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National
Low Income Housing Coalition

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PROPOSED FEDERAL HOUSING TRUST FUND

This description of the Federal Housing Trust Fund proposal developed by NLIHC in 1994 combines the substance of the working paper issued by the Coalition early in the year and the specific recommendations of the Housing Trust Fund Committee as contained in the Committee's report of February 1995. The objective of the proposal was to establish the resources and delivery system to provide all households in this country with the opportunity to live in decent, affordable housing in locations and neighborhoods of their choice. With HUD's very existence in jeopardy in early 1995 and thereafter, NLIHC shifted its focus to dealing with more immediate threats and opportunities. The concept and framework of the Trust Fund proposal, however, is relevant not only in its full scope, but also for some of its specific recommendations on such matters as citizen participation and monitoring of state and local housing and community development expenditures, that may well be applicable to current programs or help create new efforts to address the continuing low income housing crisis. Note that the data contained in this report are as of 199095 and have not been updated. However, while the specific numbers have changed, the overall patterns described below persist and the housing problems of extremely low income families have increased. *(Note: This summary prepared by Cushing N. Dolbeare, who was principal author of NLIHC's 1994 and 1995 documents.)*

CONTENTS

Introduction

Adequate, affordable housing is both a basic human need and an internationally recognized human right. By many indicators, the United States is the best-housed nation on earth, but we also fall far short of other industrialized countries in the depth and severity of our low income housing problems. Not since 1968 has there been a broadly accepted vision in this country of how to achieve the national goal of "a decent home and a suitable living environment for every American family" that was established, with bipartisan support, by the Housing Act of 1949.

The National Low Income Housing Coalition is convinced that we will, at best, make only incremental progress toward improving low income housing and neighborhoods without a new, broadly accepted vision. We also recognize that the diversity of housing needs, housing conditions, and housing markets demands flexibility in programs for the provision or improvement of housing and for dealing with the affordability gap. We propose the Federal Housing Trust Fund as a major component of the broader vision of how to address our housing needs. We believe this proposal is both adequate in scope to meet our most severe housing problems and flexible enough to fit within a more comprehensive vision and to respond to specific local needs and situations.

The Federal Housing Trust Fund would be created by reducing the benefits of homeowner deductions to upper income households. Funds would be allocated, by formula, to state and local entities to carry out eligible housing activities, including rental and home ownership assistance, affirmative fair housing efforts, and improvement and expansion of the housing supply to provide affordable units and a range of quality housing choices for low and moderate income people. The Trust Fund is intended to supplement and complement present supply-oriented programs, including public housing, HOME, the low income housing tax credit, and the rural programs of the Farmers Home Administration and to enhance their capacity to meet the housing needs of low income people.

The long-range objective of the Housing Trust Fund is to provide a vehicle to enable every low and moderate income household and individual who needs it to receive housing assistance, while avoiding harm to other beneficial social programs. A second major objective is to strengthen community-based nonprofit organizations, particularly those involved in fair housing, counseling, and in enforcement, litigation and advocacy for greater housing opportunity for low income people. The Trust Fund would provide significant support for these activities.

The Federal Housing Trust Fund is based on the following principles:

- Trust Fund resources would be used for rental and home ownership assistance, for increasing and improving the housing supply, and for community-based work to overcome segregation and other barriers to affordable housing. The Housing Trust Fund will be targeted first at the needs of very low income people with critical housing problems. It will be a flexible source of funds usable for both tenant-based and project-based assistance, as well as assistance for fee simple homeowners, co-op members, and others, and for production and rehabilitation of housing of all types needed.

- Fair housing and counseling activity by community-based organizations would be an integral component of Trust Fund activity throughout the nation.

- Modifications of housing-related tax deductions to support the fund are designed to meet the following conditions:

  (1) Only taxpayers at or near the top of the income distribution would be affected. No taxpayers in households in the bottom three quarters of the income distribution would be affected.

  (2) The proposal would not penalize taxpayers living in high housing cost areas, or produce significant disincentives to home buying or housing mobility.

  (3) The proposal would not drastically and suddenly reduce the value of housing currently occupied by homeowners.

  (4) The proposal would provide sufficient income when fully phased in to support the estimated cost of providing an adequate supply of housing, opportunity for housing choice, and assistance to cover the gap between 30% of income and the cost of housing needed in the market area.

This report presents the NLIHC's Federal Housing Trust Fund Committee's recommendations on specifics of the trust fund proposal and some of the thinking behind them. Other NLIHC and LIHIS reports and memoranda lay out the extent of housing needs, the disparities in the benefits of federal direct and tax expenditures for housing, and the basic commitments to housing justice and equity which underlie our proposals.

The Trust Fund is framed as an attempt to deal with the full range of low income housing needs, including those of low income owners, as part of a strategy to make the appeal of a campaign to support it as broad as possible, while giving priority to greatest needs at the outset and for phase-in. The universe, based on the 1990 census, would be roughly the 27.2 million households identified by the 1990 Census as having housing problems. Substantial progress toward achieving this goal within a ten-year period will require generating at least $25 billion annually for the Trust Fund.

Housing Needs

Even advocates often do not realize the extent and gravity of our low income housing needs. In 1990, 23% of all renters and 7% of owners had incomes below *30%* of median -- a shocking proportion of all households in this country.[1] Graphs 1 and 2 show the mismatch between households and units at the

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[1] Special tabulations of 1990 Census data, prepared for HUD by the Bureau of the Census for use by jurisdictions preparing Comprehensive Housing Affordability Strategies (referred to hereafter as "CHASTABS". Using the special tabulations, we totaled the state figures to obtain (continued...)

bottom of the renter income scale. Moreover, as Graphs 3 and 4 show, few of these households receive housing subsidies.

The 1990 census counted 92.0 million households: 32.0 million renters and 60.0 million owners. But there were far more very low income renters than owners. In all, 7.3 million renters had incomes below 30% of median, and another 5.1 million had incomes between 31% and 50% of median. In other words, 39% of all renter households fell into the "very low income" category. Only 10.2 million renters had incomes above 95% of median. Compared to renters, owners were well off: while about 4.2 million had extremely low incomes, and another 5.1 million had incomes between 31% and 50% of median, 37.3 million had incomes above 95% of median. (See Table 1 and Graph 5.)

Table 1. U.S. Households by Tenure and Income, 1990
(Numbers in millions)

Percent of area	**Renters**		**Owners**		**Total**	
median income	**No.**	**Pct**	**No.**	**Pct**	**No.**	**Pct**
0-30%	7.3	23%	4.2	7%	11.5	13%
31-50%	5.1	16%	5.1	8%	10.2	11%
51-80%	6.5	20%	8.5	14%	15.0	16%
81-95%	2.9	9%	4.9	8%	7.7	8%
Over 95%	10.2	32%	37.3	62%	47.5	52%
Total	32.0	100%	60.0	100%	92.0	100%

Source: Compiled from U.S. Bureau of the Census, *The Comprehensive Housing Affordability Strategy (CHAS) Database*, CD-ROM disk, July 1993.

Unfortunately, the 1990 census does not provide data on housing quality. The census does report housing costs as a percent of income and overcrowding. Households with severe housing cost burdens -- paying more than half their incomes -- are overwhelmingly at the bottom of the income scale. Overcrowding and moderate cost burdens (30% to 50% of income) are not as closely related to low income. Minority households also tend to be disproportionately concentrated among extremely low and very low income households and are far less likely to be owners.

