NAHMAnalysis
NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

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

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Fiscal Year 2014 Appropriations

Effective Date or Deadline

President Obama signed H.R. 3457, the Consolidated Appropriations Act of 2014, into law on January 17, 2014 as Public Law No. 113-76.

Background

Congress's path to the final numbers for fiscal year 2014 appropriations was notably contentious. Numerous budgets and appropriation bills were debated before the final spending amounts were determined. The first of many budgets for FY 2014 was released by the House Budget Committee Chairman, Paul Ryan (R-WI), on March 15, 2013. The Senate's FY 2014 budget, introduced by Budget Committee Chair Patty Murray (D-WA), was released on the same day. Budgets like these are used by Congress as blue prints for spending levels and any increase to federal revenues.

Both budgets passed their respective chamber quickly after introduction – but neither budget passed both the Senate and House. Typically, a conference committee would have convened to reconcile the differences between the two budgets. However, the political atmosphere at the time was toxic enough to block any form of bipartisan negotiation on a unified budget. The Obama Administration released its budget on April 10, 2013, two months after the legal deadline of the first Monday in February. The President's Budget Request serves as a set of the federal departments' requests for funding levels, as well as a reflection of the administration's policy goals and recommendations for the upcoming fiscal year.

Since the FY 2014 appropriation bills were drafted under different budgets, the resulting spending figures were at-odds (the appropriation committee's funding allocation is derived from spending totals in the budget resolution). In the Senate, lawmakers followed the allotments from Patty Murray's budget which provided a total of $1.058 trillion in discretionary spending. This amount was in line with the final number from President Obama's budget request. The House of Representatives drafted their appropriations bills under Paul Ryan's budget, which provided $967 billion in funding for discretionary programs.

H.R. 2610, the resulting Transportation, Housing and Urban Development (T-HUD) appropriation bill introduced in the House on July 2 provided a total of $44.1 billion for both transportation and housing, an amount that was 15 percent less than the FY 2013 pre-sequester amount. The Senate T-HUD bill, S. 1243, provided a total of $54 billion for housing and transportation, an increase of $500 million over the Obama Administration budget. Yet final passage of H.R. 2610 in the House and S. 1243 by the Senate was not achieved. The opposing parties disagreed over spending limits and deficit reduction.

Because no consensus had been reached on a budget or any appropriations bills, a continuing resolution (CR) became necessary to fund the federal government. Yet passage of a CR was equally difficult and unsuccessful. House Appropriations Chairman Hal Rogers introduced a CR, H.J Res 59, that would have continued the post-sequestration funding levels from FY 2013 into FY 2014. However, the bill contained amendments that would have defunded the Affordable Care Act (Obamacare), which caused disagreement from Democrats. The CR passed the House but the defunding amendments were removed by the Senate, and the CR bounced back and forth between the two chambers. FY 2014 began on October 1, 2013; without a CR to continue operations and funding, the federal government shutdown for the first time in 17 years.

After extensive debate and backlash from the American public, a temporary CR (H.R. 2775) was passed by Congress and signed into law by the President on October 17, officially ending the shutdown. H.R. 2775 provided funding to continue federal operations until January 15, 2014 and it raised the debt limit enough to allow the government to pay its bills until late February, 2014. According to a White House report, the shutdown lowered fourth quarter real GDP growth in 2013 by 0.2-0.6 percentage points, or $2 billion to $6 billion in lost output. A different report from Moody's analytics estimates that the government shutdown cost the American economy $24 billion.

With a temporary CR in place, Paul Ryan and Patty Murray agreed to convene and negotiate a final budget for FY 2014. This Budget Conference Committee also included select members from the House and Senate Budget Committees. The end result was "The Bipartisan Budget Act", a new federal budget which displayed major compromises between the early separate budgets from Murray and Ryan. In total, $1.012 trillion in discretionary spending was provided for FY 2014 – of this amount, $491.7 billion was slated for non-defense discretionary spending. With a final spending cap set, lawmakers began to work on a new set of appropriations bills, culminating in the FY 2014 omnibus package.

FY 2014 Omnibus

On Monday, January 13, 2014, the House Appropriations Committee Chairman Hal Rogers (R-KY) introduced the bill H.R. 3457, the Consolidated Appropriations Act of 2014. This omnibus appropriations bill for fiscal year 2014 includes all 12 of the regular spending bills necessary to fund the federal government. Introducing all 12 bills together as an omnibus serves to limit debate and fast-track passage of large legislation. The omnibus was quickly passed by the House on January 15th with a recorded vote of 359 to 67 and by the Senate on the 16th with a recorded vote of 72 to 26. No amendments were included with the omnibus and it was signed into law by President Obama only four days after its introduction.

