

PUBLIC HOUSING ASSET MANAGEMENT IMPROVEMENT  
 ACT OF 2007

JANUARY 29, 2008.—Committed to the Committee of the Whole House on the State  
 of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial  
 Services, submitted the following

R E P O R T

[To accompany H.R. 3521]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the  
 bill (H.R. 3521) to improve the Operating Fund for public housing  
 of the Department of Housing and Urban Development, having con-  
 sidered the same, report favorably thereon with an amendment and  
 recommend that the bill as amended do pass.

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## AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Public Housing Asset Management Improvement Act of 2007”.

**SEC. 2. REVISIONS TO ASSET MANAGEMENT RULES AND RELATED FEES.**

(a) **MANAGEMENT AND RELATED FEES.**—The Secretary shall not impose any restriction or limitation on the amount of management and related fees with respect to a public housing project if the fee is determined to be reasonable by the public housing agency, unless such restriction or limitation imposed by the Secretary on such fees—

(1) is determined pursuant to a negotiated rulemaking which is convened by the Secretary no earlier than April 1, 2009, and in accordance with subchapter III of chapter 5 of title 5, United States Code, with representatives from interested parties; and

(2) is effective only on or after January 1, 2011.

(b) **INCREASE OF THRESHOLD FOR EXEMPTION FROM ASSET MANAGEMENT REQUIREMENTS.**—Any public housing agency that owns or operates fewer than 500 public housing units under title I of the United States Housing Act of 1937 may elect to be exempt from any asset management requirement imposed by the Secretary.

**SEC. 3. PROHIBITION ON RESTRICTION OF FUNGIBILITY OF CAPITAL FUND AMOUNTS.**

The Secretary of Housing and Urban Development shall not impose any requirement, regulation, or guideline relating to asset management that restricts or limits in any way the use by public housing agencies of amounts for Capital Fund assistance under section 9(d) of such Act, pursuant to paragraph (1) or (2) of section 9(g) of the United States Housing Act of 1937 (42 U.S.C. 1437g(g)), for costs of any central office of a public housing agency.

**SEC. 4. TENANT PARTICIPATION.**

(a) **RULE OF CONSTRUCTION.**—Neither the requirements of this Act, nor any other requirement, regulation, guideline, or other policy or action of the Department of Housing and Urban Development relating to public housing asset management may be construed to repeal or waive any provision of part 964 of title 24 of the Code of Federal Regulations, regarding tenant participation and tenant opportunities in public housing. The Secretary of Housing and Urban Development shall ensure that public housing agencies encourage the reasonable efforts of resident tenant organizations to represent their members or the reasonable efforts of tenants to organize.

(b) **GUIDANCE.**—Guidance issued by the Secretary of Housing and Urban Development shall encourage participation by residents in the implementation of asset management and the development of local policies for such purposes.

## PURPOSE AND SUMMARY

The purpose of H.R. 3521, the “Public Housing Asset Management Improvement Act of 2007,” is to ease the regulatory burden on public housing agencies of complying with the Department of Housing and Urban Development (HUD) regulations requiring certain public housing agencies to convert to asset management. The bill includes the following regulatory relief reforms: (1) ensure that the management and related fees established by HUD are reasonable and that such fees become effective on or after January 1, 2011, the date by which public housing authorities are required under the Public Housing Operating Fund Final Rule to demonstrate conversion to asset management; (2) restate provisions of current law that permit public housing authorities to use a portion of their capital fund grant for operating expenses; (3) increase the number of public housing authorities that are exempt from mandatory conversion to asset management; and (4) encourage the par-

ticipation of public housing residents in the implementation of asset management.

#### BACKGROUND AND NEED FOR LEGISLATION

The nation's public housing system is in the process of a major administrative transformation as public housing agencies (PHAs) move from managing their portfolios on an agency-wide basis to a system in which they administer each development on a project-level basis. It is the largest change to the way public housing is operated in more than 30 years. Known as "asset management," this system of project-level administration is based on the Federal Housing Administration (FHA) multi-family model and is required for public housing by the Public Housing Operating Fund Final Rule. The Final Rule was developed via negotiated rulemaking between HUD, representatives from key industry groups, and several PHAs. The Final Rule, which became effective on November 18, 2005, required PHAs that administer more than 250 units of public housing to restructure their organizations, retrain their staffs, and reorganize their physical assets as part of the conversion.

While there is general consensus that asset management is desirable, housing agency groups have been critical of several components of the negotiated rule, specifically with respect to how PHAs' management fees are set and how much flexibility they will have to retain some centralized operations. The Final Rule states that PHAs must be in full compliance with asset management by 2011.

It is important to note that two of the provisions in H.R. 3521 were included as part of H.R. 2764, the Consolidated Appropriations Act of 2008 (Public Law 110-161) which was signed into law on December 26, 2007. Specifically, the Consolidated Appropriations Act included the provision exempting small PHAs of 400 or less from asset management and the provision to reinstate fungibility of capital funds as operating assistance.