[1] (...continued)
national data on households by tenure and percent of median income, as defined by HUD to determine eligibility for subsidized housing programs. HUD uses median family income to set these percentages, adjusting for household size and housing costs. Median incomes vary widely. HUD estimates of incomes for 1993 show a six to one difference between the highest median income ($73,400 in Stamford, CT) and the lowest ($12,200 in Owsley County, KY). Thus, 30% of median can range from $3,660 to $22,020, and 50% of median can range from $6,100 to $36,700.

Table 2. Households paying more than 50% of income for housing costs, 1990
(Numbers in millions)

Percent of area median income	Renters No.	Renters Pct	Owners No.	Owners Pct	Total No.	Total Pct
0-30%	4.2	73%	1.9	49%	6.1	64%
31-50%	1.2	21%	0.8	22%	2.1	22%
51-80%	0.2	4%	0.6	6%	0.8	9%
81-95%	0.0	1%	0.2	4%	0.2	2%
Over 95%	0.0	0%	0.4	9%	0.4	4%
Total	5.7	100%	3.9	100%	9.5	100%

Source: *Ibid.*

In 1990, one family in ten paid over half its income for housing costs (rent or mortgage payment, utilities, and, for owners, taxes and insurance). Most, 60%, were renters. Almost two thirds (64%) of these 9.5 million households had incomes below 30% of median. Some 53% of all extremely low income households paid over half of their meager incomes for housing. In contrast, only 6% of households with severe cost burdens had incomes above 80% of median. (See Table 2 and Graph 6.)

- Among renters, 58% of extremely low income households had severe cost burdens, as did 23% of very low income households . But only 4% of low income renters and 1% of moderate income renters had severe cost burdens, and none above that level. Almost no above-moderate income renters had severe cost burdens.

- Owners with incomes above 80% of median were somewhat more likely to have severe cost burdens. Among owners, 45% of extremely low income households had severe cost burdens, as did 17% of very low income households. Only 6% of low income owners, 3% of moderate income owners and 1% of owners with incomes above 95% of median had severe cost burdens.

Households with severe cost burdens often suffer from other housing problems. They may live in substandard housing, or be overcrowded, or both. Analysis of raw data from the 1989 American Housing Survey shows that about one fifth of all renter households with severe cost burdens either lived in housing with moderate or severe physical problems or were overcrowded, or both.

The Census Bureau CHAS tabulations provide an unduplicated count of households in 1990 with cost burden or overcrowding problems. Households with severe cost burdens comprised 41% of all households with these housing problems. More than one in four households -- 27.2 million in all -- reported these problems to the census. Most, 51%, were renters, even though renters comprised only 35% of all households. Almost one-third (32%) were extremely low income. Almost three quarters (74%) of all extremely low income households reported one or more significant problems, as did 60% of very low income households, 37% of low income households, 24% of moderate income households and 11% of above-moderate income households.

- o Among renters, 76% of extremely low income and 75% of very low income households reported cost burden or overcrowding problems, as did 45% of low income households. The incidence of moderate cost burdens or overcrowding was strikingly higher for moderate and above-moderate income renters than the incidence of severe cost burdens. In all, 24% of moderate income renters and 10% of above-moderate income renters reported cost burdens, overcrowding, or both. (See Graph 7.)

- o Among owners, 71% of extremely low income households had cost burdens or were overcrowded, as were 45% of very low income and 31% of low income owners. Some 25% of moderate income owners and 11% of owners with incomes above 95% of median also had cost burdens or were overcrowded. (See Graph 8.)

Table 3. Households with cost burden or overcrowding problems, 1990
(Numbers in millions)

Percent of area	Renters		Owners		Total	
median	No.	Pct	No.	Pct	No.	Pct
0-30%	5.5	40%	3.0	23%	8.6	32%
31-50%	3.8	27%	2.3	17%	6.1	23%
51-80%	2.9	21%	2.6	20%	5.6	20%
81-95%	0.7	5%	1.2	9%	1.9	7%
Over 95%	1.0	7%	4.1	31%	5.1	17%
Total	14.0	100%	13.2	100%	27.2	100%

Source: *Ibid.*

Unfortunately, the 1990 Census throws little light either on the physical quality of housing units or on their economic viability. In 1993, the Alliance to End Childhood Lead Poisoning developed a rough measure of economic distress -- the inability to afford major repairs or improvements without subsidy. Economically distressed units were defined as all owner-occupied units where the household income was less than $20,000 and all renter-occupied units where household income was below $20,000, housing costs are less than $500, and occupants paid more than 30% of their incomes for housing costs. Using 1991 American Housing Survey data, the Alliance estimated that 18 million of the 72 million units built before 1978 were economically distressed. A background paper on economically distressed housing prepared for the HUD Task Force on Lead-Based Paint Poisoning found this a conservative definition. More significantly, this paper found that 63% of these units could not meet the Housing Quality Standards used by HUD in its rental assistance programs. This is probably a far better measure of housing quality than the AHS categories of "moderately" or "severely inadequate," since only 13% of the distressed units were so classified.[2]

Approximately 5.5 million households live in federally subsidized low income housing. Most of them live in housing subsidized by HUD programs, but about 500,000 live in housing subsidized by the rural

[2] Alliance to End Childhood Lead Poisoning, *A Framework for Action to Make Private Housing Lead-Safe*, 1993 and ICF Incorporated, *Reducing Lead-Based Paint Hazards in Economically Distressed Housing,* 1993.

Table 4. Federal Housing Expenditures and Benefits, 1994

Estimated federal housing expenditures, in millions of dollars

	Income Quintile					
	Lowest	**Second**	**Third**	**Fourth**	**Top**	**All**
Estimated quintile income limit	*$13,100*	*$25,500*	*$38,200*	*$60,600*		
Mortgage interest	$52	$380	$2,117	$9,753	$39,533	$51,835
Property taxes	$15	$96	$541	$2,397	$10,816	$13,865
Capital gains	$20	$133	$747	$3,375	$14,421	$18,695
Investor	$13	$90	$503	$2,274	$9,719	$12,600
Total, tax expenditures	$100	$699	$3,909	$17,799	$74,488	$96,995
Low income housing outlays	$20,786	$2,416	$504	$120	$14	$23,840
Total housing costs	$20,886	$3,115	$4,413	$17,919	$74,502	$120,835

Estimated households receiving housing benefits, in thousands

	Income Quintile					
	Lowest	Second	Third	Fourth	Top	All
Tax benefits	124	707	2,992	8,471	16,127	28,422
Housing assistance	3,567	829	346	165	47	4,954
Total	3,690	1,536	3,338	8,636	16,175	32,771
Percent of quintile	20%	8%	18%	46%	87%	--
Average amount per household receiving subsidy	$5,660	$2,027	$1,322	$2,075	$4,606	$3,620
Average subsidy per household in quintile	$1,121	$167	$237	$962	$3,999	$1,297

programs of the Farmers Home Administration. These units are the total amount of housing achieved by federal low income housing programs over more than half a century, beginning with the emergency and public housing programs launched in the depression of the 1930's.

For every very low income household now living in subsidized housing, there is another unsubsidized very low income renter household with a "worst case" housing need. They are either paying more than half their incomes for housing costs, or living in seriously substandard housing, or both. In 1990 the Senate Appropriations Committee asked HUD to report annually on "worst case" housing needs and progress toward meeting them. HUD has done three such reports, using data from the 1989 American Housing Survey (AHS). The first, issued in 1991, covered national data; the second analyzed results from the 44 metropolitan areas surveyed between 1987 and 1990. The most recent report was released in 1996.[3] HUD's 1991 study[4] found 5.9 million renter households and another 3.1 million owner households

[3] U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Rental Housing Assistance at a Crossroads: A Report to Congress on Worst Case Housing Needs*, March 1996. This report is based on 1993 American Housing Survey data and shows worst case needs increasing. However, the (continued...)

paying more than half their incomes for housing or living in seriously inadequate units. Of these 9.0 million households, 5.1 million were renters with incomes below 50% of median who were not receiving housing assistance. These "worst case" households constituted half of all unsubsidized very low income renters.[5] However, almost 80% of unassisted renters with the very lowest incomes -- below 25% of median -- had worst case problems. Worst case households contained 5% of our population and 7% of our children. Just to have enough units to meet current worst case needs would require more than doubling the present number of 4.8 million HUD-subsidized low income housing units. Cost burden was the *only* major problem of almost three-quarters of these households. (See Graph 9.)

