual development projects with

any fiscal year's allocation, requiring HUD environmental review of each project proposed to be funded causes serious delay in the overall review of each program. Furthermore, shifting the responsibility for environmental review from HUD to States and units of general local government on behalf of PHAs and IHAs would avoid the necessity for HUD to obtain information on each project or activity that is proposed for funding in the detail that would otherwise be necessary if HUD were to be the entity that carries out the environmental review responsibilities.

Regarding the other 1937 Act programs to which this provision would apply, while not formula programs, they are nevertheless locally conceived and executed. Accordingly, having the environmental review performed by States, local governments, or Indian tribes makes sense. Essentially, the same reasons underlie grantee assumption of environmental reviews under the Block Grant and McKinney Act programs.

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PUBLIC HOUSING ADMISSION REQUIREMENTS

Section 208 would make three changes to the admissions requirements for housing under the Public Housing program. The net effect of these changes would be an increase in the number of very low-income families, in which one or more persons are employed, that reside in public and Indian housing.

Preference for Working Families

This proposal would revise section 6(c) of the United States Housing Act of 1937 to include in the examples of allowable local preferences for admission to public housing a preference based on the employment of one or more members of the family.

Inclusion of a preference based on employment would increase the percentage of employed non-elderly families residing in public housing. Although at present the majority of very low-income non-elderly households eligible for public housing include one or more employed persons, only 28% of non-elderly families now residing in public housing are employed. In many projects, the percentage of employed families is even lower. The resulting concentration of dependent families in public housing projects reinforces expectations of future dependency, often the precursor to such self-defeating behavior as dropping out of school, teen pregnancy, and reliance on illegal sources of income. Admission of more working families, on the other hand, would serve as role models for these dependent families, reinforcing important family goals such as the completion of education and full-time employment.

The anticipated impact resulting from this new preference would be the admission of more very low-income families with working incomes to public housing. This would be caused by two factors, in addition to the new preference itself: (1) most families with incomes above 50% of the median can afford unsubsidized rental housing or choose to live in such housing rather than apply for public housing; and (2) the current restrictions (as amended below by this proposal) on the admission of households to public housing in section 16(b) of the 1937 Act would allow no more than 15% of households admitted to housing built after October 1, 1981, to have incomes between 50% and 80% of the median.

Project Owners Allowed to Use Federal or Local Preferences to Select Families with Relatively Higher Incomes Regardless of Their Position on the Waiting List

This proposal would revise section 16(c) of the United States Housing Act of 1937 to exclude applicants given either a Federal or local preference for occupancy in public housing from the requirements of that section.

Section 16(c) prohibits project owners from selecting families for residency in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence. The HCD Act of 1992 exempted families selected for occupancy in public housing under the system of local preferences from this prohibition. Congress' intent in 1992 seems to have been to make clear that the prohibition in section 16(c) should not apply to public housing. Because the 1992 amendment only applied to local preferences, however, the effect of this amendment was to require PHAs to establish a method of determining which admissions were due to local preferences and which were due to Federal preferences, even though most applicants would qualify for both. This amendment inadvertently created an excessive and unnecessary administrative burden on the PHAs. Moreover, its complexity makes compliance and monitoring extremely difficult. This proposal would amend section 16(c) to except families given either a Federal or local preference from the mandates of section 16(c), thereby alleviating this burden and more closely tracking the apparent intent of Congress.

Eliminate 25% Cap on Occupancy under Public Housing Contributions Contracts for Low-Income Families

This proposal would delete section 16(b)(2). Section 16(b)(2) currently provides that not more than 25% of the dwelling units in any project of any agency may be made available for occupancy by low-income families other than very low-income families, unless more than 25% of the occupants in that project before November 28, 1990, had such incomes. The percentage of households with these incomes admitted to public housing projects is low enough, when looking at the program as a whole, that the 25% restriction is not needed.

Nonetheless, there are a few exceptional cases where the project-level restriction creates serious program problems. For example, in homeownership projects it may be necessary to exceed the restriction in order to select families which will be able to afford homeownership costs. Also, in some very small localities with a high level of employment among eligible families, there may not be enough eligible families with incomes below 50% of the median income for the area to obtain full occupancy. Thus elimination of this requirement should not have much of an effect on the general makeup of tenants residing in public housing projects, but may prove useful in some situations.

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PUBLIC HOUSING DEVELOPMENT COST LIMITS

Section 209 would amend section 6(b)(2) of the U.S. Housing Act of 1937 in order to accomplish two goals. The first is to correct an error in the present law. The second is to make the public and Indian housing development cost limit system more flexible.

First, the current language requires deriving the cost limits from residential construction cost indices for "publicly bid construction of a good and sound quality". There are reliable national construction cost indices, but they are not based on "publicly bid" construction. This amendment would correct this error by deleting "publicly bid" from the statute.

Second, the current statutory formula to determine the total development costs provides for multiplying the hard costs derived from the indices by 1.6 or 1.75. This amendment would permit HUD to increase the multiplier if HUD determines it is necessary to account for higher costs resulting from (a) blending the housing into the neighborhood (including providing desirable architectural features or amenities), (b) high site costs, (c) lead-based paint removal or abatement, (d) making the projects accessible for the disabled, or (e) other causes HUD may prescribe.

This amendment would make the development cost limit system more flexible. It has historically been criticized for being too bureaucratic and too inflexible and for establishing limits that are too low. The modernization cost limits would also become more flexible because they are based on the development cost limits.

Additionally, this amendment would pave the way for the repeal of section 5(j)(2)(D) of the United States Housing Act of 1937, proposed in the following section of this bill, in order to create a less complicated system. Section 5(j)(2)(D) requires a separate set of cost limits for the Major Reconstruction of Obsolete Projects program.

Public housing agencies can be expected to support this legislative change, since it would result in a simpler and more flexible system.

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MROP COST LIMITS

Section 210 would repeal section 5(j)(2)(D) of the U.S. Housing Act of 1937 to eliminate the requirement that HUD establish separate Major Reconstruction of Obsolete Public Housing (MROP) program cost limits that are unrelated to development cost limits or to modernization cost limits and recognize the higher direct costs of such work.

The present inflexible development cost limit system has caused the creation of the Major Reconstruction of Obsolete Public Housing (MROP) program with a more flexible MROP cost limit system under section 5(j)(2)(D) of the 1937 Act, as added by section 111 of the Housing and Community Development Act of 1992.

If development cost limits are modified to make them more flexible, as proposed in the preceding section of this bill, the need for a totally different system for MROP cost limits would be negated. Under that proposal, HUD would be able to alter the cost limits to account for higher costs resulting from (a) blending the housing into the neighborhood (including providing desirable architectural features or amenities), (b) high site costs, (c) lead-based paint removal or abatement, (d) making the project more accessible for the disabled, or (e) other causes HUD may prescribe. With the proposed change to make the development cost limits more flexible, MROP cost limits could be based on development cost limits and still possess the needed flexibility. This would simplify the establishment of cost limits by removing the need for a different system, while still achieving the objective of section 5(j)(2)(D).

Public housing agencies are expected to support the enactment of such a legislative change which could achieve the desired result without the lengthy effort necessary for HUD to develop a totally new system.

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DELETE LIMITATION ON RESERVATION OF DEVELOPMENT FUNDS

Section 211 would repeal section 5(j)(1) of the U.S. Housing Act of 1937. Section 5(j)(1) states that the Secretary shall reserve funds for the development of public housing (other than for Indian families) only if at least one of the following occurs:

(A) HUD determines that additional amounts are required to complete the development units for which amounts were obligated before September 30, 1987;

(B) The PHA certifies that it maintains 85% of its units in standard condition either currently or after approved or reasonably anticipated modernization;

(C) The PHA certifies that the development will replace dwelling units that are disposed of or demolished by the PHA or that the development is required to comply with a court order or HUD requirements;

(D) The PHA must certify that section 8 certificates and vouchers do not satisfy all the family housing needs, and that the PHA plans to construct or acquire projects of 100 units or less; or

(E) The Secretary makes the reservation for the MROP program.

