NAHMAnalysis

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

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Fiscal Year 2016 Budget Request for Affordable Housing Programs

Background

On February 2, 2015 the Obama Administration issued its budget request for fiscal year 2016. The President's budget serves as a framework for Congress to compare and complete its own budget, and it also serves as a set of policy recommendations for the upcoming fiscal year.

The newly released budget for FY 2016 proposes many new tax policies and spending figures which do not adhere to the spending levels agreed to in the Budget Control Act of 2011. It has drawn criticism for these higher figures, which are mainly directed at new infrastructure projects. The budget calls for a total of $3.99 trillion in spending for FY 2016, a 6.4% increase from the current year. Included is a proposal for more than $1 trillion in new tax measures over the coming decade though Republicans declared that this is a nonstarter.

Budget Request for HUD Multifamily Programs

For the Department of Housing and Urban Development, the requested gross discretionary budget authority is $49.3 billion, an amount that is $2.7 billion more than what was requested for FY 2015, and $3.8 billion more than what was appropriated for FY 2015 in the omnibus appropriations bill (H.R. 83). With the assumed funding increases over FY 2015, the Obama Administration's FY 2016 budget proposes higher funding levels for some HUD programs. There are considerable increases for Section 202 Supportive Housing for the Elderly and for the Tenant-Based Section 8 program.

A major area of concern in this budget is the proposed funding level for the Project-based Section 8 (PBS8) program. While the Administration has requested a funding increase for PBS8, NAHMA remains concerned that the funding level is not adequate to fully fund all contracts upfront for 12-months *at the time of renewal*. In the budget, HUD indicates that the requested amount for the program will be sufficient for 12-month funding, but this assumption is based on a transition to a calendar year funding model wherein all contracts are funded at once beginning January 1 each year.

On the next page is a chart comparing the funding levels in this proposed budget with the FY 2015 appropriations.

	Project-Based Section 8	Housing Choice Vouchers	HOME	Section 202	Section 811	Community Development Block Grant
FY 2016 Budget Request	$10.76 billion*	$21.12 billion**	$1.06 billion	$455 million***	$177 million	$2.80 billion
FY 2015 Omnibus (H.R. 83)	$9.73 Billion	$19.3 Billion	$900 Million	$420 Million	$135 Million	$3 Billion

*Includes $10.55 billion for renewals and $400 million in advanced appropriations (for FY 2017)
**Includes $18.33 billion for contract renewals
***Includes $77 million for Service Coordinators

Congressional Justifications

Following the release of the President's budget, each department issues its Congressional Justifications to lawmakers and the public. These documents outline why the amount of funding was requested and they include additional information on legislative authority requests and other program initiatives.

Project-Based Section 8 (PBS8)

The request of $10.76 billion for PBS8 is more than $1 billion over the FY 2015 funding. During a budget hearing in 2014 (for the FY '15 budget) then HUD Secretary Shaun Donovan noted that $10.8 billion will be necessary for the program in 2016. Yet this was contingent on a one-time reduction in PBS8 funding for FY 2015 as the Department was planning to transition all contracts to a calendar funding schedule. In HUD's Congressional Justifications on the budget, the Department again assumes a calendar year funding cycle:

> "The enacted funding level for fiscal year 2015 reflects one-time savings on contracts that require less than 12 months of funding as they transition to a calendar year funding cycle. The requested increase for fiscal year 2016 returns the PBRA account to the baseline level required for annual ongoing 12-month (calendar year) funding of contracts under the account…The Department's fiscal year 2016 request provides for the first complete year of funding under the new calendar year methodology, and represents the baseline level for 12-month funding of contracts"

However, this figure is still contested because previous discussions from the Department cited $11.9 billion as the necessary amount for the program in FY 2015 under the previous fiscal year funding cycle. Furthermore, HUD has not released data to show any real savings by converting to the calendar year cycle. NAHMA is concerned that this is a new, untested idea being implemented at a time of considerable risk. Automatic spending cuts known as sequestration may return in 2016 if Congress fails to keep spending below the budget caps agreed to in the Budget Control Act of 2011. What will happen then if sequestration returns? What contingency plan does the Department have to ensure all contracts are fully funded for the full 12-month agreement? We believe that HUD should release more information on the cost savings generated by the calendar year model and what procedures will be taken if sequestration were to return.

