

NAHMAanalysis

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

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A Recap of Housing Legislation in 2015

Background

As 2015 draws to a close, NAHMA would like to provide members with a recap of the affordable housing legislation released in this year. This NAHMAanalysis will provide a short synopsis of the affordable housing bills introduced in 2015 and their current status in becoming law. Additionally, there is information provided on other bills affecting the Low-Income Housing Tax Credit (LIHTC).

Please note that this NAHMAanalysis does not review the funding legislation considered this year. If you would like to learn more about the appropriations legislation for fiscal year 2016, please review this recent [NAHMAanalysis](#) on the recently enacted omnibus package.

Transportation Funding Bill with Housing Amendment

The Fixing America's Surface Transportation (FAST) Act is a five-year legislative package designed to improve America's roads, bridges, public transit, and rail transportation systems and reform federal surface transportation programs. It was passed with strong bipartisan support in both the House and the Senate, and President Obama signed the bill into law on December 4, 2015.

Though the bill focused on transportation programs, an amendment was introduced by House Financial Services Committee Chairman Jeb Hensarling (R-TX) before passage of the bill which included several affordable housing bills. These housing bills were first introduced as stand-alone legislation and were all previously approved in the House:

- H.R. 1047, the Housing Assistance Efficiency Act, introduced by Representative Scott Peters (D-CA) on February 24, 2015. This bill amends the McKinney-Vento Homeless Assistance Act to allow (in addition to a state, local government, or public housing agency) a private nonprofit organization to administer permanent housing rental assistance provided through the Continuum of Care Program.
- H.R. 2997, the Private Investment in Housing Act, introduced by Representative Dennis Ross (R-FL) on July 9, 2015. This bill provides HUD with the authority to establish a demonstration program and enter into budget-neutral, performance-based agreements that result in the reduction in energy or water costs for multifamily housing properties.

- H.R. 233, the Tenant Income Verification Relief Act, introduced by Representative Earl Perlmutter (D-CO) on January 8, 2015. This bill seeks to allow tenants on a fixed income to have their income certified and/or verified once every three years rather than annually. H.R. 233 would help streamline and reduce the burdens placed on tenants for purposes of determining their eligibility for certain Federal assistance housing programs, including seniors and other individuals and families who consistently maintain a fixed income. In the past, NAHMA has supported similar proposals that would reduce the burden of income certifications for property owners, tenants and housing authorities. For example, NAHMA supported provisions in the unpassed Affordable Housing and Self-Sufficiency Improvement Act (AHSSIA) of 2012 which would have similarly reduced income certification to once every three years.
- H.R. 2482, the Preservation Enhancement and Savings Opportunity Act, introduced by Representative Erik Paulson (R-MN) on May 20, 2015. This bill would amend the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIPRHA) to allow owners (including nonprofits) of multifamily developments access to remaining profits after all operating expenses and maintenance costs. For the past 15 years, HUD has administratively removed limitations on distributions where it had the authority, but it lacked this authority with the LIHPRHA portfolio.

NAHMA supported the provisions of each of these housing bills, and we are glad to see this legislation enacted in the 114th Congress through passing of the FAST Act. It is our belief that these changes will positively impact the management of affordable housing properties.

H.R. 3700

On October 7, 2015, Representative Blaine Luetkemeyer (R-MO), Chairman for House Financial Services Subcommittee on Housing and Insurance, introduced [H.R. 3700](#), the Housing Opportunity through Modernization Act of 2015. H.R. 3700 combines several of the same housing bills that were included in the FAST Act. It also includes several provisions from a bill introduced in the 112th Congress, the Section Eight Voucher Reform Act of 2011 (SEVRA) (H.R. 1209), and a drafted bill which has never been formally introduced, the Affordable Housing and Self-Sufficiency Improvement Act of 2012 (AHSSIA).

The key provisions in H.R. 3700 are intended to streamline the Section 8 Housing Choice Voucher (HCV) program. These provisions include:

- Increasing the maximum contract term for project-based vouchers from 15 to 20 years;
- Streamlining income reviews/determinations: three-year income recertifications will be required for fixed income households;
- Streamlining physical inspection protocols;
- Authorizing HUD to collect utility data; and
- Authorizing USDA's Multifamily Housing Revitalization Program and providing authority for USDA to delegate guaranteed rural housing loan approval to preferred lenders.

While many of the proposals included in H.R. 3700 were enacted through the amended FAST Act, NAHMA continues to support passage of Luetkemeyer's bill because of the provisions incorporated from the SEVRA and AHSSIA bill text. SEVRA proposed common-sense reforms to the inspection requirements such as permitting housing agencies to approve tenant lease-ups

in properties which had passed inspections under a program with stringent standards such as HOME or the LIHTC. NAHMA strongly supports these provisions because they will help expedite the lease-up process for voucher holders. Streamlining this process will provide the residents with much needed housing access sooner, and the owners will not lose income due to delayed move-ins.

