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NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

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Fiscal Year 2015 Appropriations

House and Senate T-HUD Appropriations Bills

On May 6, 2014, the House Appropriations Committee released H.R. 4745, the FY 2015 funding bill for Transportation, Housing and Urban Development (T-HUD). The legislation includes a total of $40.3 billion for HUD, a decrease of $769 million below the FY 2014 enacted level and $2 billion below the Obama Administration's FY 2015 budget request. H.R. 4745 passed the full House of Representatives on June 10 with a recorded vote of 229 to 192.

The Senate Appropriations Committee's T-HUD funding bill, S.2438, was released on June 3, 2014 after passing the Committee. This bill provides $45.8 billion for HUD, an overall program funding level that is $853 million less than the President's request and $3.2 billion more than the FY 2014 enacted level. The Senate is using the Congressional Budget Office's (CBO) estimated figure of $9.8 billion in FHA receipts for FY 2015 which explains the increased program funding compared to the House bill. In contrast, the President's budget used FHA receipt figures compiled by the Office of Management and Budget (OMB), which were higher than the CBO estimates.

Below is a chart comparing the numbers in this bill with the FY 2014 enacted level and the Administration's FY 2015 budget request.

Figures rounded to the nearest 10th decimal place

	Project-Based Section 8	Tenant-Based Section 8	HOME	Section 202	Section 811	Community Development Block Grant
House Bill H.R. 4745	$9.75 Billion*	$19.35 Billion**	$700 Million	$420 Million***	$135 Million	$3 Billion
Senate Bill S.2438	$9.75 Billion*	$19.56 Billion^	$950 Million	$420 Million***	$135 Million	$3.02 Billion
FY 2015 Budget Request	$9.75 Billion	$20.05 Billion	$950 Million	$440 Million	$160 Million	$2.80 Billion
FY 2014 Enacted Level	$9.92 Billion	$19.18 Billion	$1 Billion	$383.5 Million	$126 Million	$3.03 Billion

*Includes $210 million for PBCAs and $400 million in advanced appropriations

^Includes 17.72 billion for contract renewals and $4 billion in advanced appropriations
** Includes $17.70 billion for contract renewals and $4 billion in advanced appropriations
*** Includes $70 million for service coordinators

Project-Based Section 8

The most controversial item in these bills is the appropriation of $9.75 billion for the Project-Based Section 8 (PBS8) program. This figure is $170 million less than the FY 2014 enacted level, and is also more than $2 billion short of the $11.9 billion needed to fully fund contracts upfront at the time of renewal in FY 2015. This funding cut reflects the adoption of a calendar year funding cycle for all PBS8 contracts. HUD will begin aligning contracts to the new January 1 – December 31 funding cycle in FY 2015, and will convert all PBS8 renewals to this cycle in FY 2016.

HUD and the Administration believe that a calendar year schedule will minimize funding disruptions that occur during end-of-year budget delays, and that it would lead to consistent 12 month funding in FY 2016 and beyond. Under a calendar year funding schedule, all contracts would be funded once on January 1 regardless of the contract's anniversary date. Essentially, the contract anniversary date would be divorced from the single contract funding date. Contracts would be funded from January 1 through December 31, but renewal anniversary dates will still fall throughout the year.

NAHMA is highly skeptical of the benefits of altering the contract renewal cycle and strongly opposes any cuts to the Project-Based Section 8 program. Essentially, this transition amounts to a budget gimmick. First, the necessary funding to renew contracts will still fall over two different fiscal years as it does now when HUD short-funds contracts. A transition to a calendar year funding schedule shifts these program costs into FY 2016, and potentially jeopardizes HUD's ability to pay the PBS8 contracts.

In the committee report that accompanied the House T-HUD bill, lawmakers recognized that $9.75 will be insufficient to provide full and upfront 12-month funding for all PBS8 contracts:

> "The Committee acknowledges that the [FY 2015] appropriation for the Project-Based Rental Assistance account provides less than twelve months of additional funding visibility for some contracts. However, the recommended funding level is predicated on HUD's proposal to shift to a calendar year funding cycle for payments on renewal contracts as presented in the request. The Committee directs HUD to follow the calendar payment proposal as reflected in the request… The recommendation expects HUD to plan for the sustainability of the new payment cycle beyond calendar year 2015, and expects HUD to accurately reflect the twelve months of funding required to support the new approach in its annual budget request for FY 2016." (Page 85)

The Senate Appropriations Committee's report similarly acknowledges reservation on the PBS8 provisions:

> "The Committee reluctantly concurs with the administration's proposal to shift the payment of contracts to a calendar year basis. This funding cycle is consistent with the practices for the tenant-based rental assistance and public housing programs. However, it is a departure from the long-standing practice that all project-based contracts should receive a full 12 months of financing from the

> contract renewal date to maintain investor confidence and support for the program. The Committee recognizes that this strategy temporarily defers the need for large budgetary increases to fiscal year 2016.
>
> Unfortunately, due to the budget constraints for fiscal year 2015, the Committee accepts this approach as the best option for preserving HUD's housing assistance programs. While the Office of Multifamily Housing is implementing many cost-savings measures, the revenue that such steps are expected to generate in the next fiscal year will be minimal compared to PBRA's funding requirements. The Committee urges the Department to explore other opportunities to reduce program costs, while encouraging the Department to manage the funding provided to ensure an uninterrupted flow of funds to support this critical housing resource."