NAHMA will be reaching out to lawmakers requesting that their figures for PBS8 contract renewals in FY 2016 should be higher than the Administration's request. At the very least, the figure for PBS8 renewals cannot fall below $10.76 billion.

The funding request in the PBS8 program also assumes cost savings from a legislative request related to tenant medical expense deductions. The budget proposes to increase the amount of income that must be spent on medical expenses before they may be deducted:

> "The funding request for fiscal year 2016 assumes cost savings from a legislative request related to tenant medical expense deductions. This request would increase the amount of income that must be spent on medical expenses from 3 percent of income to10 percent before medical expenses can be deducted. *If this change is not approved, the fiscal year 2016 appropriations requirement may increase*" (emphasis added).

The Department also proposes a general provision that would establish a Pay for Success demonstration to allow HUD to enter multi-year agreements to repay private investors who provide upfront funding for energy efficiency retrofits of assisted housing.

Finally, a general provision was proposed that would facilitate the refinance and recapitalization of projects that have use agreements imposed by the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA). This proposal will align owner distribution and prepayment policies in LIHPRHA-governed properties with other PBRA-assisted properties in order to facilitate preservation transactions.

Tenant-Based Rental Assistance – Housing Choice Vouchers (HCVs)

For HCVs, the Department requests $21.12 billion for FY 2016, which is an increase of $1.82 billion from the FY 2015 enacted level. HUD believes that this increase will address the losses experienced in the voucher program that resulted from sequestration cuts and reduced funding levels in 2013. This request would result in approximately 67,000 new incremental vouchers.

Similar to the PBS8 program, the Administration is proposing several cross-cutting initiatives including an increase for the threshold for the deduction of medical and related care expenses from 3 to 10 percent of a family's income. This provision was included in the Department's FY 2014 and 2015 budget requests. HUD estimates that this provision would generate savings of $30 million in FY 2016 for the HCV program.

Next, HUD is proposing another cross-cutting provision which they claim will improve the process for establishing Fair Market Rents (FMRs). This proposal removes the statutory requirement that FMRs be published for comment in the Federal Register, and HUD would instead publish proposed FMRs to its website along with any proposed material changes in methodology. A similar version of this language appeared in the Department's FY 2015 budget request.

The Department also included a provision to authorize triennial recertifications for families with fixed incomes instead of the current practice of annual recertifications. Eligible families would be defined as those for whom at least 90 percent of income is from sources such as Social Security or federal, state, local, and private pension plans. These families are estimated to be about 50 percent of public housing, voucher, and project-based section 8 tenants. If implemented, this policy change could reduce administrative burdens on PHAs and owners. NAHMA has supported similar proposals in the past. There has also been interest from lawmakers to enact this change. Representative Ed Perlmutter (D-CO) recently introduced the Tenant Income Verification Relief Act of 2015 (H.R. 233) which would require recertifications every three years for fixed income families.

For the Moving-to-Work (MTW) program, HUD included a proposal that would incrementally expand the MTW program to high capacity Public Housing Authorities (PHAs). Participating PHAs would be required to design and implement innovative policies related to housing preservation, family self-sufficiency, mobility, cost-effectiveness and other priority areas. PHAs will be subject to rigorous reporting and evaluation requirements and up to fifteen PHAs, totaling no more than 150,000 combined HCV and public housing units, would be selected competitively.

HOME Investment Partnership Program (HOME)

The Administration proposes to revise “grandfathering” provisions and eliminate the dual allocation threshold for HOME participating jurisdictions. The number of participating jurisdictions has increased from 387 in 1992 to 640 in 2014. However, funding has not increased along with the number of new participating jurisdictions, resulting in much lower formula allocations than is necessary. Given recent funding levels, the Administration believes it is necessary to reduce the number of participating jurisdictions to ensure that individual allocations are sufficient to support affordable housing development and have an impact on affordable housing need within communities.

