

**FEDERAL SPENDING REQUIREMENTS IN HOUSING
AND COMMUNITY DEVELOPMENT PROGRAMS:
CHALLENGES IN 2008 AND BEYOND**

HEARING
BEFORE THE
SUBCOMMITTEE ON
HOUSING AND COMMUNITY OPPORTUNITY
OF THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED TENTH CONGRESS
SECOND SESSION

—————
JULY 9, 2008
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Printed for the use of the Committee on Financial Services

Serial No. 110-126



U.S. GOVERNMENT PRINTING OFFICE

44-899 PDF

WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
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**FEDERAL SPENDING REQUIREMENTS
IN HOUSING AND COMMUNITY
DEVELOPMENT PROGRAMS: CHALLENGES
IN 2008 AND BEYOND**

Wednesday, July 9, 2008

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING AND
COMMUNITY OPPORTUNITY,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 9:40 a.m., in room 2128, Rayburn House Office Building, Hon. Maxine Waters [chairwoman of the subcommittee] presiding.

Members present: Representatives Waters, Lynch, Cleaver, Green, Maloney, Ellison; and Capito.

Also present: Representatives Hinojosa and Watt.

Chairwoman WATERS. Good morning. This hearing of the Subcommittee on Housing and Community Opportunity will come to order.

Good morning ladies and gentlemen. I would like to thank Ranking Member Capito, whom I understand will be in just a little bit later, and the other members of the Subcommittee on Housing and Community Opportunity who will be joining me today for this hearing entitled, "Federal Spending Requirements in Housing and Community Development Programs: Challenges in 2008 and Beyond."

In January, the House passed H.R. 3524, the HOPE VI Improvement and Reauthorization Act of 2007, which I introduced with Chairman Frank and Representatives Watt and Shays. That bill made significant reforms to the HOPE VI program which had failed to provide for one-for-one replacement or to protect the rights of tenants to return to the new HOPE VI development.

The bill also address the performance of HOPE VI grantees allowing the Secretary to establish performance benchmarks and to extend those benchmarks under certain circumstances such as litigation or natural disasters.

However, as comprehensive as that legislation is, once enacted it will only address problems in the HOPE VI program respectively. H.R. 3524 does not address the issues before us today, which are the Federal spending requirements for existing HOPE VI grant programs, and how strict imposition of those requirements can negatively impact affordable housing developments.

Beginning in Fiscal Year 2002, Congress began to impose obligation requirements on many grant programs, including the HOPE

VI program. Grantees were required to obligate their funds within 1 to 3 years, with the time period for obligation depending on the type of grant. Once obligated, another law required the grantees to spend their funds within 5 years. Fiscal Year 2008 marks the first year that grantees will have to meet the spending deadline. Grantees that fail to spend their funds by September 30th of this year will have their funds canceled and returned to the Treasury.

The HOPE VI program is at risk of losing about \$78 million this year because of the challenges Fiscal Year 2002 grantees have encountered in spending their funds. Many of these grantees have had to contend with natural disasters that have slowed the pace of construction or forced them to temporarily divert resources.

For example, as Ms. Bryant will testify, in 2004 Orlando was struck by three hurricanes. As we have seen in the aftermath of Hurricane Katrina, recovery of public housing from a natural disaster can be a complicated process. Unfortunately, coping with the natural disaster does not exempt a HOPE VI grantee from the 5-year spending requirement. In fact, there are no exceptions in Federal law for circumstances under which the 5-year deadline can be extended.

Without an extension of this deadline, communities and residents will suffer. The majority of the unspent funds are construction dollars. If these funds are canceled, fewer units will be built, resulting in a further loss of public housing units.

As we are in the middle of an affordable housing crisis, we should be working to preserve our public housing stock, not to reduce it further. This is why Representatives Corrinne Brown and John Mica introduced H.R. 6347, the HOPE VI Amendment Act of 2008. This bipartisan bill would extend the expenditure deadline from 2008 to 2009 for Fiscal Year 2002 HOPE VI grantees who have encountered project delays or cost increases either as the result of a natural disaster or the subprime mortgage crisis.

While this bill would assist those HOPE VI grantees struggling to get their money out the door, we are aware of other programs that may be impacted by the 5-year spending requirement. These programs include housing opportunities for people with AIDS, brownfields, Section 202, Section 811, and homeless assistance grants.

Many of these grantees, such as Section 202 and homeless assistance grantees, routinely encounter project delays that are beyond their control. Although Section 202 and homeless assistance grant programs are not due to have funds canceled at the end of this fiscal year, the first year for cancellation of any unspent funds from these programs is Fiscal Year 2009.

I am concerned that the special types of problems these programs encounter could prevent them from meeting their spending deadline. Cancellation of funds from these programs that are so critical to serving our most vulnerable populations is simply unacceptable.

I am looking forward to hearing from our two panels of witnesses on the challenges involved in meeting Federal spending requirements for housing programs.

I would now like to recognize our subcommittee's ranking member to make an opening statement. Mrs. Capito?

Mrs. CAPITO. Thank you, Madam Chairwoman. Excuse me for being a couple of minutes late.

I know that this is an issue in a lot of our fellow members' districts with the fast approaching September 30th deadline. So in lieu of giving an opening statement, I would just like to thank the witnesses for coming, and I thank the chairwoman for holding this hearing, and hopefully we can meet the challenges that many folks are facing across the country, in terms of spending or trying to find a way to meet the deadlines that are quickly coming upon them. Thank you.

Chairwoman WATERS. Thank you very much. Also, the gentleman from Missouri, you are recognized for 5 minutes.

Mr. CLEAVER. Thank you, Madam Chairwoman. I don't have much of a statement. I can't say Missouri is not subject to the cancellation provision, but nonetheless, I am very concerned about this.

The first HOPE VI project in the Nation was built in Kansas City during my term as mayor, and with all of the HOPE VI projects it could very easily be in the New York Times or one of the housing magazines because of the quality of the housing. It converted decrepit housing into affordable and attractive housing for low-income residents, and I think that if we have slow spending cities, if there is any way to work with them, we need to find it because to have any city in the country denied an opportunity to participate in the HOPE VI program, I think, is a very tragic possibility considering what that program can do and has done all over this country.

So I am here in support of the Brown/Mica HOPE VI Amendment Act of 2008 in hopes that we can find a way to prevent any city in the country from falling victim to the cancellation provision. Thank you, Madam Chairwoman, and I look forward to dialogically becoming involved in this room.

Chairwoman WATERS. Thank you very much, and without objection, Representative Hinojosa will be considered a member of the subcommittee for the duration of this hearing, and I will recognize Representative Hinojosa for his opening statement.

Mr. HINOJOSA. Thank you, Chairwoman Waters. I am delighted to be able to participate for a while here in your subcommittee, and I want to personally thank you for your leadership and dedication to HOPE VI and for your great leadership and the work that you have done to help rural housing, which impacts a big part of my congressional district. I also thank you for helping our committee authorize the Housing Assistance Council, which is going to make a very significant difference and provide help to rural areas that I represent in South Texas. I assure you that I will help you authorize your Urban League legislation, because I know how important it is also.

This hearing today is going to be very helpful to us in areas like I represent where we have such a large need for affordable housing, and I am interested in listening to our panels to see just how we can be of help to our constituents. And with that, Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you very much. Mr. Watt, without objection, you also will be considered a member of the sub-

committee for the duration of this hearing, and I recognize you for 5 minutes.

Mr. WATT. I thank the Chair for recognizing me, but I think I will pass and let you all get on with the hearing. I am interested in the subject matter and just came to hear the witnesses. Thank you.

Chairwoman WATERS. Thank you very much.

I am pleased to welcome our distinguished first panel. Our first witness will be Ms. Dominique Blom, Deputy Assistant Secretary, Office of Public Housing Investments, U.S. Department of Housing and Urban Development. Thank you for your presence here today. Without objection, your written statement will be made a part of the record. You will now be recognized for a 5-minute summary of your testimony.

STATEMENT OF DOMINIQUE BLOM, DEPUTY ASSISTANT SECRETARY, OFFICE OF PUBLIC HOUSING INVESTMENTS, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Ms. BLOM. Thank you. Good morning, Chairwoman Waters, and members of the committee. I am Dominique Blom, the Deputy Assistant Secretary for the Office of Public Housing Investments at the U.S. Department of Housing and Urban Development. Thank you for inviting me to testify today.

The Department monitors and assists all HOPE VI grantees to enable them to implement the revitalization plans and construct units in accordance with their development schedules. Grantees awarded in Fiscal Year 2002 or later were required by Congress to expend their HOPE VI funds within 5 years of HUD's deadline for obligating grant funds. Under this requirement, it is the responsibility of each grantee to establish and implement realistic development schedules that allow them to complete the Federal components of their projects by this deadline or have the unused funds recaptured by the Treasury.

My remarks today will focus on what the Department has done to assist the Fiscal Year 2002 HOPE VI grantees in meeting the expenditure deadline of September 30, 2008, and the current status of funds that remain unexpended as of June 30, 2008.

The Department has taken numerous steps in notifying Fiscal Year 2002 grantees of their responsibility to meet their development schedules and the 5-year expenditure deadline of September 30th. The grant agreement that codified the funding relationship between each grantee and HUD clearly stated that all funds must be expended within 5 years of grant award. The letter from HUD approving the revitalization plans submitted by each grantee reiterated the language in the grant agreement and encouraged grantees to stay on schedule to meet the expenditure deadline. In site visits over the life of each grant, HUD staff also reminded grantees of this requirement and the responsibility to stay on schedule. If a grantee submitted revisions to the revitalization plan that altered the development schedule, HUD staff reviewed the schedule to ensure that the grantee would complete construction ahead of the expenditure deadline before approving the changes.

On March 20, 2008, HUD issued a letter to all the Fiscal Year 2002 grantees with unexpended funds. In this letter, grantees were

again reminded that all HOPE VI funds must be expended by September 30th. In response to this letter, grantees were required to state in writing that they would be able to meet the expenditure deadline. For those grantees that expressed concern about meeting the expenditure deadline, the Department assisted the grantee to develop a plan for completing construction and expending HOPE VI funds by the deadline. The Department also accelerated review processes and expedited approvals to put each of these construction and expenditure plans into action.

Throughout this process, the Department was careful to exercise good judgment, not to take unreasonable risk, and to ensure that taxpayer dollars were used for eligible and feasible purposes.

As of June 30, 2008, there is \$78 million in unexpended funds across the 28 grantees awarded HOPE VI funding in Fiscal Year 2002. Based on grantee responses and the Department's monitoring efforts, we currently believe that there are 21 grantees that will expend all their funds; 4 that are likely to expend all their funds; and 3 that are unlikely to expend all of their funds by the deadline. Of the 3 that are unlikely to expend their funds by the deadline, the Department estimates that the amount of funds at risk for recapture by the Treasury ranges from \$200,000 to \$2.3 million for an approximate total of \$4 million.

Beyond the Fiscal Year 2002 grantees, the Department is also assisting HOPE VI grantees awarded in Fiscal Year 2003 or later with their efforts to meet the expenditure deadline set by Congress. To this end, HUD issued a letter July 8, 2008, to all Fiscal Year 2003 grantees with unexpended funds that request information on their estimated timeframe for completing construction and expending all HOPE VI funds. If HUD determines that a grantee requires additional assistance to meet the expenditure deadline, selected Fiscal Year 2003 grantees will also be provided assistance from technical assistance contractors.

Thank you for the opportunity to discuss the status of the Fiscal Year 2002 HOPE VI grantees. As I mentioned earlier, the Department monitors and assists all HOPE VI grantees to enable them to implement the revitalization plans and construct units in accordance with their development schedules. As part of these efforts, the Department will continue to assist the HOPE VI grantees in meeting the expenditure deadlines that are mandated by Congress.

I am happy to address any questions that you might have.

[The prepared statement of Deputy Assistant Secretary Blom can be found on page 29 of the appendix.]

Chairwoman WATERS. Thank you very much. I will recognize myself for questions.

I would like to reconcile the \$78 million amount with the \$4 million amount that you just indicated represents the three agencies that are unlikely to spend. What is the difference in these two figures and where does that come from?

Ms. BLOM. Based on the information that we have received from the housing authorities, as of June 30, 2008, there are \$78 million of funds that are still remaining. But based on housing authority's responses, most believe they will be able to expend the funds by the September 30th deadline, that they already have construction under way, and it is just a matter of those housing authorities

drawing down the funds in order to meet the September 30th deadline. However, there are three grantees who are unlikely to expend a maximum, we believe, of \$4 million by the September 30th deadline.

Chairwoman WATERS. Let me just inquire of you, what is HUD's policy about initiating legislation with the Congress when you encounter a problem with the law that we have created? Obviously, natural disasters and other kind of unforeseen problems can occur which would fly in the face of the law.

Do you think that you have any responsibility to say to Congress, "I think we have a problem, and we would suggest, based on our information and our assessment that there needs to be a waiver or an extension of some kind given the difficulty that these agencies have faced, and we think that it is legitimate difficulty." Have you ever envisioned doing something like that?

Ms. BLOM. The Administration is currently reviewing the bill that has been introduced providing the 1-year extension, and that is currently under review particularly to assess it from a budget impact.

Having said that, from a programmatic point of view, from the office that I sit in that administers the HOPE VI program, there is certainly a reality that many of the housing authorities faced with regard to natural disasters, with regard to the mortgage crisis, and with regard to unforeseen environmental concerns that had developed as part of their implementation of the HOPE VI revitalization plan. These are certainly legitimate concerns and challenges that were faced by the Fiscal Year 2002 housing authorities and, I believe, provide extenuating circumstances of why certain housing authorities are unable to meet the deadline of September 30, 2008, for expenditure.

Chairwoman WATERS. Then the Department would support a 1-year extension for funding year 2002 HOPE VI grantees that have encountered these cost increases and project delays as a result of natural disaster or the subprime mortgage crisis, as envisioned in this bill, H.R. 6347?

Ms. BLOM. The Department and the Administration have not developed a position yet on the bill. However, I can speak from my own personal perspective and of the Office of Public Housing Investments, which oversees the HOPE VI program, to certainly say that the reasons provided in the bill are legitimate ones for providing an extension for the HOPE VI grantees.

Chairwoman WATERS. And finally, let me just ask, despite the fact that you have done a review, and perhaps even provided technical assistance, and you anticipate that most of these housing authorities will be able to use their funds by the deadline, and you only encountered three that may not be able to meet the deadline, you do recognize that even with that review, that some that fall within the 25 probably will not be able to meet that deadline also, so this bill would cover all, not just three that are unlikely. You understand that?

Ms. BLOM. Yes, that the bill would cover those housing authorities that were affected by the mortgage crisis and by natural disasters, and it would certainly cover more than just the three housing authorities that we had immediate concerns about, and it would

provide relief to those housing authorities that were funded in 2002 that are faced with the circumstances of the mortgage crisis and disasters.

Chairwoman WATERS. Thank you very much. Ms. Capito.

Mrs. CAPITO. Thank you. Just so I understand here, there were originally 28 grantees in Fiscal Year 2002?

Ms. BLOM. Correct.

Mrs. CAPITO. Correct. Okay. All of them have not expended all of their money by the end of—that is 28, right—21 will, 3 are likely, and 3 are unlikely?

Ms. BLOM. Four.

Mrs. CAPITO. So all of them are in this boat. Okay. I have a couple of questions. On the front end, when you grant in 2002, what kind of vetting do you do for all of these? If all of these are falling within this category of not expending their money before the end of September, has there been a thorough vetting of where they are going to spend the money, when they are going to spend it, and how they are going to spend it?

Ms. BLOM. Absolutely. In the beginning of the grant process, we work with each of the housing authorities to establish a development schedule that is realistic, that will meet the September 30th deadline.

Mrs. CAPITO. Then you keep following that from year to year?

Ms. BLOM. Absolutely. It is very important at the beginning of the grant program to get off to a good start. With that, we have onsite visits that are done within a few months of the grant being awarded, and we work with the housing authority to establish a schedule that is going to carry out for the life of the program.

We also require the housing authorities to submit their first development proposal that is going to describe their construction plans within 12 months of receiving the grant, and then they must start construction within 18 months of receiving the grant—

Mrs. CAPITO. Did they all start construction within 18 months?

Ms. BLOM. All except for one, which was Fulton County, started construction within the 18 months. So we worked very diligently with the housing authorities to ensure that the requirements for the grant award were implemented and met, and then have been following the grants throughout the life of the grant cycle.

Mrs. CAPITO. Okay. And then my next question is, we are sitting here at June 30th with \$78 million unspent. According to your testimony, \$74 million will be spent in 3 months. If it is spent, is it spent judiciously and on proper things, or is it people filling up the paper cabinet with copy paper just so they can have their \$74 million spent, if you know what I mean?

Ms. BLOM. Yes, absolutely. I share your concern. And that is the reason why, for some of the grants, the funding will be returned, because we do believe that it is vitally important that taxpayers' money is used for feasible and eligible purposes, and that housing authorities are not undertaking activities that are high risk.

As a result of that, we have worked with the housing authorities to develop what we think are realistic and feasible plans for expenditure of those funds, that protects those funds and has them used for eligible HOPE VI purposes, for construction of public housing units or for affordable homeownership units.

Mrs. CAPITO. Well, regarding natural disasters, I certainly can understand environmental concerns elongating the project and also making it more expensive. I mean, that happens every day.

But I do want to voice some concerns of the \$74 million that are going to be spent in the next 3 months, and I guess I would be curious, my last question, if you could, without pointing a finger specifically at one project, if you could say in a general sense, where is the problem? Is it the problem at the local level that is not moving the projects forward quick enough, is it at the HUD management level, or is it at the beginning, which I was trying to get to in the beginning, that the projects were not ripe enough to really be ready for a grant in 2002, so consequently running into problems in the year 2008?

Ms. BLOM. I think that the major impediment to those housing authorities that have considerable funds remaining today happened in the middle of their grant cycle. It happened with unforeseen challenges that were faced, whether that was environmental in nature, you will hear potentially from Pete Gamble who will talk to you about eagles coming to the HOPE VI project and therefore causing a portion of their land to be unfeasible for construction.

Another project that had planned to redevelop back onsite, but because of an airport expansion, was no longer able to build back onsite because of increased noise pollution.

Certainly you are going to hear about the hurricanes that occurred in 2004 as well as in 2005, which increased construction costs and caused housing authorities in the Gulf to redirect their energies from building their HOPE VI projects to working on disaster related issues.

And lastly, the mortgage crisis. Over the last year or so, we have had construction lenders that have pulled out of HOPE VI projects, making the homeownership phase behind schedule as housing authorities have had to retool, either look for other lenders or look for other sources of construction financing to build homeownership—

Mrs. CAPITO. Of the 28, how many would you say are influenced by the housing crisis, the last one you just mentioned, lenders pulling out?