As the name implies, "worst case" needs are only the most pressing part of the problem. For every very low income household with a worst case need, there are four other low or moderate income households for whom the goal of decent, affordable housing has been unattainable.

The national figures used for this analysis mask growing diversity in housing needs and housing markets. In some areas, with population declining, there is plenty of housing and vacancy rates are at historic highs. Other areas have significant shortages. The challenge is to frame a program which will be responsive to this diversity of needs and obtain the money needed to pay for it.

Budget authority for federal low income housing programs peaked in 1978, at $66.6 billion in inflation-adjusted dollars. This was 6.4% of all federal budget authority. Moreover, 80% of this amount was spent for providing additional subsidized units or households. In that year, outlays for low income housing assistance cost $7.8 billion. Housing-related tax expenditures, primarily homeowner deductions, cost $33.4 billion. In contrast, the FY 1995 budget calls for only $20.7 billion in low income housing budget authority. This is projected at 1.4% of total budget authority. Worse, only 30% of this amount will be used for expanding the number of household receiving assistance. Outlays for low income housing assistance are expected to cost $24.7 billion and tax expenditures are estimated at $98.7 billion. (See Graphs 10-12.) The 1978 budget funded 401,800 units through HUD and Farmers Home programs (down from the 1976 high of 541,500 units); the 1995 budget is expected to fund 153,000 additional units (79,400 through HUD and 73,600 through Farmers Home).

These expenditures go predominantly to benefit households in the top fifth of the income distribution. The top fifth get an estimated 61% of all housing benefits, compared to only 18% for the bottom fifth. Only 19% of the households in the bottom fifth -- about 3.7 million in all --get federal housing assistance,

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[3] (...continued)
information here is based on the earlier report, which is more comparable to conditions reported in the 1990 Census and is what was used in the 1994 NLIHC working paper and included in this document.

[4] U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Priority Housing Problems and "Worst Case" Needs in 1989: A Report to Congress*, June 1991.

[5] Generally, because federal law gives them preferences for housing assistance under the public housing and Section 8 certificate and voucher programs, households paying over 50% of income or living in seriously inadequate housing are referred to as having "priority" housing problems. "Worst case" households are *unsubsidized, very low income* households with priority problems. Homeless people are assumed to have seriously substandard housing problems for purposes of the definition, but are not counted in HUD's estimates of the number of worst case households, which are based on data from the American Housing Survey.

but 87% of the households in the top fifth get homeowner deductions. (See Graphs 14-20 for further details.) Table 4 summarizes the data on the inequity of our housing subsidy system. The top panel gives the distribution of housing outlays and major tax expenditure categories, and the bottom panel shows the number of households receiving assistance.

In short, as low income housing needs have grown, our performance has withered -- but tax expenditures, which primarily benefit upper income people, have continued to grow without restraint.

Recommendations of the NLIHC Trust Fund Committee

The key provisions of the Trust Fund proposal were developed by a special NLIHC committee which reported its recommendations to the Board in February 1995. The Committee was chaired by Mary Brooks. Other members participating in its work were: Janet Becker, David Bryson, Harry Gottlieb, Chester Hartman, Maureen Howard, Charles Kamasaki, Fred Karnas, Amata Miller, Shelly Nortz, Mary Stover, Denise Viera, and Rob Wiener. Cushing Dolbeare had primary staff responsibility, with other members of the NLIHC/LIHIS staff assisting.

Three subcommittees did much of the work: Housing Needs, Revenue Sources, and Administration. Ad hoc groups also developed specific recommendations on monitoring and fair housing. Almost all meetings were by conference telephone call, although two meetings of the full Committee were held in Washington. A number of background analyses and memos were generated in the course of our work.

The work of the Committee heavily influenced the provisions contained in H.R. 5275, introduced by Representative Major Owens in 1994, just before the 103rd Congress adjourned and reintroduced in the 104th Congress. (H.R. 5275 is referred to below as the Trust Fund bill.) For convenience, the provisions of the Trust Fund bill and major differences between that bill and the Committee's recommendations are noted throughout this report. In some cases, the bill was drafted before the Committee had framed its recommendations; in others, additional time to draft appropriate language or additional policy analysis was needed.

Who gets served by the Trust Fund .

The Trust Fund should attempt to deal with the full range of low income housing needs, including those of low income owners, as part of a strategy to make the appeal of the Housing Justice campaign as broad as possible, while giving priority to greatest needs at the outset and for phase-in. The universe, based on the 1990 census, would be roughly the 27.2 million households identified by the 1990 Census as having housing problems. Substantially achieving this goal within a ten-year period will require generating at least $25 billion annually for the Trust Fund.

Targeting.

While both owners and renters will be assisted through the Trust Fund, the Committee recommends basing targeting requirements on renter incomes, which are significantly lower than those of owners. Within each participating jurisdiction, we propose that the number of units assisted by the Fund should be at least the proportion of renter households in that jurisdiction with housing problems, as shown in the relevant CHASTABS.[6] Based on national numbers, at least 40% of the assisted units would be occupied by Extremely Low Income; 27%, by Very Low; and 21% by Low Income households.

In addition to these requirements, which are in the Trust Fund bill, the Committee recommends that states and localities should be required to meet certain milestones in order to continue receiving Trust Fund monies:

- Within five years of the Trust Fund being fully phased-in, participating jurisdictions would be required to demonstrate that all Extremely Low Income households (those below 30% of HAMFI[7]) with severe housing problems are receiving or have been offered assistance to meet their needs. Severe housing problems would be defined as paying 50% or more of income for housing expenses, and/or living in severely inadequate units and/or in severely overcrowded units (over 1.5 persons per room). This standard is similar to the current federal preferences.

- Within ten years of full phase-in, the requirement would be raised to include all Very Low Income households (those below 50% of HAMFI) with severe housing problems.

- The elimination of severe housing problems would have to be continuously maintained as a pre-condition to the receipt of Trust Funds.

- For any year in which an eligible public entity would be denied Trust Fund monies for failure to substantially meet these goals, the state (or HUD, in the case of state failures) would administer the program to correct the deficiency.

Several members of the Committee were initially uneasy with these targets. Some feared they would not address the needs of enough households and might seem to contradict the comprehensive housing assistance concepts that underlie the Trust Fund; for others, the sheer size of the task seemed so great in high need areas that it was almost unimaginable that the goals could actually be met within the time frames provided, particularly given the need for more capacity in some places. Having considered adding more ambitious mandatory milestones, the Committee ultimately decided to add a planning requirement for participating jurisdictions to have a plan in place to meet all severe needs in 20 years.

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[6] Special tabulations of 1990 Census data made by the Census Bureau and distributed by HUD to all jurisdictions preparing Comprehensive Housing Affordability Strategies (CHAS's). The CHASTABS contain a wealth of data on households, by percent of median income, and housing units, with costs at 30% of household income ranges.

[7] "HUD area median family income" or the HUD definition of percent of median income applying to the jurisdiction. This is median income adjusted for household size and, in some instances, high housing costs.