The Department is proposing to eliminate the $335,000 allocation threshold for years in which the HOME appropriation is less than $1.5 billion, resulting in a stable threshold of $500,000 regardless of appropriation amount. HUD also wants to eliminate continuous grandfathering of participating jurisdictions and insert a provision that would grandfather participating jurisdictions for 5-year periods running concurrently with their consolidated plan period. This prosed amendment would result in the elimination of more than 250 local participating jurisdictions after three years in a five-year period with an allocation of less than $500,000. If the proposal is enacted and the HOME appropriation levels remain relatively consistent, 253 of the 640 HOME participating jurisdictions will be removed from the program after five years.

Although these participating jurisdictions would be ineligible for direct formula funds, they would still be able to access HOME funds by forming consortia to meet the qualifying threshold or apply directly to their States for finding for specific projects. In addition, new participating jurisdictions would need to meet the allocation threshold of $500,000 regardless of the HOME appropriation level.

Additionally, the budget proposes to allow nonprofit organizations that operate statewide to be designated as Community Housing Development Organizations (CHDO). The effect of the amendment would be to assist largely rural states to identify organizations with capacity to undertake HOME CHDO-set aside projects. Currently, state-designated CHDOs are not permitted to serve the entire state. Participating jurisdictions in those areas would now be able to use their CHDO set aside funds on CHDO projects owned, developed, or sponsored by these statewide CHDOs instead of losing the funds for failing to meet the 24-month CHDO reservation requirement.

HUD estimates that an appropriation of HOME at the requested level will result in the production of 15,099 units of newly constructed and rehabilitated affordable rental units over time.

Community Development Block Grant (CDBG)

For the CDBG program, the budget is proposing to allow up to ten states, localities or groupings of the two to blend funding across four block grants as part of the Administration's Upward Mobility Project. These four grants include the Department of Health and Human Services' (HHS) Social Services Block Grant and Community Services Block Grant, as well as HUD's HOME Investment Partnerships Program and CDBG. In exchange for more accountability for results, state and localities would be able to use the funds beyond the current allowable purposes of these programs to implement evidence-based or promising strategies for helping individuals succeed in the labor market and improving economic mobility.

The Upward Mobility Project would be jointly administered by HUD and HHS. In addition, participating communities would be eligible to receive up to $300 million per year ($1.5 billion over five years) through the HHS Social Services Block Grant to support implementation of pilot projects.

Housing for the Elderly (Section 202)

The Administration's FY16 budget includes $455 million for the Section 202 program, a $35 million increase over the FY 2015 appropriations. Of this amount, $365 million is slated for Project Rental Assistance Contract (PRAC) renewals while $77 million has been allotted for service coordinators. The budget also seeks to renew HUD's authority to capture excess residual receipt amounts for other parts of the program.

A total of $10 million will also be extended to expand the Section 202 housing-with-services demonstration, which was authorized by the FY 2014 appropriations act. HUD is conducting this demonstration in conjunction with the Department of Health and Human Services. These Departments seek to demonstrate that housing and supportive services with a health/wellness component successfully and cost effectively helps elderly residents maintain their housing and their health, and helps in avoiding costly institutional care.

There were no new program changes proposed in the budget for Section 202, but NAHMA is concerned to see that no new funding for 202 Capital Advances was included.

Housing for Persons with Disabilities (Section 811)

The Department requests $177 million for the Section 811 program in FY 2016, an increase of $42 million above the 2015 level. The funding request includes two primary activities: $150 million for PRAC renewals and $25 million for new Section 811 Project Rental Assistance (PRA) awards.

The budget proposes new transfer authority under the 811 program in order to assist properties in complying with Olmstead requirements. In 1999, the Supreme Court held in Olmstead v. L.C that unjustified segregation of persons with disabilities constitutes discrimination in violation of title II of the Americans with Disabilities Act. The Court held that public entities must provide community-based services to persons with disabilities when:

1. Such services are appropriate;

2. The affected persons do not oppose community-based treatment; and
3. Community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability services from the entity.