Ms. BLOM. I know of the seven housing authorities that we have concerns about, about half of those are affected by the mortgage crisis, and I will be able to follow up with you in writing about an assessment about all of the 28 grantees and which ones would be affected by the mortgage crisis.

Mrs. CAPITO. Alright. Thank you.

Chairwoman WATERS. Mr. Cleaver.

Mr. CLEAVER. Thank you, Madam Chairwoman. Ms. Blom, thank you.

On page three of your testimony, in the third paragraph, you talk about the three housing authorities that you believe to be in trouble to the point that they will end up as victims of the cancellation provision. Can you give me the names of the three?

Ms. BLOM. Yes sir. The three housing authorities are Muncie, Indiana, East Baton Rouge, Louisiana, and Daytona Beach, Florida.

Mr. CLEAVER. Muncie, Indiana, Baton Rouge, and—

Ms. BLOM. Daytona Beach, Florida.

Mr. CLEAVER. Daytona Beach. Those are all class A cities, which, as I mentioned earlier, we did the first HOPE VI during my term as mayor, and most of these cities on here are class A cities, which means they have a housing department, and I am not sure what kind of technical assistance would matter to people with a housing department, and the problems that you mentioned, I am not sure that the technical assistance will clear up a problem of a delay based on the subprime lending crisis or even the Hurricane Katrina disaster, I am not sure what technical assistance would be needed. I mean, what kind of technical assistance do you provide somebody who is stumbling because of the lending crisis?

Ms. BLOM. For these housing authorities, the Muncie, Indiana, housing authority may need to return about \$800,000 of its funds because of the mortgage crisis. They had planned to develop 44 homeownership units, but because a construction lender had pulled out, they had to retool, looking to the City for additional funds in the form of home funds, and are now planning on building the 44 units. However, it is dependent on spending the HOPE VI funds for infrastructure and getting City permits in advance of that.

So in the case of Muncie, it is a question of, can the housing authority and the City work together to issue the permits and for the HOPE VI funds to be spent for the infrastructure portion.

Mr. CLEAVER. I am still not sure about the technical assistance. I am not sure in your answer you explained what the technical assistance would do for those cities, but wouldn't it just be easier to support a 1-year extension than to—if I were back in office, we have two former mayors here, if I were back in office and someone from HUD called and offered technical assistance for a problem that technical assistance won't correct, I am not sure that I would be happy.

I mean, I didn't understand it. And it would seem to me that a more appropriate response would be a 1-year extension as opposed to saying, we will give technical assistance. I appreciated the answer you gave, but I still couldn't hear inside your answer what the technical assistance would do.

Ms. BLOM. The technical assistance that I referred to in my testimony is geared toward Fiscal Year 2003 and later grantees, because we believe that there is enough time with those grantees to have the technical assistance be meaningful.

For those grantees that have their funds expiring at the end of September of this year, I agree with you, there is very little time left for the housing authorities to expend those funds, and technical assistance isn't the right answer. That is why we have not dedicated our HOPE VI contractor funds that dedicated technical assistance for the Fiscal Year 2002 grantees. Instead, we have dedicated that for Fiscal Year 2003 grantees and later.

For the 2002 grantees, HUD staff has been working with the housing authorities to determine what the schedule can be and to revise the plans to create feasible options for expenditure of the programs—

Mr. CLEAVER. Pardon me for interrupting you, but my time is about up. It is up. Wouldn't it be easier to just have a 1-year extension?

Ms. BLOM. Again, for the 1-year extension, it would provide relief to those housing authorities that have faced the crisis of the mortgage subprime crisis, as well as hurricanes and other natural disasters, certainly.

Chairwoman WATERS. Thank you very much. Mr. Green.

Mr. GREEN. Thank you. If Mr. Cleaver needs more time, I am willing to yield.

Chairwoman WATERS. Are you yielding time to Mr. Cleaver?

Mr. GREEN. I will. Mr. Cleaver.

Mr. CLEAVER. Just one more question. Today my hearing is bad, I guess. I am trying to zero in on what—if we have a 1-year extension, it would seem to me that the cities that were named, it would be infinitely better off, in terms of completing the HOPE VI application, getting everything here in Washington than having technical assistance offered. Baton Rouge, Louisiana, does have a housing department. They have the capacity to do this. The people in Baton Rouge woke up one morning and had their population doubled, with poor people coming in from New Orleans. So it seems to me that a year extension would provide them with a better opportunity to deal with this crisis than for HUD to offer technical assistance.

Ms. BLOM. And certainly a 1-year extension would provide those housing authorities with more time to be able to finish up their revitalization plans, yes sir.

Mr. GREEN. Reclaiming my time, Madam Chairwoman, I would now yield 1 minute to Mr. Hinojosa, who has another hearing that he must attend right away, if I may.

Chairwoman WATERS. Mr. Hinojosa.

Mr. HINOJOSA. I thank you, gentleman from Texas. Thank you.

I am delighted that I stayed to listen to your presentation, and I am pleased to hear that there will be help in time for those who are impacted directly by natural disasters such as Hurricanes Katrina and Rita. I represent counties in the Gulf of Mexico all the way to San Antonio and south to Edinburg.

But what about those who were impacted indirectly? For example, we learned that the San Antonio housing authority, while not directly impacted by Hurricane Katrina, took in many Katrina evacuees, which affected its ability to focus on the HOPE VI grant. Houston and San Antonio, closest to my district, were recipients of many of the evacuees, and they stayed there for as much as 2 years. So what could you do for them?

Ms. BLOM. Are you asking, sir, in terms of the bill or in terms of—

Mr. HINOJOSA. The bill, in terms of the September 30th deadline. Could they have an extension so that they could use up their funds?

Ms. BLOM. The deadline of September 30th is statutorily established by Congress, so unless Congress provides an extension of that timeframe, the Department is unable to provide extensions to the housing authorities. In the case of San Antonio, we have been working with San Antonio for approximately the last 6 months, very intensively, to develop a plan for how they could spend the remaining funds, and we believe at this point that we have a viable plan for how the housing authority can complete the last remaining

phases of their program, which includes a homeownership program as well as rental development of public housing, and that they will be able to expend their funds by September 30th.

Mr. HINOJOSA. I thank you, and I yield back. Thank you.

Mr. GREEN. Thank you. I will be as quick as possible.

Ma'am, thank you for coming this morning. Ms. McGraw, who is on the second panel, and if I am incorrect, I am sure she will have an opportunity to speak to what I am about to say, has indicated that HUD could possibly, through an act of Congress, be granted the authority to waive the 5-year rule which would allow for extensions.

Would you support or oppose, or what is your position or HUD's position on Congress granting this type of authority for a waiver?

Ms. BLOM. The Administration is still reviewing the bill in terms of its impact on the budget.

Having said that, from a programmatic point of view, and in my opinion, the 1-year extension would provide relief to the housing authorities to enable them to complete their revitalization plans.

Mr. GREEN. She also indicates that Congress could consider allowing communities or agencies to use these funds for similar projects or similar purposes. What are your comments on this, please?

Ms. BLOM. Unless Congress were to change the use of the funds, the remaining funds would still be used for HOPE VI eligible purposes, so it would have to be used for the development of affordable homeownership units or for public housing units that would serve families under 80 percent of median income.

Mr. GREEN. My time is up. Thank you, Madam Chairwoman.

Chairwoman WATERS. Thank you very much. Mr. Lynch.

Mr. LYNCH. Thank you, Madam Chairwoman, and thank you for holding this hearing. I also thank the ranking member.

Madam Secretary, we are doing a delicate dance here. We have been trying to ask, is it HUD's position that you support the 1-year extension?

Ms. BLOM. I appreciate very much that you understand that I am doing a delicate dance here. The Administration and the Department do not have an official position yet on the bill. But from a programmatic point of view, I realize that a 1-year extension granted to the housing authorities would provide them relief.

Mr. LYNCH. I know you know that it would be helpful if we had the 1-year extension. The problem is that the Department hasn't taken that official position, and that is not happening. And you are saying Congress has that power. The executive office as well, especially in matters brought to this point by Hurricane Katrina and other unforeseen disasters, the President in the immediate days following Katrina, suspended the prevailing wage act by executive order, stepped in and said the greatest danger to this area of the country is that these people are going to make too much money, these people who are repairing this housing. So he suspended the minimum prevailing wage in that area.

Certainly there is a great opportunity here for the Administration to provide this 1-year extension. It provides the opportunity for HUD to step up and say this is something that we should be doing.

Are you making those recommendations to the Administration, that they should indeed give this 1-year extension?

Ms. BLOM. I think from a programmatic point of view, the 1-year extension makes sense. I think from an Administration's point of view, it is a much larger issue than just HOPE VI, that the statutory requirement for expenditure covers not just the HOPE VI program, but other programs, and the Administration is reviewing the bill in the context of all programs and what it would mean for there to be extensions provided on expenditure deadlines.

Mr. LYNCH. Okay, I understand. I am not going to ask you that question again because you have been asked it 3 or 4 times already and have just not been really helpful with your response. Let's move on.

There is another area that I am becoming concerned about. I am hearing from a lot of our affordable housing developers, and this is ancillary to what you do. In the past, a lot of our affordable housing projects have been financed by tax credits where we have corporations that want to shelter some of their profits, and so by buying these affordable housing tax credits, they can make out at the end of the year on their taxes. And it is a great incentive and I support the program.

However, unfortunately in this kind of economy, we don't have a lot of corporations that need to acquire losses. They have losses of their own. And so the need to shelter profit has diminished greatly in this current environment, and so tax credits remain unpurchased.

So we are seeing this across the country, without limitation to any region, that tax credits have remained unpurchased and so people aren't able to put that patchwork of deals together to get this stuff going. Is there anything that HUD has seen that might help us in trying to figure out how to deal with this? Are there other alternatives that you have thought of that might help us incentivize, re-incentivize the development of affordable housing through the tax incentive framework?

Ms. BLOM. What we are seeing as part of the HOPE VI program, in relation to tax credits, is that the tax credits are being still bought by large firms through syndications. What we are seeing, however, is that the equity raise per tax credit has been reduced. So whereas 3 years ago, tax credits were selling at anywhere from \$.95 to the dollar up to \$1 and even over, what we are seeing today are tax credit raises in the low 80s, mid 80s cents on the dollar. So while we are still able to fund the HOPE VI projects through tax credits, the amount of equity that is being raised is less.

As a result of that, housing authorities have been seeking other sources of funds, either through the city or other mechanisms, or unfortunately they have had to, at times, reduce the scope of their project to now fit the new budget.

Mr. LYNCH. Okay. Well, that was helpful. Any other strengthening of that framework would be appreciated. Thank you, I yield back.

Chairwoman WATERS. Thank you very much. Mr. Ellison.

Mr. ELLISON. I will pass, Madam Chairwoman, at this time.

Chairwoman WATERS. Thank you. Mr. Watt.

Mr. WATT. Thank you, Madam Chairwoman.

Let me take one more slightly different swipe at the question you have been asked 3 or 4 times and managed to dance around gracefully, I might add. Does the Administration anticipate coming out with a position on the proposal? And if so, when?

Ms. BLOM. My hope is that the Administration does have a position on the bill—

Mr. WATT. You are dancing on that one now when you say “hope.” Do you anticipate, is the Department encouraging the Administration, I don’t know who the Administration is, maybe that is the Department. Is it the Department, is it the President, is it the Vice President, as the world believes that he is controlling everything. I mean, who would make that decision?

Ms. BLOM. The Department is talking with OMB with regard to the bill, and we are formulating a position on that.

Mr. WATT. And you expect to have a position at some point?

Ms. BLOM. Yes, sir.

Mr. WATT. When?

Ms. BLOM. I was hoping it would be ready by today, so I am hopeful it will be ready in the next few weeks.

Mr. WATT. Alright, enough on that. I am actually interested in another, slightly different issue. I assume the law that we passed covered only unspent money starting in 2002 and going forward, but the last time that we dealt with this subject, we determined that there were substantial amounts of unspent HOPE VI money prior to the funding year 2002. Is that still the case?

Ms. BLOM. There are still some funds for the older grantees. There is approximately \$900 million of funds across all housing authorities that remains unfunded—

Mr. WATT. And what is HUD doing about that? How far does it go back?

Ms. BLOM. It goes back to, 1993 was our first year of funding—

Mr. WATT. So that is from 1993 up to 2002, and then your testimony today is 2002 forward. Is that right?

Ms. BLOM. That is correct.

Mr. WATT. Okay. So how much money did you say that is?

Ms. BLOM. About \$900 million remains unfunded, but that also includes funds for housing authorities that were funded in 2006 and 2007. The group of—

Mr. WATT. Wait, wait, wait. I thought you just said that that cut off at 2002?

Ms. BLOM. I am sorry if I misstated that. The \$900 million of funds covers grantees funded from 1993 up to the present.

Mr. WATT. Okay, so what part of that would be prior to 2002? I mean you gave us the information. I guess we could subtract out what you testified about 2002 forward, but that is not—well, tell me what the figure is prior to 2002.

Ms. BLOM. Certainly. The Director of the program, Sue Wilson, is tallying up right now behind me what the totals are from 1993 through 1999—

Mr. WATT. It is a lot more money than from 2002 forward though, isn’t it?

Ms. BLOM. We are doing the math—

Mr. WATT. I guess, let me get the bottom line before my time runs out. What is HUD doing about that arrearage, because there

were a number of us who were substantially concerned about that. That is why we wrote this provision into the law, for housing authorities to make prompt disposition of funds from 2002 going forward. And we got a commitment, we thought, from HUD at that time that they were going to make an aggressive effort to deal with the money that was still in the pipeline prior to 2002.

In fact, I remember the Secretary promising us in response to a question that I asked that we was going to give us details on each one of those housing authorities, the amount outstanding, the status of that. I don't think we ever got that that I am aware of. Are you doing anything about that money that is in the pipeline?

Ms. BLOM. Yes we are. In—

Mr. WATT. Tell me what you are doing, and I will shut up.

Ms. BLOM. To answer your first question, the amount of funds that is still remaining for those housing authorities that were awarded funds in 1993 to 1999 is approximately \$500 million. Those funds—

Mr. WATT. You mean to 2002?

Ms. BLOM. Yes, sir. To 2002.

Mr. WATT. Not 1999.

Ms. BLOM. Correct.

Mr. WATT. From 1993 to 2002. That is the figure you are giving me?

Ms. BLOM. That is correct, sir. I apologize. There is about \$80 million still with the 1994 grantees, and let me tell you a little bit about the 1994 grantees. Those group of housing authorities—

Mr. WATT. My time has actually expired. I think since this is not the subject of the day, and I am not even a member of this subcommittee officially except—

Chairwoman WATERS. Unanimous consent for another minute; I am interested in this.

Mr. WATT. It might be better to get this in writing from HUD because—I mean, there was a reason we put this provision in the new law, and I think, while I am extremely supportive of extending it for one additional year or even longer for those areas that were impacted by the hurricanes, there is also a very good reason to be more aggressive in pushing housing authorities to use the funds that go back historically because if they are not going to use them, then somebody else could be using them to provide housing in their communities. And from 1993 to now 2008 is, my math is not good, but that is a lot of years, so if you could just provide this to us in writing as the Department said it was going to do one time before, I think that would be really helpful to the committee.

Ms. BLOM. Yes, we will certainly do that.

Mr. WATT. Thank you, Madam Chairwoman.

Chairwoman WATERS. You are certainly welcome, and I would like to thank our witness, Ms. Dominique Blom, for appearing here today, and let me just say, we see a lot of representatives from HUD. Not all are straightforward and have the information at hand as you have had, and we thank you for your testimony here today.

The Chair notes that some members may have additional questions for Ms. Blom which they may wish to submit in writing, so without objection, the hearing record will remain open for 30 days

for members to submit written questions to this witness and to place the responses in the record.

This panel is now dismissed and I would like to welcome our second panel. Thank you very much, Ms. Blom.

Ms. BLOM. Thank you.

Chairwoman WATERS. I am pleased to welcome our distinguished second panel: Ms. Vivian Bryant, executive director, Orlando Housing Authority; Mr. Joyours "Pete" Gamble, executive director, Housing Authority of the City of Daytona Beach; Ms. Nancy McGraw, managing director, Eastern Region, Corporation for Supportive Housing; and Ms. Robin Keller, vice president of affordable housing development, Volunteers of America, testifying on behalf of the American Association of Homes and Services for the Aging.

Without objection, your written statements will be made part of the record.

We will now recognize our first witness, Ms. Vivian Bryant, for 5 minutes, for a summary of her testimony.

Thank you very much.

**STATEMENT OF VIVIAN BRYANT, EXECUTIVE DIRECTOR,
ORLANDO HOUSING AUTHORITY**

Ms BRYANT. Good morning, Chairwoman Waters, and members of the committee. Thank you for inviting us to provide this testimony.

The project that I will discuss is the Carver Court 2002 HOPE VI grant. Carver Court was built on a landfill in 1945. It was 160 units on approximately 17 acres of land. In 1960, approximately 52 more units were added to the site, which brought the total number to 212.

The buildings started to sink because the ground underneath began to settle, and by 2001, we only had 148 units that were still available to be occupied. The United States Department of Housing and Urban Development authorized us to relocate the tenants and to demolish the building in 2001, and by 2002, the building had been demolished—there were 35 buildings.

The 2002 grant was for \$18,084,255 and we had a deadline of September 30, 2008, to complete the construction. The development was phased into seven different phases, the first one being the infrastructure, then offsite improvements, an offsite homeownership program, an onsite homeownership program, 64 elderly public housing units, 56 family rental units, and a community supportive services program.

The original plan had to be revamped because of the impacts that we had from several areas. The first impact was that the Orlando area was impacted by three named hurricanes in 2004—Charlie, Jeanne, and Francis. A result of those hurricanes—and the three hurricanes were in a 5-week period, and the area was considered a total disaster and was declared a disaster by FEMA and the President.

As a result of those hurricanes, we had skyrocketing costs of construction and a decrease in the median incomes for the total area.

A third impact was that we found we had impacts on the soil. As indicated, the property project had been built on a landfill, and while we were installing the infrastructure, we found that there

was some contamination in the soil. It took us 27 months of working with the Florida Department of Environmental Protection to get an approved plan for removal of the debris and the impacted soil. As a part of that remediation, we removed 38 million pounds of soil. We had to put back 18,000 pounds of new soil, and we had to add 2 feet of new soil throughout the whole site in order to comply with the plans for the Department of Environmental Protection.

They did allow us to move forward with the construction, but it changed the way we had to look at the site. The remediation cost \$4.5 million. We received funds from the City of Orlando, which gave us \$1 million, but we had planned to provide 50 homeownership units offsite for low-income home buyers. Because we needed that \$2 million in order to overcome the impacts, we had to abandon the offsite plan and just provide the housing onsite.