Revenue Sources

Homeowner deductions to be modified

Revenue for the Trust Fund would be raised by modifying the benefits of homeowner deductions for taxpayers with incomes above $75,000. IRS would calculate the additional amounts paid each year and transfer them to the Federal Housing Trust Fund, to be administered by HUD as described below. Based on analysis of the incidence of the benefits of homeowner deductions, it is clearly impossible to raise funds at the scale required from the mortgage interest deduction alone without going fairly far down the income distribution. Therefore we recommend applying the benefit reductions to the property tax deduction and special capital gains provisions for homeowners. The property tax deduction is included with some misgivings. Our concerns arise partly because of the potential opposition of state and local governments and their constituencies and partly because of disproportionately high property taxes in inner cities and some suburban minority neighborhoods and jurisdictions. On the other hand, overall, the property tax deduction is slightly more regressive than the homeowner deduction. Further study should be given to whether to modify the property tax in the same way as the mortgage interest deduction, or to use a modified approach to minimize the problems noted above.

The Trust Fund bill, as introduced in October 1994, is broader than we had envisaged with regard to capital gains and uses a different approach. As introduced, it removes the stepped-up basis of assets at death (for all assets, not just owner-occupied homes). In contrast, our discussion was limited to the capital gain from sale of a home after adjusting for inflation and the possibility of eliminating stepped-up basis on the value of the home at death. Unfortunately, no data are available on the incidence of the capital gains exclusions and deferrals for homeowners. The LIHIS/NLIHC estimates of the benefits of these provisions is based on assuming that the benefits are similar to those from the mortgage interest and property tax deductions. Further study is needed on how best to modify inflation-adjusted capital gains from home sales to produce revenue for a housing Trust Fund.

Benefit reduction formula.

The reductions in homeowner tax benefits should start at the $75,000 income level. That is, all taxpayers with incomes below $75,000 would get 100% of their current deductions. For each $1,000 of income above $75,000, the homeowner deduction benefits would be reduced by 3%, down to a maximum reduction of 50%. This would reduce the deductions of an estimated 9.3 million owners -- about one sixth of all owners and only one tenth of all households. Two thirds of all owners now claiming the deductions would still receive their full benefits. (See Table 4 above for further information on the income distribution of homeowner deductions.)

Using 1994 estimated benefits, this would have generated about $21.6 billion, with the amount rising in future years, assuming the historic trend of steadily rising homeowner deductions continues. If only the mortgage interest deduction were modified, about $13.8 billion would have been generated in 1994. (See table 2.) The average benefit of homeowner deductions for taxpayers in the $75-$100,000 income bracket is $3,800; under this proposal, it would be reduced to about $2,500. While this is a substantial reduction, these owners would still benefit by a bit more than the average benefit of $2,400 enjoyed by homeowners in the $50-75,000 range taking the deduction.

The Trust Fund bill incorporates these benefit reductions for the mortgage interest and property tax deductions.

Phase-In.

The Committee recommends phasing in the modifications over a 5-year period, adding 20% of the applicable reduction each year. In contrast, the Trust Fund bill caps the reductions at 10% in the first year, 20% in the second year, 30% in the third year, and 40% in the fourth year.

Circuit breaker for high-cost areas.

Housing costs vary widely across the country, as do incomes. Nationally, fewer than 3% of all owners have incomes above $50,000 and pay more than 30% of income for housing costs. More than half of these owners live in just three states: California, New York, and New Jersey. More than 10% of owners with incomes over $50,000 pay more than 30% of income for housing costs in four additional states: Connecticut, Hawaii, New Hampshire, and Massachusetts. To meet our criterion of avoiding penalizing households in high cost areas, we propose a circuit breaker" provision so that modification of Homeowner deductions will not increase housing costs to more than 30% of income. Taxpayers using the circuit breaker would need to itemize expenses for principal, interest, taxes, insurance, and an allowance for utilities, and would take the full benefits of homeowner deductions until their costs are lowered to 30% of income. This provision would be similar to the deductions for expenses for owners of rental housing. We recognize that the specific circuit breaker provisions would have to be designed not to create an incentive for owners to spend excessively in low cost markets, but also note that the relatively small number of affluent households paying more than 30% of income for housing indicates that this is not likely to be a major problem. [There is no such provision in the Trust Fund bill.]

Second homes.

The Committee is against tax advantages for second homes, but did not frame a specific proposal for two reasons: (1) the amount of additional revenue generated would not be very large and (2) it would either have to exempt people with incomes below $75,000 or would violate our principle of confining the impact of our proposal to the top 15% of the income distribution. Still open is the question of higher reductions for second homes and/or eliminating the deductions entirely, but it was agreed that this could also come as a response when others propose it.

Other revenue sources.

The Committee considered a number of other revenue sources for the trust fund, on the assumption that the $25 billion which would be generated by modifying the homeowner deductions would prove inadequate to meet the full range of needs. Among these were working with the Campaign for Financial Democracy on a proposal to tax the assets of financial institutions not now covered by HMDA and CRA, taxing capital gains on owner-occupied housing at death, and a federal tax on large, nonresidential real estate transfers. We concluded it best to focus on the homeowner deductions at this time, and to leave for the future the question of whether to broaden further the revenue sources.

How the Program Would Work

Entitlement program of formula grants

Because the Housing Trust Fund proposal covers both consumer-based housing costs assistance and housing supply and services, the entitlement proposed is an entitlement to states and eligible local governments for an allocation from the Trust Fund. It is not an entitlement of any individual to housing assistance, although we have tried to frame the proposal so that all low income households with severe housing problems will, in fact, obtain decent, affordable housing within ten years.[8]

The Committee recommends that the Federal Housing Trust Fund support a program of entitlement grants which would consist of two baskets of assistance. Participating jurisdictions would receive one "basket" of funds with which to address affordability problems (including mobility), and a second "basket" to address supply and service needs, including capacity building, supportive services for residents and fair housing. Separate allocation formulas would be used for each basket. Entitlement communities would each receive two baskets of assistance and would not be eligible to receive additional assistance from the state pools, which would be used exclusively for non-entitlement area needs. [The Trust Fund bill adopts this approach. It qualifies as an entitlement program because each eligible jurisdiction is entitled to a grant, although the Trust Fund bill specifically excludes any individual entitlement and limits state and local entitlements to a total of whatever is actually generated by modifying the homeowner deductions.]

State assistance to non-entitlement areas would take two forms:

- Counties and other units of local government as well as public and non-profit housing organizations would be eligible to apply to states for Trust Fund grants. The pattern of grants made by states would have to meet the same array of needs and targeting criteria as those imposed upon entitlement communities. States would have suballocation authority to make these grants to units of local government seeking to subcontract with local housing providers or to provide housing assistance directly. Where states make suballocations to local jurisdictions, the governance requirements applying eligible public entities (see below) should apply.

- States would be required to establish a set-aside Remote (or Under-served) Rural Program to meet needs where no eligible/capable applicants exist and where those that do exist do not seek Trust Fund monies. Capacity building would be a priority service in such circumstances. The primary purpose of the setaside is to address the capacity barrier to meeting housing needs in remote rural areas. Still needing further study are such questions as: should HUD establish this program by regulation? are there States where this would not be a relevant program? what definition do we want to use in describing "remote" or "underserved"?

[The Trust Fund bill is less specific than the Committee recommendation about how states administer the nonentitlement funds. The targeting rules applying to the supply program require HUD to develop a formula for assuring that the state's rural areas are assisted on the basis of housing need, measured by the

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[8] The proposal was framed as an entitlement because of statutory ceilings on domestic discretionary spending in effect at the time.

number of Very Low and Extremely Low Income families in those areas, with Extremely Low Income families counted twice.]