The repeal of section 5(j)(1) makes sense because the complicated certification process that it requires has few if any benefits. The cumbersome process has little value because almost all PHAs can easily qualify for a reservation on the basis of subparagraph (D), which is greater family need than can be met by available section 8 certificates and vouchers. In addition, PHAs with a large number of substandard units that are not scheduled for modernization are highly unlikely to be funded for development because an applicant must meet threshold approvability requirements which include administrative capability. Accordingly, the objectives of subsection (j)(1) are achieved through other features of the program.

By repealing section 5(j)(1), this proposal would eliminate the need for a PHA to make one of the numerous certifications required when submitting its application. Historically, the public housing development program has been criticized for being too bureaucratic and requiring too much paperwork. Section 5(j)(1) is an example of a statutory requirement for the submission of superfluous paperwork.

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REPEAL LIMITATION ON NEW CONSTRUCTION

Section 212 would repeal section 6(h) of the U.S. Housing Act of 1937. Section 6(h) states that HUD may enter into a contract involving new construction only if the PHA demonstrates to the satisfaction of HUD that the cost of new construction in the neighborhood where it is needed is less than the cost of either the acquisition of existing housing or the acquisition and rehabilitation of existing housing.

The repeal of section 6(h) would simplify and make more flexible the application process both for the PHAs and for HUD. The PHAs would no longer have to submit a cost comparison to HUD for its approval and verification. The decision on how to provide additional public housing should be made locally based on the current circumstances of the locality.

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RECAPTURE OF DEVELOPMENT AMOUNTS

Section 213 would amend section 5(k) of the U.S. Housing Act of 1937 to give the Secretary discretion to recapture amounts reserved for development of specific public housing projects without waiting the entire 30-month period that is now required. This discretion could be exercised in situations where the Secretary makes a specific finding that there is no feasible way for the project to begin construction or rehabilitation, or to complete acquisition, within the 30-month period. The amendment would preserve the 30-month period as the normal minimum time period for start of construction, rehabilitation, or acquisition, and retain the exclusions from the time period for factors beyond the control of the public housing agency.

The amendment would tend to increase pressure on public housing agencies and Indian housing authorities to implement as quickly as reasonably possible the development projects for which they have funding reservations. The amendment would also provide HUD with more flexibility in the management of public housing development funding. In this regard, amounts recaptured under the amendment -- like amounts recaptured under the present 30-month minimum rule -- may be made available for other development projects, but sooner than would be otherwise possible. If a project ceases to be feasible, even at a different site or reformulated, then there would seem to be no useful purpose in preventing the Secretary from acting to recapture the funding, and reserve it for another project, before the arbitrary 30-month minimum waiting period now in section 5(k) has elapsed.

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DELETION OF PRECLUSION OF JOINT MROP AND MODERNIZATION FUNDING

Section 214 would amend section 5 of the U.S. Housing Act of 1937 by deleting section 5(j)(2)(E), and would make conforming changes to section 14(c). Section 5(j)(2) allows the Secretary to reserve a portion of the amounts appropriated for the development of public housing in each fiscal year for the substantial redesign, reconstruction, or redevelopment of existing obsolete public housing projects (Major Reconstruction of Obsolete Public Housing (MROP)). Section 5(j)(2)(E) was added by section 111 of the Housing and Community Development Act of 1992. It prohibits the use of MROP funds for any project or building which receives modernization funding under section 14 of the 1937 Act. This requirement unnecessarily hampers the ability of PHAs to effectively address their most problematic developments by preventing HUD from funding, and PHAs from using funding for, MROP and modernization together in the same project or building. This proposal would eliminate that requirement.

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REVISION OF VACANCY REDUCTION PROGRAM

Section 215 would make two revisions to the Public Housing Vacancy Reduction program under section 14(p) of the U.S. Housing Act of 1937.

Determination of Vacancy Rate

The first revision would exclude certain vacancies in public housing projects when determining the vacancy rate for purposes of participation in the vacancy reduction program. Vacancies would be excluded in projects that are funded for modernization if HUD determines that full occupancy of the project would occur after the modernization work is completed. Under current law, any public housing agency that has a vacancy rate in its developments that exceeds twice the average vacancy rate among all agencies is required to participate in the Vacancy Reduction program.

This revision is necessary because many PHAs have vacancy rates that are twice the national average at any given time without having a vacancy problem. Many vacancies are caused by the need to relocate residents during rehabilitation work or are due to physical deterioration which will be corrected by the modernization. This is especially true for smaller PHAs where vacating one project for modernization can temporarily cause an extremely high vacancy rate. A HUD survey of all PHAs with more than twice the average vacancy rate showed that 30% of all vacant units are funded for modernization. Therefore, in cases of modernization, there is no need to conduct assessments of these PHAs or to provide funding to them to address their vacancies. In addition, by excluding vacancies due to modernization when determining the vacancy rate, some PHAs that have serious vacancy problems with little modernization either underway or planned would qualify for the vacancy reduction program. Under current law they would not.

Repeal Special Sanction for the Vacancy Reduction Program

The second revision would repeal section 14(p)(3), which requires HUD to create a reserve for a PHA, from amounts otherwise payable to a PHA, to be used only for vacancy reduction activities. Section 14(p)(3) was added by section 115(g) of the HCD Act of 1992.

The reserve is comprised of up to 80% of the annual contribution attributable to any unit that has been funded with vacancy reduction assistance for 24 months and is still vacant, not including units that are vacant due to modernization, reconstruction, or lead-based paint reduction activities. HUD is required to recapture funds in the reserve if HUD determines, 24 months after establishing the reserve, that the PHA has not made

significant progress in complying with its vacancy reduction plan.

The repeal of section 14(p)(3) is necessary to standardize record-keeping, monitoring, and sanctions applicable to all vacancies funded under section 14. Section 14(p)(3) creates the need for extensive and detailed record-keeping and monitoring which is different from the record-keeping and monitoring which applies to all other vacancies funded under section 14. In addition, the penalty for failing to perform with vacancy reduction funds is different from the sanctions now in 24 CFR 990 for all other vacancies which have been funded under section 14. With the repeal of section 14(p)(3), in accordance with Part 990, the vacant units would be included in the count of all vacant units of the PHA. Tenant rents would be attributed to all vacant units in excess of 3% in determining the amount of operating subsidy for a PHA. This has the effect of reducing the overall operating subsidy available to PHAs with vacancy rates exceeding 3%.

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REPLACEMENT HOUSING FOR PUBLIC HOUSING DEMOLITION OR DISPOSITION

Section 216 would make several changes to give public housing agencies (including Indian housing authorities) more flexibility in planning for the future of their stock.

Comprehensive Grants and Development Grants for Replacement Housing.

Subsection (a)(1) would amend 5(a)(2) of the U.S. Housing Act of 1937 to require HUD, in selecting among applications for the development of additional public housing, to give a priority to PHAs that use amounts they receive under the Comprehensive Grant modernization program for replacement housing under section 18. Section 18 requires the replacement of public housing units which are demolished or disposed of, with some exceptions.

Subsection (a)(2) would authorize HUD to permit PHAs to use amounts allocated under the Comprehensive Grant program for the development of replacement housing, as required by section 18.

These changes are in response to a strong recommendation of the Commission on Severely Distressed Public Housing that replacement funds be provided in the funding for rehabilitation and revitalization. Ready access to replacement funds assures the community that its stock of assisted housing will not be diminished.

Use of Tenant-Based Assistance for Replacement Housing

Subsection (b) would permit a PHA to replace public housing units with five-year tenant-based section 8 assistance if --

(a) the project has been vacant for a period of at least five years;

(b) the proposed demolition is necessary for revitalization of the remaining units in the project; or

(c) demolition of the entire project is proposed and some or all of the units will be replaced on the site.

In addition, section 18(b)(3)(C) -- the so-called "market test" -- would be amended so the current market test would not apply if the replacement housing plan involves the use of five-year tenant-based section 8 assistance or involves the demolition of 200 or more units. Instead, section 8 tenant-based assistance could be approved if the PHA determines that such use is feasible and appropriate to meeting the low-income housing needs in the community. Current law restricts use of section 8 assistance to places where HUD makes a finding that development is not feasible

and where the supply and availability of adequate private market resources for the program can be assured for the next 15 years.

