

MEMORANDUM

TO: Regional Steering Committee on Homelessness and Housing

FROM: HomeBase

DATE: October 17, 2008

RE: Legislative and Budget News

Brief Summary

The present memorandum summarizes the following Regional Steering Committee (RSC) agenda items:

1. The Governor's budget cut to the Emergency Housing and Assistance Program's operations budget;
2. An overview of the Housing and Economic Recovery Act of 2008, which contains the National Affordable Housing Trust Fund and its connection to the recently passed Emergency Economic Stabilization Act of 2008;
3. An update on McKinney-Vento reauthorization efforts; and
4. A review of the Reconnecting Homeless Youth Act of 2008.

ITEM 1. CALIFORNIA EMERGENCY HOUSING AND ASSISTANCE PROGRAM BUDGET CUTS

Background on EHAP

The Emergency Housing and Assistance Program (EHAP) provides funds for emergency shelter, transitional housing and related services for the homeless and those at risk of losing their housing. The funds are distributed to all 58 counties based on a "need" formula derived from factors including population, unemployment and poverty. In many areas, the program funding recommendations are made locally by Designated Local Boards (DLBs). Funds can/could be used for operating costs (staffing, vouchers and support services), and capital costs for new construction and rehabilitation.¹

The Governor's Blue Pencil

When the state budget passed, 85 days late, the Governor used his "blue penciling" authority to veto individual budget line items, one of which was the entire \$4 million EHAP operational funds that hundreds of emergency shelters statewide rely upon. According to the State of California's website, the 2008 EHAP NOFA has been cancelled.² However, "due to the passage of Proposition 46, approximately \$31 million

¹ California Housing Law Project, <http://www.housingadvocates.org/default.asp?ID=168>.

² See: <http://www.hcd.ca.gov/fa/ehap/>.

in EHAP Capital Development funds will be available each year for 6 years beginning with fiscal year 2002-2003”.³ These funds are available as forgivable deferred loans for capital development to acquire, construct, or rehabilitate sites for emergency shelters, transitional housing, and safe haven facilities for homeless persons.

A wide variety of organizations have come forward to criticize the Governor’s veto of the EHAP operational funding, especially as winter is coming, but that money now is gone.

ITEM 2. CONGRESS AND THE HOUSING TRUST FUND

The Housing and Economic Recovery Act of 2008 – An Overview

The Housing and Economic Recovery Act of 2008⁴ was signed into law by President Bush on July 30th and includes provisions that broadly address the following areas of congressional concern:

- Housing finance reform;
- Foreclosure prevention; and
- Tax related provisions.

The Housing and Economic Recovery Act is designed in part to over-haul the federal regulation and oversight of housing finance to address the nation-wide foreclosure situation and credit crisis. Background on this reorganization follows.

Reordering the Federal Oversight of Housing Finance

The Act establishes the Federal Housing Finance Agency (FHFA)⁵, which will have authority over Fannie Mae⁶, Freddie Mac⁷, the Federal Home Loan Banks⁸ and the Office

³ See: <http://www.hcd.ca.gov/fa/ehap/ehap-capdev.html>.

⁴ H.R. 3221; Public Law 110-289.

⁵ Federal Housing Finance Agency (FHFA) is an independent agency of the federal government. FHFA was established on the date of enactment of the Housing and Economic Recovery Act, which provides for the abolishment of the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFBB) one year after the date of enactment [July 30, 2009]. These agencies, together with the Housing and Urban Development Government-Sponsored Enterprise Mission Teams, are combined to establish FHFA. (Federal Register: September 9, 2008, Volume 73, Number 175).

⁶ Federal National Mortgage Association (Fannie Mae) – A government sponsored enterprise (GSE) authorized to make loans and loan guarantees, it operated in the secondary mortgage market to ensure that mortgage bankers and other lenders have enough funds to lend to home buyers at low rates. (<http://www.fanniemae.com/aboutfm/>).

⁷ Federal Home Loan Mortgage Corporation (Freddie Mac) – A government sponsored enterprise (GSE) authorized to make loans and loan guarantees, it bought mortgages then pooled them to be resold on the open market to further its mission to provide liquidity, stability and affordability to the housing market. (http://www.freddiemac.com/corporate/company_profile/our_mission/).