On December 9, 2015, H.R. 3700 passed the House Financial Services Committee with a recorded vote of 44 to 10. However, it has not been passed by the House and there are no legislative work days left in 2015. NAHMA will continue to support passage of the bill in 2016.

Other Affordable Housing Bills

Throughout 2015, many other affordable housing bills were introduced in Congress. Some of these bills were intended to improve HUD program offerings, and others sought to block policies proposed by HUD from taking effect. However, due to the partisan gridlock in both the House and Senate, most of these bills were not passed. Provided below is information on these bills and their current status in being passed into law. Please note that H.R. and the proceeding numbers denote a House bill while S. followed by the bill number is a Senate bill.

- **H.R. 3827: the Project-Based Voucher Improvement Act of 2015.** This bill would allow public housing authorities (PHAs) increased flexibility to develop new units of housing that serve vulnerable populations, including the homeless, the elderly, and persons with disabilities. H.R. 3827 seeks to also create housing opportunities in areas where vouchers are difficult to use. Under this legislation, a PHA would be authorized to project-base up to 20 percent of its authorized voucher allocation rather than 20 percent of its voucher funding. The bill also enables a PHA to provide up to an additional 10 percent of its authorized vouchers to create units targeting homeless individuals and families, veterans, or households with persons who are elderly or have disabilities; or units in areas where vouchers are difficult to use due to market conditions. The permissible term of PBV contracts and extensions would be extended from 15 to 20 years, and PHAs would be required to prioritize payments for units subject to a PBV contract in the event of insufficient funding (this provisions only applies when other cost-saving measures are available). *Introduced by Representative Maxine Waters (D-CA) on 10/23/15. H.R. 3827 did not advanced past the Committee level and NAHMA does not anticipate that it will progress. The bill did not gain any cosponsors.*
- **H.R. 1995: the Local Zoning and Property Rights Protection Act of 2015.** This bill sought to prohibit HUD from implementing the proposed rule entitled “Affirmatively Furthering Fair Housing,” published in the Federal Register on July 19, 2013 (78 Fed. Reg. 43710; Docket No. FR-5173-P-01). Under H.R.1995, the Secretary of HUD would be required to consult with State officials, local governments, and public housing agencies (PHAs) to develop recommendations which further the purposes and policies of the Fair Housing Act. In essence, H.R.1995 will direct local governments to act on their community’s fair housing issues rather than the federal government. *Introduced by Representative Paul Gosar (R-AZ) on 4/23/15. Representative Gosar has introduced this legislation in the past. In the 113th Congress, he introduced an identical provision as an amendment to the Transportation, Housing and Urban Development Appropriations bill for FY 2015. The amendment was passed, but the bill was ultimately not enacted. The Affirmatively Furthering Fair Housing proposed rule has not been implemented yet, and according to HUD staff at NAHMA’s most recent meeting in October 2015, the rule is still under review by HUD personnel. H.R.1995 gained 23 cosponsors and was referred to the Subcommittee on the Constitution and Civil Justice. NAHMA does not anticipate it will be passed.*

- **H.R. 574: The Pay Back the Taxpayers Act of 2015.** This legislation seeks to prevent the Government-Sponsored Enterprises Fannie Mae and Freddie Mac (the GSEs) from directing funds to the Housing Trust Fund or the Capital Magnet Fund. The Housing Trust Fund was established in the Housing and Economic Recovery Act of 2008 (HERA) with the purpose of increasing the supply of affordable housing for low-income families by providing grants directly to states for development and preservation of multifamily properties. It was intended to be funded by Fannie Mae and Freddie Mac. When these two government sponsored enterprises (GSEs) were placed into conservatorship by the U.S. Treasury in September of 2008, contributions were suspended. For the first time in 2016, the Housing Trust Fund is slated to be funded under the recently passed appropriations omnibus. *Introduced by Representative Ed Royce (R-CA) on 1/28/15. This bill gained 16 cosponsors and was referred to the House Financial Services Committee. NAHMA does not anticipate that this legislation will progress past the committee level.*
- **S.1909: Local Zoning Decisions Protection Act, 2015.** This bill would prevent any federal funding being used for implementing HUD's final rule "Affirmatively Furthering Fair Housing." The bill would also prohibit any funds from being used for HUD's "Fair Housing" database in an effort to prevent disparate theory investigations. *Introduced by Senator Mike Lee (R-UT) on 7/30/15; this bill was referred to the Senate Banking Housing and Urban Affairs Committee and gained six cosponsors. NAHMA does not anticipate that this legislation will progress past the committee level.*
- **S. 2012: Energy Policy Modernization Act of 2015.** Among numerous other changes to U.S. energy policy, this bill would create a demonstration program under which the Secretary of HUD may enter into agreements with multifamily property owners that result in a reduction in energy or water costs. The demonstration would be open for up to 20,000 multifamily units in properties assisted through Project-Based Section 8, Section 202 and Section 811. This bill is similar to H.R. 2997, the Private Investment in Housing Act of 2015, which passed the House on July 14, 2015, and to the provisions included in the recently passed FAST Act. *S.2012 was introduced by Senator Lisa Murkowski (R-AK) on 9/9/15.*