This flexibility is essential for dealing with severely distressed developments where a substantial amount of demolition is needed and sites are not readily available for that quantity of units. These criteria would give more flexibility than the current provision, which allows use of five-year section 8 assistance if at least 200 units are to be demolished, but does not exempt such situations from the market test.

Need for Replacement Units

Subsection (c) would amend section 18(b)(3) to permit demolition or disposition without replacement if there is no need for additional assisted housing in the community, as determined in accordance with criteria determined by the Secretary.

The law currently requires replacement even in places where there is no need for additional assisted housing. For example, there are rural areas which have suffered dramatic losses in population and there is literally no need for replacement housing. In Detroit, loss of population has been so severe that there are huge vacancies in both the private and public housing stock. In these cases, replacement should obviously not be required.

Replacement Housing Outside the Jurisdiction of the PHA

At present, section 18 restricts the location of replacement units to the PHA's jurisdiction. Subsection (d) would permit locating some or all of the replacement units outside of the jurisdiction of the PHA but within the same housing market area, based on a realistic look at housing needs in the real economic community, and not simply according to the boundaries of political jurisdictions. For core-city PHAs, this might solve the problem of the unavailability of suitable replacement sites within their jurisdictions. It would allow adjoining communities to cooperate in a way that best serves the interests of the poor and might help to open up housing opportunities in adjacent areas where the employment picture is favorable.

Specifically, replacement units could be located outside the PHA's jurisdiction if --

(a) the location is in the same housing market area as the original agency, as determined by the Secretary;

(b) the replacement housing plan contains an agreement between the original agency and the PHA in the alternate location, or other public or private entity that will be

responsible for providing the additional units in the alternate location ("alternate agency or entity"), that the alternate agency or entity will, with respect to the dwelling units involved --

(1) provide the dwelling units in accordance with program requirements;

(2) complete the plan within the required time period;

(3) work with the original agency to ensure that (A) the same number of individuals and families will be provided housing and (B) the maximum post-relocation rent provisions are complied with; and

(4) not impose a local residency preference on any resident of the jurisdiction of the original agency for purposes of admission to any such units; and

(c) the arrangement is approved by the unit of general local government for the jurisdiction in which the additional units will be located.

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SECTION 8 FEES

Section ~~218~~ 217 would amend section 8(q) of the U.S. Housing Act of 1937 to change the way fees paid to public housing agencies (including Indian housing authorities) for the costs of administering the section 8 Certificate and Voucher programs are determined.[1] In addition, it would increase the amount of the preliminary fee from $275 to $500 and limit it to PHAs that have not previously carried out a Certificate or Voucher program and, for those PHAs, limit it to their initial increment of assistance.

Under the revised system, a PHA would receive a fee for each month for which a dwelling unit is covered by a housing assistance payments (HAP) contract. The fee would be 7.25% of the base amount for units with two or fewer bedrooms and 7.75% of the base amount for units with three or more bedrooms.

During the initial year of implementation, the base amount would be the average of the FY 1993 and FY 1994 fair market rent (FMR) established by HUD for a 2-bedroom existing rental dwelling unit in the market area of the PHA. However, the base amount for a market area could not be less than 80% nor more than 120% of the weighted average of the 2-bedroom FMRs in the jurisdiction of the applicable HUD regional office or in such other area as HUD determines to be appropriate.

After the year of initial implementation, HUD would adjust the base amount, based on changes in wage data or other objectively measurable data that reflect the costs of administering the program, as determined by HUD.

To protect PHAs from sudden drops in fee income, the law would provide that the base amount during the year of initial implementation would not be less than the FY 1993 FMR for a 2-bedroom existing rental dwelling unit in the market area. While the proposal does not guarantee continued funding for each PHA at the current level, the transition provision would smooth out changes (both positive and negative) in funding.

The proposal would retain authority for HUD to increase the fee if necessary to reflect the higher costs of administering small programs and programs operating over large geographic areas (see section 8(q)(1) of existing law), and for extraordinary expenses (see section 8(q)(2)(A)(iii)). In addition, HUD could approve higher fees if necessary to reflect the higher costs of

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[1] Section 201 of the bill would merge the existing Certificate and Voucher programs into a single Certificate program. The new fee formula would apply to all Certificate and Voucher programs.

administering the Family Self-Sufficiency program under section 23 of the 1937 Act.

The current system of Section 8 administrative fees is unnecessarily complex, unwieldy, and inconsistent with program needs. The proposed amendment simplifies the current system, eliminates its most serious flaws, and would be cost-neutral at the national level.

The current system has three different rate structures. Pre-1989 allocations provide for a 6.5% fee for vouchers and a 7.65% fee for certificates. For both programs, an 8.2% fee applies for incremental allocations made after 1988. Research shows that administrative costs for certificates and vouchers are very similar. The proposal would make the fee system more uniform.

Basing administrative fees on each year's FMRs means that administrative budgets are tied to changes in FMRs. Rents are subject to market forces and periodic rebenchmarking which can produce sudden increases or decreases in FMRs and administrative fees (but with no changes in administrative costs). Erratic and sudden changes in administrative fees are not conducive to sound program management, and can disrupt PHA efforts to provide a high and consistent quality of management and advisory services. Due to this year's rebenchmarking, revised FMRs could increase or decrease administrative funding by 25-30%. These problems would be solved by the proposal. Under this proposed new PHA fee system, PHAs would no longer face the possibility of sudden decreases in administrative budgets. Small PHAs and PHAs with unusually low FMRs would tend to receive higher funding. Large PHAs and those operating in high-FMR areas that research has shown to have excessive funding would receive some decreases.

Linking administrative fees to FMRs produces upward pressures on FMRs. The primary cost of administering the Section 8 program is wages paid to PHA employees. These wages are closely tied to local wage costs, but not necessarily to local rental costs.

FMR/local wage ratios differ significantly from area to area, with low FMR areas relatively underfunded and high FMR areas relatively overfunded. Small PHAs and PHAs in non-metro areas tend to have the lowest FMRs and appear to be least-favored by the current system. Research conducted by the Office of Policy Development and Research indicates that housing costs (and FMRs) are more variable than wages and non-housing costs, and that areas with unusually high or low FMRs receive relatively high or low levels of administrative funding relative to local wage and other non-housing costs. This inequity is addressed by placing "caps" and "floors" on the calculation of the fee base.

Small programs appear to have difficulties with current administrative fee levels, partly because they tend to be in low FMR areas and partly because they are unable to achieve the economies of scale possible in larger PHAs. Under the new system, small PHAs will tend to receive higher fees, and may also apply for additional funds as needed.

The current system does not appropriately compensate for the increased difficulties and expenses associated with placing large families (i.e., those requiring three or more bedrooms). The new system provides higher fee payments for assisting large families. Research of large urban PHAs in the late 1980s indicated that 20% to 25% of units contained three or more bedrooms. Recent section 8 contract renewals and data from the AHS suggest that about 30% of all units under contract have three or more bedrooms.

The current statutory provision in section 8(q)(2)(A)(ii) regarding costs of assisting families who experience unusual difficulties would be repealed. The higher rate proposed to be applied to the fee base for units with three-plus bedrooms will be a more meaningful reimbursement than the currently used "hard-to house" add-on fee, and would remove a potential disincentive for PHAs to serve large families with children.

Current provisions in law that allow for additional fees for small PHAs, delivery of assistance within large geographic areas, and extraordinary costs would be retained. However, HUD would approve additional fees only in unusual circumstances, where the PHA documents and justifies the need. The use of ceilings and floors in the setting of the initial fee base should help most small PHAs and PHAs serving large geographic areas, minimizing the need for additional fees.

The current preliminary fee of up to $275 per unit for new allocations, which is no longer a significant source of revenue because program sizes are now large relative to incremental unit allocation in any one year, would be modified. It would be increased to $500, limited to PHAs in their initial year of carrying out a tenant-based assistance program, and paid without documentation by a PHA. Few additional PHAs enter the program in any one year. The preliminary fee has not been increased since the beginning of the program in the mid-1970s. Eliminating the need for PHAs to document the need for a preliminary fee will eliminate unnecessary paperwork. Virtually all PHAs are able to justify the proposed level of preliminary fees in their first year of participation in the program.