⁸ The three basic parts of the Federal Home Loan Bank (FHLBanks) System are the 12 banks, the Federal Housing Finance Board, which regulates them, and the Office of Finance, which acts as a liaison with Wall Street. Over 8,000 community financial institutions are member/shareholders in the FHLBank system. (<http://www.fhlbanks.com/>).

of Finance⁹. The FHFA will replace the Office of Federal Housing Enterprise Oversight (OFHEO)¹⁰ within the Department of Housing and Urban Development (HUD)¹¹.

It is worth noting that Fannie Mae and Freddie Mac are two Government Sponsored Enterprises (GSEs). Until recently these GSEs were privately held corporations with public purposes created by Congress to reduce the cost of capital for certain borrowing sectors of the economy. These GSEs carried the implicit backing of the U.S. Government but they were not direct obligations of the U.S. Government. This type of business organization can draw on government support in times of distress and the Housing and Economic Recovery Act allows the U.S. Department of the Treasury to make loans to GSEs. Recently the government exercised its control over both Fannie Mae and Freddie Mac by placing them in conservatorship when the extent of a combination of bad business practices and bad accounting became apparent to all.

On September 7, 2008, FHFA's Director, James Lockhart, placed both Fannie Mae and Freddie Mac in conservatorship. A conservatorship is the legal process in which a person or entity is appointed to establish control and oversight of a company to put it in a sound and solvent condition.¹² In a conservatorship, the powers of the company's directors, officers, and shareholders are transferred to the designated conservator, in this case the FHFA. According to the FHFA, the purpose of a conservatorship is to preserve and conserve the company's assets and property and the related goals of the conservatorship are to help restore confidence in the company and allow for its ongoing operations and business.¹³ As conservator, the FHFA has full powers to control the assets and operations of Fannie Mae and Freddie Mac. These two GSEs hold about \$5 trillion in debt that the U.S taxpayer now stands behind since the conservator, FHFA, is an independent agency of the federal government.¹⁴

HOPE for Homeowners Program

An additional feature of the Housing and Economic Recovery Act is that it provides

⁹ The Office of Finance is operated on behalf of the 12 regional FHLBanks. Its primary function is to issue and service all debt securities for the FHLBanks, while obtaining the most cost-effective terms possible, given the needs of investors and dealers. Closely related is the analysis and joint development of new funding opportunities, and conducting activities to better inform investors about FHLBank debt products. (<http://www.fhfb-of.com/mission/missionframe.html>).

¹⁰ The Office of Federal Housing Enterprise Oversight's (OFHEO) mission is to promote housing and a strong national housing finance system by ensuring the safety and soundness of Fannie Mae and Freddie Mac. (<http://www.ofheo.gov/about.aspx?Nav=55>).

¹¹ HUD's mission is to increase homeownership, support community development and increase access to affordable housing free from discrimination. To fulfill this mission, HUD will embrace high standards of ethics, management and accountability and forge new partnerships--particularly with faith-based and community organizations--that leverage resources and improve HUD's ability to be effective on the community level. (<http://www.hud.gov/library/bookshelf12/hudmission.cfm>).

¹² Federal Housing Finance Agency – Fact Sheet: Questions and Answers on Conservatorship, <http://www.ofheo.gov/media/pdf/FHFACONSERVQA.pdf>.

¹³ Id.

¹⁴ Congressional Research Service Report for Congress: Fannie Mae and Freddie Mac in Conservatorship, Mark Jickling, September 15, 2008. (<http://fpc.state.gov/documents/organization/110097.pdf>).

assistance to current homeowners by establishing Home Ownership Preservation Entity (HOPE) for Homeowners Program, within the Federal Housing Administration (FHA)¹⁵. The HOPE Program seeks to allow financially distressed homeowners to refinance loans as well as provide other services to avoid foreclosure. The program is implemented through HUD and will last from October 1, 2008 through September 30, 2011. The FHA will insure up to \$300 billion in new loans and borrowers will pay an upfront premium of 3 percent of the original mortgage amount and an annual premium of 1.5 percent of the outstanding mortgage amount. The FHA only allows owner-occupants to be eligible for FHA-insured mortgages and borrowers must also meet the following eligibility criteria:

- Their mortgage must have originated on or before January 1, 2008;
- Their mortgage debt-to-income must be at least 31 percent;
- They cannot afford their current loan;
- They did not intentionally miss mortgage payments; and
- They do not own second homes.¹⁶

The HOPE Program was addressed in recent Emergency Economic Stabilization Act in that the eligibility for participation in the program was broadened and the tools available to prevent foreclosure were strengthened. Having touched on the larger context of the reorganization of federal oversight, the general intent in passing the Act, as well as the HOPE for Homeowners Program, what follows is a closer examination of the Housing Trust Fund.