The Omnibus follows the terms set in the Bipartisan Budget Act by providing $520.5 billion for the defense and $491.7 billion for the non-defense budget caps. Of the amount allotted for non-defense programs, the Omnibus includes a total of $32.8 billion for HUD, a decrease of $687 million below the fiscal year 2013, pre-sequester enacted level. With the decrease of $687 million from FY 2013's enacted level, some HUD programs received less than desired funding.

Below is a chart comparing the appropriations provided within the omnibus to previous budget figures and appropriations legislation.

HUD Appropriations

	Project-Based Section 8	Housing Choice Vouchers	HOME	Section 202	Section 811	Community Development Block Grant
FY 2014 Omnibus	$9.91 billion *	$19.18 billion **	$1 billion	$383.5 million ***	$126 million	$3.03 billion
House Bill H.R. 2610	$9.45 billion	$18.61 billion	$700 million	$374.63 million	$126 million	$1.64 billion
Senate Bill S.1243	$10.77 billion	$19.59 billion	$1 billion	$400 million	$126 million	$3.15 billion
FY 2014 Obama (HUD) Request	$10.27 billion	$19.99 billion	$950 million	$400 million	$126 million	$2.79 billion
FY 13 Pre-Sequester	$9.32 Billion	$18.91 billion	$1 billion	$373.88 million	$164.67 million	$3.24 billion
FY 13 Post-Sequester	$8.85 billion	$17.96 billion	$948 million	$355 million	N/A	N/A

*Includes $400 million in advanced appropriations for FY 2015 and $265 million for PBCAs
** Includes $4 billion in advanced appropriations for FY 2015 and $17.36 for renewals
*** Includes $72 million for Service Coordinators

The omnibus bill also includes $30 billion in loan commitment authority for the General and Special Risk Insurance Funds (FHA Multifamily Mortgage Fund) and $300,000 for Limited English Proficiency activities. As the chart shows, the funding provided through the omnibus is a compromise between the Senate and House numbers from their separate appropriations bills.

For Project-based Section 8, NAHMA and its industry partners advocated consistently for full-funding in order to maintain solvency for the program and to prevent short-funding of contracts. The industry cited $11.5 billion as the number to fully-fund contracts for a 12-month cycle. However, with the $9.9 billion in funding, contract short-funding will occur again in FY 2014.

General Provisions for HUD

A General Provisions section follows each department's actual appropriations bill. They typically discuss non-funding items as well as funding issues for specific programs. In the FY 2014 omnibus, the General Provisions section for T-HUD appropriations contains several program changes.

First, Section 220 in the omnibus will change the annual inspection cycle in the Housing Choice Voucher program to a biennial inspection cycle. This provision was proposed in the FY 2014 Obama Administration budget. Each PHA that provides assistance under the program will be required to make inspections not less often than biennially during the term of the housing assistance payments contract for the unit to determine whether it is maintained in accordance with the latest requirements. The omnibus allows for inspection requirements to be completed through use of "alternative inspection methods". These alternative inspections include methods used currently in HOME or LIHTC inspections. The Secretary of HUD may adjust the frequency of inspections for mixed-finance properties assisted with vouchers to facilitate the use of the alternative inspections. Similar proposals can be found in the Affordable Housing and Self-Sufficiency Improvement Act of 2011 (AHSSIA), which has not been passed into law.

Section 225 mandates that the Secretary of HUD shall report annually to the House and Senate Committees on Appropriations on the status of all Project-based Section 8 housing, including the number of all project-based units by region as well as an analysis of all federally subsidized housing being refinanced under the Mark-to-Market program. The report will also identify in detail and by project all the efforts made by HUD to preserve all project-based housing units and all the reasons for any units which opted out or otherwise were lost as Project-based Section 8 units. The analysis must include a review of the impact of the loss of any subsidized units in that housing market place, such as the impact of cost and the loss of available low-income housing in areas with scarce resources for low-income families. This provision was carried over from the Obama Administration's FY 2014 Budget Request.