Implementation

Implementation of this proposal will require issuance of a proposed and final rule. HUD anticipates that the year of

initial implementation, which is the first year that the fee base will be applied, will be fiscal year 1995. The Department intends to adjust the 1993 and 1994 fair market rents appropriately in determining the initial fee base concept in FY 1995.

To avoid administrative problems associated with significant changes to fair market rents for FY 1994 that are proposed for some areas due to rebenchmarking, a separate legislative proposal in the following section of this bill would require that, for fiscal year 1994, or until such time as a final rule for this legislative proposal for a system using a fee base has been implemented, the fee rates applicable in fiscal year 1993 would continue to be used, and would be applied to the fiscal year 1993 two bedroom fair market rent.

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FREEZE FEES FOR ADMINISTRATION OF THE CERTIFICATE AND VOUCHER PROGRAMS

Section ~~219~~ 218 would, essentially, freeze fees paid to PHAs (including IHAs) by HUD for the ongoing costs of administering the Certificate and Voucher programs until it implements the new system for determining fees, as proposed in the preceding section of this bill. Under section 8(q)(1) of the U.S. Housing Act of 1937, HUD pays PHAs administering the Certificate and Voucher programs a fee for the ongoing costs of administering the program. The fee is based on a percentage of the fair market rent for a 2-bedroom unit in the PHA's market area.

HUD recently published fair market rents for public comment in the Federal Register on May 6, 1993. These fair market rents were developed using the 1990 Census data and the new definitions of metropolitan statistical areas established by the Office of Management and Budget and are more accurate. They will take effect on October 1, 1993.

The use of the 1990 Census data and other changes in the calculation procedures have resulted in significant revisions for a large number of FMR areas this year. For example, where all nonmetropolitan counties in a county group previously had the same FMRs, each county now has separate FMRs. As the result of all of these changes, the FMRs are being decreased in more than 50% of the FMR areas.

Under this proposal, until HUD implements the new system described in the preceding section of the bill, HUD would pay PHAs their administrative fee based on the FMR published on October 1, 1992. The applicable percentages for determining the fee would not be changed. HUD would continue to approve higher fees for the special circumstances now authorized by section 8(q).

The policy would apply to the existing Certificate and Voucher programs, as well as the new Certificate program merging those two programs. Otherwise applicable law, current HUD regulations, and related requirements would be overridden by the proposal, so HUD could implement this new policy as soon as possible, in accordance with written guidelines issued directly to HUD field offices and PHAs.

Since the fees that PHAs earn for administering the Certificate and Voucher programs are based on the FMRs, if this proposal is not enacted, many PHAs will suffer a severe financial hardship because their administrative fees will be reduced in direct proportion to the decrease in FMRs. This means that PHAs would have to reduce staffing levels immediately to comply with the reduced level of fees, and as a result, the ability of the PHAs to administer the programs in accordance with applicable requirements would be impaired.

HUD believes that the fees for PHAs in areas where the FMRs for FY 1994 are being increased should not be increased due to the happenstance of improved FMR methodology. In many cases, the fee increase would be a windfall to PHAs where rents have gone up substantially but the costs of administering the program have not.

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PART 1 -- HOME/CDBG CONFORMANCE

USE OF CDBG FUNDS FOR HOME ADMINISTRATIVE EXPENSES

Section 230 would make eligible for CDBG funding administrative costs relating to administration of the HOME program. The use of CDBG funds for HOME administrative costs would be within the overall 20 percent cap on the use of CDBG amounts for planning, managemnt, and adminstrative costs activites.

Section 207 of the Housing and Community Development Act of 1992 amended the HOME program by making eligible the use of HOME funds for administrative costs, subject to a percent limitation. The 1992 Act also eliminated the authority to use CDBG funds to pay for the general program administration costs of the HOME program.

This change will provide greater flexibility in allocating costs for CDBG grantees that are also HOME participating jurisdictions (PJs) because most of them use the same staff to administer both CDBG housing and HOME activities.

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PROJECT DELIVERY COSTS

Section 807(a)(4) of the Housing and Community Development Act of 1992 established a new category of CDBG eligibility for housing services, including housing counseling, preparation of work specifications, loan processing, and other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in housing activities under the CDBG or HOME program. These activities were, however, made subject to the 20% cap on the use of CDBG funds for planning, management, and administrative expenses. Section 231 would exempt CDBG funds used to pay such costs from the 20% cap.

It appears that in enacting section 807(a)(4), Congress did not intend to subject these costs to the cap on administrative expenses. Activity delivery costs are not subject to the cap for any CDBG activity. Many grantees are very concerned about the possibility of HUD implementing this provision. Based on the very rough data we have, implementation of the 1992 Act change would put about 33 percent of CDBG grantees over their administrative caps, and would have a significant negative effect on CDBG rehabilitation funding.

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COMPREHENSIVE AFFORDABLE HOUSING STRATEGY

Section 232 would amend the HOME program and the McKinney Act homeless program to require formula recipients under those programs to certify that they are following a current, HUD-approved Comprehensive Affordable Housing Strategy (CHAS).

Existing law contains two requirements with respect to the CHAS. Two programs -- CDBG Entitlement and McKinney Act programs -- require grantees to certify that they are "following" a current HUD-approved CHAS. These programs, as well as a number of other authorities, also require that each activity assisted under the specific program in question be "consistent with" the CHAS.

This proposal would ensure that HUD's formula grant programs that are subject to the CHAS -- the CDBG Entitlement, HOME, and Emergency Shelter Grants (ESG) programs -- contain both a "following" and a "consistency" requirement. Other programs would be subject only to the "consistency" standard. McKinney Act programs other than ESG would no longer be held to the "following" test.

The "following" certification is important because it does not apply to any particular program activities -- if a community fails to carry out any of its promised actions under the CHAS, or if each program activity is consistent with the CHAS, but in the fourth or fifth years of a CHAS, it becomes obvious that a community is not carrying some actions promised in the CHAS whether or not those actions are part of a HUD program, HUD can challenge a community's certification that it is following its CHAS. Right now, if the CDBG and McKinney programs determine that a community is not following its CHAS, those funds would be affected, but the HOME program would not be affected as long as each individual activity was consistent with the CHAS.

The proposal would ensure that the broader "following" test would apply to formula grant programs where the continuity of funding makes such an approach appropriate. These and other programs would be subject to the "consistency" standard in order to ensure that each assisted activity is consistent with the CHAS.

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REMOVE FIRST-TIME HOMEBUYER LIMITATION FOR HOME UNITS

Section 233 would amend section 215 of the Cranston-Gonzalez National Affordable Housing Act to remove "first-time" homebuyer limitations for HOME units.

Section 215 of the Cranston-Gonzalez National Affordable Housing Act qualifies HOME assistance for homeownership by requiring that the housing be the principal residence of an owner whose family qualifies as low-income at the time of purchase and is made available for initial purchase only to first-time homebuyers. The term "first-time homebuyer" means an individual and his or her spouse who has not owned a home during the 3-year period prior to purchase of the home with HOME assistance. However, there are a number of exceptions. The original legislation exempted displaced homemakers and single parents who owned or resided in a home owned by the spouse. The 1992 amendments further exempted individuals who owned substandard housing that could not be feasibly rehabilitated or owned a manufactured home not permanently affixed to a permanent foundation.

The amendment would remove the "first-time" homebuyer limitation for HOME units. The current definition of first-time homebuyers as expanded by the 1992 amendments includes almost all low-income homebuyers. Consequently, the limitation creates burdensome paperwork requirements because participating jurisdictions must document the statutory category under which each assisted family is qualified. The proposed change will get rid of the burdensome paperwork and allow participating jurisdictions to efficiently assist any income-qualified homebuyer, if it is consistent with the comprehensive housing affordability strategy (CHAS).

The CDBG program does not restrict homebuyer assistance to first-time homebuyers. This proposed change would conform the HOME program with the CDBG program, simplifying implementation for local grantees who manage both programs.