To the extent that entitlement community funds are not obligated at the local level, states should be authorized to receive the unobligated amount for the purpose of implementing a balanced Trust Fund program within the community in question. [The Trust Fund bill does not contain this provision.] To the extent that states fail to meet their program obligations or decline to pre-empt localities that do not obligate their funds, HUD should have the responsibility to establish a back-up mechanism designed to implement the program so that needs are met. We hope that it will be possible to include such a provision in a way which complies with the rules governing entitlements when the Trust Fund bill is reintroduced. [The Trust Fund bill does not contain this provision.]

Scope of Assistance

The Committee generally endorses the provisions of the Trust Fund bill under which the amount which recipient jurisdictions receive is the total of its allocation for housing costs assistance program and its allocation for housing supply (see below).

Housing costs assistance. The Trust Fund bill's housing costs assistance program (both for renters and owners) covers the difference between 30% of adjusted income (or 5% of gross income, whichever is lower) and the FMR for a decent unit of size needed. "Adjusted income" is defined as "the income of the family (from all sources) which remains after excluding (A) $500 for each member of the family residing in the household (other than the head of the household or his spouse) who is under 18 years or age or who is 18 years of age or older and is disabled or handicapped or a full-time student; (B) $400 for any elderly or disabled family; (C) the amount by which the aggregate of the following expenses of the family exceeds 3 percent of annual family income: (i) medical expenses for any family, and (ii) reasonable attendant care and auxiliary apparatus expenses for each handicapped member of any family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed; (D) child care expenses to the extent necessary to enable another member of the family to be employed or to further his or her education; (E) 10 percent of the earned income of the family; (F) any payment made by a member of the family for the support and maintenance of any child, spouse, or former spouse who does not reside in the household, except that the amount excluded under this subparagraph shall not exceed the lesser of (i) the amount that such family member has a legal obligation to pay; or (ii) $550 for each individual for whom such payment is made; (G) an amount equal to 50 percent of aggregate amount of personal exemptions allowed under section 151 of the Internal Revenue Code of 1986 for the family, and (H) excessive travel expenses, not to exceed $25 per family per week, for employment or education-related travel." This definition is intended to reflect a "shelter poverty" approach, under which assisted families would have enough income to cover their nonhousing needs, in a way which is clear and specific.

Under the Trust Fund bill, reflecting the allocation formula, the amount of allocation attributable to the affordability portion of the formula is initially allocated for housing costs assistance. Funds which cannot be used for this purpose within 9 months may be reallocated to increasing the supply of permanently affordable housing. To provide for increased housing choice, up to 20% of funds allocated for this purpose may to used to increase the amount of assistance above FMR levels to enable minority households to move to nontraditional areas. If funds are inadequate to serve all households, the jurisdiction follows statutory federal preferences for at least 70% of the funds and sets its own priorities for remaining funds. Counseling on housing quality and neighborhood choice must be given to all recipients.

While the subsidy is based on the difference between adjusted income and fair market rents, families may use their assistance to buy. HUD is to issue regulations to assure that purchases are reasonable, considering the assets, obligations, and income of the assisted family, and to prevent windfalls on the sale of the home.

Housing supply program. The Trust Fund bill's housing supply program funds are primarily for increasing the supply of permanently affordable housing, housing repairs, and services. In general, Trust Funds may be used for activities under other federal, state and local programs that comply with Trust Fund requirements. However, under the Trust Fund bill, supply funds may not be used for rental assistance, since that is a major function of the housing costs assistance program, or for non-Federal matching contributions under other federal programs. Nor, in order to avoid efforts to use the existence of the Trust Fund bill as a rationale for reducing their funding, may supply funds be used for public housing modernization or reconstruction, or for subsidized housing preservation (except for assisting purchases by priority purchasers, including tenants and nonprofits). The use of funds must comply with provisions of Section 3 of 1968 act (employment of minorities and neighborhood people), with HUD to issue regulations.

Eligible housing development activities under the Trust Fund bill include new construction, acquisition, reconstruction, and moderate or substantial rehabilitation of affordable housing, all of which may include costs for real property acquisition, site improvement, conversion, and demolition, financing costs, relocation expenses of any displaced persons, families, businesses, or organizations, and reasonable administrative and planning costs. HUD is to establish cost limits on the amount of funds that can be used for administrative, planning, and development costs. All housing assisted must be subject to binding restrictions that the units will be used as affordable housing for its entire useful life.

The Trust Fund bill applies several types of targeting to housing assisted under the housing development provisions. (1) In each fiscal year, the number of units assisted is to reflect the income profile of Low Income renter households with housing problems (that is, Extremely Low (under 30% of median), Very Low, and Low Income households), based on latest available information from HUD. Binding restrictions are required to ensure affordability to and priority for occupancy by these income groups. (2) The percentage of units assisted in each year that are available for rental may not be less than 10% below the percentage of Low Income families with housing problems in the jurisdiction that are renters. (3) The percentage of units assisted in poverty areas must be at least as great as the percentage of Low Income families residing in those areas. (4) For states, HUD is to develop a formula for assuring that the state's rural areas are assisted on the basis of housing need, measured by the number of Very Low and Extremely Low Income families in those areas, with Extremely Low Income families counted twice.

Eligible housing repair activities under the Trust Fund bill include emergency repairs of housing, abatement of lead-based paint, and removal of such other hazards in housing as HUD may include in regulations.

The Trust Fund bill's supply program may also support services relating to the development of decent and affordable housing, eliminating segregation in the availability and occupancy of such housing, and improving the capacity of moderate-income families to obtain and maintain such housing. Eligible activities include fair housing enforcement activities; counseling relating to housing and neighborhood choice; counseling regarding homeownership and tenant affairs and responsibilities; support services for nonprofit organizations engaged in developing or managing affordable housing; employment training; development of the capacity of community housing development organizations and tenant organizations; supportive services for residents of affordable housing (including day care and job counseling); technical assistance to organizations in developing proposals for assistance under the housing supply assistance program; and such other services as HUD may permit. HUD is to regulate the percentage of total housing supply funds that may be used for services in such a way that the percentage cap, which may not be higher than 15%, decreases as the total amount of supply funds increases.

The Committee endorses the types of assistance to be provided in the Trust Fund bill, as described above, with the following additions and qualifications:

- Eligible activities should include land acquisition (beyond purchase of sites for specific development projects), code enforcement, and conversion of existing housing units to permanently affordable ownership (at the option of owners).

- The affordability and production provisions should include mandatory milestones as well as a process for justifying any departure from the expected allocation. Strict rules should apply to the "reprogramming" of funds.

- The provisions on emergency repairs should be clarified to state clearly that these repairs should be completed in accordance with local codes and standards, but that dwelling units assisted with grant amounts for the purposes of emergency repairs need not meet all applicable housing quality standards. Emergency repairs should be defined as "Improvements made to a dwelling unit in order to remove a hazard or hazards of the home or site that jeopardize the health or safety of the occupants and/or members of the community."

- Require that not less than 20% of the units in any capital project using Trust Funds be provided to households below 50% of HAMFI with housing problems at a cost affordable to each such household. This proportion might be dropped somewhat to the extent that Extremely Low Income households are assisted. In adopting this recommendation Committee recognizes that the dilemmas that arise with respect to targeting and fighting segregation when it comes to production are complex and require further discussion. For example, should a development using Trust Fund monies be permitted to serve Extremely Low Income people exclusively, or should there be a mandatory income mix "on both ends", as it were? Would the HAMFI profile targets with added planning requirements promoting integration suffice in making it impossible for communities to use their development funds in a way that discriminates against those who most need housing assistance? Might there be enough money to make this a non-issue?