In Section 230, there is language which affects HUD's ongoing Civil Money Penalties (CMP) Pilot Program. HUD is currently reviewing Section 230 to make sure the CMP Pilot Program satisfies its requirements. The legislation directs HUD to take certain actions against owners receiving rental subsidies that do not meet minimum Real Estate Assessment Center (REAC) standards. The penalties can be issued if the property has a REAC score of 30 or less, receives a REAC score between 31 and 59, or if the property receives consecutive scores of less than 60 on REAC inspections. Actions can also be taken if owners fail to certify in writing to HUD within 60 days that all identified deficiencies have been corrected.

Owners will be notified and provided with an opportunity for response within 30 days. If the violations remain, a Compliance, Disposition and Enforcement Plan will be developed within 60 days, with a specified timetable for correcting all deficiencies. The HUD Secretary will provide notice of the Plan to the owner, tenants, the local government, any mortgagees, and any contract administrator as well.

At the end of the term of the Compliance, Disposition and Enforcement Plan, if the owner fails to fully comply with such plan, the Secretary may require immediate replacement of the project management with another approved management team. The following actions may be imposed on the owner:

(A) Civil money penalties;
(B) An abatement of the section 8 contract, including partial abatement, as determined by the Secretary, until all deficiencies have been corrected;
(C) Transfer of the project to an owner, approved by the Secretary under established procedures, which will be obligated to promptly make all required repairs and to accept renewal of the assistance contract as long as such renewal is offered; or
(D) Judicial appointment of a receiver to manage the property and cure all project deficiencies or seek a judicial order of specific performance requiring the owner to cure all project deficiencies

Section 231 places a salary cap on the CEOs and other official employees of Public Housing Agencies (PHAs). The salary cap is equal to the pay allowed for a position at level IV of the Executive Schedule, or $155,500 a year.

Section 238 alters the definition of "extremely low-income" for families under the Housing Act of 1937, and it modifies requirements for low-income targeting to better target rental assistance to the working poor. The term “extremely low-income” as it applies to families now means “very low-income families whose incomes do not exceed the higher of the poverty guidelines updated periodically by the Department of Health and Human Services or 30 percent of the median family income for the area.” The Secretary of HUD may establish income ceilings higher or lower than 30 percent of the median for the area on the basis of his or her findings that such variations are necessary because of unusually high or low family income. This change was included in the Obama Administration’s budget in an effort to increase access to HUD rental assistance for working poor families. Similar language was also included in AHISSA.

Section 239 modifies the Rental Assistance Demonstration program to extend current authority through December 31, 2014.

Section 241 of the omnibus expands the authority to facilitate section 202 operating assistance-only contracts to fund supportive housing units for the elderly aligned with State healthcare priorities. This language appears to implement the operating assistance proposed in HUD’s 2014 budget: “The Budget also requests new authority to allow HUD to make more funds available for expansion through residual receipts collections, recaptures, and other unobligated balances, and proposes language to expand facilitate provision of Section 202 operating assistance-only contracts to fund supportive housing units aligned with State health care priorities… HUD’s investment of Section 202 operating assistance leverages not only existing affordable housing capital programs, in particular the Low-Income Housing Tax Credit (LIHTC) program which produces approximately 40,000 elderly restricted affordable units a year, but an increasing sophistication among health care providers who can use Medicaid waiver and other funding to provide the kinds of long term supports and services in the community that formerly required institutional settings.” NAHMA is currently seeking more information from HUD about this provision.

Utility Allowances are amended under Section 242. Now, when determining the monthly assistance payment for a family, the amount allowed for tenant-paid utilities cannot exceed the appropriate utility allowance for the family unit size as determined by the PHA regardless of the size of the dwelling unit leased by the family. Upon request from a family that includes a person with disabilities, the PHA must approve a utility allowance that is higher than the applicable amount on the utility schedule if a higher allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family member with a disability.

Rural Development Appropriations

Similar to the first House and Senate T-HUD appropriations bills, the Agriculture, Rural Development, FDA, and Related Agencies Appropriations bills for FY 2014 were not passed by Congress. Fortunately the omnibus contains strong funding for Rural Development (RD) programs, especially for the Section 521 Rental Assistance (RA) account.