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MAKE HOMEOWNER ASSISTANCE PERMANENTLY ELIGIBLE UNDER CDBG

Section 234 would repeal section 907(b)(2) of the Cranston-Gonzalez National Affordable Housing Act, as amended by section 807(b) of the Housing and Community Development Act of 1992. Under section 907(b)(2), direct assistance for homeownership under CDBG was to be terminated as of October 1, 1992. The Secretary could extend that date to October 1, 1993 if certain circumstances existed. Section 807(b) extended these dates to October 1, 1994 and October 1, 1995, respectively. The Housing and Community Development Act of 1974 defines direct assistance to facilitate and expand homeownership to include subsidized interest rates, finance assistance, guarantees, up to 50 percent of downpayments, or reasonable closing costs.

The repeal of section 907(b)(2) would allow CDBG funds to be used to provide homeownership assistance as a permanent eligible activity under the Housing and Community Development Act of 1974. This would increase the level of flexibility of local governments to implement their comprehensive housing affordability strategy (CHAS). Without this change, they will lose much of their ability to undertake homeownership assistance, even if the CHAS shows need, because almost half of CDBG entitlement grantees do not get HOME funds.

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RECONSTRUCTION OF BUILDINGS AND IMPROVEMENTS

The CDBG program does not normally permit funds to be used for the new construction of housing. It does, however, permit structures to be rehabilitated, but statutory language is lacking involving the use of CDBG funds for reconstruction of housing. The HOME program, on the other hand, authorizes new construction, reconstruction, and rehabilitation of housing.

Section 235 would amend section 105 of the Housing and Community Development Act of 1974 to permit reconstruction of housing as another category of rehabilitation.

Some housing structures are in need of rehabilitation when a grantee undertakes neighborhood revitalization efforts. The grantee must determine whether the housing is suitable for rehabilitation, requires reconstruction, or demolition. After rehabilitation has begun, a grantee may determine that the structure is so weak that it requires reconstruction. The proposed change would permit CDBG funds to be used for either the rehabilitation or reconstruction of housing under the same guidelines that are used in the HOME program. Simplifying the law and conforming the CDBG and HOME program eligibility requirements will ease administration and provide needed flexibility in carrying out the CHAS.

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PART 2 -- ECONOMIC REVITALIZATION INITIATIVE

Economic Revitalization Grants: Financing Economic Revitalization Projects With Guaranteed Loans and Grants

Sections 240 and 241 would amend sections 108 and 119 of the Housing and Community Development Act of 1974, to authorize deobligated Urban Development Action Grant (UDAG) funds to be used to make grants to communities to finance a portion of the cost of qualifying economic revitalization projects or activities assisted under the Section 108 Loan Guarantee program. The program design assumes that the cost of a qualifying economic revitalization project or activity will include such reserves (including debt service reserves) as are necessary to ensure the financial feasibility of the project.

Assistance would be limited to economically distressed communities. The Secretary will establish minimum criteria for economic distress. Any activity or project receiving grant assistance shall be deemed to meet the CDBG national objectives requirements. The 70% overall benefit requirement would not apply to activities or projects which receive grant assistance. Section 108 applications that include requests for grant assistance will be funded on a first-come, first-served basis.

Communities need funds for economic revitalization, and section 108 can provide them with a largely untapped source of financing for community economic revitalization activities. It is a particularly valuable funding source for activities that involve loans because it permits CDBG funds (that would otherwise be the funding source for the loans) to be allocated to other CDBG activities.

Without the proposed changes, section 108 would continue to be a valuable financing tool for certain CDBG activities. However, the demand (even under the best conditions) is not expected to exceed $300 - 500 million, primarily because of the risk that future years' CDBG funds will have to be used to repay the section 108 loan. This risk generates opposition from the various parties that have a claim on future CDBG funds (e.g., neighborhood groups, elected officials, local staff). Section 108 use can be increased by reducing this risk to a level that does not summon the primal fears of these parties regarding "their" funding source.

These loan guarantees with grant support will enhance and complement communities' current economic development efforts. Currently, most CDBG communities limit both the size and extent of their economic development programs due to the many competing demands for CDBG funds. This enhanced source of funding will allow communities to take on larger projects or to establish

economic revitalization loan programs to address major downtown and neighborhood economic revitalization needs that are not now addressed.

Unlike traditional Small Business Administration sources of business assistance (such as the 7(a), 502, and 504 programs) that target the needs of the business within the specified program's parameters and which tend to assist businesses directly, this proposal relies on the involvement of the local government to select economic revitalization projects that further its overall economic development strategy. Because a local government is able to provide financial assistance (through funds available under this proposal, CDBG and local programs), technical assistance and other government services, consistent with its own strategy, this approach will likely result in more coordinated economic and physical revitalization.

The program design will provide for HUD's review and approval of each applicant's proposal (including financial underwriting, by providing underwriting standards for communities to adhere to in making loans, and by HUD's commitment of section 107 technical assistance funds to continue to improve local economic development capacity).

The grant made with deobligated UDAG funds would address the risk to future CDBG funds directly by increasing the project cash flow that will be available to repay the section 108 loan. The project could be structured to deal with smaller cash flows during the start-up period of the project. To address the start-up problem, the project's costs could include reserves (e.g., debt service and operating reserves) to supplement, if necessary, the project's cash flow during the start-up period. Any reserves that are not used for such purposes, would be used to reduce the section 108 loan (and thereby reduce section 108's share of the funding for the project).

Any program income generated by the project would be retained by the community and used in accordance with CDBG requirements.

SECTION 108 LOAN GUARANTEES FOR COLONIAS

Section 242 would amend section 108 to expand the list of eligible activities to include section 108 loan guarantees on loans in colonias for all public improvements and facilities that are now eligible under the CDBG program.

This change would enhance section 108's utility as a vehicle for financing investment in public infrastructure in colonias. It would provide up-front financing for badly needed public improvements and facilities (e.g., water and sewer systems) and enable colonias to use CDBG related monies for projects which are time consuming and might otherwise conflict with deadlines for quick expenditure.

GUARANTEE OF OBLIGATIONS BACKED BY SECTION 108 LOANS

Section 243 would amend section 108 to permit pooling of notes by giving HUD authority to guarantee trust certificates or other obligations representing fractional undivided interests in a trust or pool of notes issued by section 108 recipients, and would make related technical changes. The Small Business Administration (SBA) has this type of authority with respect to its local development company program. In some respects, this authority is also similar to the authority of GNMA to guarantee securities backed by pools of FHA-insured mortgages.

Communities receiving guaranteed loans under section 108 may repay the loans over a period of from 1 - 20 years. In order to finance the loans in the most efficient manner, HUD arranges for borrowers to issue promissory notes for sale in an underwritten public offering. The current public offering process has been hampered by the large number of notes offered for sale to investors, resulting in higher interest rates and a larger administrative burden on HUD.

According to the universal opinion of section 108's underwriters, marketing securities representing interests in pools of obligations issued by local governments under section 108 would be more efficient than the current mechanism and would encourage more institutional investors, such as pension funds, to purchase obligations guaranteed under section 108. Due to the varied financial needs of local governments participating in the section 108 program, it is impossible to substantially reduce the number of notes issued under the current process without HUD having the authority to guarantee securities based upon pools of obligations otherwise eligible for guarantee under section 108.

The efficiencies and increased interest by investors would reduce interest rates. The reduced interest rates would, in turn, induce more public investment by communities because the cost of financing that investment would be reduced.

Not only would the reduced rates produce significant savings for communities and make section 108 a more effective financing tool for community and economic revitalization, but HUD's administrative burden would be measurably reduced.

This change should have no budgetary effect.

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PART 3 -- MCKINNEY ACT HOMELESS ASSISTANCE

EXTEND FEDERAL PREFERENCE UNDER THE CERTIFICATE PROGRAM TO TRANSITIONAL HOUSING PROGRAM FAMILIES

Section 250 would amend section 8(o) of the U.S. Housing Act of 1937, which is being amended by section 201 of this bill to merge the Certificate and Voucher programs into a unified Certificate program, to clarify that very low-income families who are moving out of Transitional Housing for the Homeless program facilities and who have successfully completed a program designed to help achieve independent living are considered "families that occupy substandard housing." Thus these families would be accorded a Federal preference for section 8 Certificates.