At this point, we have about \$11 million still at risk. We had to apply for tax credits for the remainder of the property and if we are not allowed to—if the money goes away September 30th and we don't spend it, those tax credit dollars will be in jeopardy because the HOPE VI funds were used to leverage the tax credits.

HUD has been helpful with us in expending the funds, they have suggested ways that we could be able to move the project forward, and provided assistance with expeditiously approving our waivers—approving budget revisions.

Thank you.

[The prepared statement of Ms. Bryant can be found on page 32 of the appendix.]

Chairwoman WATERS. Thank you very much.

Next we will hear from Mr. Joyours "Pete" Gamble.

STATEMENT OF JOYOURS "PETE" GAMBLE, EXECUTIVE DIRECTOR, HOUSING AUTHORITY OF THE CITY OF DAYTONA BEACH, FLORIDA

Mr. GAMBLE. Thank you, Madam Chairwoman.

The Daytona Beach Housing Authority, in the Year 2002, was awarded a grant of \$17,242,383. To date, we have expended \$14,750,317, which leaves us approximately \$2,492,066 left. Over the course of implementing our HOPE VI we have run into the same difficulties as the Orlando Housing Authority.

We are approximately 50 miles from Orlando, situated right on the ocean. Orlando was hit by three hurricanes in 2004. Daytona Beach was even luckier; we got four.

In addition to the four hurricanes that we received in 2004, as it turns out, the very next year, 2005, we had an eagle set up on one of our sites as we were just beginning construction. Because the eagle was declared an endangered species, we had to stop all work, which ended up costing the housing authority somewhere between \$4.5 million and \$5 million in work and costs that had to be completely redone. We had to completely re-lay out our site to set aside a portion of that property for the eagle. Even though the eagle has been taken off the endangered species list, there are some laws that are still in place that force the housing authority to continue to set aside that property, so we had to go ahead and build a site based on the design laid out to set aside property for the eagle.

HUD has been very, very helpful throughout the entire HOPE VI effort. I have met with them at least yearly here in Washington and we have monthly teleconferences with both the headquarters office and our field office in Jacksonville.

The big thing that hit us, as I mentioned, was the \$4.5 million to \$5 million cost that hit us because of the storms and the eagle, was that we had to pull all of our HOPE VI staff to assist our residents during the storm. Our entire administration office was under water.

We had to move—fortunately, the Hearst Argyle family, which owns the local network, was able to put us up in their building, and so we are currently still there and we had to stop all work on HOPE VI to assist those residents who were being affected by the storms, the waters, and things of that sort.

Our specific administration office was under approximately 1 to 1½ feet of water, and so we had to totally relocate. Many of our files were destroyed or damaged from the storm water, the roof was ripped off of our administration building, as well as two of our high rises that we have, so we had to spend our efforts trying to take care of those residents that we already had rather than trying to relocate—

Everything basically came to a standstill on HOPE VI. We had to re-lay out our sites and also look at the design. We started out with masonry construction and we went to wood because of cost. The cost of concrete, for example, went up about 35 percent, which caused the cost of our buildings to increase significantly, so even though we were able to build the same number of rentals, we were unable to use the additional monies that we had originally set aside for homeownerships because we had to take those monies and put into the rentals to be able to complete those to take care of the clients that we were going to be relocating.

To date, we feel that we have done an excellent job. We have the \$2.4 million that is left, we have discussed with the headquarters assisted, we have submitted an application for an endowment to try and meet the deadlines of September 30th. That is approximately \$1 million. The endowment would allow for social services, if you will, and so we are looking at carrying on those social services for many years after the HOPE VI completes, so that is where we stand at this point.

I will be happy to answer any questions that you might have.

[The prepared statement of Mr. Gamble can be found on page 36 of the appendix.]

Chairwoman WATERS. Thank you very much.

Next, we will hear from Ms. Nancy McGraw.

**STATEMENT OF NANCY MCGRAW, MANAGING DIRECTOR,
EASTERN REGION, CORPORATION FOR SUPPORTIVE HOUSING**

Ms. MCGRAW. Chairwoman Waters, Ranking Member Capito, and members of the subcommittee, good morning.

My name is Nancy McGraw, and I am the managing director for the Eastern Region for the Corporation for Supportive Housing, CSH. I appreciate the opportunity to testify on CSH's views of and experience with Federal spending requirements and housing and

community development programs, and how it might impact programs beyond HOPE VI.

CSH has unique experience as a national organization that for the last 17 years has helped communities build permanent supportive housing to prevent and end homelessness.

My testimony today will describe the difficulties homeless assistance grantees typically encounter in spending grant funds and how CSH and the providers we work with address these challenges. I will describe our industry's need for flexibility and technical assistance to put together complex projects to benefit people in very precarious life situations.

Regarding the specific issue of the Federal statute that mandates the recapture of funds 5 years after appropriation, I would suggest that this limit has both positive and negative aspects. CSH agrees that it is good government to ensure that appropriated funds are put to use within a reasonable timeframe, and that 5 years of availability for obligation is a good expectation that fosters accountability.

We would also encourage the subcommittee to consider that reasonable and legitimate delays are commonplace and that properly applied, flexibility such as granting the Secretary the authority to waive the 5-year rule would likely benefit all stakeholders.

While the supportive housing industry is still relatively young, extensive data shows that the combination of permanent supportive housing, permanent housing and services, is an effective method for helping hard-to-serve individuals find and keep places to live. The bottom line is that we have come a long way in a short period of time.

Nevertheless, creating permanent supportive housing is a very complex process. All stakeholders are becoming more comfortable with it, but I would suggest that supportive housing production requires even more sophistication than typical affordable housing industry and may therefore be more susceptible to delays in spending funds.

Some of the complicating factors include that supportive housing production requires partnerships between housing and service providers. This housing requires not only capital funding but also securing operating and usually scarce service dollars. The number of sources can easily reach 7 to 10 or more.

Financing is often leveraged and layered, yet there are very few places where all the financing can be assembled simultaneously. This results in needing to cobble together funding sources, often over several years.

Acquiring the proper location for permanent supportive housing can be difficult due to zoning and planning board requirements as well as NIMBYism. Siting woes can escalate into lengthy review processes as well as lengthy legal challenges.

Based on our experience as a community development financial institution through which we have made over \$160 million in loans and grants, I can offer an example of these challenges.

In 2001, we made a predevelopment loan to Citizen's Housing Corporation to create a 40-unit project in Marin County, California. The project had very complex financing, over a dozen sources, including McKinney Vento homeless assistance grants, involved a

zoning change, and it was a historic rehabilitation. We stuck with the project as it encountered delays and ended up amending the term of this loan 5 times based on our assessment that it continued to be a viable project worthy of the risk.

I am happy to report that with some flexibility and perseverance we were recently repaid, and the project is in construction.

My written testimony describes several other ways that CSH has worked with the partner agencies and with HUD to overcome some of the difficulties in putting together projects in a timely manner.

I should note that the HUD SNAPS office should be commended for proactively identifying grantees that were vulnerable for recapture. HUD has worked with CSH and we have been successful in resolving the status of more than 700 unobligated McKinney Vento grants, which resulted in 629 grants representing over \$270 million in funds being obligated before their recapture deadline, and 82 grants being de-obligated for a total of \$19.6 million being recaptured to Treasury.

I will reiterate that we understand the rationale. We would like to request that Secretary have that waiver authority or to allow communities or HUD to re-use the recaptured funds.

Thank you.

[The prepared statement of Ms. McGraw can be found on page 52 of the appendix.]

Chairwoman WATERS. Thank you.

Next, we will have Ms. Robin Keller.

STATEMENT OF ROBIN KELLER, VICE PRESIDENT OF AFFORDABLE HOUSING DEVELOPMENT, VOLUNTEERS OF AMERICA, ON BEHALF OF THE AMERICAN ASSOCIATION OF HOMES AND SERVICES FOR THE AGING

Ms. KELLER. Chairwoman Waters, Ranking Member Capito, and members of the committee, the American Association of Homes and Services for the Aged and Volunteers of America would like to thank you for the opportunity to testify on the impact of Federal spending requirements on HUD supported programs. The members of AAHSA serve as many as 2 million people every day through mission driven not-for-profit organizations dedicated to providing the services people need when they need them in the place they call home.

I am Robin Keller and I am vice president of affordable housing at Volunteers of America. I have been actively involved in the section 202 program for more than 20 years. I am also responsible for the development of the section 811 program for organization.

Volunteers of American is a national nonprofit faith-based organization dedicated to helping people rebuild their lives and reach their full potential. In addition, we are also one of the Nation's largest providers of affordable housing for elderly, families, and disabled.

We currently have sections 231, 202, and 811 projects in operation. We have been funded for an additional 13 projects which are in various stages of development. The section 202 program, like its companion, the section 811 supportive housing for disabled program, are outstanding examples of public/private partnership that maximize efficiency and quality in Federal programs.

When a project opens, the commitment for that unit of housing is for 40 years. However, in recent years, the section 202 program has come under increased scrutiny for pipeline delays.

In its annual budget proposals, the Administration has recommended cuts to the program based in part on the argument that new programs take too long to move to construction and that funds are not expended in a timely manner. HUD's guidelines propose that a project reach initial closing within 18 months.

However, GAO's report in 2003 shows that actually 73 percent of the projects in 2003 and prior to that year had not reached initial closing in 18 months. Arthur Andersen did an independent report that showed that the number was closer to 25 months, and AAHSA did yet another survey of its members showing that timeframe was around 37 months.

The difficulties that sponsors have in spending the award funds are basically two factors, and I am sure it is two factors you hear all the time, and that is time and money.

In the 1970's, 1980's, and most of the 1990's, when HUD funded a project, HUD funded the project. There were sufficient funds to build that facility. However, funds are increasingly decreasing and sponsors are forced to find outside funding to fill that gap.

In 2003, I testified on behalf of Volunteers of America before the Senate Aging Committee and noted that approximately 90 percent of our projects were requiring additional money due to insufficient funds allocated at the time of award. Today, that number is 100 percent.

Like most sponsors, once we receive the award, we have to find additional funding sources to fill that gap, and that puts developers like Volunteers of America at the mercy of the application timelines and funding cycles of other agencies, specifically the two major funding outside sources are CDBG and HOME, both of which come from HUD, and also Federal Home Loan Grant, Home Loan Bank, and other foundations.

A major problem is that the regional cost that HUD announces for the funding cycle isn't sufficient to build the project. The applications are due tomorrow, and to give you a quick example, I contacted the Los Angeles HUD office yesterday. Because the NOFA this year shows that there is \$58,300 to build a new unit of housing, plus a high cost factor for Los Angeles of 249 percent. That equates to \$145,000 a unit to build a housing.

So I asked HUD yesterday, the last section 202 that you closed, what did it cost to build that? They closed a project in March, and it cost \$149,000 in March, but they are putting \$145,000 on the table today. So already today, there is a \$4,000 per unit shortfall, and the project won't be built for another 3 years.

So once you add all the increased costs—labor, construction, and land on top of that—there is a huge shortfall. That particular project had a \$1.9 million shortfall. So the amount of time that it takes to get through zoning, permitting, building permits, and HUD processes adds to the timeframe to get the projects developed.

If HUD puts sufficient funds on the table, the cost would dramatically decrease because we could develop the projects. We wouldn't be spending our time trying to apply for CDBG and HOME funds that all the other agencies are also applying for.

And my basic recommendations are that HUD should adopt realistic funding levels for the construction of new units and fund the projects accordingly. That would eliminate months and months of processing and reduce the overall cost for the development of the project.

They should also remove any provisions that cancel funds, except for delays that were caused outside the sponsor's control—excuse me, within the sponsor's control. In the rare case where you have to pull funds because the sponsor either gave it back or just couldn't produce, then the money should stay with the section 202 program and not be returned to Treasury.

And they should remove any provisions that penalize sponsors when you score future applications. If a sponsor has to have amendment money or it takes too long, then points are taken off for future applications when they go to process for the new funding rounds, yet HUD didn't give you enough money to build the project in the first place.

Our service to the elderly community is based on our expertise and excellent partnerships with Federal, State, and local governments, and we look forward to a strong partnership with the U.S. Congress and this subcommittee to provide solutions that benefit those in need.

I thank you for the opportunity to testify and I look forward to answering any of your questions.

[The prepared statement of Ms. Keller can be found on page 40 of the appendix.]

Chairwoman WATERS. Thank you very much. I now recognize myself for 5 minutes for questions.

I would like to begin with a statement. We held this hearing today because of the very, very reasonable and logical request from Ms. Bryant and others about the problems that are confronting Orlando and other communities, and I think that the information that we have heard today certainly supported by many of us who understand that there are just unavoidable delays in trying to construct these projects. As a matter of fact, I have heard some additional delays today that I never thought of. I never thought that an eagle could cost us so much and create such a delay.

But I am very, very sympathetic to all of the information that I have heard here today, and I am convinced that based on the testimony we heard from HUD, that our witness here today also is sympathetic and is waiting for the bureaucratic response from HUD to support this bill, and I just anticipate that we will get that support. I may be speaking out of turn, but that is what I anticipate.

However, I think you have raised additional questions here today, not only about extending the length of time to complete projects, but you really do raise questions about whether or not there should be some flexibility in the law that would allow HUD to make decisions based on very real problems without us having to go through additional delay in getting the waiver.

I, too, would question some of what Mr. Cleaver alluded to today about technical assistance. We didn't talk about it a lot, but we will address this issue with HUD.

One of the things some of our members have real problems with is spending a lot of money on consultants when it doesn't make

good sense to do so, and we don't know if this is the case or not, but we certainly don't want consultants to substitute for extensions that certainly are needed, and we do believe that when the projects were initially agreed upon, that evidently you showed the expertise and a plan that was acceptable, which shows that you can, in fact, complete these projects given you are not interfered with these unavoidable delays.

So I for one am certainly supportive and would hope that this committee would join with me in moving very quickly to take this bill to the Floor, and also would hope that we could get the support from both sides of the aisle to place it on suspension so that we do not delay in getting these waivers.

With that, I will yield to our ranking member, Mrs. Capito.

Mrs. CAPITO. Thank you, Madam Chairwoman, and I too would support this bill on the Floor and for suspension to help gain the flexibility that I think has been demonstrated through your testimony.

Help me out here with the financing. Ms. McGraw, you mentioned that there is a layer of financing on all these projects, and Mr. Gamble, I believe your project was \$17.2 million HUD. What other funding sources beside HUD sources, because Ms. Keller mentioned CDBG and HOME, is there private financing? And Mr. Gamble, maybe you could then say how the rest of your project was—

So Ms. McGraw, if you would start talking about the layering, and then Mr. Gamble, give me a real life example.

Ms. MCGRAW. Absolutely. The financing layering for supportive housing tends to include McKinney Vento funding—

Mrs. CAPITO. That is HUD, right?

Ms. MCGRAW. HUD funding. It will also include some HOME being administered locally. Low-income housing tax credits are used very often.

Then on the operating and service side, those funds may come from local sources like a department of mental health or AIDS services or—

Mrs. CAPITO. But those can't be construction funds?

Ms. MCGRAW. Excuse me?

Mrs. CAPITO. Those aren't construction funds.

Ms. MCGRAW. For service funds, not for the construction. The construction funds may also come from a local bond initiative or a local housing trust fund.

Mrs. CAPITO. Generally speaking, are those funds phased in over a 5-year period, McKinney Vento or HOME, or are they year to year? I am trying to get a feel, is that the reason the Federal funding might be stacked up in the back end, or is it because everything else has to be expended first, and is that the case here?

Ms. MCGRAW. It is actually an issue of acquiring the funding before you can even start to spend it. So for supportive housing projects, they may acquire the McKinney Vento or HUD funds first. They may acquire them a little bit later in the process, but in order to actually start the project, they will need to have secured funds for the majority of the capital before they even get started, so it doesn't even get to the question of which money they spend first.

Mrs. CAPITO. Okay.

Ms. MCGRAW. Once they assemble it and then can spend it, they can spend those funds simultaneously.

Mrs. CAPITO. Okay. Mr. Gamble, what was the layering of funding in your project? I know it is ongoing.

Mr. GAMBLE. Mrs. "Capito," is that correct?

Mrs. CAPITO. It is "Capito," but that is okay.

Mr. GAMBLE. The 1.7, what we did, we went out and we were able to achieve two tax credit awards in 1 year, which is kind of unheard of in the State of Florida, and especially for a housing authority to get—somehow, there is this belief that somehow housing authorities shouldn't be in the tax credit business. But we were able to get tax credits to supplement the funding for our construction.

In addition, we were able to get the City of Daytona Beach to contribute \$1.6 million for all of the infrastructure work. The County of Volusia, which is where Daytona Beach is, also contributed funds.

Things like licensing permits, which can be very expensive costs, were being waived or have been waived for the construction, and so you add those type things together and it comes to a pretty significant amount of monies that we were able to achieve.

In addition to just the, I refer to it the sticks and bricks or the mortar, we were able to get agencies in the area to provide services, and the number I am going to give is over two HOPE VI programs, so between the two, the total package adds up to close to \$200 million worth of additional dollars that were able to come into the program.

Mrs. CAPITO. Okay, so just quickly here, on the construction side, of the total construction cost, what was that number, of this project? Is it \$20 million?

Mr. GAMBLE. The total construction cost is probably closer to about \$33 million.

Mrs. CAPITO. So the HUD funds here, the HOPE VI funds, are basically about half?

Mr. GAMBLE. Yes.

Mrs. CAPITO. Alright, thank you.

Chairwoman WATERS. Thank you very much. Mr. Cleaver.

Mr. CLEAVER. Thank you, Madam Chairwoman.

Ms. Bryant, on page three of your testimony, you talk about the unexpected need for removal and remediation of impacted soil. When this project first began, was it designated by HUD as a brownfield?

Ms. BRYANT. No, it wasn't.

Mr. CLEAVER. Well, did you have HUD approval to begin construction on this site?

Ms. BRYANT. Yes, we had done phase one and phase two environmental, and those environmental showed that there wasn't any concern. In fact we had done a couple of them, and it wasn't until we started to remove the debris underneath that we found that there was a problem. We believe that it had, in the 1920's, been an oil gasification plant or something near that was dumping there, but all of our preliminary and due diligence test showed that the site was okay.

We didn't qualify for a brownfield, and I don't recall why right now but I know we did look into it, and it was not designated as a brownfield.

Mr. CLEAVER. So it was approved by the State environmental protection and HUD?

Ms. BRYANT. Yes. Our remediation plan was approved.

Mr. CLEAVER. How much has that cost you?

Ms. BRYANT. \$4.5 million in additional costs.

Mr. CLEAVER. And those dollars were actually granted by non-governmental entities?

Ms. BRYANT. Well, the City gave us approximately \$1 million and—

Mr. CLEAVER. Of CDBG?

Ms. BRYANT. I have forgotten which funds they were, but they did provide \$1 million to assist us.