National Affordable Housing Trust Fund

The Housing and Economic Recovery Act repeals and amends portions of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992¹⁷ and establishes a National Affordable Housing Trust Fund. The stated purpose for creating the Housing Trust Fund is to increase and preserve the supply of rental housing and homeownership for extremely low (30% AMI) and very low-income (50% AMI) families, including homeless families.

Funding

The Housing Trust Fund is a permanent fund, not subject to the annual congressional appropriations process, and will receive money from Fannie Mae and Freddie Mac (GSEs) based on a funding formula that involves:

- GSEs setting aside an amount equal to 4.2 basis points for each dollar of the unpaid principal balance of its total *new* business purchases -
 - Stated another way: 4.2 cents per \$100 in total new business each year.
 - This funding is scheduled to begin in 2009.

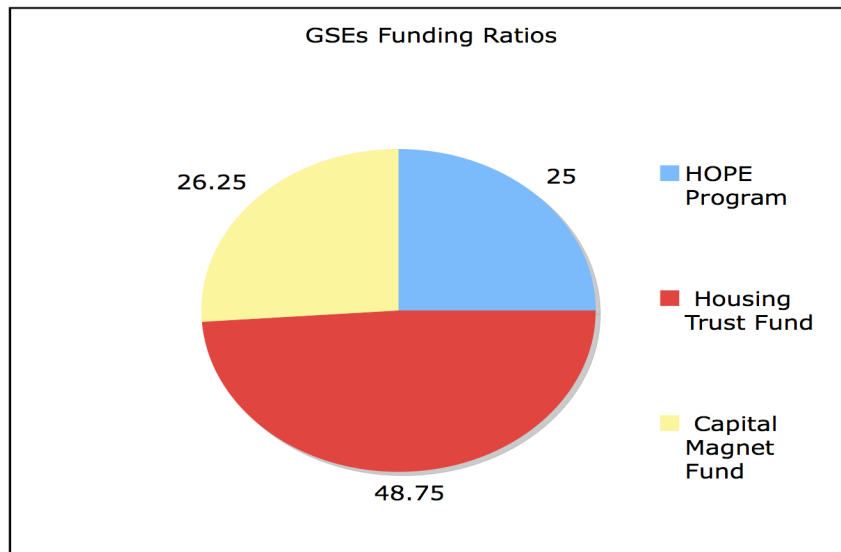
¹⁵ Federal Housing Administration (FHA) provides mortgage insurance on loans made by FHA-approved lenders throughout the United States and its territories. FHA insures mortgages on single family and multifamily homes including manufactured homes and hospitals. It is the largest insurer of mortgages in the world, insuring over 34 million properties since its inception in 1934. (<http://www.hud.gov/offices/hsg/fhahistory.cfm>).

¹⁶ For more information see: "HOPE for Homeowners" at <http://www.hud.gov/hopeforhomeowners/>.

¹⁷ 12 U.S.C. 4501 et seq. – Government Sponsored Enterprises (GSEs).

One may interpret this funding formula for the National Affordable Housing Trust Fund as technically beginning in 2009, but the money coming from Fannie Mae and Freddie Mac is to be immediately shared between:

- HOPE for Homeowners Program reserve fund
 - 25% of the total assessed funds from GSEs must be deposited into a reserve fund set up by the Treasury Department for the HOPE Program.
- The National Affordable Housing Trust Fund
 - Of the “remaining assessment”
(75% of the total assessed funds from GSEs):
 - ♣ 65% is to be transferred to HUD to fund the Housing Trust Fund
 - ♣ This is 48.75% of the “total assessment” from GSEs.
- The Capital Magnet Fund¹⁸
 - Of the “remaining assessment”
 - ♣ 35% is to be applied to the Capital Magnet Fund
 - Which is also established by the Housing and Economic Recovery Act
 - ♣ This is 26.25% of the “total assessment” from the GSEs.