Proposed section 8(o)(4)(B) includes transitional housing residents in a list of examples of possible categories of families suitable to receive a local preference for the units not subject to the existing three Federal preferences. (See section 8(d)(1)(A)(ii)(I) and 8(o)(3)(B)(i) of existing law.) Since this proposal would explicitly include transitional housing residents in those categories of families eligible for a Federal preference, that section would be amended to delete the reference to transitional housing residents.

The McKinney Act's Transitional Housing for the Homeless program, under the Supportive Housing program, is designed to provide a stable environment for up to 24 months for homeless families and individuals who are willing to work toward independent living and receive the benefit of intensive supportive services. For the program to be successful in helping very low-income homeless families, who ordinarily lack many of the skills needed to achieve independent living, strong incentives are critical. This proposal would provide an incentive for these families to complete the program -- eligibility to receive a Federal preference for a section 8 certificate at the end of their participation in the Transitional Housing program.

Unfortunately, many transitional housing providers are now unable to fulfill their goal that with hard work the families in their transitional facilities will be able to find affordable, permanent housing, particularly in the case of single-parent households. This proposal will help assure the continued success of the Transitional Housing program and have the additional benefit of targeting the section 8 assistance to those with the greatest need.

This section includes safeguards to ensure that the preference for section 8 assistance is only provided to those families who have made substantial progress toward achieving independent living. The legislation would require that the families complete a program of services meeting standards that

HUD determines are appropriate for the purpose of achieving independent living. These services could include basic life skills, education, employment-related activity, and assistance in locating permanent housing.

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PART 6 4 -- HOPE 3

PERMIT HOPE 3 GRANTEES TO ASSUME ENVIRONMENTAL REVIEW RESPONSIBILITIES

Section 260 would amend the HOPE 3 program under title IV of the National Affordable Housing Act to provide for assumption of HUD's environmental review responsibilities under the National Environmental Policy Act of 1969 (NEPA) and associated statutes by State, local government, and Indian tribe recipients of assistance under the program. This amendment would remove a burdensome workload from HUD and speed up implementation of the program. Compliance with NEPA and related laws by State and local government recipients of HOPE assistance would be consistent with the CDBG and McKinney Act programs. HUD would continue to perform its NEPA review responsibilities for other grantees under the HOPE 3 grant program.

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GRANTEE FLEXIBILITY IN HOPE 3 PROGRAM DESIGN

Section 261 would amend section 444(e)(1) of the Homeownership and Opportunity Through HOPE Act to require that units be free from any defects that pose a danger to health or safety before occupancy of a unit by an eligible family. Currently, HOPE 3 applicants and recipients are required to ensure that single family properties are free from health and safety defects before transfer of ownership.

This section would make the HOPE 3 health and safety requirement consistent with a comparable requirement under the HOME program. Homebuyers would be permitted to either provide sweat equity in the rehabilitation of their property or to finance and oversee the rehabilitation of the property with assistance from the grantee. This approach would allow the family to have some control over the rehabilitation of the property they have purchased. HOPE 3 grantees would also be given more flexibility in the design and implementation of their program.

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PERMIT PUBLIC AGENCIES TO APPLY INDEPENDENTLY FOR HOPE 3 GRANTS

Section 262 would allow public agencies (including public housing agencies and other agencies and instrumentalities) to apply independently for assistance under the HOPE 3 program, without having to join with a private nonprofit. Eligible HOPE 3 applicants currently include private nonprofits; cooperative associations; and public agencies, but only in cooperation with private nonprofits.

This proposal would give public agencies (and their agencies and instrumentalities) the same right they have under the HOPE 1 and 2 programs to apply for HOPE funding independently. Many public agencies have run successful Urban Homesteading programs, and there is no reason they cannot run successful HOPE 3 programs without having to coordinate with an existing private nonprofit organization or, in some cases, without having to wait for one to be formed.

This proposal will also increase geographic diversity of awards under the HOPE 3 program. Large areas of rural American and even urban areas in some Regions lack sufficient nonprofit organizations. This has made it difficult, and in some areas, impossible for public agencies to participate in the HOPE 3 program.

Nonprofits are fully supported by other provisions of the HOPE 3 program, such as the ability of nonprofits to apply as direct recipients of program funds. This legislative proposal does not detract from the strong role nonprofits can play in the HOPE 3 program.

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REDUCE PROMISSORY NOTE TERM
FOR THE HOPE 3 PROGRAM

Section 263 would reduce the period during which a homebuyer assisted under the HOPE 3 program is required to return a portion of any net proceeds upon resale of the property. Also, this section would permit instruments other than secured promissory notes as the method for enforcing payment of the amount due.

Current law requires HOPE 3 homebuyers to sign a promissory note payable to a HOPE 3 grantee or its designee equal to the difference between the market value of the property and the purchase price, in effect requiring recapture of any subsidy inherent in the price. Also, if the family sells within 6 years of its purchase, it may retain from the net sales proceeds only the amount (including sweat equity) it contributed, plus an inflation adjustment, effectively limiting the homebuyer's profit for the first six years. The remaining net sales proceeds are payable initially to the HOPE 3 grantee. Beginning with the 7th year and continuing through the 20th year, the amount payable on the promissory note is reduced for each month of ownership, and only the remaining balance at the time of sale is paid to the grantee.

Under this proposal, the formula for determining how much profit the homebuyer may retain if it sells within 6 years after it acquired a HOPE 3 property would not be changed, nor would the original amount of the promissory note be changed. However, the period over which the promissory note is forgiven would be reduced from 7 to 20 years to 7 to 15 years. Also, this proposal would permit alternative arrangements for enforcing payment. This could make administration of the program more flexible, since enforcing promissory notes over a long period of time is likely to prove difficult.

The proposed amendment would enable low-income families who have made a significant investment in homeownership to more rapidly obtain the full financial benefits of homeownership. This is consistent with the subsidy recapture period in the HOME program and would remove some of the administrative burden on grantees and HUD to track and ensure repayments over the current 20-year period.

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REDUCE HOPE 3 MATCH REQUIREMENT TO 25%

Section 264 would reduce the HOPE 3 local match requirement from 33% to 25%.

Enactment of this proposal would make the local match requirement of the HOPE 3 program consistent with the HOPE 1 match requirement. At present, PHAs, which are potential applicants for both the HOPE 1 and HOPE 3 programs, must meet a higher match requirement for their HOPE 3 application than their HOPE 1 application for no apparent reason.

In addition, HOPE 3 Field Office Coordinators uniformly have noted that both private nonprofit and public agencies have experienced difficulty in providing the full 33% match now required for Implementation Grant applicants. Many potential applicants did not submit HOPE 3 applications due to an inability to locate sufficient resources to meet this requirement.

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PART 5 -- RELOCATION

RELOCATION PROVISIONS

Section 270(a) would amend the Department of HUD Act to provide for an exclusion from the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended in 1987. The latter amendments added, as beneficiaries of relocation assistance payments, persons who were displaced by Federal projects or projects receiving Federal financial assistance in American Samoa, the Northern Mariana Islands, and Indian reservations (among other places). The terms under which eligibility for relocation assistance payments, and computation of the payments, are determined are based on land tenure laws such as those existing in the 50 states, the District of Columbia, Puerto Rico, and Guam. American Samoa, the Northern Marianas and Indian reservations, however, have entirely different land tenure systems, and as a result, the administration of the Uniform Relocation Act in these places is extremely awkward. The proposed legislation would exclude these areas from direct applicability of title II of the Uniform Relocation Act, and require the Secretary to issue comparable regulations (that could address the differences in land tenure) instead.

Subsection (b) would exempt HUD and HUD-assisted projects from section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Under that provision, there is Uniform Relocation Act coverage for residential displacees who would otherwise be unable to meet the occupancy eligibility requirements under that Act because the persons are displaced as a result of a Presidentially-declared disaster. For example, where a storm such as Hurricane Andrew made a residence uninhabitable, and the residence was later demolished with Federal assistance, section 414 would permit the persons displaced from the residence by the storm to receive relocation assistance by virtue of the later Federal involvement.