In certain States, existing Section 811 group homes are facing difficulties in obtaining referrals for certain disability populations due to Olmstead settlements or enforcement actions. Lack of referrals puts these properties at risk of failure or foreclosure. The requested Section 811 transfer authority would give the Department flexibility to transfer Section 811 subsidies to properties that comply with local Olmstead requirements. For example, under this authority a Section 811 project rental assistance contract supporting a six-person group home could be transferred to two three-person group homes.

Rental Assistance Demonstration (RAD) Program

The budget request for PBS8 in FY 2016 includes renewal funding for public housing properties that converted in 2014 under RAD, but properties that are converting in 2015 that will require renewal funds in 2016 are not reflected in this request. Instead, HUD states that it will use its statutory authority under the 2012 continuing resolution (P.L 112-55) to transfer amounts from the FY 2016 Operating Fund and Capital Fund appropriations to the PBS8 account.

General Insurance and Special Risk Insurance (GI/SRI) Fund

For the Federal Housing Administration's (FHA) General Insurance and Special Risk Insurance (GI/SRI) Fund, the budget is requesting commitment authority for up to $30 billion in new loan guarantees. This fund fills underserved market segments and plays a countercyclical role in the market by insuring critical mortgage financing for multifamily rental housing, nursing home facilities, and hospitals.

<u>Budget Proposal for Rural Housing Programs</u>

The U.S. Department of Agriculture's Rural Development (USDA-RD) requested budget for FY 2016 seeks to increase funding for nearly all affordable housing programs administered by the agency. Below is a chart comparing the budget request with the funding levels provided in the FY 2015 omnibus (H.R.83):

	Section 515	Section 521 Rental Assistance	Section 538 (Loan Level)	Revitalization and Rural Housing Vouchers
FY 2016 Budget Request	$42.27 million	$1.172 billion	$200 million	$34 million/ RHVs: $15 million
FY 2015 Omnibus	$28.40 Million	$1.088 Billion	$150 Million	$24 Million/ RHVs: $7 Million

Congressional Justifications

The Congressional Justifications for RD programs are remarkably similar to the FY 2015 budget request. Some policy proposals which NAHMA and other industry groups originally opposed have returned.

Section 521 Rental Assistance (RA)

Although the Administration is requesting higher figures for FY 2016, NAHMA remains concerned that the request for Section 521 Rental Assistance (RA) may not be sufficient to fully fund the program. Recently, several NAHMA members who participate in the RA program experienced severe delays for their scheduled contract funding. According to RD, the delays were due to a late allocation of funds for the program and Agency staff is working hard to address the issue. Still there is precedent for our concerns as RA was severely compromised in 2013 after devastating sequestration cuts slashed RD's budget. Cuts to the program caused RD to not renew a number of contracts for multifamily properties in September 2013.

These contracts were renewed at the beginning of FY 2014, but the Agency has not made retroactive payments to cover the lost RA in September 2013. It is possible that sequestration will return in FY 2016 and RD may again prevent the renewal of contracts without sufficient funds to provide for all contracts.

For the RA program, RD has included some controversial policy language in its Congressional Justifications which would significantly alter the standard terms of contracts. First, the Agency is proposing to change the language for contract length from the current standard that contracts entered into or renewed during the current fiscal year shall be funded for a 1-year period to new language which states that contracts shall be funded for *up to one year*. NAHMA is concerned that this new language would allow the Agency to fund contracts with inconsistent lengths which may leave O/As without RA for months at a time should the Agency run out of funding.

Next, the Agency is proposing language which states that rental assistance contracts will be renewed at the discretion of the Secretary of the U.S. Department of Agriculture. This is again another proposal from the FY 2015 budget request. RD believes that this policy will be a helpful management tool during periods of funding uncertainty such as short-term continuing resolutions. They also note that this authority "will help establish clear priority order for funding in situations similar to the recent sequestration, when funding was substantially reduced." In our testimony submitted in 2014, NAHMA opposed this change and instead suggested that the Agency should request advanced appropriations which may be used during uncertain funding periods such as short-term continuing resolutions.