And then we had abandoned—we had already begun to implement our offsite strategy of providing second mortgages for homebuyers to purchase homes, and we had nine in the pipeline. We had wanted to do 50, but HUD approved for us to use the additional monies, the monies that would have paid for the additional homebuyers, to use that onsite, so that gave us an additional \$2 million. And then as fate would have it, the Florida Department of Transportation purchased 16 of our units and we received \$4 million from them, so we used \$1 million from that to make up for the difference.

Mr. CLEAVER. Now, you know what this new legislation that we are discussing is aimed to do?

Ms. BRYANT. Yes.

Mr. CLEAVER. Do you believe that you can spend your HOPE VI dollars by September 30th?

Ms. BRYANT. If we have complete cooperation—what we had to do was, we had to seek tax credits because of the problems that we encountered, and the—

I misstated, it is not \$11 million, we spent \$11 million, we have about \$6 million, \$6.9 million that we still have to spend. And our strategy is to provide a bond redemption for about \$4.7 million, which is where we would use the HOPE VI funds to pay off the bonds, and then we have on another project, phase F, we will spend about \$1.6 million.

So what we have in jeopardy, if those strategies work, is \$579,000. But if we are not able to use those funds to pay down the construction and the bonds, then we will have about \$6.9 million that we will lose.

Mr. CLEAVER. Do you need a consultant?

Ms. BRYANT. No. We have had technical assistance from HUD and they have expeditiously worked to try to make this plan work for us and—

Mr. CLEAVER. Okay. Mr. Gamble, do you need a consultant?

Mr. GAMBLE. At this point, no, we don't need a consultant.

Mr. CLEAVER. I have been so frustrated today trying to find out why we have put money aside for consultants, and based on the fact that I was mayor and did run a housing authority, I can't understand what we need consultants to do. And so since the two of you are directly impacted, I thought maybe you could help us find

out the value of some technical assistance at this point. Can you speculate?

Ms. BRYANT. A consultant could help us with strategies to spend the monies. At this point, we are so close to the deadline that we just need some assistance with being able to get these monies expended within the deadline, and to make sure that we are able to get the HOPE VI funds spent upfront. And HUD has been working with us to do that. In fact, they informed us we have two approvals that they have made just yesterday.

Mr. CLEAVER. Ms. McGraw, are you going to shed some light on this?

Ms. MCGRAW. I would like to.

Mr. CLEAVER. Thank you.

Ms. MCGRAW. I do think that when you only have a couple of months left, there is not a lot that a consultant could offer that you haven't already thought through, but if you can go back further, when we have worked with HUD on the unobligated grants, we started about 9 months ahead of time and reached out to those, and you will see that we had a tremendous amount of success. That work was not extremely elaborate technical assistance, it wasn't very deep technical assistance, but it did enable the groups to make sure that they had all of their funding resources lined up and that they would be able to obligate and meet the technical submission requirements for HUD.

I think that going back even further, we have been successful in offering technical assistance before grantees even apply. After they apply for HUD resources to help them assemble the other financing that they would need and understand how much funding they need, what do they need to put together, and how to do effective project management.

There are, beyond government agencies, a number of nonprofits that are administering and seeking funds, and so I think the nature of the technical assistance certainly varies depending on how sophisticated and how much they have worked in that area.

Mr. CLEAVER. Thank you. We had a section 202 project submitted in my congressional district, and it was turned down, and then HUD told the applicant that they needed to hire a consultant and gave them a list of three. Needless to say, the following funding cycle, the Harvest Church received the section 202 grant. I am just always interested in these consultants and why they are necessary, especially at this short period of time.

So I do have some other questions, but I appreciate the candor that you presented in your comments. Thank you.

Chairwoman WATERS. Thank you very much.

There are no other members present who raised questions of this panel.

I would like to thank the panel for being here today, for taking time from your schedules to come and place on the record the difficulties that you are having in spending the money in the short period of time that you have left. I think that the obstacles that you have been confronted with are understood by us, and your reasons for wanting to get our assistance are very logical, and again, I think you will get that support from this committee.

With that, the Chair notes that some members may have additional questions for this panel which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record.

Thank you, this panel is now dismissed.

Before we adjourn, without objection, the written statement of the Cherokee Investment Fund will be made a part of the record of this hearing.

Thank you. The hearing is adjourned.

[Whereupon, at 11:13 a.m., the hearing was adjourned.]

A P P E N D I X

July 9, 2008

STATEMENT OF THE HONORABLE WM. LACY CLAY

Before

The Subcommittee on Housing and Community Opportunity
"Federal Spending Requirements in Housing and Community Development Programs:
Challenges in 2008 and Beyond"
July 9, 2008

Good morning, Madam Chairwoman, Ranking Member, Members of the Committee and witnesses.

The St. Louis Housing Authority (SLHA) has had some difficulty spending allocated funds for various programs. One of the issues involves the Section 8 program. In FFY 2007, SLHA received notification of the funding for its program in late June. The notification stated that SLHA was going to receive approximately \$3 million more in funding than we expected on July 1, 2007.

While this was good news because the extra funding will allow us to assist more families, the down side was we had very little time to expend the funds. SLHA's fiscal year ends on September 30th. Because of the huge increase in funding on July 1st we would have had to lease approximately 1400 additional units per month to expend the extra funds. As our program is about 5200 units, the task was not possible with the resources we had.

In FFY 2008, we were informed of the funding level in April, 2008. We were not sure if the prorating of the funding was going to be reduced from the 2007 level until we received the notification. In 2008, the funding level increased only slightly. To ensure that we do not overspend we tend to be conservative. Once we were assured the funding level, we have been aggressive in attempting to lease-up units and expend the funds, calling over 1700 families off the waiting list. The current timing of funding notification makes it very difficult to plan.

The ability to plan is also a significant issue in the public housing operating subsidy program. In our last two fiscal years our operating subsidy amount has not been approved by HUD until after our fiscal year ended. While the funding is still provided by HUD and the level is/has been a little more predictable, the exact prorated amount has not been provided until late September or early October. SLHA has taken a fiscally responsible approach to ensure we do not spend more than we are going to receive. However, when we don't know how much we are going to receive until after you fiscal year is over, financial planning is extremely difficult.

In the Public Housing program the level of funding for Operating Subsidy and Capital Funding was insufficient for the last several years. We are currently operating with about 84% of the funding HUD has determined we need to operate. This, combined with the fact that we don't know exactly how much funding we are going to receive, makes it difficult to continue to provide the necessary services to public housing residents.

I yield back the balance of my time.

WRITTEN STATEMENT OF DOMINIQUE BLOM

Deputy Assistant Secretary, Office of Public Housing Investments
U.S. Department of Housing and Urban Development

Hearing before the Subcommittee on Housing and Community
Opportunity, Committee on Financial Services

United States House of Representatives



“Federal Spending Requirements in Housing and Community
Development Programs: Challenges in 2008 and Beyond”

July 9, 2008

Good morning Chairwoman Waters and members of the Subcommittee. I am Dominique Blom, the Deputy Assistant Secretary for the Office of Public Housing Investments at the U.S. Department of Housing and Urban Development (HUD). Thank you for inviting me to testify today.

The Department assists and monitors all HOPE VI grantees to enable them to implement their revitalization plans and construct units in accordance with their development schedules. For grantees awarded HOPE VI funding in FY 2002 or later, Congress established an expenditure deadline for HOPE VI funds. Grantees are required to expend their HOPE VI funds within five years of HUD's deadline for obligating the grant funds. Under this requirement, it is the responsibility of each grantee to establish and implement realistic development schedules that allow them to complete the federally funded components of their projects by the five year expenditure deadline or have the unused funds recaptured by the Treasury.

Over the last year, the Department has discussed the potential impacts of this expenditure deadline with both the House and Senate Appropriations Committees. My remarks today will focus on what the Department has done to assist FY 2002 HOPE VI grantees in meeting the expenditure deadline of September 30, 2008 and the current status of funds that remain unexpended as of June 30, 2008.

The Department has taken numerous steps in notifying and reminding FY 2002 grantees of their responsibility to meet their own development schedules and the five year expenditure deadline of September 30, 2008 that was established by Congress. The grant agreement that codified the funding relationship between each grantee and HUD clearly stated (in bold type) that all funds must be expended within five years of grant award or unused funds would be recaptured by the Treasury. The letter from HUD approving the revitalization plan submitted by each grantee reiterated the language in the grant agreement, and encouraged grantees to stay on schedule to meet the expenditure deadline. In post-award and follow-up site visits over the life of each grant, HUD staff also reminded grantees of this requirement and their responsibility to stay on schedule.

During the course of each grant, if a grantee submitted revisions to the Revitalization Plan that altered the development schedule, HUD staff reviewed the schedule to ensure that the grantee would complete construction ahead of the expenditure deadline before approving the changes. In the approval of these revisions, HUD staff again reminded grantees that it was their responsibility to expend all HOPE VI funds by the expenditure deadline.

On March 20, 2008 HUD issued a letter to all FY 2002 grantees with unexpended funds. In this letter grantees were again reminded that all HOPE VI funds must be expended by September 30, 2008. In response to this letter grantees were required to state in writing if they would be able to meet the expenditure deadline.

For those grantees that expressed concern about meeting the expenditure deadline, the Department assisted the grantee to develop a plan for completing construction and

expending HOPE VI funds by the deadline. The Department also accelerated review processes and expedited approvals to put each of these production and expenditure plans into action. Throughout this process the Department was careful to exercise good judgment, not take unreasonable risks and ensure that taxpayer dollars were used for eligible and feasible purposes.

As of June 30, 2008, there was \$78 million in unexpended funds across the 28 grantees awarded HOPE VI funding in FY 2002. Based on grantee responses and the Department's monitoring efforts, we currently believe that 21 grantees will expend all funds, four are likely to expend all funds, and three are unlikely to expend all funds by the September 30, 2008 deadline. Of the three that are unlikely to expend all funds by the deadline, the Department estimates that the amount of funds at risk for recapture by the Treasury across these grantees ranges from \$200,000 to \$2.3 million, for an approximate total of \$4 million.

Beyond FY 2002 grantees, the Department is also assisting HOPE VI grantees awarded funding in FY 2003 or later with their efforts to meet the expenditure deadline set by Congress for each grant cohort. To this end, HUD has sent a letter to FY 2003 grantees with unexpended funds that requests information on their estimated time frame for completing construction and expending all HOPE VI funds. Grantees are required to respond to this letter and state in writing if they are able to meet the expenditure deadline. In addition to assistance provided by HUD staff, the Department is also dedicating HOPE VI technical assistance funding to further assist FY 2003 and later grantees in meeting their expenditure deadlines.

Thank you for the opportunity to discuss the status of FY 2002 HOPE VI grantees. As I mentioned earlier, the Department assists and monitors all HOPE VI grantees to enable them to implement their revitalization plans and construct units in accordance with their development schedules. As part of these efforts, the Department will continue to assist HOPE VI grantees in meeting the expenditure deadlines that are mandated by Congress for each grant cohort. I am happy to respond to any questions that you might have.



July 7, 2008

Congresswoman Maxine Waters
Subcommittee on Housing and
Community Opportunity
Committee on Financial Services
U.S. House of Representatives
Washington, D.C.

Re: Federal Spending Requirements in Housing and Community
Development Programs: Challenges in 2008 and Beyond

Dear Congresswoman Waters:

A written statement of the proposed testimony for the above reference Subcommittee Hearing is attached. If you have any questions, contact me at 407-895-3300, extension 1000.

Sincerely

Vivian Bryant, Esq.
Executive Director

Attachments

VB/vb

Summary of Education, Experience and Affiliations of the Presenter: Vivian Bryant, Esq.

Education: Juris Doctorate –University of Florida, Gainesville, FL
 Masters Social Work – Florida State University, Tallahassee, FL
 Bachelor of Arts – Howard University, Washington, D.C.

Experience: Executive Director of Orlando Housing Authority, Orlando, FL - 14 years
 Assistant Director for Section 8 Programs, Miami-Dade County, FL 6 years
 Assistant Director for Housing, Dade County Community
 Development Program - 13 years

Affiliations: The Housing and Development Law Institute, Vice President

 Public Housing Authorities Directors’ Association Trustee
 Florida Association of Housing and Redevelopment Officials
 The Florida Bar Association
 The American Bar Association

Description of FY 2002 HOPE VI Grant

The Carver Court Public Housing complex consisted of 212 units. It was constructed on a landfill in 1945. Over the years, the land beneath the 35 buildings began to compact. The building foundations cracked and many of the apartments were unsafe. In 2001, the United States Department of Housing and Urban Development (HUD) authorized the Orlando Housing Authority to relocate the tenants and to demolish the buildings.

The Orlando Housing Authority (OHA) was awarded a 2002 HOPE VI grant in the amount of \$18,084,255 to revitalize the Carver Court public housing development site, hereinafter referred to as Carver Park. The name was changed; the redevelopment site is called Carver Park. Carver Park is a new community, founded on a concept of community sustainability that goes beyond the mere physical transformation of an obsolete public housing development. The site is the southern anchor to the Historic Parramore Heritage neighborhood in downtown Orlando. Carver Park is the key to the revitalization of this community that is impacted by minorities and poverty. The 17-acre Carver Park site represents the largest revitalization of affordable housing in the downtown area.

The new community will provide 203 units of mixed-income, mixed-tenure, mixed-finance housing with facilities and a new city park.

Tenure Type	Total <u>Number</u>	Affordable <u>Units</u>	Market Rate <u>Units</u>	# Public Housing <u>Units</u>	% of <u>Units</u>
Homeownership	83	30	53	0	41
Rental	<u>120</u>	<u>26</u>	<u>0</u>	<u>94</u>	<u>59</u>
Grand Total	203	56	53	94	100

Many local factors have affected the Carver Revitalization Plan goals over the last five (5) years: hurricanes, skyrocketing constructions costs, the need for soil remediation and inflated housing costs. The impacts of these factors are discussed below.

Hurricanes. The State of Florida was severely impacted by the unprecedented 2004 and 2005 hurricane seasons. Florida was struck by seven (7) hurricanes and four (4) tropical storms. In 2004, just as construction was beginning on the Carver Park site, Orlando was hit by three hurricanes, Charley, Frances and Jeanne in the months of August and September. The National Geographic News stated, "The last time one state took such a pounding was 1886, when Texas was hit by four (4) hurricanes." The Orlando Housing Authority assisted the City of Orlando in its clean-up efforts after the hurricanes by allowing the City to use the Carver Court site as a debris collection site throughout 2004 and into the first quarter of 2005.

The OHA still tried to meet the goals of the Revitalization Plan by September 30, 2008. The Plan was modified to take into consideration the extraordinary site conditions, skyrocketing construction costs, soaring home sales prices, drops in median income, increased costs for homeowners insurance and property taxes, and delays caused by site remediation.

Skyrocketing Construction Costs. Construction costs skyrocketed in 2005 because of all the hurricane damage throughout the state. Contractors were in such demand that some families had to wait a year to have their roofs repaired. Contractors were able to name their prices because there was too much work to be done and not enough contractors to complete the work. Construction estimates for the dwelling-unit construction on all phases of the Carver Park Revitalization Development increased by five (\$5,000,000.00) million dollars.

The Orlando Metropolitan Statistical Area (MSA) average home sales prices increased dramatically from \$159,627 in January 2003 to \$293,775 in January 2006. Orlando was thrust into an affordable housing crisis. The MSA average sales price for homes in the Orlando area in May 2007 was \$316,287. While home prices escalated, median income for the area dropped from \$57,400 in 2006 to \$54,900 in 2007. Average home prices are out of reach for low-income families in Orlando. HUD's published income limits for a family of four at 80% of median income in Orlando is \$45,900. A low-income family of four can qualify for a first mortgage of \$109,000, leaving a shortfall of \$207,287.

Unexpected Need for Removal and/or Remediation of Impacted Soil. Phase 1 and Phase 2 environmental assessments were conducted on the Carver Park site prior to beginning construction. The tests showed no causes for concern. However, it was determined in 2005 that the Carver Park site was environmentally impacted by heavy hydrocarbons. Construction was halted until remediation of the site could be completed. The remediation took over two years. The OHA had to find other funds for the remediation and construction and had to complete tax credit applications for two of the phases of the development. The Florida Department of Environmental Protection (FDEP) was notified. Construction was delayed until FDEP approved the remediation plan.

Thirty-eight (38) million pounds of impacted soil were removed from Carver Park site during the 27-month remediation period; 18,000 pounds of soil were replaced. Sixty thousand (60,000) miles were covered transporting soils to an approved landfill, for a total cost of approximately \$4.5 million.

Difficulties in Spending FY 2002 Grant Funds

The soil remediation delayed the construction of the infrastructure, i.e., sewer lines, man holes, storm drainage systems and roads.

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The OHA applied for and was awarded bonds and Low-Income Housing Tax Credits (LIHTC) from the Florida Housing Finance Corporation (FHFC) for the 64-unit elderly public housing complex. OHA also applied for and received LIHTC for the mixed income family rental on site. Preparing and submitting these applications added to the delays. This additional funding compensated for the increased costs of construction.

Actions Taken by the United States Department of Housing and Urban Development (HUD)

In order to move forward with the HOPE VI grant funds, pre-development activities continued throughout the remediation process. HOPE VI predevelopment funds were spent throughout the remediation process. Activities included financing, permitting, architectural and engineering services and other non-construction services. The Community and Supportive Services (CSS) component provided services to former residents per the HUD-approved Community and Supportive Service Plan (CSS). The Orlando Housing Authority (OHA) requested approval from HUD to modify the Carver Park Revitalization Plan and realign the overall Carver Park HOPE VI budget. The Carver Park infrastructure costs significantly increased over the original estimates due to extraordinary site conditions.

The HUD-approved plan for Carver Park included an off-site homeownership. In this phase, \$2 million of HOPE VI funds would have assisted fifty (50) families in purchasing homes (\$40,000 each). HUD approved the OHA's proposal to reduce the number of offsite homeownership opportunities to nine (9) and to increase the number of affordable for-sale units on the Carver Park site from twenty-two (22) to thirty (30). This reallocated funding was used to help pay for costly remediation.

OHA maintained active communication with its HOPE VI manager and other HOPE VI program personnel in finding solutions to expenditure delays. HUD promptly approved requested budget revisions, revitalization plan amendments as well as providing technical assistance throughout the process.

In the event your FY 2002 HOPE VI funds are cancelled, how will the cancellation affect the implementation of your HOPE VI grant? What services, programs, or units do you estimate you will be unable to implement or complete if the funding is cancelled?

The bulk of HOPE VI funds are being used as leverage for private financing for fifty-six (56) units of affordable rental and sixty-four (64) units of public housing for the elderly. The schedule of expenditures is precise. If the schedule is compromised for any reason and HOPE VI funds become unavailable after September 30, 2008, project financing is in jeopardy. The developer may sue the Housing Authority for specific performance of the contract.