- Place a cap on the services component, such as a limit of $10 million for each local jurisdiction until the 10 year milestone is met and for every year in which it is not maintained. Include a planning requirement meant to address the need for supportive services for housing residents, in lieu of a setaside for such services. Again, in lieu of a setaside for capacity building, include a planning requirement meant to address the need for greater capacity in some areas. The

Committee recognizes that further work is needed to determine what the planning requirement might be, how to set a cap for states and what a more sophisticated financial analysis might reveal with respect to limiting this category for local jurisdictions without restricting needed services too much.

Administrative Structure

Federal Administration/HUD Advisory Committee. The Trust Fund bill establishes the Federal Housing Trust Fund within HUD directed by an Administrator subject to Senate confirmation and with a representative Advisory Committee, a majority of whom are low income advocates or have demonstrated experience in addressing low income housing needs and working with low income people. Each year, IRS would calculate increased revenues from modifications of homeowner deductions and transfer this amount into Trust Fund. HUD is to appoint an Advisory Committee of 7 to 15 members, a majority of whom are to represent the interests of low income families or have experience in providing affordable housing or working on such issues with low income families. Members will serve staggered 4-year terms. They will be reimbursed for expenses, but not paid. The Advisory Committee is to meet at least annually to review the use of Trust Funds by eligible public entities, make recommendations to the Administrator for changes in the Trust Fund program, review the formulas and system for grant allotments and analyze the adequacy of the Trust Fund program for meeting housing needs.

The NLIHC Federal Housing Trust Fund Committee supports the concept of HUD administration with an independent advisory committee consistent with the Trust Fund bill's provisions.

The Committee recommends that the HUD Advisory Committee be charged with working with HUD to establish and advise the Administrator on Trust Fund policy; this would include a periodic report regarding needed legislative changes, which would be prepared by the HUD Advisory Board. HUD, participating jurisdictions, and qualified housing providers would be required to honor policies enacted by HUD and Congress; failure to do so would be remedied through a combination of enforcement measures described below. We recommend further refinement of our ideas as to: what the Advisory Committee's role should be, its public meeting/information responsibilities, whether it should be empowered to set any specific policies, whether there should be a full time paid chairperson, what compensation should be fixed for the members, and possibly a more specific instruction with respect to the committee's composition.

A more powerful policy role for the HUD Advisory Board was considered, but not adopted by the Committee both because it would require special legislation under the Federal Advisory Committees act and because of the safeguards that the rule-making and legislative processes provide in the case of an un-elected body tending toward "bad" policy.

State/Local Administration. 1. Eligible public entities. The Committee concurs with the Trust Fund bill's provisions for qualified entitlement jurisdictions with approved Comprehensive Housing Affordability Strategies designate "eligible public entities" to administer state/local Trust Fund programs (as is now done under the HOME program). This entity may be either a new agency or an existing agency (or subagency) meeting stated criteria, including the capacity to delegate and monitor activities or directly undertake required or permitted activities. This should also apply to any state sub-allocations made to local governments.

The Committee recommends that, unless otherwise provided by state or local law, the eligible public entity would be designated by the chief elected official (governor or chief executive). The entity must be governed by a representative board, a majority of whom must have been nominated by individuals and entities other than a governmental jurisdiction, including currently or formerly homeless people, housing advocates, and representatives of entities providing housing or housing assistance and services to low income and homeless people. These entities should be subject to open meeting/public information provisions. The concept is to try to have a policy mechanism which gives a voice to low income people and is genuinely responsive to their needs. The Committee noted the critical need for adequate training for members of the state and local boards, although it did not work out a specific proposal for how and by whom this training should be offered.

The Trust Fund bill does not contain the open meeting requirement. In addition to the foregoing, the Trust Fund bill provides that the entity have an approved Trust Fund Plan and agree to comply with the requirements of the Federal Housing Trust Fund program and with its own plan. State boards must also reflect geographic balance in their composition.

2. Limit on administrative expenses. The Committee believes that there should be an effective limit on state/local Trust Fund administration, such as a one percent limit (capped at $10 million) for state/local Trust Fund administrative expenses. While $10 million sounds like a great deal of money, it is probably reasonable in consideration of the fact that some states might have a few billion dollars to administer each year. Rather than attempt to establish an appropriate formula or limitation at this time, the Committee recommends that HUD, by regulation, establish limits on state and local administrative costs and on program administration expenditures. [The Trust Fund bill requires HUD to establish cost limits on the amount of funds, up to 6% of the grant amount, that can be used for administrative, planning, and development costs under the housing supply program.].

Allocations

The Trust Fund bill establishes an entitlement program of formula grants under which allotments from the Trust Fund would be made annually to eligible public entities (states, entitlement cities and metro counties or consortia, and Indian tribes) according to the formula set forth below. The initial split of allocations between states, local governments or consortia, and Indian Tribes would be based on relative proportions of Low Income households with housing problems, as shown by 1990 CHASTABS. Thus there would be three separate pools, to be allocated by formula: states, entitlement cities (population over 100,000, urban counties, and consortia); and Indian tribes. State funds could only be used outside of entitlement jurisdictions.

Within each allocation pool:

- 67% of the funds would be allocated to eligible public entities according to 1990 Census data on households paying more than 50% of income for housing costs under a formula to be developed by HUD which would allow for differences in housing costs, to be used for a housing costs assistance program.

- 33% of funds, to be used for housing supply, fair housing, capacity building and related services, would be allocated to eligible public entities according to a formula to be established by HUD by regulation reflecting share of total need for increased supply of decent, permanently affordable housing for Very Low and Low Income families of difference size, as identified by objective measures of inadequate housing supply, including population growth; the costs of acquiring, rehabilitating or producing housing; the relative fiscal incapacity of the jurisdiction to carry out eligible housing activities without Federal assistance; and special housing needs.

The Federal Housing Trust Fund Committee supports the general framework of the allocations plan in the Trust Fund bill, except that the Committee recommends establishing a minimum allocation to limit the number of entitlement communities.

Planning requirements

Before a state or local jurisdiction can receive its Trust Fund allocation, it must have an approved plan. The Committee endorses the planning and citizen participation requirements contained in the Trust Fund bill which provide that the jurisdiction submit a Trust Fund Grant Plan to HUD at least 90 days before the beginning of the fiscal year. The plan must be approved by HUD within 90 days unless it does not comply with the requirements of the act. The plan must deal separately with the housing costs assistance and housing supply programs.

Housing costs assistance. The Trust Fund bill requires the plan to describe: (1) how and by whom the housing costs assistance program which will be carried out; (2) how assistance will be provided under the program to assist minority families to move to areas without high concentrations of persons living in poverty; and (3) how families receiving assistance under the program will be provided counseling.

Housing supply assistance. The Trust Fund bill requires the plan to describe: (1) how and by whom the program will be carried out; (2) for each income group, the shortage of decent housing in the jurisdiction of the public entity that is affordable for the income group; (3) how, and the extent to which, the program will remedy such shortages; (4) the priorities for the types of housing to be provided under the program, the areas for locating housing to be provided under the program, and the families to be offered occupancy in such housing; (5) how the program will avoid displacement and provide assistance for families involuntarily displaced; and (6) the requirements under the program to comply with housing quality standards.

Citizen participation in planning. The Trust Fund bill requires the plan to include provisions for ongoing citizen participation in carrying out Trust Fund activities. In addition, the jurisdiction must provide "reasonable and timely access to meetings, information, and records relating to any amounts the entity has received under this title in previous years, the amount the entity expects to receive for the fiscal year under this title, and the proposed uses of the grant amounts." The plan must be published in a way that gives citizens "reasonable opportunity to examine its content and to submit comments" and there must be at least one public hearing. The comments and views of citizens must be considered in preparing the final plan, which must also include a summary of these comments.