In calendar year 2009, the entire 100% of the “remaining assessment” (i.e. all funding for both the Housing Trust Fund and the Capital Magnet Fund) will go to the Treasury

¹⁸ The Capital Magnet Fund is established within the Treasury Department and designed to support affordable housing and related economic development activities through: loan loss reserves; capitalizing a revolving loan fund; capitalizing an affordable housing fund; capitalizing a fund to support economic development activities and community service facilities; and risk sharing loans.

Department to reimburse it for the cost of the HOPE for Homeowners Program. Stated another way, all the money goes to the HOPE Program in 2009. This amount changes to 50% of the “remaining assessment” in 2010, and 25% of the “remaining assessment” in 2011, to be applied to HOPE bond payments with the remainder of the money to be split between the Housing Trust Fund and the Capital Magnet Fund as previously described in the formula.

Taking this situation into account, the Congressional Budget Office has estimated that assessments paid to these two funds, Housing Trust Fund and the Capital Magnet Fund, will total \$283 million in fiscal year 2010, over \$600 million by fiscal year 2012, and an estimated \$2 billion through fiscal year 2013, after the most significant portions of the HOPE bond payments cease.¹⁹ Note that these estimated amounts may have changed in recent weeks as the national economic situation and financial crisis has grown, along with the legislative response.

Closely related to the Housing Trust Fund funding formula and the financial crisis is the provision in the Act that allows the Director to suspend the assessments from Fannie Mae and Freddie Mac to the Housing Trust Fund, and other programs mentioned in the funding formula above, upon a finding by the Director that such allocations:

- Are contributing, or would contribute, to the financial instability of the GSE;
- Are causing, or would cause, the GSE to be classified as undercapitalized; or
- Are preventing, or would prevent, the GSE from successfully completing a capital restoration plan.

Interested parties may be inclined to watch for news from FHFA’s Director, James Lockhart, who is currently the conservator of both Fannie Mae and Freddie Mac for any decision he may make in regards to suspending funding. On September 25th in a House Committee on Financial Services hearing, titled “Oversight Hearing to Examine Recent Treasury and FHFA Actions Regarding the Housing GSEs”, Mr. Lockhart responded to a question on suspending the GSEs contribution to the Housing Trust Fund by saying that he will make a final determination over whether the companies will put money into the fund after the GSEs report third quarter results.²⁰

Distribution

The distribution of funds from the National Affordable Housing Trust Fund to the states and U.S. territories²¹ is to be determined by a “needs based formula”. However, the Act indicates that the minimum allocation to any state/territory will be \$3 million annually.

States, through the governor, may designate a housing finance agency, tribal housing entity or other state instrumentality to receive and administer the state grant. Essentially

¹⁹ Summary of Housing and Economic Recovery Act of 2008, Citizens Housing and Planning Association, July 28, 2008, www.chapa.org.

²⁰ National Low Income Housing Coalition “Memo to Members”, September 26, 2008, Vol. 13, No. 38. For archived webcast of this hearing see:

http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr092508.shtml

²¹ 57 states and territories, including Washington D.C.

the money flows from: the GSEs “new business” assessments → the Housing Trust Fund → HUD → the states/territories → the designated state agency that administers the funds → recipient organization that spends the funds.

The Act directs HUD to establish regulations that provide more detail regarding the “needs based formula” and guidance on the distribution of the Housing Trust Fund money by July 30, 2009. States will then likely follow with their regulations and guidance concerning administration of the funds.

Recipients

Eligible recipients of Housing Trust Fund grants from the states may be an organization, agency or other entity (for-profit or non-profit entity) with experience and capacity to provide the required housing as evidenced by its ability to:

- Own, construct or rehabilitate, manage and operate an affordable multifamily rental housing development;
- Design, construct or rehabilitate and market affordable housing for homeownership; or
- Provide forms of assistance, such as down payments, closing costs, or interest rate buy-downs for purchasers.

The Act indicates that recipients of the funds must spend the amount within two years from the date of receiving the money.

Activities

Eligible activities for the funds include:

- For rental housing -
 - At least 80% of the grant must be used for:
 - ♣ Production, preservation, rehabilitation and operating costs.
 - ♣ Not less than 75% of the funds shall be used for only extremely low- income families (30% AMI).
- For homeownership -
 - Up to 10% of the grant can be used for:
 - ♣ The production, preservation and rehabilitation as well as down payment assistance, closing cost assistance, interest rate buy-downs.
 - This is available for purchase of housing only for use as a principal residence by families that qualify as:
 - Extremely low and very low-income families; and
 - First-time homebuyers.
 - Up to 10% of the grant can be used:
 - ♣ By the state or designee for administration costs.
 - This includes counseling.