In your opinion, what statutory changes are necessary in order to address the difficulties you have encountered in spending your HOPE VI funds?

Housing authorities, including the Orlando Housing Authority, are good stewards of public funds. However, even under the best of circumstances, delays can occur. In any construction environment, whether public or private, market forces, environmental issues and natural events can seriously impact a well-planned development. While housing authorities should be held accountable for timely implementation of grant provisions, allowances should be made for circumstances outside the control of the grant recipient. Providing flexibility in time requirements would seem a reasonable provision.

Commissioners Lillian Sampson, Chairman John Kretzer, Vice Chairman Robin A. Courtney Sonya C. Frazier Reverend Corwin D. Lasenby	THE HOUSING AUTHORITY of the City of Daytona Beach 211 N. Ridgewood Avenue, Suite 200, Daytona Beach, FL 32114 (386) 253-5653 FAX (386) 255-2136 TDD (386) 252-6473	Joyours "Pete" Gamble Executive Director/CEO
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Committee	Housing Committee on Housing and Community Opportunity
Reference	Hearing on federal spending requirements in Housing and Community Development, Wednesday, July 9, 2008 Room 2128, Rayburn House Office Building
Project Name	Bethune Village and Halifax Park 2002 Hope VI Grant
Agency	Housing Authority of the City of Daytona Beach
Location	Daytona Beach, Florida

**Directors Background
Joyours "Pete" Gamble**

During his initial college days he along with six other Blacks were the first to attend/integrate what was then Daytona Beach Junior College currently Daytona Beach Community College. After two years, he transferred to Bethune Cookman College. There he received his Bachelor degree.

Upon completion of college, Pete taught in the Brevard County Schools for two years before becoming an engineer with the General Electric Company in Daytona Beach, later Martin Marietta and finally Lockheed Martin Corporation. During his twenty-eight years as an engineer, systems analyst, and project manager, he received numerous awards. As an employee of General Electric, he continued his education. Pete attended Florida A&M University for work towards a Masters degree, plus universities as Massachusetts Institute of Technology, Princeton, and UCF for additional studies. His greatest skills have been developed through the General Electric Corporate Management Training Program.

At General Electric Pete was involved in the state of the art development of satellite communications, artificial intelligence, solar power technology, remote diagnostics, speech recognition, cell phone technology, military simulation technology (video gaming) and the latest military automated ship control technology. Pete's designs are currently on the finest fighting ships in the world, the Perry Class Guided Missile Frigates, Ticonderoga Cruisers and the Burke Class Guided Missile Destroyers including the USS Cole. Prior to leaving Lockheed he worked two winning programs that value exceeds \$200,000,000,000 (F22 and F35).

THE HOUSING AUTHORITY OF THE CITY OF DAYTONA BEACH, FLORIDA

In 1991 along with other GE employees the Company Advanced Information Systems Group (AISG) was founded in Daytona Beach. In 1996 USA Today rated the company as the fastest growing high technology company in the State of Florida. AISG has continued to receive numerous other awards and is currently located in Orlando, Florida. AISG has presence in countries around the world like England, Saudi Arabia, Germany, Mongolia and others.

After being a Commissioner for Daytona Beach Housing Authority for nine years, he was selected to guide the operation, as Executive Director in 1997. Over the last ten years Pete has attempted to expand the Authority's community presence.

Pete is community minded and affiliated with many organizations including Board of Counselors of Bethune Cookman University, Daytona Beach Community College Foundation Board, Boys and Girls Club Board of Directors, YMCA Corporate Board of Directors, Kiwanis of Central Daytona Beach, South East Regional and National Association of Housing Authorities Legislative Committee, Fannie Mae Advisory Board, formerly Vice President of Business Development Daytona Beach Chamber of Commerce, member of Kappa Alpha Psi Fraternity Inc., Sigma Pi Phi Fraternity, NAACP and his Church, New Life Ministries.

Before Grant

- 65 year old buildings – World War II era
- 399 housing units existed on two sites one block apart
- \$50,000,000 in Capital needs were required to bring the units up to current building codes at \$125,000 each unit
- All residents were concentrated into low income Public Housing in a small area within the city
- Lack of community services were available to residents, original apartments were a city within the city. Many people would not venture there. Pizza Man would not deliver to the sites.

After Grant

- 213 new structures – Energy Star goals which reduces the cost of living in the new units through lower utility consumption
- 2 new sites with community services, bus service, college nursing school set up across the street from one site, Wal-Mart being built a block from our Bethune Village/Pine Haven site, no problem getting agencies to visit the sites
- 4 Hope VI funded Home Ownerships completed one in process
- 13 Other families have Homes because of the Hope VI program, at no cost to the program through our Public Housing and Section 8 Homeownership programs
- Mixed income environment exist, currently no concentration of just low income public housing any more
- Community Center-New Neighborhood Network Center(NNC), fully operational on site 16th July 2008 – Job searches, computer training, game room with

THE HOUSING AUTHORITY OF THE CITY OF DAYTONA BEACH, FLORIDA

activities to keep kids off the street, Will preparation and job training on site exist today

Impact of scheduled date

- Redesign of an entire construction site to meet the schedule, very costly
- Deletion of desired site composition which formerly was single family type structures that could be easily sold in the future as homes should the tenant wish to buy the units
- No time or money due to the short time span is left for homeownerships
- Construction cost have been reduced now because of the current economy but, there is no money to make changes or additional improvements at this late date
- Can't build additional Public Housing units if we wished Fair Housing (FHCO) won't allow it – no one for one replacement
- From bricks to sticks, our construction technique changed from concrete blocks to wood frame due to approximately 35 percent cost increases.
- The eagle made us do it - approximately ¼ of the acreage on one site was taken out of the construction area for a preserve for the bald eagle. This is believed to have occurred because of the 4 hurricanes in 2004 and hurricane Katrina hitting the Gulf in 2005. These storms caused pricing to go through the roof when you could get quotes. Many contractors went to New Orleans because they could get better deals on the reconstruction after Katrina.
- We are rushing to complete expending funds to complete as much as possible before the deadline of September 2008, primarily the Endowment
- \$17,242,383 grant funds received
- \$14,750,317 grant funds spent
- \$2,492,066 grant funds left

Loss of funds impact

- Endowment Application is pending, two months before loss of funding. This endowment will allow us to continue providing assistance for job search, computer education, medical information and transportation (bus tokens, trips to doctor/clinics).
- Without the endowment funds community services assistance cannot continue

HUD/DBHA addressed problem

- Headquarters staff has been outstanding in assisting with our problems
- HUD Headquarters, Field Office have been at all times ready to assist with issues within their hands
- DBHA has always had an open line with all HUD Hope VI staff through direct contacts with them
- Seasoned Grant Managers are truly needed for a successful grant, there is no substitute for experience

THE HOUSING AUTHORITY OF THE CITY OF DAYTONA BEACH, FLORIDA

- DBHA has at times had to think outside of the box – look ahead to our replacement housing funds and Section 8 for future construction to replace units lost in the transition to Hope VI units

Recommendations

- Headquarters regulation need flexibility in decision making in extreme situation (abnormal conditions - eagle nesting on a site stopped construction, natural disasters – fires, hurricanes for grant extensions)
- Provide additional funding assistance to assist Hope VI projects after a natural disaster, cost always definitely rise. At this time if you find yourself in this situation, all you can do is look for another method to complete your project, usually reducing the numbers of structures built or building materials.
- Allow Support Services to continue long after bricks and mortar are completed, five years is just time to get started working on the problems that the people we serve have.
- Additional workshops for Hope VI awardees and applicants, using grantee's experiences or case studies



**Statement of Ms. Robin Keller, Vice President, Affordable Housing Development,
Volunteers of America, Inc.**

**Submitted to the
U.S. Financial Services Committee
Subcommittee on Housing and Community Opportunity**

**Legislative Hearing on
“Federal Spending Requirements in Housing and Community Development Programs:
Challenges in 2008 and Beyond”**

July 9, 2008



Testimony

Chairwoman Waters, Ranking Member Capito and Members of the Committee, it is my pleasure today to testify on the “Federal Spending Requirements in Housing and Community Development Programs: Challenges in 2008 and Beyond.” The American Association of Homes and Services for the Aging and Volunteers of America would like to thank the Subcommittee for the opportunity to testify on the impact of federal spending requirements on HUD’s supportive housing programs. The members of the American Association of Homes and Services for the Aging (www.aahsa.org) serve as many as two million people every day through mission-driven, not-for-profit organizations dedicated to providing the services people need, when they need them, in the place they call home. Our 5,700 members offer the continuum of aging services: adult day services, home health, community services, senior housing, assisted living residences, continuing care retirement communities, and nursing homes. AAHSA’s commitment is to create the future of aging services through quality people can trust.

My name is Robin Keller and I am Vice President for Affordable Housing Development at Volunteers of America. I have been actively involved with 202 housing for 20 years and am also responsible for development of Section 811 funded housing on behalf of the organization. Prior to my employment with Volunteers of America, I was employed at HUD for seven years. Volunteers of America is a national, nonprofit, faith-based organization dedicated to helping those in need rebuild their lives and reach their full potential. Through thousands of human service programs, including housing and healthcare, Volunteers of America helps more than 2



million people in over 400 communities. Since 1896, our ministry of service has supported and empowered America's most vulnerable groups, including at-risk youth, the frail elderly, men and women returning from prison, homeless individuals and families, people with disabilities, and those recovering from addictions. Volunteers of America engages its professional staff and volunteers in designing and operating high quality human services that deal with today's most pressing social needs for abused and neglected children, youth at risk, the frail elderly, the disabled, homeless individuals and families, ex-offenders, substance abusers, and many others in need of assistance.

In addition, Volunteers of America is one of the nation's leading nonprofit providers of quality affordable housing for individuals and families in need, people with disabilities, and the elderly in over 220 communities across the United States, and is a growing provider of assisted living, skilled nursing and Alzheimer facilities for seniors with limited resources. We currently have 231 Section 202 and Section 811 facilities in operation and an additional 13 facilities in various stages of development. As a leading provider of housing and services for the elderly, Volunteers of America is an active member of the Leadership Council of Aging Organizations, the American Association of Homes and Services for the Aging, the National Council on the Aging, the Interfaith Coalition for Long Term Care, and the Elderly Housing Coalition.

The HUD Section 202 Supportive Housing for the Elderly Program provides capital development grants and rental assistance contracts to non-profit housing sponsors to develop, build and maintain supportive housing for seniors living on very-low incomes. Since the program's creation in 1959, it has developed nearly 6,000 projects serving more than 310,000



elderly households. The Section 202 program, like its companion, the Section 811 Supportive Housing for Disabled program, are outstanding examples of public-private partnerships that maximize efficiency and quality in federal housing programs.

We would like to take this opportunity to urge Congress to eliminate the 5 year limitation on the funds availability after obligation. While we believe few projects reach that deadline, if it does occur, typically factors far beyond the sponsors control would cause the delay in spending.

Background

In the past, the Section 202 program has come under increased scrutiny for “pipeline” delays. In its annual budget proposals, the Administration has recommended cuts to the program based, in part, on the argument that new projects take too long to move to construction and funds are not expended in a timely manner. HUD’s guidelines propose that projects should move from fund reservation to initial closing within 18 months. In 2003, the Government Accountability Office (GAO) found that 73% of projects funded in fiscal years 1998 through 2000 did not meet HUD’s 18-month guideline to move from award notification to initial closing.¹ A 2000 study by Arthur Andersen found that it takes an average of 25 months for projects to go from award to initial closing.² The reasons included departmental staffing levels and expertise, inexperienced sponsors and inadequate funding levels. GAO cited reasons similar reasons. When discussing the GAO study during a Senate Aging Committee hearing in 2003, former Assistant Secretary John

¹ United States General Accounting Office, *Elderly Housing: Project Funding and Other Factors Delay Assistance to Needy Households*, GAO-03-512, (Washington, DC: United States General Accounting Office, May 2003), 15.

² Arthur Anderson, *Section 202 Supportive Housing for the Elderly Funds Underutilization Study*, (Washington, DC: U.S. Department of Housing and Urban Development, 2000), 25.



Weicher noted that the backlog of old projects had been virtually eliminated by mid 2003. While it is true that HUD has made some significant improvements to the program in recent years, a large number of projects still take more than the recommended 18 months.

Section 202 PRAC Funding Allocation

In response to concerns about “pipeline” issues appropriators have imposed a five year limitation on the availability of funds. It is important for Congress to realize that the current Section 202 PRAC program includes both capital advance funding, as well as multiyear operational funding. The five year cancellation clock begins running at the obligation date and PRAC contract funds do not begin to flow until after the project is built and is operational. In 1990 Section 202 PRAC awards included contracts to fund the operational expenses of the project over that 5 year period. In 2006, to address the appropriation crisis, Congress reduced PRAC contracts to 3 year allocations. The cancellation of funds for these contracts may cripple many properties even if the funds are obligated and the project has gone to initial closing within the 3 years. If the PRAC amounts are not spent down, future renewals are at risk since often the PRAC funds from the initial contract are frequently applied to renewals of other projects, reducing the funding needed for renewals and limiting the reduction of the capital advance funding.

Delays in the Section 202 Program

The difficulties that sponsors have spending their awarded funds are based on two factors: time and money. The current Section 202 program does not provide full funding for a new



development with HUD estimating that they cover 80% of the cost of new development on average. Sponsors are faced with the challenges of finding additional grants to meet a larger funding gaps. A construction cost study conducted by the National Association of Home Builders acknowledges that virtually every project requires additional funding or gap financing.

According to the 2000 study by Arthur Andersen, HUD's expected timeframe to move from the time funds are appropriated through the initial closing stage is 30 months. In practice, however, AAHSA has found that it actually takes approximately 37 months.

Section 202 Process Stages	Expected Time Frame	Actual Time Frame
Appropriation to NOFA	5 months	5.9 months
NOFA to Award	7 months	6.2 months
Award to Firm Commitment	17 months	22+ months
Firm Commitment to Initial Closing	1 month	3.1+ months
<i>Total Time</i>	<i>30+ months</i>	<i>37+ months</i>

If the capital advance funds are cancelled, the funds are not reallocated to the 202 program. The funds are permanently rescinded and the country has lost these units of affordable housing for our seniors. The loss of these units would be a tragedy given the increasing need for affordable housing for seniors.



Development Cost Limits

In 2003, I testified on behalf of Volunteers of America before the Senate Aging Committee and noted that approximately 90% of the facilities that we develop require additional money due to insufficient funding allocated at the time of the award. Like most sponsors, we must search for additional funding sources to fill the gap created by an inadequate capital advance. This puts developers at the mercy of the application timelines and funding cycles of other agencies and organizations, adding to the delay. The chronic underfunding of this program means that increasing the development cost limits for new Section 202 projects will mean fewer and fewer projects built each year. It may be more realistic to make mixed-financing opportunities easier, thereby reducing delays.

Escalating Construction Costs

The regional cost differentials for development and escalating construction costs have not been reflected in HUD's funding limits. In the FY08 NOFA, the Department allocated \$58,300 limit per unit for new projects and caps the overall costs at 260% of that amount for "high costs areas." The simple fact is that the actual development costs – including land acquisition - in many areas far exceed that amount. Developers must spend a great deal of time looking for additional funding and that means construction costs continue, resulting in still more gap financing needed. For perspective, the 2008 allocation of \$58,300 per unit provides a maximum allowable amount to build a unit in Los Angeles of \$151,580. From that amount, approximately 30% must be used for legal costs, soils investigation, furnishing purchase, audit costs,



architectural design, land costs, consultant fees, etc. This leaves approximately \$100,000 to build a new apartment unit three years from now.

Section 202 applicants are required to have site control when they submit their application. In some cases, developers negotiate an option to purchase the land when they receive the necessary funding, for which they pay a premium. Sponsors face unpredictable timing of notice of funding availability (NOFA) release, application deadlines, and award announcements. Timing of the NOFA release is largely out of HUD's control since it is contingent on passage of the federal budget, however, once the NOFA is released, there are no set parameters for application deadlines and selection announcements. Over the past six years, sponsors have had between 49 and 87 days to prepare applications. In turn, the review stage has ranged between 92 and 219 days. This year the NOFA was released on May 12th and applications are due tomorrow, on July 10th, a total of 59 days. If history is any guide, announcements will be made before the election. This all adds to the time that applicants must option land in the event they receive the award.

More problematic is the fact that HUD requires sponsors have a general contractor on board with a fixed price when submitting their application for firm commitment. The reality of the business is that contractors will only hold their prices for so long. The longer the review and processing of the grant takes, the greater the likelihood the construction costs will escalate. These problems add to the snowballing costs. I strongly encourage HUD to adopt reasonable cost limitations for new development, use independent cost analysts to review the reasonable project costs for a given area and fund the projects accordingly.



Delays Caused by Outside Factors

Many cost increases are caused by time delays that are out of the sponsor's control, such as local zoning and permitting approval delays or HUD's processing. According to its NOFA HUD recognizes this fact in their policy on applying for amendment funding, "amendment funds will only be provided in exceptional circumstances (e.g., to cover increased costs for construction delays due to litigation or unforeseen environmental issues resulting in a change of sites) that are clearly beyond your control." When this is the case applicants should not be penalized with a loss of funding for something that is beyond their control.

Partnering with Other Funders

Partnerships between HUD and other housing agencies has been a necessary part of the Section 202 program for as long as the program has been underfunded. Rather than a problem, it presents opportunities for HUD to improve and streamline its business relationships. Sponsors have had to seek grant funds under the CDBG and HOME programs, or grants or loans from the Affordable Housing Program of the Federal Home Loan Banks, or local foundation grants. In the current economic environment, the availability of outside funding is decreasing rapidly. More recently there have been opportunities to establish partnerships with state housing finance agencies and the Rural Housing Service of the Department of Agriculture. The lack of clarity in the Section 202 funding process makes it difficult to plan for and align with other funding source deadlines and other development process procedures. Since almost all Section 202 projects must secure additional sources of money, sponsors must be able to plan submittals for other funding



sources. If sponsors miss a funding deadline due to a delay in award announcement, they must wait until the next application opportunity, further delaying a project.

If HUD wishes to increase the efficiency with which other financing sources can be blended with Section 202 dollars, they have to be willing to bend in some of their requirements. Although congressional budget passage is beyond HUD's control, HUD should set predictable dates for NOFA release, application deadlines, and award announcements. Each year HUD should release its NOFA within a specified number of days after the budget is passed, and set a firm deadline for awards.