In addition to endorsing the foregoing provisions of the Trust Fund bill, the Committee recommends three additional provisions:

- Require plans to state how the jurisdiction will meet the full range of Low Income housing needs within the 20-year period after full phase-in of the Trust Fund.

- Require plans to detail a choice in residence strategy that deals with any negative impact on inner city neighborhoods that might result from residents moving to nontraditional neighborhoods. The Fair Housing rule(s) prohibiting siting of new Low Income housing in certain neighborhoods may need to be modified or waived for this purpose. Eligible activities -- such as choice/neighborhood investment -- should be spelled out. There might be a need to require the use of programs such as CDBG to strengthen neighborhoods.

- In order to add to the stock of permanently affordable housing, require plans to establish at least one mechanism to promote the conversion of existing standard housing to permanently affordable ownership

Additional Program Requirements

Fair Housing. Affirmative action to eliminate discriminatory housing barriers and provide genuine freedom of housing choice is an essential component of the Trust Fund proposal. This includes both broader opportunities for mobility and improvement of housing conditions in current poverty areas.

The Committee recommends, at minimum, the following fair housing requirements:

- All Trust Fund recipients must certify that they will take steps to affirmatively further fair housing
- Plans required to be prepared by recipients must include steps to be taken to affirmatively further fair housing.
- No less than 1% of each Jurisdiction's share of Trust Fund grants (or $1 million, whichever is less) is required to be spent for fair housing. HUD will issue regulations specifying eligible expenditures.
- Eliminating housing discrimination and expanding housing opportunities should be stated as a major purpose of the legislation.
- Monitoring and performance reports will include the fair housing component.

The Committee recommends that a separate section on fair housing, incorporating these recommendations, be added to the Trust Fund bill before it is reintroduced.

Citizen Participation. The Committee endorses the citizen participation requirements in the Trust Fund bill. These provide that, in addition to required citizen participation in preparing the Trust Fund plan, HUD is to ensure citizen participation in both the housing costs and housing supply programs, particularly with regard to the following issues: (a) identifying the housing needs of the entity and priorities for use of grant amounts for addressing such needs; (b) developing requirements and procedures for expending grant amounts; (c) reviewing proposals for assistance with grant amounts and determining the allocation of grant amounts among such proposals; (d) monitoring and reviewing the performance of the eligible public entity in complying with the Trust Fund grant plan of the entity; (e) recommending and developing improvements in the operations of the eligible public entity to implement the Trust Fund grant plan of the entity; (f) amending or changing the Trust Fund grant plan for the entity;

(g) submitting a performance review for the entity; (h) establishing a system of local preferences for housing costs assistance; and (i) any other issues required by HUD regulations.

Public hearings are required before "significant actions" regarding any of these topics. There must also be provision for complaints and grievances, with written responses required within 15 days. Finally, all performance reports and substantial amendments to the plan must be published.

Housing quality standards. The Trust Fund bill provides that Section 8 housing quality standards (HQS), at minimum, must apply to all dwelling units assisted with grant amounts, unless the jurisdiction has higher standards. Enforcement procedures must be in place, and may include "providing for the voluntary transfer of housing that violates such code or standards in a significant manner to an owner who will remedy such violations and maintain the housing in accordance with such code or standards."

The Committee endorses these provisions, with one exception. Because of our concern that the maximum number of units be provided with the supply funds available, we oppose permitting jurisdictions apply standards that are higher than HQS. If the HQS are inadequate, they should be amended. The Committee agrees that the rules should be spelled out in the bill or regulation, that there should be special consideration given to making emergency repairs feasible and that one example to look at in removing barriers to this activity would be the subsidy layering review process for Low Income Housing Tax Credits

Preventing displacement. The Committee endorses the provision in the Trust Fund bill requiring that HUD issue regulations setting specific requirements for minimizing displacement and providing relocation assistance if and when it occurs.

Maintenance of effort. The Committee recommends a strong maintenance of effort requirement. The Trust Fund bill provides that no Trust Funds may be used to replace other public funds previously used or designated for use for activities of the type permitted with Trust Fund monies.

Tenants ' and homeowners ' rights. Residents of housing assisted by the Trust Fund, and applicants for such housing, as well as participants in the rental assistance program, should have the same types of rights as participants in other federally assisted housing.

For applicants, those rights should include:

- The right not to be discriminated against on grounds prohibited by the Fair Housing Act.
- The right not to be rejected because of participation in the rental housing program.
- The right not to be rejected because of stereotypical judgments about any class to which the applicant may belong.
- The right to have one's application judged on the basis of one's likely ability to comply with material obligations of the lease or purchase agreement.

For tenants, those rights would include:

A national organization that meets the qualifications for state organizations may apply to monitor unique and special circumstances within the program.

Monitoring Obligations. Independent monitoring programs must cover, but are not limited to, the following:

- An identification of the housing needs that have been addressed this year through expenditures from the Federal housing Trust Fund allocations and any discrepancy with the jurisdiction's claim of performance.|
- Comment on housing needs that remain unmet;
- An evaluation of the relative progress of the jurisdiction in meeting legislative goals and an assessment of the feasibility of meeting those goals based on this year's performance.
- An evaluation of all efforts that encourage the participation of community-based nonprofit housing development organizations to apply for funds and that provide training and technical assistance to increase their capacity to develop eligible projects.
- An evaluation of efforts to involve residents of the community in the process of applying for and implementing the use of Federal Housing Trust Fund funds;
- An evaluation of the barriers that exist making it difficult to address housing needs, proposed measures to overcome these barriers, and steps taken by the jurisdiction to remove those barriers.

Application Process. Monitoring applicants will apply directly to the U.S. Department of Housing and Urban Development Regional Office within which the jurisdiction to be monitored lies or, in the case of national organizations, directly to the U.S. Department of Housing and Urban Development. A brief application form will be developed by the U.S. Department of Housing and Urban Development that will require at least the following information:

- evidence of eligibility as a monitoring organization as outlined above;
- a plan for conducting monitoring activities that outlines how information will be gathered; criteria upon which it will be evaluated; and how the findings will be reported;
- a plan for involving the community in the monitoring activities; and
- identification of staff that will be conducting monitoring activities and their qualifications and any previous program monitoring experience.

The U.S. Department of Housing and Urban Development will develop disclosure requirements to identify whether the applicant is receiving and/or applying for Federal Housing Trust Fund funds from the jurisdiction to be monitored and to promote a disclosure process for all Board members of the applicant monitoring organization.

The U.S. Department of Housing and Urban Development will develop criteria for evaluating proposed applicants and publish these criteria as part of the application process. Criteria will include, but are not limited to:

- priority will be given to a monitoring program conducted by the monitoring organization that covers the entire entitlement jurisdiction;
- state and national organizations (either as a single entity or a consortium of organizations) will be given priority for monitoring state jurisdictions and local organizations will be given priority for monitoring local jurisdictions;
- priority will be given to the degree to which the local monitoring applicant is involved with and representative of its constituents;

- multi-purpose monitoring will be allowed, but each state must be monitored as an entire entity;
- regional or statewide monitoring proposals are allowed, whether proposed by a single organization or a collaborative effort of several organizations; and
- consideration will be given to ensuring that all recipient jurisdictions will be monitored independently.

Other eligible monitoring activities. Monitoring applicants may also include, but are not limited to, the following activities as eligible for funding:

- Sub-contract to other eligible monitoring organizations (as defined above) for any activity outlined in their approved monitoring program;
- Citizen participation activities to inform, educate, and involve citizens of the community in the jurisdiction's housing Trust Fund funded programs.