Tax Credit Legislation

Several bipartisan bills were introduced in 2015 which would impact the Low-Income Housing Tax Credit (LIHTC). NAHMA has long sought a permanent establishment of the 9 percent minimum credit rate for new construction of LIHTC properties, and a 4 percent minimum credit rate for property acquisition and rehabilitation. The tax credit for new construction (also known as the 70 percent present value tax credit) was temporarily fixed at 9 percent under the Housing and Economic Recovery Act (HERA), and was again extended through December 31, 2013 and 2014 under two additional legislative acts. The tax credit for property acquisition and rehabilitation (also known as the 30 percent present value credit) has never been fixed at 4 percent.

Fortunately, a new tax extenders bill, the Protecting Americans from Tax Hikes Act of 2015, was passed on December 18, 2015. In a major victory for the LIHTC, the Protecting Americans from Tax Hikes Act made **permanent** the 9-percent minimum credit rate. NAHMA is very pleased with this result and this change will help remove the uncertainty and risk placed on private investors when a minimum credit rate is not defined and investors are subject to a floating rate. However, the bill did not contain an establishment of the 4-percent minimum credit rate for property rehabilitation. NAHMA has consistently advocated that fixing the minimum credit rate for acquisition housing credits at no less than 4 percent would remove the uncertainty and financial complexity of the current floating rate system. In 2016, NAHMA will continue to advocate for making permanent the 4 minimum credit rate.

Provided below is a summary of the LIHTC bills submitted this year.

- **H.R.1142: To amend the Internal Revenue Code of 1986 to make permanent and expand the temporary minimum credit rate for the low-income housing tax credit program** (working title). This bill would permanently establish a fixed 9 percent (for new rental construction property) and 4 percent (for existing property) LIHTC minimum credit rate. NAHMA was a strong supporter of this legislation and its Senate counterpart bill, S.1193. *H.R. 1142 was introduced by Representative Patrick Tiberi on 2/26/15. The bill is identical to his H.R.4717, which Representative Tiberi introduced in the 113th Congress. H.R.1142 gained 84 cosponsors and was been referred to the House Ways and Means Committee. NAHMA sent a letter of support to Tiberi's office, and we advocated to other lawmakers for its passage. The bill did not progress past the Committee level.*
- **S.1193: To amend the Internal Revenue Code of 1986 to make permanent and expand the temporary minimum credit rate for the low-income housing tax credit program** (working title). This bill would also permanently establish the fixed 9 percent and 4 percent minimum credit rates under the LIHTC. NAHMA was a strong supporter of this legislation and its House counterpart bill, H.R.1142. *S.1142 was introduced by Senator Maria Cantwell (D-WA) on 5/5/15. The bill is identical to her previous legislation, "Improving the Low Income Housing Tax Credit Rate Act" (S.1442), which was introduced in the 113th Congress. S.1193 gained 28 cosponsors and was been referred to the Senate Finance Committee. NAHMA sent a letter of support to Cantwell's office, and we advocated to other lawmakers for its passage. This bill also did not progress past the Committee level.*
- **S.1412: The Housing for Homeless Students Act of 2015.** This bill would qualify homeless youth and veterans who are full-time students for purposes of the LIHTC. Current law prevents many full-time students from qualifying for affordable rental housing funded through the LIHTC. To correct this, the Housing for Homeless Students Act will exempt certain individuals from the LIHTC student occupancy rule if they have experienced homelessness at any point in the five years prior to moving into a LIHTC property. This exemption will include homeless individuals covered by the definition of "homeless children and youth" in the McKinney-Vento Homeless Assistance Act. The bill also includes an explicit exemption from the student rule for homeless veterans seeking an education. *Introduced by Senators Al Franken (D-MN) and Rob Portman (R-OH) on 5/21/15. The bill is identical to S. 2723, the Housing for Homeless Students Act of 2014, which Senators Franken and Portman submitted in July of 2014. S. 1412 gained five cosponsors and was referred to the Senate Committee on Finance. It did not progress beyond the Committee level, but NAHMA will continue to support passage of this bill in 2016.*

Conclusion

Much of the partisan conflict that plagued Congress in 2014 continued in 2015. However, recently passed legislation such as the FAST Act and the Protecting Americans from Tax Hikes Act of 2015 demonstrate that lawmakers are still willing to reform and strengthen affordable housing programs.

NAHMA is encouraged to see several bills and provisions we supported throughout the year become enacted. There will be new challenges in 2016, but achieving major victories like the permanent establishment of the 9 percent minimum credit rate under the LIHTC will bolster additional advocacy activities. We will continue to advance the unpassed but favored legislative items from 2015 in 2016.