This proposed amendment is justified on grounds that section 414, as it now applies to HUD programs, makes relocation payments a substitute -- and possibly a supplement -- for insurance coverage. Further, the displacements involved are the result of disasters, not initially of HUD action. Rather, HUD assistance is called upon as a part of the remedy for the disaster. Ironically, however, because of the typically high costs involved in relocation payments, HUD assistance may not be financially feasible. Finally, the amendment would simplify program administration to a considerable degree, particularly since accurate occupancy records in areas affected by disasters may be difficult to obtain. For these reasons, HUD programs should be excluded from section 414 of the Stafford Act.

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SUBSIDY LAYERING REVIEW

Section 258 would amend section 911 of the Housing and Community Development Act of 1992 to make clear that in connection with HUD projects allocated a Low Income Housing Tax Credit (LIHTC), the requirements of section 102(d) of the HUD Reform Act of 1989 would be satisfied by a certification to the Secretary by a housing credit agency. An agency would certify that the combination of Federal assistance provided in connection with a project for which assistance is to be provided within HUD's jurisdiction and under the LIHTC provisions of section 42 of the Internal Revenue Code of 1986 shall not be any more than is necessary to provide affordable housing.

Housing credit agencies would submit this certification in accordance with guidelines established by the Secretary. These housing credit agencies would assume all of the responsibilities for subsidy layering review, decisionmaking, and action pursuant to section 102(d) of the HUD Reform Act, which would otherwise apply to HUD. As under current law, HUD could revoke a housing credit agency's authority if it failed to comply with the HUD guidelines. In that case, HUD would undertake the subsidy layering responsibilities.

Section 102(d) of the HUD Reform Act of 1989 directs HUD to undertake a "subsidy layering" review when other government assistance is being provided to a HUD project requesting HUD housing assistance. The requirement is designed to ensure that no more assistance than is necessary to make units affordable is provided to a project.

Section 911 of the Housing and Community Development Act of 1992 required HUD to establish guidelines for housing credit agencies administering the LIHTC to "implement" the subsidy layering requirements of section 102(d). Former President Bush, in his Signing Statement for the Housing and Community Development Act of 1992, stated that constitutional difficulties would arise if section 911 were interpreted to allow the Secretary to delegate the responsibilities under section 102(d) to a non-Federal entity. President Bush indicated that he interpreted section 911 to permit the Secretary to formulate guidelines under which the Secretary would retain the ultimate authority to make the determinations required by section 102(d).

This amendment is intended to resolve the conflict between sections 911 and 102(d), raised by President Bush in his Signing Statement, by making it clear that the non-Federal entity, in this case a housing credit agency, would assume all of the responsibility which the Secretary would otherwise have under section 102(d), and that the Secretary would have no continuing responsibility under that section once such an assumption was made. This parallels a provision proposed by HUD elsewhere in this bill for multifamily risk sharing.

This Department has been criticized for delaying development of LIHTC projects because of deleterious subsidy layering reviews. Enabling housing credit agencies to perform those reviews would expedite this process. This proposal would not only clarify the authority of housing credit agencies to perform these reviews, but also would relieve the Secretary from any residual responsibility which the Secretary might otherwise have under section 102(d).

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**DEMONSTRATION:
RTC MARKETING AND DISPOSITION OF
MULTIFAMILY PROPERTIES OWNED BY HUD**

Section 259 would create a demonstration to enable the Resolution Trust Corporation (RTC) to market and dispose of multifamily properties owned by the Secretary. RTC has a proven system for selling their properties directly to units of general local government and nonprofit organizations for affordable rental housing. At the same time, FHA's disposition rules and operating procedures have hampered successful disposition of its properties to these entities. This demonstration would increase FHA's ability to provide, under its property disposition program, affordable rental housing by adopting the RTC model and by using RTC to market its properties. It would test the feasibility of closer coordination and standardization of Federal disposition policies, and ultimately could lead to iproved marketing and disposition procedures.

Subsection (a) would authorize the Secretary to carry out this demonstration in 10 units of general local government (which could be cities or counties). The RTC would establish policies and procedures, subject to HUD review and approval.

Under the demonstration, HUD could waive any statutory or regulatory requirements that apply to the project that are not consistent with this demonstration (see subsection (b)), other than equal opportunity or nondiscrimination requirements or procedures. The Secretary could waive such provisions as income targeting and subsidy so that these provisions would conform to RTC's affordability, subsidy layering, and bidding procedures.

In determining where to carry out the demonstration, HUD would take into consideration such factors as the size of the inventory and any others that the Secretary considers appropriate (see subsection (c)).

Each demonstration would have to: (1) be approved personally by the Secretary; (2) taken as a whole over the life of the demonstration, not result in higher costs to the Federal government; (3) be generally consistent with the overall purposes of the program or programs under which the waiver is granted; (4) be evaluated by an independent party; and (5) be consistent with the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

The Secretary would be authorized to establish any requirements determined to be necessary for the conduct of these demonstrations (see subsection (e)).

The RTC would submit to the Secretary, for each demonstration site, an annual progress report. In addition, within one year of the conclusion of each demonstration, the

Secretary would be required to submit to Congress a report describing the results of the demonstration and any recommendations for legislation. See subsection (f).

One million dollars would be authorized under subsection (g) for the evaluation of the demonstration.

\RTC-Demo.sec

6/25

EXEMPTION FOR NONENTITLEMENT JURISDICTIONS FROM REQUIREMENT TO PREPARE A CHAS

Section 260 would exempt units of general local government that are not entitlement grantees under the CDBG program or participating jurisdictions under the HOME program from the requirement to prepare a comprehensive housing affordability strategy (CHAS) under section 105 of the National Affordable Housing Act (NAHA).

Section 105(a) of NAHA provides that HUD may provide assistance directly to a jurisdiction (defined as a State or a unit of general local government) only if the jurisdiction submits a CHAS to HUD for approval and HUD approves the CHAS. Accordingly, HUD may make a HOME grant to a participating jurisdiction only if it has an approved CHAS. NAHA makes numerous amendments to other HUD programs requiring submission of certifications that the proposed project or program is consistent with, or the grantee is following, an approved CHAS for the locality. Included in these programs are the various McKinney Act homeless assistance programs, the CDBG program, the new Section 202 and Section 811 programs, and the HOPE Grant programs. Although certain local governments would no longer be required to prepare a CHAS, projects in their jurisdictions would still have to be consistent with the State's CHAS.

Section 105(b) permits HUD to provide for the submission of abbreviated housing strategies by jurisdictions that are not participating jurisdictions under the HOME program. Participating jurisdictions are States and units of general local government (metropolitan cities, urban counties, and consortia of units of general local government) which receive a direct allocation of funds. By regulation, HUD has determined that all entitlement metropolitan cities and urban counties under the CDBG program will be required to submit a full CHAS, even if they are not participating jurisdictions under the HOME program. Not all CDBG grantees will qualify as HOME participating jurisdictions because of the thresholds that are used to establish HOME eligibility.

Instead of permitting local governments that are not CDBG entitlement grantees to submit an abbreviated CHAS, this proposal would exempt them from the CHAS requirement altogether. The authority for HUD to provide for an abbreviated CHAS would be retained; HUD may authorize the submission of an abbreviated CHAS in unusual circumstances.

There are several reasons for exempting these smaller local governments from the CHAS requirement. The planning requirements contained in a CHAS are best suited for CDBG entitlement grantees and HOME participating jurisdictions that receive formula grant funding year after year. The value of a CHAS as a planning document depends on a regular flow of funding to be used to carry out at least part of the strategy set forth in the CHAS.

Accordingly, the smaller local governments that are not receiving a HOME allocation and are not CDBG entitlement grantees will not ordinarily find the document to be useful. Such local governments only prepare a CHAS if they decide to apply for assistance under one of the various programs requiring a certification of CHAS consistency. A local government may have to prepare a single purpose abbreviated CHAS each time during the year it decides to compete under one of the affected programs, creating administrative burdens on the local government. In effect, the CHAS will be a bureaucratic hoop, not a meaningful planning document.