AAHSA Efforts to Address Delay Problems

AAHSA as an organization has advocated frequently for changes to the processing of the Section 202 grants to speed up development and minimize delays. We also firmly believe that providers should not be penalized for HUD's inefficiencies and delays. In fact, last year we worked with Chairman Frank, Congressman Mahoney and Chairwoman Waters to introduce H.R. 2930, the Section 202 Supportive Housing Act of 2007. H.R. 2930 includes a number of provisions to speed up the processing of new Section 202 projects including the adoption of reasonable costs limitations, delegated processing to state agencies with mixed-financing expertise and a timeline for processing of the grants and a provision. In a hearing before this Subcommittee AAHSA members and others testified about the importance of the bills provisions and the impact that it would have on development delays.

Chairwoman Waters, we would like to thank you and former Ranking Member Biggert for your leadership and support of that legislation. We would also like to thank the members of this



subcommittee for the bipartisan support of H.R. 2930. Unfortunately, we are still waiting for the Senate to act on the bill. Although the passage of this legislation would not avoid cancellation for every project in the pipeline, we know that it will have a tremendous impact on the new projects that are being funded.

Statutory Changes Needed

In addition to the passage of H.R. 2930, we encourage Congress to eliminate the “one size fits all” cost allocation. The business reality of multifamily housing development and supportive communities has to be recognized by Congress and HUD. Sponsors such as VOA must operate in the existing business environment. We do it as efficiently as possible, patching together various funding sources throughout the country. We would like to urge the Subcommittee to reject any blanket provision canceling funding awards for Section 202 projects.

Conclusion

In summary, I would like to offer the following recommendations to improve the 202 program.

1. HUD should adopt realistic funding levels for the construction of new units, use independent cost analysts to review the costs submitted to the agency by sponsors and fund the projects accordingly.
2. Remove any provisions that cancel funding awards for projects that are delayed by factors outside the sponsor’s control.



3. Remove any provisions that penalize sponsors when scoring future applications for delays when those delays are beyond the sponsor's control.

Chairwoman Waters, I would like to thank you once again for your leadership and support of affordable housing and this program in particular. I would also like to thank Ranking Member Capito, and the members of this committee for working together to address national issues in a responsible and proactive manner. Over the last year we have seen how important stable housing is to communities and for the most vulnerable members of our society. Our service to the elderly community is based on our expertise and excellent partnerships with federal, state and local governments. We look forward to a strong partnership with the United States Congress and this Subcommittee to provide solutions that benefits those in need. Thank you for this opportunity to testify today. I look forward to answering your questions.

**Hearing of the Housing and Community Opportunity
Subcommittee of the House Financial Services Committee:**

**Federal Spending Requirements in Housing and Community
Development Programs**

July 9, 2008

**Testimony of Nancy McGraw
Managing Director, Eastern Region
Corporation for Supportive Housing**

Madam Chair Waters, Ranking Member Capito, members of the Subcommittee, good morning.

My name is Nancy McGraw, Managing Director of the Eastern Region for the Corporation for Supportive Housing (CSH). I appreciate the opportunity to testify on CSH's views of and experiences with federal spending requirements in housing and community development programs.

CSH has unique experience as a national organization that, for the last 17 years, has helped communities build permanent supportive housing to prevent and end homelessness, with particular success in serving people struggling with multiple challenges. Since its incorporation in 1991, CSH's staff members have worked extensively with hundreds of government and nonprofit organizations in all 50 states and the District of Columbia. CSH's direct technical and financial assistance has led to the creation of over 19,000 units of supportive housing that are now operational – providing housing to over 26,000 individuals and families, with an additional 15,000 units in the pipeline. In addition, CSH is also a HUD HOME Community Housing Development Organization (CHDO) and Homeless Technical Assistance (TA) provider as well as a Community Development Financial Institution (CDFI).

My testimony today will describe the difficulties homeless assistance grantees typically encounter in spending grant funds and how CSH and the providers we work with address these challenges. I will describe why our industry needs flexibility and technical assistance to put together complex projects to benefit people in very precarious life situations.

Regarding the specific issue of the federal statute that mandates the recapture of funds five years after appropriation, I would suggest that this limit has both positive and negative aspects. CSH agrees that it is “good government” to ensure that appropriated funds are put to use within a reasonable time frame and that five years of availability for obligation is a good expectation that fosters accountability. We would also encourage the Subcommittee to consider that reasonable and legitimate delays are commonplace, and that properly-applied flexibility – such as granting the Secretary the authority to waive the five year rule – would likely benefit all stakeholders.

I want to emphasize that CSH believes that with the proper investment, strategy and tools, homelessness can be ended in America. While the supportive housing industry is still relatively young, extensive data shows that the combination of permanent housing and supportive services is an effective method for helping the hardest-to-serve individuals find safe, affordable and stable places to live. The McKinney-Vento Homeless Assistance Act – the federal government's first coordinated effort to prevent and end homelessness – is only 21 years old. Yet through the tireless work of providers and advocates, as well as a strong commitment from federal, state and local governments and other interested parties we are making significant progress in understanding and addressing homelessness. The bottom line is, we have come a long way in a short period of time.

Nevertheless, piecing together the financing in order to create permanent housing with supportive services for homeless individuals is a very complex process. Providers, developers, policymakers and financiers are all becoming more comfortable with this process, but I would suggest supportive housing production requires more sophistication than that of the typical affordable housing industry and may therefore be more susceptible to delays in spending funds.

Allow me to describe some of the complicating factors in permanent supportive housing production that ultimately can cause delays in spending federal funds.

- Supportive housing production requires partnerships between housing providers, and service providers who need to find scarce resources for case management, employment assistance, mental health care, addiction counseling and other services.
- Because permanent supportive housing requires not only capital funding, but also operating and services funding, the number of sources can easily reach 7 to 10 or even more.
- Financing is often leveraged and layered, yet there are very few places where all the financing can be assembled simultaneously. The result is a need to cobble together funding sources.
- The competitive process for securing funds often results in needing several “rounds” or years to secure all the necessary funding. As an example, Low Income Housing Tax Credits (LIHTC), are usually made available 1 or 2 times a year in a very competitive process. I would also note parenthetically, that we are pleased many Housing Finance Agencies (HFAs) that administer tax credits are including incentives for those who prioritize supportive housing projects to serve the homeless. If federal funds are recaptured, we would be concerned that the important relationship supportive housing proponents have built with HFAs and private developers could be hindered.
- A very important source of project funding comes from capital financiers, yet they are highly reluctant to obligate funds until they know where all the funding will come from. The potential loss, due to recapture, of federal funds only makes capital funders less interested in our projects.
- Local planning and zoning boards are still wrestling with how to treat supportive housing and all services for persons who have been homeless. There are issues that arise regarding saturation of services, perceptions about the risks and safety concerns, additional levels of review, scrutiny and public approvals to which these projects are often subject.
- Acquiring the proper location for permanent supportive housing can be difficult due to NIMBYism. While we are able to effectively argue that supportive housing is a positive development in most communities, siting woes can escalate into lengthy community review and approval processes and even more lengthy legal challenges.

CSH has worked with partner organizations and with HUD to overcome some of the difficulties in putting together projects in a timely manner.

Via our 13 Hub offices across the country, we have helped establish demonstration programs, funding councils, unified Requests for Proposal (RFPs), and invested in capacity building and in evaluation and research to document best practices and impact. In 2006, CSH's work to create and support Connecticut's Supportive Housing Pilots Initiative received the prestigious Innovations in American Government Award from the Ash Institute for Democratic Governance and Innovation at Harvard University's John F. Kennedy School of Government.

As outlined in our latest Taking Health Care Home Report, which I'd ask the Committee to consider including in the record, we have documented the results of our assistance to local governments to create unified and coordinated systems to successfully leverage and layer funding. I'll note pertinent to this hearing that we have identified that approximately half of the supportive housing created has involved funding from the McKinney-Vento Homeless Assistance program.

Since our inception, we have helped over 500 non-profits create permanent supportive housing through technical assistance and training. We have invested in resources like the creation of a robust financing guide, an on-line toolkit on "Developing and Operating Supportive Housing" and a "Small Towns Toolkit" that specifically addresses building community support. In addition, several years ago CSH began conducting state-based "supportive housing development institutes," to offer providers concrete resources and tools to successfully fund and implement their projects.

Based on our experience as a CDFI through which we have made over \$160 million in loans and grants, we offer an example of these challenges. In 2001, we made a pre-development loan to Citizen's Housing Corporation to create a 40 unit supportive housing project in Marin County, Northern CA on the former site of the Fireside Motel. Citizens Housing Corporation at the time was a well-respected, non-profit affordable housing developer which had over 2,000 units occupied or in development. The project had complex financing (the original project plan included 6 sources for pre-development, 6 capital sources including SHP and LIHTC, 1 operating subsidy and 2 service funding sources, including SHP). The project also involved a zone change with planning commission review, and was a historic rehabilitation with new construction, which added time and complexity.

We stuck with the project as it encountered these delays and ended up amending the terms of this loan five times based on our assessment that it continued to be a viable project worthy of the risk. Construction was set to begin this past summer. However, one of the project's investors objected to the inclusion of refunding bonds issued by California's HFA (CalHFA) due to a technical issue which made the bonds risky from a legal standpoint. As a result, Citizens Housing Corporation has submitted new applications for tax-exempt bond financing and 4% federal and state low-income housing tax credits. Just recently we were repaid and the project is in construction. CHC now has 3,000 units in its portfolio and is a leading affordable and supportive housing developer in the Bay area.

We also appreciate the working relationship with HUD, which has included working with the Department as part of our national and local McKinney-Vento technical assistance

contracts, on updating the program desk guides, offering regular trainings on technical submissions, and supporting the establishment of the HUD Homeless Research Exchange (HRE), which is rich with helpful materials and links.

HUD's Special Needs Assistance Program (SNAP) office has also been proactive in identifying grantees that were vulnerable for recapture. CSH has worked with HUD for the past few years and has been successful in resolving the status of more than 711 unobligated McKinney-Vento grants, which resulted in 629 grants being obligated representing \$270,950,901 in funds and 82 grants being de-obligated with a total of \$19,648,192 being recaptured. Our findings from this work reaffirm the challenges laid out earlier in my testimony, from siting to zoning changes, to assembling all of the financing.

I will reiterate my earlier comment that we understand the rationale for placing time limits on expenditure of federal funds. However, at a time when we need more housing and services for people who are homeless we can ill afford the loss of units and opportunities for communities due to recaptures. CSH has worked tirelessly to incorporate supportive housing as a viable and necessary component of communities. This reputation has taken many years to solidify. While there are projects that are appropriate for recapture because they are no longer feasible, we are concerned that some good and viable projects may fall apart due to the recapture limit, and that this could have a ripple effect on the entire industry.

Our primary recommendation to overcome this challenge would be for Congress to consider granting the Secretary specific waiver authority of the 5-year rule that would allow for the extension of projects if the applicant can show a concrete plan for spending down un-disbursed funds.

We would also encourage Congress to consider creating an opportunity to allow communities or agencies to reuse these funds for similar purposes before they are recaptured to the Treasury. An example is the BRAC process, in which federal agencies have a chance to access the property before it is released to the general public. This could be accomplished by allowing the Continuum of Care to identify a different project or the community could choose a different use of the funds to address homelessness.

Again, I deeply appreciate the opportunity to testify today and welcome the Subcommittee's questions.

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STATEMENT

OF

JONATHAN PHILIPS

Senior Director
Cherokee Investment Partners

On behalf of
The National Brownfield Association and Cherokee

TO

THE SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY

OF THE COMMITTEE ON FINANCIAL SERVICES

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING

Federal Spending Requirements in Housing and Community
Development Programs

July 9, 2008

Madam Chairwoman, members of the Committee, my name is Jonathan Philips and I am Senior Director of Cherokee Investment Partners based in Raleigh, North Carolina. I feel privileged and humbled to be here today and want to thank you for the opportunity to testify before the Subcommittee on Housing and Community Opportunity in support of H.U.D.'s Brownfield Economic Development Initiative (BEDI). Specifically, I am pleased to testify on behalf of the important brownfield projects BEDI supports, the return of unused funds to the BEDI program for future grants to worthy projects and the steadfast resolve to see these challenging projects through to completion. Today, I also testify before you on behalf of the National Brownfields Association, the premier association for government, businesses and individuals involved in the redevelopment of brownfields.

I'd like to cover three basic topics in my testimony.

First, I want to provide you with an introduction to both the National Brownfields Association and Cherokee Investment Partners – who we are and what we do.

Second, I want to share with you some of the lessons that we have learned regarding brownfield remediation and redevelopment in communities all across this country. I will use the term "brownfield" in my testimony to refer to the definition provided in Section 101(39)(a), without exclusion.

Finally, I want to comment on the H.U.D. BEDI program, its funding and the use and possible recapture of unspent BEDI funds with expired draw-down periods. Specifically, I am requesting that

- a) the BEDI program, or a program with a similar mission and process, be funded to continue its good work,
- b) that due to the nature of the intrinsic complexity and time-consuming nature of brownfield reclamation, delays in using BEDI allocations ought to at least merit a case-by-case review of a project prior to effectively defunding what could be a potentially worthy project poised to break through an entanglement of complexity,
- c) if the case-by-case review determines that the recipient project is no longer worthy of the unused allocation, the funds ought to revert back to fund additional worthy projects that have competitively sought assistance for gap financing from BEDI, rather than be absorbed back into the general funds of the Treasury,
- d) given the clear public policy imperative to reduce our nation's environmental footprint, reliance on fossil fuels and carbon emissions, urban brownfield regeneration may provide the most cost-effective public allocation option for taxpayers – even, perhaps, more than green buildings or improvements in vehicular fuel efficiency – given the dramatic reductions in Vehicle Miles Traveled that are attendant with smart growth development on urban brownfields.

Before beginning, I would insert one note on what I have intentionally *not* discussed in substance today. The problem of brownfields across the nation has been increasingly studied and documented by researchers and academicians. The benefits of brownfield revitalization on the local, state and federal levels have also begun to be understood and gain currency in the public realm. Fewer people, Madam Chairwoman, will likely address the Subcommittee in oral or written testimony on how private entities analyze and tackle brownfield projects. Henceforth, I have focused my contextual brownfield comments on a private sector perspective and explanation of brownfield finance and redevelopment, as a backdrop for understanding the gap funding that the HUD BEDI program provides.

I.A. National Brownfield Association

The National Brownfield Associations, headquartered in Chicago, is a non-profit, member-based organization consisting of NBA U.S.A. and NBA Canada. It is the only non-profit organization dedicated to promoting sustainable development and encouraging green building on brownfield sites. The NBA is the premier association for government, businesses and individuals involved in the redevelopment of brownfields and the only group that represents the wide range of public and private sector brownfield stakeholders, among them, property owners, developers, investors, service professionals and elected officials. Its mission is carried out through three primary conduits: information, education and events. NBA is the "go-to" organization for information on the brownfield market, keeping its members up to date on market trends, redevelopment opportunities, and changes in policy and legislation.

I.B. Cherokee Investment Partners - Overview

Cherokee, a proud member of the National Brownfield Association, is the leading private equity firm investing capital and expertise in brownfield redevelopment. For more than two decades, Cherokee's executive team has produced strong financial returns while delivering positive environmental and social results. Cherokee has invested in more than 525 properties worldwide. The firm has more than \$2 billion under management and is currently investing its fourth fund.

The company has evolved its leadership role in the reclamation of brownfields by applying expertise, creativity and resolve to sustainable redevelopment of properties after remediation.

History: In 1984, a group of investors including Tom Darden purchased four brick plants and merged them to form Cherokee Sanford Group (CSG), which grew to become the largest privately held brick manufacturer in North America. When we discovered petroleum-contaminated soil at one of the plant sites, the regulators suggested taking the impaired soil to a nearby landfill. As an alternative, CSG proposed mixing it with clean clay in the brick-making process. The combustion in the kilns burned up the fuel oil in the soil. From this beginning, CSG started a business of receiving contaminated clay from underground storage tank clean-ups. By 1990, CSG was the largest soil remediator in the mid-Atlantic region, eventually cleaning up nearly 15 million tons of contaminated material.

Tom Darden and John Mazzarino formed the predecessor company of Cherokee in 1993 to focus exclusively on environmentally impaired assets. In 1994 they organized a risk management advisory

affiliate and then formed Cherokee's first institutional capital (Fund I) in 1996. Cherokee formed a \$250 million private equity fund (Fund II) in 1998, a \$620 million fund (Fund III) in 2002, and its current, \$1.2 billion fund (Fund IV) in 2005.

To learn more about Cherokee and see a short video about the award-winning National Homebuilder Mainstream GreenHome demonstration project, follow this link:
<http://www.cherokeefund.com/greenhomeVideo.htm>

Cherokee's Philosophy

Cherokee Investment Partners' philosophy is to buy environmentally impaired property, fully aware that large sums, the magnitudes of which are often unpredictable, will be needed to overcome the challenges associated with impairment and liability. In all cases, and contrary to the positions taken by some owners of brownfields, we firmly believe that there is no better way to eliminate liability than to aggressively remediate the underlying pollution. We've found that communities and regulators certainly respond well to this straightforward and aggressive approach. In our experience, the faster pollution is cleaned up, the faster we can return stigmatized, underutilized properties to the stream of commerce as transformed and revitalized community assets.

Cherokee accepts projects that traditional investors often reject and actively looks to transform communities where urban blight and environmental contamination impede economic growth and community redevelopment.

Cherokee's philosophy includes promoting sustainable redevelopment of the brownfield properties we remediate and providing net positive social, economic and environmental improvements. We have achieved a strong reputation for integrity and sound management advice coupled with investment, risk management and environmental expertise. Our approach concentrates on the factors contributing to the financial success of an asset, along with the risks that threaten it.

We are able to pursue these goals because our partners have entrusted us with capital to invest. We respect our capital providers and take our fiduciary responsibilities seriously. Our goal is to make our investors, partners, customers and employees proud to associate with Cherokee.

For our work in helping to revitalize this nation's brownfield sites, Cherokee has received numerous awards and honors in recent years including the 2001 Phoenix Award, the 2004 North Carolina Sustainable Business Award for its efforts at improving the environment and its leadership in sustainable development and the 2007 Canadian Urban Institute Brownfield of the Year award. Environmental groups, smart growth advocates and mayors across the country have endorsed Cherokee's practices and its role in revitalizing America's brownfields.

A. Public-Private Partnership

Cherokee rarely undertakes a project alone. I believe that one of the key factors of Cherokee's success has been our willingness to enter into public-private partnerships to achieve larger goals.

Brownfield projects are difficult at best. Without an active community desire to transform a brownfield area, the project is less likely to succeed. Knowing this, Cherokee focuses its resources in the places where our participation is actively welcomed.

Because of the high cost of remediation and low values often associated with impaired property, municipalities often struggle to bridge the gap between capital resources and the cost of brownfield redevelopment. Cherokee aims to work with municipalities, pairing our financial resources, creativity and remediation expertise with public initiatives to clean up and reposition properties for sustainable redevelopment. This strategy allows enhanced community planning and encourages creative land-uses looking far into the future.