HUD is also taking a major risk in its assumption that Congress will fully fund the PBS8 program in FY 2016 after the transition to calendar year funding is complete. There would be absolutely no room for contingencies if Congress does not provide the necessary funding for 12 months of renewals; the Department would either have to prorate funding or stop making contract payments if the predicted full funding for renewals in later fiscal years is not provided. Furthermore, sequestration may resume in FY 2016, and mostly all affordable housing programs, including PBS8, would then face additional funding cuts.

<u>Multifamily Transformation Initiative</u>

In the FY 2014 Omnibus bill, Congress requested that HUD deliver a report to appropriators on the Multifamily Transformation Initiative. In April, 2014, the Office of Multifamily Housing was directed by Congress that Asset Management employees should not consolidate under the Transformation Initiative, but should instead continue to serve in all existing field offices. This modification does not alter the consolidating of Production and Operations employees under HUD's plan for reorganizing to a five-region structure. The measure was upheld by the Senate and House in their T-HUD Appropriations bills. In the Senate's Committee Report, lawmakers directed HUD to not make any changes to this plan in FY 2015.

For the House bill, California Representative Maxine Waters (D) introduced a floor amendment that specifically prohibited consolidation of asset management employees in FY 2015. Her amendment states: "None of the funds made available by this Act may be used to require the relocation, or to carry out any required relocation, of any asset management positions of the Office of Multifamily Housing of the Department of Housing and Urban Development in existence as of the date of the enactment of this Act." The amendment was approved and included on H.R. 4745.

NAHMA supports Representative Waters' amendment and the Senate report language. While the Senate's language was not included in the actual appropriations bill, the Department would most likely follow the recommendation.

<u>Rental Assistance Demonstration Program</u>

The House T-HUD appropriations bill did not accept all of the Administration's requests for affordable housing programs. In its FY 2015 budget request, the Obama Administration and HUD proposed an elimination of the Rental Assistance Demonstration (RAD) cap of 60,000 units to continue the conversion of public housing units into long-term project-based rental assistance contracts. According to the HUD, eliminating the RAD cap would enable the Department to address the more than 180,000 current applications, and create approximately $6 billion in private financing for the recapitalization of public housing. The FY 2015 budget requested $10 million for RAD.

However, the House Appropriations Committee rejected both the funding for RAD and the elimination of the unit cap. In the report, the Committee stated: “The Committee has concerns about the impact new RAD conversions would have on the Project Based Rental Assistance account. Further, the Committee would expect the authorizing committees to undertake a full review of this program before taking measures to expand the program.”

In contrast, section 231 in the General Provisions section of the Senate T-HUD bill adopts the Obama Administration’s proposal to increase the RAD cap of 60,000 units to 185,000 (5,000 higher than the President’s request) and continue the demonstration program until 2018. The Senate T-HUD appropriations bill provides $10 million for RAD.

PBCA Awards

In March of 2014, the U.S. Court of Appeals for the Federal Circuit handed down its decision in the case of CMS Contract Management et. al. vs. the United States. The PBCA plaintiffs appealed a previous court decision which permitted HUD to proceed with its PBCA contract awards under a 2012 Notice of Funding Availability (NOFA). The Appeals Court ruled that the Performance-Based Annual Contribution Contracts (PBACCs or PBCA contracts) are procurement agreements, not cooperative agreements as HUD had argued. Procurement agreements carry stricter restrictions for contract awards. The Appeals Court decision prevented HUD from proceeding with its contract awards under the 2012 PBCA NOFA.

The House Committee Report outlined that lawmakers agree with the decision of the U.S. Court of Appeals for the Federal Circuit to prevent HUD from proceeding with its Performance Based Contract Administrator (PBCA) awards under a 2012 NOFA:

> “The Committee concurs with decisions by the Government Accountability Office (GAO) and the Court of Appeals for the Federal Circuit that HUD’s contracts for PBCA services are procurement contracts. The recommendation rejects the request to give HUD authority to administer PBCA funds as grants or cooperative agreements and directs HUD to follow the law and GAO by soliciting and awarding procurement contracts under full and open competition and without geographic limitations. The Committee further directs HUD to carry out these procurement processes in a manner that is compliant with requirements under the Federal Acquisition Regulation and the Competition in Contracting Act.” (Page 85)

The Senate’s report also addresses the PBCA issue, but it is not as explicit as the House report:

> “The Committee notes that PBCAs are integral to the Department's efforts to be more effective and efficient in the oversight and monitoring of this program [PBS8]. The Committee is also aware of ongoing litigation that will affect the future of these entities and will continue to monitor developments. The Committee believes that fair and open competition is the best way to ensure that the taxpayer receives the greatest benefit for the costs incurred. The Department

is directed to ensure that the PBCA selection process be, to the greatest extent legally permissible, full, open, and fair."