Next is a review of the Housing Trust Fund’s connection to the recently passed \$700 billion bill designed to end the credit/banking crisis.

The Emergency Economic Stabilization Act of 2008

On October 3rd, Congress passed and the President signed the Emergency Economic Stabilization Act of 2008²² otherwise referred to as either the taxpayer “bail-out” or “buy-in” bill. Relevant to the RSC, this bill provides federal protections to renters whose landlords are foreclosed upon in that federal entities that purchase and hold troubled assets are required to cooperate to allow tenants who are current on their rent to remain in their homes under the terms of the lease. Also, in modifying any mortgage assumed by the government the Treasury Secretary must ensure the continuation of federal, state and local rent subsidies and protections.

Proposed New Dedicated Funding Source for the Housing Trust Fund - Blocked

One item that did not make it into the final version of the Act was a proposal by Democratic Senator Chris Dodd for a new dedicated funding source to direct 20% of profits made by the sale of the assets acquired by the federal government to the National Housing Trust Fund and the Capital Magnet Fund.²³ Republicans went after the Housing Trust Fund during negotiations as the fund was characterized by the House Minority Leader, John Boehner, as a “left-wing giveaway Democrats are pushing to force taxpayers to bankroll a slush fund for a discredited ally of the Democratic Party.”²⁴ This “discredited ally” was an apparent reference to the Association of Community Organizations for Reform Now (ACORN)²⁵, an organization accused by the Republican nominee for president, Senator John McCain, of voter registration fraud during the final presidential debate. Interestingly, ACORN is a member of the Half-in-Ten campaign to cut poverty in half in ten years. The “discredited ally” may also refer to the former Senator and presidential candidate John Edwards, who is a high-profile member and spokes-person of Half-in-Ten, and the allegations that he covered-up a story that he fathered a child with a woman who worked on his presidential campaign.

In any event, the new dedicated funding provision was dropped from the final bill and the Housing Trust Fund may become a political football in future debates between the Democrats and Republicans. This political gamesmanship may also indirectly influence whether or not FHFA’s Director, James Lockhart, exercises the suspension clause in the Housing and Economic Recovery Act to not fund the Housing Trust Fund due to the poor financial health of Fannie Mae and Freddie Mac.

²² H.R. 1424; Public Law 110-343.

²³ National Low Income Housing Coalition “Memo to Members”, October 3, 2008, Vol. 13, No. 39.

²⁴ Id.

²⁵ ACORN is a national grassroots organization that is ineligible to receive funding from the National Housing Trust Fund. “ACORN Housing” is a separate organization that primarily provides housing counseling and homeowner assistance. In theory, a local branch of ACORN Housing could compete in its state for a grant, but 90% of the funds must be used for the production, preservation, rehabilitation, and operation of rental housing affordable for extremely low income families, not activities typical of ACORN Housing. Source: National Low Income Housing Coalition “Memo to Members”, October 3, 2008, Vol. 13, No. 39.

ITEM 3. MCKINNEY-VENTO REAUTHORIZATION PROGRESS

Background

Congress passed the McKinney-Vento Homeless Assistance Act in 1987 to address the growing problem of homelessness and provide funding for programs assisting the homeless. Congress has introduced various bills in the last several years to reauthorize Act, which HomeBase has discussed in a number of RSC memos since 2005. In 2007, Senator Jack Reed introduced The Community Partnership to End Homelessness Act (S. 1518 - the Reed bill), and Representative Julia Carson introduced the Homeless Emergency Assistance and Rapid Transition to Housing Act (H.R. 840 – the HEARTH bill).

Definition of Homelessness

The issue of greatest contention between the two bills is their respective definitions of homelessness. The HEARTH bill contains a broad definition, which proponents argue would allow providers to use their McKinney funds more flexibly, thereby more effectively serving the homeless population. Proponents of the Reed bill, which contains a more narrow definition, argue that this approach ensures that funds would go to those who are most in need.