In addition, many smaller local governments lack the capacity to prepare a planning document, even an abbreviated CHAS, and are likely to hire consultants to prepare one. This would be a wasteful use of local resources in most cases, since the document will most often be prepared for a single project that must compete with many others for approval and is not likely to be funded.

Finally, if a local government does not anticipate when applications might be due under covered programs, and fails to have an approved CHAS at the time of application submission, the application cannot be approved under current law. This exemption would permit approval of a project that under current law may not be approved for reasons outside of the applicant's control.

\chas-non.sec

6125

CLARIFY HUD'S AUTHORITY TO RECEIVE SECTION 8 PAYMENTS AS A PROJECT OWNER

Section 407 would amend section 8(f)(1) of the United States Housing Act of 1937 to clarify HUD's authority to receive section 8 payments when HUD is the owner of a multifamily property in which section 8 Certificate or Voucher tenants live. Section 8 authorizes the provision of assistance payments to owners of low-income dwelling units. Section 8(f)(1) defines "owner" as "any private person or entity, including a cooperative, or a public housing agency, having the legal right to lease or sublease dwelling units." It does not explicitly include HUD in this definition, even though it acts as an owner when it acquires multifamily properties at foreclosure.

Many low-income households assisted by section 8 Certificates and Vouchers occupy units in HUD-owned multifamily properties. Some occupied the units prior to HUD taking over the property; others rent units after HUD has become the owner. PHAs historically have made assistance payments to HUD under the Certificate and Voucher programs as they would to any other owner. Although the programs have operated for years without complication, a strict reading of the statute prevents HUD from receiving assistance payments. If HUD's ability to receive these payments were impaired, the assistance would have to come from other sources, such as the FHA fund. In effect, the families would lose their certificates or vouchers, and consequently, the ability to move with them.

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THE WHITE HOUSE

WASHINGTON

Attendees for HUD Briefing - 7/14/9
9:00

Paul Weinstein
Gene Sperling
Paul Kerry or Howard Paster
Michael Waldman
Jody Greenstein
Andrew Cuomo (HUD)
Joe Shuldiner (HUD)
Nick Retsinas (HUD)
Bruce Katz (HUD)

- HUD Budget today?

- D, G, M? Meetings for Ira?

THE WHITE HOUSE

WASHINGTON

July 13, 1993

MEMORANDUM FOR CAROL RASCO

FROM: Paul Weinstein

SUBJECT: Meeting With HUD Regarding Proposed Housing Bill.

Tomorrow at 9:00 AM, HUD will be briefing you on their proposed housing legislation. Bruce Katz, Andrew Cuomo, Nick Retsinas (Assistant Secretary For Housing), and Joe Shuldiner (Assistant Secretary for Public and Indian Housing) will conduct the briefing.

My understanding is that Howard Paster will oppose moving on this legislation any time in the near future. He or Paul Carey will attend the 9:00 briefing.

My recommendation is that you support submitting housing legislation this year, although maybe not next week as HUD would like. The bill includes several initiatives that were important pieces of the President's campaign agenda. These include:

- **Raising The Ceiling On FHA Mortgage Insurance** -- One of the President's first campaign promises was to raise the ceiling on FHA mortgage insurance to 95% of the median price of a home in a average metropolitan area. The HUD bill would implement that promise. The proposal would effect about 18 metropolitan areas. Maybe more importantly however, the legislation would also increase the ceiling on FHA mortgage insurance in low-to moderate income communities from $67,500 to around $90,000. This would have a major effect in rural communities which have lower housing prices. It is important to note that this proposal has a positive budgetary impact.

- **Community Partnerships Against Crime (COMPAC)** -- This section of the bill would authorize $265 million for FY94 and $325 million for FY95 for anti-crime strategies in public housing. This would include funding for cops, as well as security hardware and crime prevention. It is estimated that the funding in the legislation would provide for 5,000 additional police each year (although we think that is an underestimate).

- **Removing Barriers To Work** -- The HUD bill would remove disincentives to work that are contained in public housing rent rules. The current "30 percent" rule, for example, penalizes tenants who try to move from welfare dependency to self-sufficiency.

HUD's legislation would exclude for 18 months the earned income of public housing residents who obtain employment.

Although the legislation has many pluses, there are some drawbacks. It does not contain much in the way of tenant ownership which the President endorsed during the campaign on several occasions. A Presidential housing initiative without any tenant ownership proposals might raise serious political problems for the President.

cc: Bruce Reed
Gene Sperling

cc

TO: David Gergen
George S.

FROM: Carol H. Rasco

SUBJ: HUD legislation

DATE: July 12, 1993

HUD recently notified my staff they hoped to introduce a comprehensive legislative piece this week that in truth they said was only technical corrections....upon further review my staff realized it is a major legislative initiative and far more than technical corrections. We are meeting in my office with Bruce Katz on Tuesday, July 13 to discuss the matter; please feel free to join us if you are interested. I have attached a summary provided to me by DPC staff.

Thank you.

FYI

Carol: This is a brief description of HUD's Housing Bill. - Paul

June 11, 1993

THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1993
INITIATIVES FOR PRESIDENTIAL ATTENTION

HUD is developing an authorization bill for this year -- the Housing and Community Development Act of 1993. The following legislative proposals warrant Presidential attention and could be announced through White House or other events involving the President.

Revitalizing FHA

HUD's legislation would restore FHA's ability to serve homebuyers, particularly first-time homebuyers, who are locked out of the conventional market. The legislation would:

raise mortgage limits in high-cost areas to $170,000 (85 percent of the secondary market limits);

create a new no-downpayment program for low- and moderate-income homebuyers in community revitalization areas;

streamline and simplify the mortgage application process; and

authorize demonstrations that increase homeownership opportunities through partnerships with Fannie Mae, Freddie Mac, the Federal Home Loan Banks and individual state and local housing agencies.

Removing Barriers to Work

HUD's legislation would remove the disincentives to work that are contained in public housing rent rules. The current "30 percent" rule, for example, penalizes tenants who try to move from welfare dependency to self-sufficiency.

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welfare reform making work

Resolving FHA's Multifamily Crisis

HUD's legislation would give the Department the tools and authority to remedy significant material weaknesses that have been inherited by this Administration. HUD, for example, now owns hundreds of distressed multifamily projects, making it perhaps the biggest slumlord in the nation. HUD's legislation would enable the Department to dispose of these properties in a way that stabilizes neighborhoods, preserves affordability and minimizes cost to the federal government.

how?

Community Partnerships Against Crime

HUD's legislation would create the Community Partnerships Against Crime program -- COMPAC. The program, part of the President's Investment package, would be authorized at $265 million for FY 1994 and $325 million for FY 1995.

is this a part that passed?

Funds would be allocated directly to public housing agencies -- which would be required to work with community-based organizations, resident councils and other city agencies on comprehensive anti-crime strategies.

Eligible activities would include not only funding for cops and security hardware but also crime prevention -- youth sports programs, mentoring and anti-gang activities and other supportive services.

Helping Residents Help Themselves

A series of HUD actions would significantly expand support for a range of resident initiatives in public and assisted housing.

On the legislative front, HUD is seeking to create a "Tenant Opportunity Program", authorized at $25 million. This program could fund not only training for resident management (the traditional focus of HUD's programs) but also capacity building and planning for resident organizations, job training, development of resident businesses, youth corps and other economic self-sufficiency initiatives.

On the regulatory front, HUD is seeking to bring order and uniformity to the formation of resident councils and organizations. There are currently no uniform guidelines or charters which govern such formation, leading to substantial confusion throughout the nation.

Economic Development Initiative

HUD's legislation would enable state and local communities to use up to $2 billion in loan guarantees for economic development activities ("section 108 loan guarantees") that was authorized in last year's housing bill. HUD's legislation would, for example, use funds recaptured under the old UDAG program to lower the interest rate for business loans. Various statutory impediments to the use of these guarantees would also be removed. These legislative changes could have a substantial stimulative impact on distressed urban communities.

Summary

CC of this Summary was sent w/ memo to Gergen & George

June 11, 1993

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