Finally, the Congressional Budget Office estimates that H.R. 3521 would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues.

#### ESTABLISHMENT OF REASONABLE MANAGEMENT FEES AND FEE SCHEDULE IMPLEMENTATION DATE

While the Final Rule addressed the operating fund formula, it did not establish specific criteria for fees nor require that fees be made effective prior to January 1, 2011. Instead, the Final Rule stated that the fees must be reasonable. Subsequent to the Final Rule, HUD issued Interim Guidance on September 7, 2006 that outlined three types of fees: property management fees, asset management fees and bookkeeping fees. This guidance effectively required PHAs to begin implementing asset management prior to implementation of the Final Rule. In the absence of data on the actual costs of managing public housing, subsequent HUD Guidance stated that the fees would be based on the FHA multi-family inventory and that PHAs must be in compliance with those fees by the second year of project-based budgeting and project-based accounting (e.g. between July 1, 2008 and April 1, 2009).

PHAs have questioned both the methodology and adequacy of the fees and contend that using FHA properties as a model is not an

appropriate comparison because of significant statutory and regulatory differences in the way public housing and privately-owned and managed housing operate. In addition, PHAs contend that significant shortfalls in the annual appropriations for the public housing operating and capital funds make conversion to asset management even more challenging. Given these challenges, PHAs contend that some regulatory relief is needed in order for agencies to successfully convert to asset management by 2011. As such, PHAs have requested that the method of establishing a reasonable management fee be developed through a negotiated rulemaking. The Final Rule already requires HUD to convene a meeting of stakeholders in 2009 in accordance with the Federal Advisory Committee Act to evaluate subsidy levels based on actual cost data. PHAs contend that expanding the scope of the meeting in 2009 to include management fees would provide time for PHAs to track their management costs under the new system and gather data, which in turn could be used by the negotiated rulemaking committee to establish fees. PHAs also contend that the fees should not be established at the beginning of the process of conversion to asset management, but should be developed with deliberation based on actual cost data over a period of time. They have therefore requested that the effective date of the fee schedule coincide with the effective date by which PHAs are required to demonstrate full compliance with asset management.

Under the bill, HUD and PHAs would commence negotiated rulemaking with interested stakeholders on or after April 1, 2009 to establish reasonable management and related fees. This provision is consistent with information provided to the Committee by HUD in which the Department stated that a formal rule-making process to specifically focus on the matter of fees under asset management be initiated to allow for broad public input. In addition, the bill provides that the management and related fees shall become effective on or after January 1, 2011, consistent with the dates set forth in the Final Rule.

INCREASE OF ASSET MANAGEMENT EXEMPTION THRESHOLD TO PROVIDE REGULATORY RELIEF FOR MEDIUM-SIZED PUBLIC HOUSING AGENCIES THAT MANAGE BETWEEN 250 AND 500 UNITS

The Public Housing Operating Fund Final Rule exempts housing authorities with fewer than 250 public housing units from an asset management model. PHAs contend that housing authorities with fewer than 500 units of public housing should have local discretion in deciding whether to convert to asset management. According to public housing authorities, these small agencies generally have few properties, few staff and few financial resources. Furthermore, these agencies generally operate in rural areas, small towns and suburbs, so they are easily managed as a single entity geographically.

Under the bill, agencies that manage 500 or fewer units of public housing would not be subject to asset management. Increasing the exemption threshold from 250 to 500 would affect 441 agencies or about 14 percent of all housing authorities. As a result, approximately 2,292 PHAs out of 3,087 PHAs would be exempt. In terms of the number of public housing units that would remain subject to asset management under this provision, more than 751,000

units (or 68 percent of all public housing units) would still be required to transition to asset management.

The Committee notes that current HUD guidance requires agencies that have more than one asset management project in their portfolio to comply with asset management regardless of whether an agency falls within the exemption threshold. Under the bill, the exemption shall apply to all PHAs that administer fewer than 500 units of public housing, regardless of the number of asset management projects a PHA has designated with respect to its public housing inventory.

#### FUNGIBILITY OF CAPITAL FUNDS PROVIDED BY THE QUALITY HOUSING AND WORK RESPONSIBILITY ACT

The Quality Housing and Work Responsibility Act of 1998 (QHWRA) allows PHAs to transfer up to 20 percent of their capital fund grant to fund operations with no further restrictions [See Section 9(g) of the U.S. Housing Act of 1937, as amended]. HUD has issued Guidance that allows up to 20 percent of the capital fund to be transferred for direct project expenses, but prohibits the use of these funds on central office overhead. In addition, the Guidance does not allow more than 10 percent of an agency's capital funds for central office costs. PHAs contend that the costs of transition to asset management will be significant. Furthermore, housing authorities are in their fifth consecutive year of underfunding of the Operating Fund and contend that the flexibility provided by QHWRA is crucial to the successful conversion to asset management and to the successful operation of public housing. A HUD-commissioned study by the Harvard Graduate School of Design concluded that the federal government has been under-funding the operating costs of PHAs.