Recent Congressional Activity

On October 2, 2008, the House of Representatives passed a brand new version of the HEARTH Act, created by Congressional staff behind closed doors, by a vote of 355 to 61. This new bill is a compromise between the original HEARTH and Reed bills. This version of the HEARTH Act includes:

- A slightly expanded definition of homelessness.
The new definition encompasses those who will lose their housing within 14 days and do not have the resources to acquire new housing; and families and youth that lack permanent housing over a long period of time, move frequently, and have difficulty accessing housing because of disabilities, health/mental health conditions, substance abuse, domestic violence, and barriers to employment. The bill also gives the Secretary of Housing and Urban Development the discretion to expand the definition of homelessness.
- Increased resources for homelessness prevention.
Twenty percent of the funds allocated to the McKinney-Vento Homeless Assistance Act are designated for the Emergency Solutions Grant Program. This funding may be used in part to provide “rental assistance to provide short-term or medium-term housing to homeless individuals or families or individuals or families at risk of homelessness,” which may include either tenant-based or project based rental assistance. Also, funds may be used for “housing relocation or stabilization services for [. . .] individuals or families at risk of homelessness, including housing search, mediation or outreach to property owners, legal services, credit repair, providing security or utility deposits, utility payments,

rental assistance for a final month at a location, assistance with moving costs, or other activities that are effective at—

- (A) Stabilizing individuals and families in their current housing; or
- (B) Quickly moving such individuals and families to other permanent housing.”

- Allows nearly one-third of homelessness funds in a particular area to assist those who are doubled up in others’ homes.
- Increases flexibility for rural communities by allowing grants made under the Rural Housing Stability Assistance Program (formerly the rural homelessness grants program) to be used in the following new ways:
 - “Construction of new housing units to provide transitional or permanent housing to homeless individuals and families and individuals and families at risk of homelessness;
 - “Acquisition or rehabilitation of a structure to provide supportive services or to provide transitional or permanent housing, other than emergency shelter, to homeless individuals and families and individuals and families at risk of homelessness;
 - “Leasing of property, or portions of property, not owned by the recipient or project sponsor involved, for use in providing transitional or permanent housing to homeless individuals and families and individuals and families at risk of homelessness, or providing supportive services to such homeless and at-risk individuals and families;
 - “Provision of rental assistance to provide transitional or permanent housing to homeless individuals and families and individuals and families at risk of homelessness, such rental assistance may include tenant-based or project-based rental assistance;
 - “Payment of operating costs for housing units assisted under this title.”

The bill is now pending before the Senate, which is currently in recess and expected to reconvene in mid-November. The original Reed bill (S. 1518) is presently on hold on the Senate floor.

ITEM 4. RUNAWAY AND HOMELESS YOUTH CHANGES

On September 26, the House of Representatives passed the Reconnecting Homeless Youth Act of 2008, which the President signed into law on October 8.²⁶ The new law reauthorizes and amends, in part, the Runaway and Homeless Youth Act (RHYA)²⁷. The new bill accomplishes the following:

- Authorizes appropriations for FY2009-FY2013;

²⁶ S. 2982; Public Law 110-378.

²⁷ 42 U.S.C. 5701; Public Law 108-96.

- Authorizes an additional \$45 million for Basic Center (provides financial assistance for emergency needs, like shelter, food, and clothing) and Transitional Living Programs (long-term residence for youth 16-21);
- Increases authorization amount to \$30 million for the Runaway Prevention Account;
- Increases grant minimum allotments from \$100,000 to \$200,000 for states and from \$45,000 to \$70,000 for the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;
- Requires the Department of Health and Human services to develop performance standards for grantees of all three RHYA programs;
- Requires estimates of the incidence of youth homelessness every five years.
- Increases the length of stay in Transitional Living programs to 21 months (previously 18) and in Basic Center Programs to 21 days (previously 15);
- Requires the Government Accountability Office to assess within one year of enactment the effectiveness of the grant process for runaway and homeless youth programs;
- Requires a transitional living program also to develop an adequate emergency preparedness and management plan;
- Redefines "homeless youth" for purposes of transitional living programs to extend the age limit to 21;
- Defines "runaway youth" as an individual under age 18 who absents himself or herself from home or place of legal residence without the permission of parents or legal guardians.

For more information, please feel free to contact Michael Land, HomeBase Staff Lawyer, via email at Michael@homebaseccc.org, or by phone at 415.788.7961 x310