After the alarming shortfalls in Section 521 RA caused by the sequester, NAHMA and industry partners advocated for better program funding that would assure current contracts receive full funding for renewals. In the Omnibus, Section 521 RA is slated to receive $1.1 billion in appropriations, a funding level that is $237 million higher than the 2013 pre-sequestration enacted level. According to RD staff, it is the agency’s goal to renew all expiring contracts in FY 2014, but RA usage is variable, and staff will have to monitor the status of renewals throughout the year. The specific funding levels for all relevant RD programs may be found in the chart on the next page.

	Section 515	Section 521 Rental Assistance	Section 538 Guaranteed Rural Rental Housing Loan Program	Revitalization Program and Rural Housing Vouchers
FY 2014 Omnibus	$28.43	$1.11	$150	$32.57 million / RHVs: $12.58 million
House Bill H.R. 2410	$28.43	$1.01	$150	$27.08 million / RHVs: $9.75 million
Senate Bill S.1244	$28.43	$1.01	$150	$32.58 million / RHVs: $12.58 million
FY 2014 USDA Request	$28.43	$1.02	$150	$32.58 million / RHVs: $12.58 million
FY 13 Pre-Sequester*	$31.28	$907.13	$130	$27.78 million / RHVs: $10 million

*Post-sequester funding levels were never made available

The funding levels for USDA-Rural Development programs are all much closer to amount requested by USDA in April and the amount targeted by the Senate in its previous appropriations bill. However, retroactive payments for properties that did not receive RA in September 2013 were not included in the Omnibus.

Along with retroactive payments, NAHMA had pursued report language from the Senate bill (S.1243) which would have directed RD to identify: the total number of households served by RA, the average per unit RA cost per state, the number of RA contracts expiring in FY 2013 that were not renewed, and provide a revised estimate of RA needs in FY 2014, to cover the original estimate of expiring units and those not renewed in FY 2013. Though this exact language was not provided, the FY 2014 Omnibus did contain similar requirements for RD:

> "The agreement directs the Secretary to develop proposals to make short and long-term program adjustments to ensure the long-term stability and sustainability of the rental assistance program. In developing these proposals, the Secretary shall consider the management mechanisms and authorities that the Housing Acts governing other federal multi-family housing programs provide that USDA currently does not have, mechanisms that would enable the Department to proactively and strategically manage any future funding shortfalls, and the long-term viability of the program. The Secretary is directed to expeditiously report to the Committees on these proposals"

Between the updated report language, which will pressure RD to better manage the RA program, and the $237 million increase, NAHMA is pleased to see that our message was heard by members of Congress. In our advocacy efforts, NAHMA sought to inform lawmakers of the substantial risk that this short-funding in RA could have caused, not only in Rural Development but in the overall public-private partnership that is built through rural affordable housing.

Sequester

As mentioned previously, a sequester relief package was provided for FY 2014 and 2015 under the Bipartisan Budget Act. In total, $63 billion in sequester relief will be provided; this amount will be split between FY 2014 next fiscal year. The relief will also be divided equally between defense and non-defense programs. However, the sequester is not completely eliminated and it will begin again in FY 2016.

Also under the Bipartisan Budget Act, the future President will be required to sequester the same percentage of mandatory spending resources in 2022 and 2023 as will be sequestered in 2021 under current law. The omnibus did not contain any changes to the sequester cuts.

NAHMA advocated for a sensible replacement to sequestration ahead of the omnibus. It is disconcerting that these arbitrary cuts will resume and haphazardly deplete funding for critical housing programs. NAHMA encourage its members to contact their representatives and ask them to find a replacement for sequestration.

Conclusion

Overall, the omnibus puts Congress back on track to fund the government through regular appropriations rather than a continuing resolution each fiscal year. It is also reassuring that members were able to agree over a unified budget instead of separate budget resolutions for the House and Senate.

Although NAHMA is glad to see lawmakers cooperate over spending, we are still concerned about the funding levels provided to Project-Based Section 8. We have consistently advocated for an end to the short-funding of contracts because this practice does not work or save money for the government. Furthermore, it unnecessarily complicates property management for O/As, as well as program administration for HUD staff.

President Obama has delayed submission of his budget for FY 2015 to Congress until March of 2014. The OMB has cited changes to the discretionary limit as the reason for the delay. NAHMA will continue to advocate for full-funding in PBS8 for FY 2015. Also, as shown in the General Provisions section for HUD in the omnibus, a number of cost-saving proposals from AHSSIA will be implemented this year. Because of this, it remains to be seen whether authorizers will be interested in moving on a comprehensive Section 8 reform bill this year.