Many of our public-private partnerships involve properties in urban infill locations – their redevelopment catalyzes economic growth without further greenfield loss. Using a public process that includes town meetings and community-wide charrettes, Cherokee has formed community partnerships that have added economic vibrancy to previously neglected neighborhoods and brought large-scale revitalization and restoration to languished land. We are proud that many of the old factories and landfills we clean up are becoming sustainable, mixed-use developments with mass transit links and other public amenities.

Recognizing the merit of these collaborative efforts, in 2002 the US Conference of Mayors presented Cherokee Investment Partners with their Outstanding Achievement Award for Excellence in Public/Private Partnerships. This award was followed in 2004 by the announcement of an unprecedented joint initiative between the U.S. Conference of Mayors and Cherokee to help mayors across the United States identify contaminated properties with the greatest potential for redevelopment and match them with the capital, brownfield expertise and experience of Cherokee.

II. Financing Brownfield Redevelopment

It seems challenging, if not impossible, for this Committee to explore the reasons that several projects receiving BEDI awards were unable to utilize those funds within an allotted period of time, without first gaining an appreciation of the financing structure and complexity involved in a typical brownfield transaction. Once understood, it should become clearer why millions of awarded funds have not been drawn down and now risk reversion back to the U.S. Treasury.

Significant barriers prevent the remediation and redevelopment of the vast majority of this nation's brownfields. While Congress has made strides to address this problem with the passage of the Section 198 tax provisions in 1997, the passage of the 2002 brownfield law, and passage in 2004 of tax provisions waiving the unrelated business income tax penalties on qualified brownfield transaction, there is still much that can and should be done.

In this section of my testimony, I will briefly address the underlying causes of the brownfield problem and the market dynamics that currently inhibit remediation and redevelopment.

I will then focus on two areas where I believe that Congress (as well as states and local governments) can have the biggest impact in encouraging brownfield revitalization: 1) creation of new financial incentives, and 2) other actions to encourage deployment of additional capital.

Finally, in this section of the testimony, I will provide a list of criteria that brownfield investors use to determine whether to remediate and redevelop a particular site. This list is critical since, I believe, it provides some insight to the direction the markets will head if Congress, the states, and/or local governments provide additional financial incentives and/or other actions to encourage deployment of additional investment capital in this field. The H.U.D. BEDI program is one of the key programs targeting significant financial assistance in this regard.

To further illustrate the way in which brownfield investors make on-the-ground decisions about particular sites, I will present a case study of the ICI/O'Brien Industrial Park, a portfolio of contaminated sites that Cherokee selected for investment in 1999.

A. Introduction

Historically, owners of contaminated real estate often focused resources on avoiding liability rather than site cleanup. The consequence was stagnating properties, economic malaise, eyesores, and conditions hazardous to health in otherwise growing urban neighborhoods. Secondary effects have been documented to include increased crime, lower tax revenues, job loss and surrounding blight.

Among the most historically popular tools used by sellers to avoid liabilities included variations on what has been termed "mothballing." Corporate mothballing typically involved a legal team talented in producing endless delays, a chain-link fence, and techniques to continue token and inefficient "operations" with the objective of avoiding requisite environmental assessments and attendant regulatory scrutiny and enforcement actions. Owners have perceived that it is economically and "reputationally" preferable to avoid environmental testing and investigation, so as to delay the greater liability of having been legally "put on notice." This pattern of owner response to environmentally contaminated properties ensured that the nation's brownfield inventory ballooned.

As the true costs of these delays and mothballed sites have become apparent, the public and private sectors have worked together to create regulatory and financial mechanisms to revitalize brownfield sites. These stakeholders have effectuated important changes in court rulings, environmental laws, regulations and enforcement action, urbanization, insurance and availability of financing vehicles to address the cleanup and reuse of these brownfield properties. Both the public and private sectors maintain a strong interest in the cleanup of brownfields and their restoration to productive use.

Just as our nation required both sectors, working together, to produce the important brownfield reforms of the past several years, a similar partnership will continue to be important to ensure an acceleration of the rate of brownfield cleanups across the county.

As the nation's largest and most experienced brownfield investor, we believe that without public-private partnerships, there can be little hope of reclaiming most of the sites that languish today.

Only those sites that are both trivially contaminated and situated in the most attractive real estate locations are sure bets to receive the attention of developers who may be willing to tackle projects with marginally increased risks and substantial rewards. Unfortunately, we believe the vast majority of US brownfield sites are both more complicated and less economically attractive; it is this majority that are unlikely to be addressed under current market forces.

I believe that the environmentally contaminated sites most plaguing this country are more often than not either those which would produce net losses for the investors, or those with a risk-reward ratio that is significantly unattractive relative to commonplace, sprawl-producing greenfield development.

In either case, the problem stems from rational economic decisions based upon local market forces of supply and demand. If we are to concede that a wholesale, publicly funded cleanup of every contaminated site in the nation is not resource-feasible or easily implemented, we must innovate better ways to combine public and private resources to effectuate more cleanups more quickly.

The problem of brownfields can be greatly alleviated by creating a rational economic framework in which the private sector may operate, respond and be guided by well-considered, typically local, public decisions for prioritization of private-sector driven site cleanup. In an unsubsidized setting, market economics drive the cleanup decisions of these challenging sites. With public guidance, private forces can operate efficiently to produce revitalization in places where communities most need it, but where without such public incentive, revitalization may not occur.

Municipal officials and urban residents increasingly fight suburban sprawl by encouraging development of urban sites. Communities are supporting redevelopment of in-fill sites they previously avoided due to uncertain or complicated environmental issues. Although challenges remain, federal, state and local governments and private groups are collaborating to explore creative ways to remediate environmentally impaired sites. Cherokee Investment Partners is proud to have participated actively in many such efforts.

Companies whose core business is not real estate asset management and remediation or brownfield redevelopment can maximize shareholder value and redeploy resources elsewhere by selling underutilized and environmentally impaired properties to brownfield developers with proven and successful track records. By carving out underutilized and environmentally impaired properties, companies improve their liquidity and reduce their liabilities, thereby strengthening both the left- and right-hand sides of their balance sheets.

When companies want to maintain the use of such property pending cleanup, sophisticated buyers can structure sale-leaseback agreements. I see sale-leasebacks as a preemptive tool useful in the fight against what might otherwise become tomorrow's abandoned brownfields. By allowing non-intrusive cleanup to occur during a pre-determined lease-term, we are able to ensure that if the ongoing operation on the site were to depart, the site would have already been environmentally assessed, substantially remediated and in the hands of a community-friendly entity that is interested in seeing property revitalized for a future highest and best use. Best of all, the communities in which these "future brownfield sites" reside are benefited by locking in for the host communities the jobs and tax rates associated with the ongoing concern, in addition to the obvious and instant community and environmental benefits associated with the cleanup of a polluted site.

B. Background - The Brownfield Market

Even more so than the broader real estate market, the brownfield market is disaggregated and local in nature. Lack of reliable information makes it difficult to estimate accurately participants and market size. According to the Environmental Protection Agency ("EPA") and the Office of Housing and Urban Development ("HUD"), approximately 500,000 industrial and commercial brownfields exist in the United States. The EPA's definition of brownfields includes only properties that have both environmental contamination and certain socioeconomic characteristics. Based on George Washington University research using EPA and HUD databases, it is likely that the value of this impaired real estate exceeds \$600 billion in its current condition.

Corporations own many brownfield sites. Many companies are consolidating operations and closing facilities, while mergers and acquisitions produce additional surplus sites. Government agencies, individuals and financial institutions that unknowingly purchased or foreclosed on brownfield sites also own these properties. Still, there are those sites that were acquired by entities aware of the existing environmental conditions and inspired by the prospect of an attractive return on investment, only to discover that the properties challenges were too difficult to overcome, given the entity's limited track record in dealing with such properties.

Despite the significant increase in the number of brownfield redevelopments since the early 1990s, the brownfield market continues to experience excess supply (National Brownfield Association – Market Report). The imbalance between supply and demand results from several factors, including brownfield redevelopment economics, environmental liability potential, capital source limitations available for redevelopment (especially for large redevelopment), capital cost, transaction complexity and market inefficiencies in matching buyers and sellers.

C. Brownfield Redevelopment Economics

Brownfield redevelopment is a unique real estate development type. The economic drivers are generally similar to those found in typical real estate/greenfield development, but environmental contamination introduces several hurdles to successful economic redevelopment.

On the revenue side, the future sale price (i.e., exit price) of the land is a function of the highest and best use of the "clean" real estate parcel. Highest and best use values the real estate in accordance with the use that, at the time of appraisal, is likely to produce the highest economic return. On the cost side, the expenses associated with brownfields redevelopment include the purchase price, closing costs, remediation and risk management costs, capital expenditure (e.g., infrastructure, building improvements), soft costs (e.g., legal, rezoning, engineering and consulting) and sales costs (e.g., marketing and/or commissions).

Remediation cost (i.e., cleanup cost) is not the only hurdle associated with contaminated real estate; as important for the developer is the potentially larger environmental liability and the difficulty of finding debt project financing. Brownfield developers have difficulty using financial leverage (e.g. debt) because brownfield appraised value is generally low, and banks require lower loan-to-value ratios to protect themselves from the risk of having to own and manage stigmatized properties. As a result, the equity requirement for brownfield redevelopment is high. High equity requirements combined with increased expenses due to remediation costs often lead to greater risk with a possibility of lower return on investment. In 1998, the Urban Land Institute reported that average rate of return for brownfields was less than three

percent, well below the rate of return for greenfields projects, which averaged at that time between 10 to 30 percent. Higher site development and financing costs, along with often significantly longer periods of time during which capital is invested (creating a riskier illiquid investment), are seen as factors contributing to the lower brownfields return rate. Low rates of return on investment combined with high project risk and complexity requiring niche areas of expertise constitute a significant impediment to private sector brownfield development financing.

Another hurdle specific to brownfield transactions is that other dilapidated sites frequently surround individual brownfield sites. Successful redevelopment of an individual brownfield site is often contingent upon developing a master plan for an entire area, which may require the development team to buy adjacent sites from multiple owners. The complexity of dealing with multiple sellers adds to the risk inherent in brownfield development projects. In some cases, buying additional surrounding parcels is the only way for the project to offer the potential to generate, on a blended basis, enough gain to offset the risks and costs associated with the core contaminated parcel(s). However, as more property is acquired on the perimeter of a contaminated site, the investor assumes greater assembly and market risks. For example, with a smaller, core contaminated parcel, a revitalization effort hinging on future market acceptance and absorption is less risky than investing in a geographic so large that the future transformed region would need to be significantly deeper to accommodate the newly created supply in the marketplace.

In spite of these challenges, the successes of Cherokee and others serves to strongly evidence that brownfield sites still have potential if broad community support exists to restore them, and creative development teams can structure the transactions to maximize the customarily low return. Brownfield investors and developers must think creatively about ways to complete a transaction that appears upside-down (i.e., higher cost than potential sale/exit value), using tools such as private equity funding, environmental insurance, public-private partnerships, Tax Increment Financing ("TIF") and other public financing components. Public financing helps lower the capital cost and thereby increase returns. Simply put, public incentive for private activity is necessary to remediate and revitalize the thousands of brownfield sites nationwide. Together, a private company can shoulder the investment and liability of clean up, while the host community receives the environmental benefits of a cleaned site and the community and economic benefits of revitalization.

D. Capital Sources and Cost

Background

The stock market decline in 2002 contributed to an increase in capital flow to the real estate market asset class - an increased rate that had continued steadily until the recent real estate downturn. Both individual and institutional investors (e.g., pension funds, endowments and foundations) had been steadily increasing their portfolio real estate allocation target. The real estate allocation is largely comprised of class A office, hotel and development opportunities in strong markets. On the other side of the spectrum, "distressed" real estate receives significantly less allocation. Environmentally contaminated real estate is, for all practical purposes, non-existent in the division of the traditional, conservative, institutional real estate allocation.

Foreign institutions, until fairly recently, had been increasing their investment in the U.S. real estate market. The ability to attract such capital for a category of brownfield investments is driven by several factors, including the category's ability to diversify an institution's holdings, the possibility, if successful, to generate returns at least commensurate with what ordinary real estate investments might yield, there is a defined market in which there is no foreseeable shortage of deal flow and, perhaps in certain situations, an investor's particular interest in engaging in what may be deemed as "socially responsible" investing.

Equity

A very small portion of the real estate equity capital represents brownfield investment, due in part to the risk and illiquidity inherent in that investment class. When assessing the risk-return relationship for different types of real estate investment (e.g., core real estate, real estate securities, mezzanine investment, opportunistic investment, and brownfield redevelopment) brownfield redevelopment clearly falls within the upper range of the risk-return spectrum. One of the lessons of this data is that, if we wish to foster a more active private sector participation in the cleanup of our nation's polluted land, we have two levers to adjust. Either one can either lower the risk associated with tackling a brownfield project or increase the potential project return. Absent one or both of these factors, developers across America will follow the easy road: remaining content to make sizeable returns converting the next farmstead to suburban sprawl on that proverbial 'edge of town.' However, as I can today attest as I testify now before this distinguished body, there are successful and experienced brownfield equity investors with long track records that have developed the necessary risk management skills to navigate this otherwise risky business environment. Buyer track records and reputation are especially important when sellers seek a transfer of environmental risk and liability.

For small transactions, the number of brownfield equity investors is still limited, though it has been growing in recent years as regulatory changes have encouraged more redevelopment. For large transactions, the universe of brownfield equity players is even smaller, though legislation enacted last October served to promote the formation of larger pools of capital dedicated to the investment in brownfields. The main incentives for a seller to transact with equity players with large pools of institutional capital are easy to understand: the wherewithal and credibility, the ability to close without financing contingencies and the experience and track record of the equity investors experienced with large and complex transactions. When unforeseen liabilities arise, or costs spiral out of control (as they so commonly do), our experience is that such unbudgeted events are usually not less than 200%. The ability to stand behind a project and write a check to cover such unforeseen events is something that can be reassuring to sellers, communities and investors alike. On the other hand, institutional investors have fairly rigid return expectations, structural requirements and limited investment horizons, which are often hard to satisfy in many transactions.

The cost of investment equity for brownfields is higher than for greenfields due to the additional time, cost and legal risks assumed for brownfield redevelopment. To achieve a targeted internal rate of return (IRR), the longer the time horizon between the date of purchase and the date of sale of the property, the larger the required spread between the purchase and exit price. Historically, depending on the prevailing interest rate environment, prudent brownfield investors will underwrite transactions to yield an IRR between 5-10% greater than a typical greenfield investor. By targeting a higher IRR, brownfield investors attempt to compensate for the significant risks and longer time horizons associated with brownfield redevelopment, the latter of which is directly related to the issue before this Committee regarding capture and/or cancellation of unused BEDI funds.

Debt

Traditional redevelopment projects rely heavily on the use of debt to enhance investor IRRs and sometimes make seemingly economically unviable projects doable by virtue of time compression effect that use of debt affords an equity investor. Brownfield projects do not have this same luxury. The use of debt in the capital structure reduces the "blended" cost of capital and increases both project risk and the return on equity. Typically, development teams use debt when the project can generate a certain amount of cash flow (e.g.,

from existing building lease) to service interest payments. Debt cost varies from project to project and is highly dependent on the overall capital market at the time when debt financing is needed.

Conventional lenders are generally unwilling to provide debt during the times when it is needed most: i.e., before cleanup, rezoning and leasing or sale activity has been achieved. On occasion, certain lending groups have warmed to conditional participation in brownfield projects if there is sufficient equity in the project (the amount of equity depends on the overall risk profile of the project), the critical path to environmental closure is known and, perhaps, accomplished or nearly accomplished, and the equity partners/developers have the reputation, track record and risk management capabilities necessary to limit the downside risk. Without these conditions, lenders have been reluctant to lend funds on contaminated sites due to the potential liability, the relatively limited income stream in the short and medium term and the lack of marketability. In the construction lending context, where principal repayment takes months or a few years, lenders chiefly worry about the borrower's collateral relative to contingencies in the construction budget for unknown site costs and whether the project has or can readily obtain takeout financing. Permanent lenders primarily worry about the borrower's defaulting, which may require them to assume ownership of a stigmatized asset with questionable value.

Government Funding & Incentives

As I will discuss more extensively in Parts III and IV of this testimony, government incentives can provide the necessary additional funding to encourage additional brownfield redevelopment. Local governments usually shy away from direct grants; instead, tending to favor property tax incentives and Tax Increment Financing (TIF), especially for infrastructure costs like roads and utilities. Under TIF, the increased tax revenues generated by the redevelopment are used to pay off part of the redevelopment expenses. Federal and State Brownfield funds are sometimes available. More recently, some states are considering, or have passed, laws that authorize the establishment of a capital pool, drawn from future tax revenues, to serve as reimbursement of certain qualified remediation expenditures. Other programs offer low or zero interest debt financing for brownfield redevelopment. Occasionally, it may be worth exploring a special State or Federal appropriation to kick-start a remediation project. If the Federal Government is a responsible party for onsite contamination, then such appropriations are more likely.

It is unquestionably paradigmatic that the largest and, arguably, most important, brownfield projects in our nation require true public-private partnerships, allowing all stakeholders to leverage each another's resources to produce a winning result for all parties. I can think of several projects that would never have generated attention were it not for the willingness of public and private entities to brainstorm together creative ways to accomplish a shared goal.

E. Impact of Proposed/Recent Court Ruling and Legislation

A U.S. Supreme Court ruling, as well as federal and state legislation, have helped private and institutional investors become more comfortable with investing capital to redevelop environmentally impaired properties. In 1998, the U.S. Supreme Court in *United States v. Bestfoods* (528 U.S. 810; 120 S. Ct. 42) clarified the Superfund liability for corporate parents. This case held a corporate parent responsible under CERCLA when (i) the corporate veil is pierced under traditional corporate law doctrines, or (ii) the corporate parent or shareholder directs the workings of, manages or conducts the affairs of a polluting facility. In 2002, the Small Business Liability Relief and Brownfields Revitalization Act increased funding and tax incentives to promote the cleanup and reuse of brownfield and helped clarify and limit the Superfund liability of owners and purchasers under certain conditions.

Furthermore, existing federal legislation has sought to utilize the nation's tax structure to provide incentives for the privately funded cleanup of brownfields. For example, Section 198 of the IRS Code, initially passed in 1997, and subsequently amended, provides a framework to encourage the cleanup of qualified contaminated sites by allowing an eligible taxpayer to immediately expense, rather than amortize, the costs of remediation.