These concerns are increased with other proposed policy changes. RD is again proposing to prevent contracts that run out of funds from renewing within a 12-month contract period. RD believes that ending automatic renewals will allow the agency to more efficiently utilize its RA resources and will eliminate the uncertainty of future program costs and provide more budget predictability. This provision to end automatic renewals was included in the FY 2015 omnibus (H.R. 83). In testimony delivered to the House and Senate Appropriations Committees in 2014, NAHMA agreed that RD needs some degree of flexibility in its contract renewal procedures during times of extraordinary budget uncertainty. However, we stated that the flexibility must not absolve the agency of its financial obligations to owners for payment of RA during the term of the contract, nor should it be used as a budget gimmick to request less appropriations than are necessary to provide 12 months of contract funding at the time of renewal. NAHMA will make similar comments in testimony we plan to submit this year. We are concerned that

Another reprised proposal is a minimum rent of $50 for the RA program. The Agency evaluated the approximately 439,000 tenants in its direct loan properties; there are approximately 42,300 households paying between $0 and $50 per month towards rent. RD estimates that “the first year a minimum rent is implemented, it will save approximately $2.5 million. This estimate is based on the fact that minimum rent requirements will need to be included in a tenant’s annual lease, and only a limited number of those leases will be due for renewal when the minimum rent requirement is implemented.” Over time, RD estimates it will save $10 million per year.

Additionally, RD requested authority to access both the IRS and Department of Health and Human Services’ income verification databases for its multifamily housing programs. RD believes that this policy will save the time and money of staff, and reduce improper payment rates for its programs. This proposal was included in the FY 2015 budget request, but it was not enacted by Congress. Over time, RD estimates that this proposal will save $20 million a year, once fully implemented. If Congress provides such authority, NAHMA recommends that USDA-RD implement this request by seeking access to HUD’s Enterprise Income Verification (EIV) System for Agency staff, as well as for authorized property owners and managers. EIV could be more efficient for RD to use for income verification rather than the Agency creating its own entirely new system.

Section 515

The proposed level of funding in the FY 2016 budget assumes a total of $20 million in savings from charging a $50 minimum rent to tenants living in properties financed through Section 515. The minimum rent proposal was included in the FY 2015 budget request, but the Agency received criticism from lawmakers who believed a minimum rent of $50 would be too burdensome for extremely low-income and fixed-income tenants. The Agency believes this change will reduce the burden on the rental assistance program, better ensure program funds will be available for all rental assistance agreements that need to be renewed, and foster tenant responsibility for program residents. Eviction of tenants is prohibited if they are unable to pay the minimum rent and hardship exemptions for applicants and tenants who cannot pay the minimum rent would be implemented.

RD estimates that the first year a minimum rent requirement is introduced in the Section 515 program, approximately $5 million would be saved. Once fully implemented, RD estimates it could save $20 million per year. They cite HUD’s minimum rent policies for some of its programs as an example of this policy in practice. NAHMA has no official policy on the minimum rent proposal for either Section 515 or Section 521 RA.

Rural Multifamily Revitalization Program and Rural Housing Vouchers

Funding for the multifamily housing revitalization program rehabilitates housing or rental properties occupied by very low and low-income residents living in rural areas. In FY 2015, USDA requested a decrease in funding for the program, and the FY 2015 omnibus provided only $24 million for the program with only $7 million set aside for vouchers. The Agency was vague as to why they requested a funding level that was much lower than previous years.

In this budget, the Administration has requested a major funding increase for both revitalization activities and vouchers. The budget also proposes some minor program changes for tenants residing in a property financed with a Section 515 loan. RD is requesting that vouchers be available for residents in properties with a loan that has been prepaid after September 30, 2005, or *that is otherwise paying off the section 515 financing* as based on prioritization.

Budget Request for the U.S. Treasury Department – Low-Income Housing Tax Credit

Along with proposed changes in HUD and RD, the Obama Administration's FY 2016 budget contains proposals to reform and expand the low-income housing tax credit (LIHTC).