The bill would prohibit HUD from preventing PHAs from transitioning up to 20 percent of their capital fund grant to fund operations as provided for under QHWRA.

#### TENANT PARTICIPATION

On March 1, 2007, HUD issued a Notice [FR-5128-N-01] providing for an expedited waiver process for HUD regulations as they transition to asset management. Included in the Notice are several examples of HUD regulations for which HUD would consider expedited requests. Among those regulations is a provision providing for tenant participation that is set forth at 24 CFR 964 (Tenant Participation). While the authority to seek waivers from certain HUD regulations, including tenant participation, is not new, tenant advocates contend that tenants should be involved in the discussions on asset management and that the limited rights tenants have should not be further eroded.

Under the bill, HUD would be required to ensure that PHAs involve tenants in the local decisions that affect their housing.

#### HEARINGS

The Committee did not hold any hearings on H.R. 3521 in the 110th Congress.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 25, 2007, and ordered H.R. 3521, Public Housing Asset Management Improvement Act of 2007, as amended, reported by a voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken in conjunction with the consideration of this legislation. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a voice vote.

During the consideration of the bill, the following amendments were considered:

An amendment by Mr. Sires, No. 1, a manager's amendment making various technical and substantive changes, was agreed to by a voice vote.

An amendment by Ms. Velázquez, No. 2, striking prevention of certain PHAs from participation in negotiations, was agreed to by a voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

#### PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The goal of H.R. 3521 is to ease the regulatory burden on public housing agencies of complying with the Department of Housing and Urban Development (HUD) regulations requiring certain public housing agencies to convert to asset management through the inclusion of important regulatory relief reforms. These reforms would: (1) ensure that the management and related fees established by HUD are reasonable and that such fees become effective on or after January 1, 2011, the date by which public housing authorities are required under the Public Housing Operating Fund Final Rule to demonstrate conversion to asset management; (2) restate provisions of current law that permit public housing authorities to use a portion of their capital fund grant for operating expenses; (3) increase the number of public housing authorities that are exempt from mandatory conversion to asset management; and (4) encourage the participation of public housing residents in the implementation of asset management.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax ex-

penditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 2, 2007.*

Hon. BARNEY FRANK,  
*Chairman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3521, the Public Housing Asset Management Improvement Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Chad Chirico.

Sincerely,

ROBERT A. SUNSHINE  
(For Peter R. Orszag, Director).

Enclosure.

*H.R. 3521—Public Housing Asset Management Improvement Act of 2007*

CBO estimates that H.R. 3521 would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues.

H.R. 3521 would alter the Department of Housing and Urban Development's (HUD's) implementation of a new system for allocating operating subsidies to public housing authorities (PHAs). Historically, HUD has provided funding to PHAs in an aggregate amount for each authority. Under the agency's new operating fund formula, PHAs will receive a separate subsidy for each housing project under their control. The bill would prevent HUD from imposing a limit on the amount of funding that can be used for management fees, increase the unit threshold under which smaller PHAs are exempt from asset management requirements, and prevent HUD from limiting the use of Public Housing Capital Fund assistance for PHAs' central office costs.

H.R. 3521 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. State, local, and tribal governments that participate in housing assistance programs would benefit from management activities authorized in the bill.

The CBO staff contact for this estimate is Chad Chirico. The estimate was approved by Keith J. Fontenot, Deputy Assistant Director for Health and Human Resources, Budget Analysis Division.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### EARMARK IDENTIFICATION

H.R. 3521 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section establishes the short title of the bill, the “Public Housing Asset Management Improvement Act of 2007.”

##### *Section 2. Revisions to asset management rules and related fees*

Prohibits HUD from establishing restrictions or limits on the amount of management and related fees with respect to a public housing project if the fee is determined reasonable by the PHA before January 1, 2011. Requires HUD to establish fees pursuant to negotiated rulemaking that would commence on or after April 1, 2009 and would include interested stakeholders. This prohibition is also applicable to public housing agencies that are seeking a discontinuance of the reduction in their operating fund reductions.

Increases the threshold for exemption from asset management requirements for medium-sized public housing authorities. Thus, agencies that own or operate fewer than 500 public housing units may elect to be exempt from asset management requirements.

*Section 3. Prohibition on restriction of fungibility of capital fund amounts*

Clarifies that notwithstanding HUD guidance, public housing agencies are permitted the flexibility allowed by the Qualify Housing and Work Responsibility Act to transfer up to twenty percent of their capital funds for operations with no further restrictions.

*Section 4. Tenant participation*

Encourages HUD to ensure that public housing agencies encourage the reasonable efforts of resident tenant organizations to represent their members and the reasonable efforts of tenants to organize.