F. Brownfield Investment Key Criteria

Location and real estate market are critically important. Ideal brownfield sites are in growth corridors within tier 1 or 2 urban markets with good access from a main highway, complemented by good visibility and strong demographics. In addition to the environmental impairment, a primary brownfields site has all the attributes of a good real estate development site. Due to prior use, many brownfield sites have industrial zoning, and the potential to rezone them for mixed-use residential/retail often increases their development value. To analyze whether a real estate transaction has potential for a private brownfield investment group, the starting point is a thorough understanding of the site's real estate fundamentals. Two of some of the most important analytical elements are the site's underlying market value (its value without the contamination and stigma) and time required/complexity involved to achieve a revitalized site (and hence, a financial exit). Typical brownfield site screening criteria are as follows:

Capital Commitment

The "ideal" size of capital commitment by private brownfield investors depends on the size of their available capital pool. Brownfield investors would prefer to commit amounts of capital in each transaction that reduces overall overhead. Well-capitalized brownfield investors often seek transactions that allow them to employ \$10 million or more, realizing that smaller projects can often require as much overhead as larger projects. The site size (number of acres or square feet) is irrelevant if the location does not dictate sufficient value. Multiple sites with a common owner sold as a portfolio can provide the desired critical mass of dollar value.

Market

Brownfield developers prefer properties in primary urban markets because they represent potentially higher real estate values and because market demands in those areas are more likely to enable prompt (or less risky) redeployment of the asset after cleanup.

Location

Location, despite the cliché into which it has evolved, is still a dominant factor in analyzing a site. Access to highways and infrastructure, visibility and future-use possibilities all combine to increase the value of sites.

Environmental Cost, Schedule and Path to Closure

By studying existing environmental documents including soil-boring results and groundwater well test results and by conducting other standard types of environmental and land use due diligence with the help of experienced and well-qualified technical and legal consultants, the brownfield investor usually can make a well-educated guess as to the extent of the required environmental clean-up. An added challenge is mapping out a remedial closure path that dovetails with future redevelopment plans for the site. In some cases, a seller does not know (and does not wish to know) whether, and to what extent, contamination is present on its property. Former manufacturing sites, for example, are still contracted for sale without the benefit of accompanying Phase I and Phase II assessment reports.

Case Study – The ICI/O’Brien Industrial Park*Background*

In 1999, ICI Glidden Paints, a division of the ICI Group (“ICI”), acquired the O’Brien Corporation (“O’Brien”). As part of the acquisition, ICI decided to divest a portfolio of environmentally impaired real estate assets owned by ICI and O’Brien. The real estate portfolio consisted of six sites ranging in size from 8 to 25 acres. The portfolio of sites was financed wholly with equity from Cherokee, because debt financing was not available due to the presence of site contamination. Cherokee also provided the seller, ICI, with full indemnification supported by a comprehensive environmental risk management program. Cherokee’s ability to invest capital within a short timetable (one month of due diligence) and to provide full indemnification were key to the transaction’s success.

Site Description and Environmental Conditions

Site 1: The property consisted of two industrial buildings on roughly eight acres owned and occupied by ICI in South San Francisco, California. The first building was a three-story concrete, paint manufacturing building containing 76,000 square feet of net rentable area. The second building was a one-story, concrete tilt-up, warehouse building containing 94,700 square feet of net rentable area. The land north of the ICI warehouse building had lead contamination.

Site 2: This property was comprised of 18.6 acres zoned light industrial within the City of South San Francisco. The Fuller-O’Brien Company had used the site as a paint manufacturing and distribution facility from the early 1900’s and had terminated most site operations in the late 1980’s. The site was the largest piece of land in the immediate South San Francisco area, enjoyed bay frontage and was ten minutes from the San Francisco airport.

Federal EPA Administrative Order of Consent issued in final form on April 18, 1991 applied to the site. At the time of the transaction, O’Brien operated the site remediation as two units, Operational Unit (OU) 1, which dealt with the soil issues, and OU 2 which addressed groundwater issues. One area on the east side of the property bordering the Bay was contaminated with lead and some SVOCs required additional remediation. O’Brien had not fully defined groundwater contamination. The remediation cost was estimated to be several million dollars.

Site 3: This property in Georgia consisted of a 70,000 square foot building located on 8 acres. O’Brien had used the property in the paint manufacturing process, but had vacated the property in the late 1980’s. The building was in average condition with several hundred thousand dollars needed for deferred facility maintenance to prepare it for tenancy. BTEX and lead were the main site environmental concerns. Barium and zinc also existed above permissible regulatory levels. Remediation costs were estimated to be several million dollars.

Site 4 and 5: These properties included an approximately 28,000 square foot building on 43,000 square feet of land and five residential lots located within Anchorage, Alaska. The building was a single-story, concrete block retail/warehouse constructed in 1956. These properties were well-located within the city of Anchorage, Alaska, and the building was in good condition. Minor environmental corrective actions were underway.

Site 6: This 25 acre site was on Highway 288, south of Houston. The site was undeveloped and near Houston Hobby Airport. Contamination was insignificant.

Market Analysis

At the time of the transaction, the South San Francisco market had one of the lowest average vacancy rates and the most expensive average lease rates in the area. With little available developable ground, developers had delivered little space to meet the needs of the expanding local economy. Analysts assumed the area would remain a landlord's market for several years. In Houston, the demand for industrial space was high and industrial vacancy rates were falling. Shortages of such space had stimulated new construction, boding well for this parcel. Most new construction was in Houston's northwest and southwest quadrants. Analysts expected warehouse space absorption to remain strong and lease rates and sales prices to increase.

Investment Risks

Market Value for Improved Land in South San Francisco: Because value in this investment was in the remediation and disposition of the ICI and O'Brien properties, a decrease in undeveloped land values during the project holding period would adversely impact investment return.

Near-by Waste Transfer Facility: During due diligence, Cherokee discovered that an adjacent, 11-acre, vacant waterfront parcel was designated for an enclosed waste transfer facility. Cherokee had concern that a transfer facility might detrimentally impact the O'Brien site's potential use as an office/R&D site.

Environmental Liability: Investment in ICI and O'Brien's real estate assets included significant environmental liability risk from known and unknown contamination. However, through extensive environmental due diligence, Cherokee gained increasing confidence that the liability was manageable. Cherokee also employed sophisticated risk transfer mechanisms to mitigate potential liability, including insurance policies to address any overage in the estimated total cost of remediation as well as pollution legal liability from unknown contamination discovered during the ensuing five years. On the basis of its financial and environmental due diligence and risk transfer program, Cherokee proceeded with the transaction during the summer of 1999. The parties structured the transaction as a single acquisition with separate purchase agreements among Cherokee, ICI and O'Brien. The sellers received an indemnification backed by a risk management structure.

Epilogue

Cherokee completed all environmental remediation by June 2003. Groundwater monitoring is ongoing at two sites. All six sites received No-Further Action letters from the California Department of Toxic Substances Control and the Regional Water Control Board. For one site, the environmental remediation cost exceeded the estimated cost, but the risk management program operated as planned and covered the additional expenses. During 2002 and 2003, Cherokee sold all of the sites. Site 1 and 2 have become biotechnology research and development facilities. Site 3 was sold to a developer with plans for a retail and office complex. Sites 4 and 6 were sold to an end-user for warehouse and distribution, as well as possible retail components.

III. Brownfield Solutions

Given what we know about the causes of the brownfield problem, the market forces that both inhibit and encourage remediation and redevelopment, existing government programs to encourage redevelopment, and

criteria that the markets use to select particular sites for investment, how do we solve the overall problem? How do we move beyond our current situation where some sites are being remediated and redeveloped while literally hundreds of thousands of others continue to languish?

A friend once told me that for every complex, difficult problem, there's usually a simple solution – and it's usually wrong.

I think that's true for the brownfield issue generally. If there were one simple solution, we probably would have found it and enacted it long ago.

On the one hand, the problem seems clear-cut: the costs associated with remediating and redeveloping a brownfield site must be outweighed, when adjusted for risk, by the potential economic reward from that transaction.

Viewed on that level, the solution becomes one of reducing costs and risks or increasing potential income.

On the other hand, the problem is much more complex. Some brownfield sites are already economically "above water" – that is to say that without additional incentives, those sites will likely be revitalized at some point in time. Fear of unknowns or other risks may still drive most prospective developers of those sites away, but an objective analysis would suggest that the project is economically viable. Other sites are marginally "under water." That is to say that with some coordinated efforts, focus, creativity and a modest economic push, the sites would likely be redeveloped within a reasonable period of time. And then there are sites in less attractive real estate markets and/or those with more substantial contamination. Those sites may be substantially under water and, without significant help, may never be cleaned up.

Viewed on this level, the solution becomes more multifaceted, requiring a mix of federal, state and local incentives to thoroughly attack the problem. Policymakers need to increasingly understand that the problem of brownfields is nuanced and solutions must be nuanced and targeted, as well. Some would prefer to focus attention on the graphical intersection of the most polluted sites and those with the lowest intrinsic real estate value, as these are the ones that most need the help of the public sector for reclamation to occur. Others would prefer to target sites that fall within the graphical intersection of the sites with both the most economic development potential and those that are most easily, quickly and cheaply revitalized. Perhaps the answer is a combination of those two views. Regardless of one's perspective, we would be doing our country a disservice by not understanding the market factors driving cleanups and crafting policies and programs that target those sites that are determined to be in most urgent need of redevelopment. Again, this is where the H.U.D. BEDI program distinguishes itself.

If we, as a country, really want to attack the brownfield issue on a nationwide basis, it is clear that we must create policies that will truly move the meter well beyond assessment assistance and expensing provisions—though such programs have been important and will continue to help move sites back into productive use. But, by now, it should be clear to everyone involved that these programs are simply insufficient to drive most of the 500,000 to 1 million brownfield sites into revitalization.

The United States Environmental Protection Agency, in an analysis conducted with George Washington University, concluded that the remediation "costs for all of the brownfields located within the United States have been estimated to exceed \$650 billion," and that, consequently, "*it is imperative that private capital be attracted to the redevelopment of brownfields.*"

I believe that it is on this front that the federal government can have the biggest impact.

The challenge to the federal government should not be to create a new program that helps better characterize brownfield sites or that tries to create a larger role for federal agencies.

The federal government's challenge should be to look for bold, innovative ways to reduce barriers and create incentives to attract significant volumes of private capital to help remediate and redevelop our nation's brownfields. The H.U.D. BEDI program, one of the focal points of the Committee's attention here today, is a shining, albeit currently defanged, example of the federal government's creative path to leveraging private capital to clean-up and recycle America's lands.

A. H.U.D. Brownfield Economic Development Initiative

The HUD BEDI grant program has been one of the most effective programs in addressing the brownfields sites in the nation. The BEDI program, used, as required, in conjunction with a HUD Section 108 loan, is one of the only brownfields programs that can bring substantial federal resources to leverage private capital. When working in tandem with the important EPA cleanup programs (which can provide as much as \$1,000,000 for any single project) the BEDI program can truly be determinative on some of our nation's larger, more critical brownfield sites. With Section 108 coupled funding, several million dollars can be deployed as gap financing to turn an otherwise underwater site into one that may be a candidate for sustainable redevelopment. Best of all, the HUD BEDI program supports only those project that leverage private funds.

It is my hope and belief that the contextual information I have provided on brownfield economics and finance will enable this Committee to better view the problem of unused funds through a sharper lens. When addressing major brownfields, more, not less, federal funding is required. The complexity of navigating the federal and state environmental regulatory agencies, combined with the time involved in the remedial actions that must take place before the vertical development can occur, in many cases is the reason for the delay by a local jurisdiction in utilizing the BEDI grant funds. When the period of utilization of these allotted funds expire, it seems reasonable to explore, on a case-by-case basis, whether the very expected and contemplated complexity with which these BEDI funds are intended to assist or other factors out of the grantee's control, could have created or significantly contributed to the extenuating project delays. If so, it would be seem unfair to strip the project of that much needed gap financing. If, on the other hand, the project delays can be materially attributed to other factors, such as project mismanagement, systemically poor real estate markets, foreseeable missteps or miscalculations, etc., the Committee might choose to conclude that the federal government via HUD ought to endorse the revocation of the expiring funds. It would seem equitable, at the very least, to allow the same project to re-apply for those same funds and compete for an renewed extension on the deadline for fund utilization.

Regardless of whether on a particular project the expiration and revocation of the unused BEDI funds is stayed due to valid reasons meriting deadline extension, or the unused funds are allowed to expire, any program that funds distressed and challenging projects will experience a certain percentage of project failures. These failures will often result in the expiration of unused funds. To where should these funds revert? We believe that the unused funds should revert back to the BEDI program to allow the

administrators to best allocate that capital, in a competitive bidding process, to a new and deserving municipal applicant. Allowing the unused funds to be recaptured by the Treasury would be tantamount to signaling to the towns and cities of this nation that this federal government is not serious about seeing our urban land regenerated. There are simply too many brownfields in need of revitalization.

Further, let it not be forgotten that there are few actions as cost-efficient and effective as brownfield regeneration in reducing carbon emissions. The EPA estimates that for every acre of brownfields redevelopment that occurs 4 ½ acres of fields and forests are saved. Sprawl is reduced. Travel times are cut. Pedestrian-friendly, transit-oriented development is promoted. This further evidences why every possible resource should be retained and plowed into other, deserving brownfield redevelopment projects. In what is being touted by many as the pending Carbon Economy, where maximum value is placed on reducing green house gases, smart growth infill development on brownfields may be equally or more significant to reducing a city's net carbon footprint than would be the construction of the equivalent green-rated buildings that are built on the suburban edge. While it's, indeed, environmentally beneficial to build green buildings, it is exponentially better to build green buildings on urban brownfields. Given the huge role brownfield redevelopment and plays in reducing vehicle miles traveled, it would be hard to not conclude that the re-investment of expired BEDI funds into the sustainable redevelopment of America's urban infill brownfields is one of the most cost-effective expenditures by the federal government to promote policies to combat global warming.

Conclusion

Allow me conclude with a startling statistic: the US Chamber of Commerce estimated that at the current rate of remediation, it will take 10,000 years to clean up our nation's brownfields. Clearly we can, and must, do better. The HUD BEDI program certainly cannot do it all, but every bit helps. Reverting the unused dollars to the Treasury would be a mistake.

I sit before you today as testament to the fact that with will, perseverance, patience, integrity and intelligent financial and risk management, the private sector can play a substantial role in cleaning up the pollution of this country's industrial past. The HUD BEDI program lets the private sector take the lead, but helps underwater, untouchable transactions get a second look. Isn't it better to clean these up with mostly private dollars, rather than not at all or with all public dollars?

I also sit before you today as a testament to the fact that this problem is too big for any one organization, government or market sector to take on single-handedly.

It is only through public-private partnerships involving the private sector, non-profits, and federal, state and local governments that we will have a chance at solving this problem in our lifetimes.

Nearly every member of Congress has the misfortune of brownfields within their own districts. I know many of you sitting before me do, as well. Working together, government and the private sector can address the environmental contamination at these sites and can build healthy communities, with healthy tax and job bases and strong economies.

Working together, government and the private sector can solve America's brownfield problem.

Cherokee Investment Partners and the National Brownfields Association look forward to working with Chairwoman Waters and the members of this Subcommittee to continue to explore new ways to accelerate brownfield cleanups. Please do not hesitate to look to us as a resource both for these legislative endeavors and for assistance with specific sites that you are aware of that are in need of targeted assistance.

Madam Chairwoman, members of the Subcommittee, it has been an honor and a privilege to testify here today on behalf of the National Brownfields Association and Cherokee. I am happy to answer any questions that you may have.

Contact Information:

For more information regarding this testimony, or if there is a site or community area in need of our help or attention, please use the following contact information:

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BIOGRAPHY OF JONATHAN PHILIPS

Jonathan Philips is Senior Director of Cherokee Investment Partners. He specializes in investment, strategic and structuring activities. Mr. Philips has reviewed hundreds of brownfield, distressed and other strategic transactions. Through his work identifying, analyzing and executing transactions, Mr. Philips has forged partnerships with communities, organizations, agencies and officials. In addition to his deal and strategic work, Mr. Philips has helped craft and expand Cherokee's toolbox for the creative and efficient execution of contaminated, distressed and sustainable transactions. Mr. Philips helped architect the federal 2005 Brownfield Revitalization Act that was enacted by Congress and signed by the President in October 2004. Mr. Philips also created the *US Conference of Mayors—Cherokee Investment Partners Community Revitalization Initiative*, a first-of-its-kind national public-private partnership to fast-track the cleanup and revitalization of property in cities and towns across America, an important national pipeline of underutilized and distressed assets. As part of his strategic work, Mr. Philips has been intricately involved in key fund management, innovations, decisions, activities and outcomes. Mr. Philips has been a leader in Cherokees' aggressive initiative toward sustainability and its decision to promote the green vertical build-out on its sites. He has led and overseen a project comprised of over 100 partners from government and the private sector, the National Homebuilder Mainstream GreenHome www.mainstreamgreenhome.com, a national educational showcase home for the building industry that has been seen by 40 million people and counting. Video at <http://www.cherokeefund.com/greenhomeVideo.htm>. Mr. Philips is a frequent public speaker and was honored to appear and testify before the U.S. Congress on April 5, 2005 on the topic "*Lands of Lost Opportunity: What Can Be Done to Spur Development at America's Brownfield Sites?*" (<http://reform.house.gov/UploadedFiles/J.PhilipsTestimonyFinal3.pdf>), on September 13, 2005 on the topic "*Brownfields and the Fifty States: Are State Incentive Programs Capable of Solving America's Brownfields Problem?*" (<http://reform.house.gov/UploadedFiles/Philipsweb2.pdf>), and on June 8, 2006 on the topic of "*Reauthorization of the Brownfields Program: Successes and Future Challenges.*" Prior to joining Cherokee, he served as Chief Executive office of a closely held company headquartered in New York City where he identified, structured and closed private equity investment and strategic relationships. Previously, Mr. Philips worked as a Mergers and Acquisitions corporate attorney with Davis Polk & Wardwell, with a stint in the Capital Markets group, where he represented private equity, banking and corporate clients in over 25 public and private transactions, comprising several billion dollars of closing value. Before Davis Polk, Mr. Philips founded and led a Manhattan-based consulting company and, previously, worked as a strategic management consultant. Mr. Philips has served as an advisor to corporate and nonprofit entities and is actively involved with several nonprofits throughout the country. He is a member of the Business Council of the US Conference of Mayors and serves on the USCM's Council for Investment in the New American City. He serves on the Executive Committee and Board of Directors of the Green Standard Organization (formerly IDCE), on the Strategic Advisory Board for the NC Museum of Natural Sciences and on Board of Advisors for UNC's Kenan-Flagler Business School's Business Accelerator for Sustainable Enterprise (BASE). He received his law degree from the Yale Law School, where he was an Olin Fellow in Law and Economics, and his Bachelors degree from the University of Virginia, where he was an Echols Scholar with double Highest Distinction. He and his wife have four children and live in Raleigh, NC.

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