The first proposal would allow states to convert a portion of their tax-exempt Private Activity Bond (PAB) authority into allocated LIHTCs. States would be authorized to convert PAB volume cap to be received for a calendar year into LIHTC allocation authorization applicable to the same year. The conversion ratio would be reset each calendar year to respond to changing interest rates. The aggregate amount of PAB volume cap that each state may convert in a calendar year is 18 percent.

The second proposal would add a third criterion to the LIHTC qualifying criteria. When a taxpayer elects this criterion, at least 40 percent of the units in the project would have to be occupied by tenants with incomes that average no more than 60 percent of area median income (AMI). No rent-restricted unit, however, could be occupied by a tenant with income over 80 percent of AMI; and, for purposes of computing the average, any unit with an income limit that is less than 20 percent of AMI would be treated as having a 20 percent limit. Maximum allowable rents would be determined according to the income limit of the unit. When the tenant moves out, if the unit is to continue to be rent-restricted, the income restriction on the unit would revert to 60 percent of AMI. The Administration included this request in its FY 2015 budget; NAHMA supports this proposal.

A third proposal would change the formulas for 70 percent present value credit rate and 30 percent present value credit rate LIHTCs. Under the proposal, the discount rate to be used would be the average of the mid-term and long-term applicable Federal rates for the relevant month, plus 200 basis points. This proposal would not extend the 9 percent minimum credit rate for LIHTCs, which expired at the end of December and must be reintroduced. NAHMA believes that having a flat 9% credit, as seen in Maria Cantwell's bill S. 1442, the Improving the Low Income Housing Tax Credit Rate Act, is superior to this Treasury proposal because a flat minimum credit rate would provide more predictability for the program.

The budget proposes to also add preservation of federally assisted affordable housing as an eleventh selection criterion that state qualified allocation plans (QAPs) must include in their allocation of LIHTCs. The proposal would be effective for allocations made in calendar years beginning after the date of enactment. This request was included in the Administration's FY 2015 budget. NAHMA strongly supports this proposal.

Next, the budget proposes to implement protections for victims of domestic abuse that would be required in all Long-Term Use Agreements. These provisions would apply to both the low-income and the market-rate units in the building. The owner could not refuse to rent any unit in the building to a person because that person had experienced domestic abuse. Moreover, an experience of domestic abuse would not be good cause for terminating a tenant's occupancy. Under the Agreement, an owner could bifurcate a lease so that the owner could evict a tenant or lawful occupant who engaged in criminal activity directly relating to domestic abuse. The Administration included this proposal in the FY 2015 budget, and has done so again because the 2013 Violence Against Women Act (VAWA) Reauthorization lacked enforcement provisions for LIHTC properties.

Finally, the budget proposes to allow HUD to designate any census tract as a Qualified Census Tract (QCT) if it meets the current statutory criteria with a poverty rate of at least 25 percent or 50 percent or more of households with an income less than 60 percent of AMI. In essence, the proposal would remove the current limit under which the aggregate population in census tracts designated as QCTs cannot exceed 20 percent of the metropolitan area's population. This change would apply to buildings that receive allocations of LIHTCs or volume cap after the date of enactment. This is a new proposal which was not included in the FY 2015 budget.

Conclusion

Congress is unlikely to adopt the Administration's budget in its entirety, but some of these policy proposals and funding could appear in future legislation. NAHMA will follow the progress of this budget and monitoring its most concerning proposals. Throughout this process, NAHMA will advocate to Congress that funding for programs such as Project-Based Section 8 cannot under any circumstance fall below the requested levels and that any appropriations must ensure full-funding for multifamily housing programs.

We will need help from all of our members in this advocacy goal, and we are preparing materials to help you voice our concerns with your district representatives and state senators. As affordable housing property owners and managers, you have a unique perspective on these issues which needs to be communicated to Congress. Please stay posted for grassroots action alerts from NAHMA staff in the coming weeks.

To find your district representative and state senators, please use NAHMA Maps. Additionally, please check to see if your elected officials are members of any committees with oversight of affordable housing programs. You can review these committee assignments in this recent NAHMAnalysis.