Submission of monitoring report. HUD shall determine a reasonable period for submission of the monitoring reports that enable the monitoring organization to incorporate information submitted in the performance report of the entitlement jurisdiction and HUD to meet its statutory obligation under 5212(h)(2).

Annual Performance Reports

Annual performance reports must be submitted by each jurisdiction receiving Federal Housing Trust Fund funds. The Annual Performance Reports will be submitted in conformance with a form developed by the U.S. Department of Housing and Urban Development, which will be brief and will include, but is not limited to, the following:

- Housing needs that have been addressed this year: the number of units provided and households assisted, (by income of occupying household; by race and/or ethnicity; by previous housing problem experienced by that household; by type of unit; and source of funds used by the project); the housing needs that remain unmet (with reference to housing needs identified in the application); any changes in data from application (with an explanation of why the changes have occurred, e.g. loss of units, provision of units from other funding sources, etc.).
- Relative progress toward meeting legislative goals and feasibility of meeting those goals based on this year's performance. Within five years of the Trust Fund being fully phased-in, eligible public entities would be required to demonstrate that all Extremely Low Income households (those below 30% of HAMFI) with severe housing problems are receiving or have been offered assistance to meet their needs. Severe housing problems would include those paying 50% or more of income for housing expenses, and/or living in severely inadequate units and/or in severely overcrowded units (more than 1.5 persons per room).
- Within ten years of full phase-in, the requirement would be raised to include all Very Low Income households (those below 50% of HAMFI) with severe housing problems. The elimination of severe housing problems would have to be continuously maintained as a precondition to the receipt of Trust Funds.
- All data shall conform to the CHASTABS, unless sufficient documentation can be provided that demonstrates a more accurate source of information.

- Description of all efforts that encourage the participation of community-based nonprofit housing development organizations to apply for funds and that provides training and technical assistance to increase their capacity to develop eligible projects.
- Description of any effort to involve residents of the community in the process of applying for and implementing the use of Federal Housing Trust Fund funds;
- Barriers that exist making it difficult to address housing needs: existing conditions that create barriers to the implementation of programs developed to address existing housing needs; proposed measures to overcome these barriers; and steps that have been taken to remove the barriers and an expectation of when the problem will be solved.

HUD Performance Monitoring

Annual Performance Review. HUD will be responsible for conducting an annual performance evaluation of each jurisdiction receiving Federal Housing Trust Fund funds. The evaluation will be based on: the jurisdiction's performance report; and any other comments submitted. HUD will determine for each jurisdiction a ranking of its annual performance, as follows:

- *satisfactory:* performance is adequate and funds will continue to be allocated;
- *needs improvement*: must submit a plan within 90 days outlining specific steps the jurisdiction will take to achieve a satisfactory ranking before any additional funds will be released and a subsequent six month report must be submitted that demonstrates how these steps have been achieved;
- *unsatisfactory:* additional funds will be withheld until mechanisms are in place to address housing need and no request for additional funds can be made until the jurisdiction has these mechanisms fully operational.

HUD must respond in its annual performance evaluation of each jurisdiction to the recommendations and criticisms contained in the independent monitoring report. If HUD considers It appropriate, comments from the jurisdiction may also be solicited.

<u>Criteria for satisfactory rankings</u>:

- Funds allocated for the present year have been expended and/or committed.
- A process and/or program is in place which encourages the participation of community-based nonprofit housing development organizations and provides training and technical assistance to increase their capacity to develop eligible projects.
- A majority of the funds have been committed to the provision of units or assistance to households that are Extremely Low Income with severe housing problems, unless all of these needs have been addressed. Then, the requirement applies to Very Low Income households with severe housing problems.
- The jurisdiction has met its objectives and goals for the year as identified in its application. The baseline for performance shall be the unmet needs identified in the jurisdiction's application.
- Effective program requirements are being implemented to assure continued affordability of the units assisted; a choice in residence strategy that deals with any negative impact on inner city neighborhoods that might result from residents moving to nontraditional neighborhoods; promotion of the conversion of existing standard housing to permanently affordable ownership; code enforcement and housing quality standards; and fair housing activities.

- Citizen participation requirements as outlined in the legislation and subsequent regulations have been fully complied with.
- Maintenance of effort standards have been met.

Criteria for "needs improvement" rankings:
- No less than 2/3 of the funds allocated for the present year have been expended and/or committed.
- Experienced community-based nonprofit housing development organizations have participated in the program. New organizations have not been encouraged.
- Less than half of the funds have been committed to the provision of units or assistance to households that are Extremely Low Income with severe housing problems. If these needs have been addressed; the requirement applies to very Low Income households with severe housing problems.
- The jurisdiction has met a majority of its objectives and goals for the year as identified in its application
- Program requirements, as listed above, are not being implemented effectively in all areas.
- Citizen participation requirements as outlined in the legislation and subsequent regulations are not being fully complied with.
- Maintenance of effort standards have been violated and other funds previously supporting housing programs have been reduced.

Criteria for unsatisfactory rankings
- Less than 2/3 of the funds allocated for the present year have been expended and/or committed.
- Community-based nonprofit housing development organizations are not participating in the program.
- A majority of the funds have not been committed to the provision of units or assistance to households that are Extremely Low Income with severe housing problems. If these needs have been addressed; the requirement applies to Very Low Income households with severe housing problems.
- The jurisdiction has met less than a majority of its objectives and goals for the year as identified in its application.
- Effective program requirements, as listed above, are not in place.
- Citizen participation requirements as outlined in the legislation and subsequent regulations have not been met.
- Maintenance of effort standards have been violated and other funds previously supporting housing programs have been reduced.

While the above criteria have intentionally been structured to provide an objective basis for evaluation, it is not the intention of these requirements to ignore subjective information that reflect upon the overall performance of the jurisdiction and that enhance an understanding of its performance in meeting these criteria.

Monitoring Awards. Funds will be available for monitoring activities for each jurisdiction receiving Federal Housing Trust Funds in an amount that is one-half of 1% of the entitlement amount, but which is no less than $50,000 or no more than $250,000. Applications for monitoring more than one jurisdiction may combine amounts identified above for each jurisdiction monitored. Multi-year contracts for monitoring (up to three years) are encouraged and may combine annual amounts, as applicable.

The U.S. Department of Housing and Urban Development shall develop a program for making HOME performance data accessible to entitlement jurisdictions and monitoring organizations via a widely accessible computer program to improve the availability of current and consistent housing data within each jurisdiction. Note: It is intended that this mirror the availability of HMDA data currently developed. No more than $1.5 million will be made available for the development and implementation of this program.

Compliance.

HUD Remedies for noncompliance. The Committee recommends recovery of misappropriated funds through broad withholding authority granted to the HUD as a means to enforce compliance by states and localities and applying existing HUD debarment procedures to the Housing Trust Fund program. [The Trust Fund bill provides that, after due notice and opportunity for a hearing, HUD may terminate or reduce grants or bring a civil action for recovery of funds.]

Private right of action. Residents of housing assisted by the Housing Trust Fund program, applicants for such housing and participants in the resident-based assistance program should have the right to sue in federal and state court if any of their program rights are violated or their interests are adversely affected by any unlawful action of the program administrators. The private right of action, however, should not be extended to others who are not the intended beneficiaries of the program, such as housing providers, state and local government entities and disgruntled neighbors.

The appropriate language creating the private right of action would be: "Any resident participating in a program of the Housing Trust Fund or applying for such participation, whose rights guaranteed by the program have been violated or whose interests have been adversely affected by unlawful program administration, shall have a right to bring an action in any federal or state court of appropriate jurisdiction to secure redress of such violations and, if he or she prevails, to recover costs and reasonable attorneys fees."

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