HUD Secretary Shaun Donovan told Congress that the Department disagrees with the Appeals Court's ruling. He claimed that the Appeals Court did not look closely enough at the specifics of the program or HUD's contract authority. HUD sought to have Congress write language into the T-HUD appropriations bill which would have specifically settled the question of whether PBCA contracts are procurements or cooperative agreements. HUD requested that Congress appropriate funds for "grants, contract administration, or cooperative agreements under such terms as determined by the Secretary."

Affirmatively Furthering Fair Housing

Arizona Congressman Paul Gosar (R) introduced an amendment to H.R. 4745 which will prohibit the use of funds in the bill to implement or enforce the Office of Fair Housing's proposed disparate impact rule "Affirmatively Furthering Fair Housing". This rule proposed new regulations for furthering fair housing planning by states, local governments and PHAs. The amendment was agreed to by a recorded vote of 219 – 207.

Stakeholders and the public were invited to submit comments to the proposed Affirmatively Furthering Fair Housing rule in September of 2013. In the comments, NAHMA supported HUD's efforts to issue regulations that would add clarity to the Fair Housing Act requirements, and provide participants with tools to meet statutory obligations. Though the rule does not directly apply to owners and managers of privately owned assisted multifamily housing, NAHMA offered several recommendations to avoid unintended negative consequences for preservation and new development of affordable multifamily properties. NAHMA recommended that HUD must clarify the rule to ensure that preservation of existing rental housing is encouraged. Our recommendations stated that grantees' investments to preserve, rehabilitate and revitalize properties in distressed neighborhoods does affirmatively further fair housing.

General Provisions

In the FY 2015 House and Senate T-HUD Appropriations bills, the General Provisions section contains several program changes. The provisions listed below are included in both T-HUD bills unless noted otherwise.

Sec. 221 requires the Secretary of HUD to report annually to the House and Senate Appropriations Committees on the status of all PBS8 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 must identify all existing units maintained by region as PBS8 units and all project-based units that have opted out of the program or been eliminated. The reasons for why the properties opted out or otherwise were lost as section 8 project-based units must be included as well. Such analysis will include a review of the most likely impact of the loss in that housing marketplace.

Sec. 226 continues the Civil Money Penalties legislative authority that was granted under the FY 2014 Omnibus. 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 and fails to certify in writing to HUD within 60 days that all deficiencies have been corrected, 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 237 of the Senate bill requires the Secretary of HUD to establish a demonstration program under which he or she may enter into budget-neutral, performance-based agreements that result in a reduction in energy or water costs at no more than 20,000 residential units in multifamily buildings. This demonstration program would include PBS8, Section 202, and Section 811. (Senate only)

House and Senate Agriculture, Rural Development Appropriations Bill

On May 19, 2014, the House Appropriations Committee released H.R. 4880, its FY 2015 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations bill. The Senate version, S. 2389, was released on May 22.

On the following page is a chart comparing the two bills with the Obama Administration's Budget request and the FY 2014 enacted level.

*Figures rounded to the nearest 10th decimal place

	Section 515	Section 521 Rental Assistance	Section 538 (Loan Level)	Revitalization and Rural Housing Vouchers
Senate Bill S. 2389	$28.43 Million	$1.09 Billion	$150 Million	$28 Million/ RHVs: $8 Million
House Bill H.R. 4800	$28.40 Million	$1.09 Billion	$150 Million	$28 Million/ RHVs: $8 Million
Budget Request	$28.43 Million	$1.09 Billion	$150 Million	$28 Million/ RHVs: $8 Million
FY 2014 Enacted Level	$28.43 Million	$1.11 Billion	$150 Million	$32.57 Million/ RHVs: $12.58 M

Both of the bills follow the President's budget request closely, including Rental Assistance (RA) figures that are below the FY 2014 enacted level. Despite this cut to RA, lawmakers have stated that the proposed amounts will be sufficient to renew all expiring rental assistance contracts in FY 2015.

Coupled with a cut to RA, NAHMA is concerned that the House and Senate have adopted the President's request to eliminate the automatic renewal of contracts that occur within the 12-month contract period. If included in the final FY 2015 Agriculture, Rural Development appropriations bill, contracts that run out of funds before their next renewal date will not be replenished. The Office of Rural Development (RD) has stated that the purpose of this proposal is for the Agency to gain better management of RA's limited funds and address the program's "challenges". For this legislative change to be effective, the approximately $1.09 billion provided under these bills <u>must</u> be sufficient to renew all contracts in FY 2015 with full-funding.

NAHMA has heard concerns from members that while this policy may seem logical on its face, it's much more likely to target owners with higher fixed debt service who are often are making proactive efforts to preserve their properties. Eliminating automatic renewals of contracts may threaten these important preservation endeavors.

The Multifamily Housing Revitalization program, which includes funding for Rural Housing Vouchers (RHVs), is slated to receive substantial cuts. As shown in the chart above, RHVs will be reduced by over $4 million from the FY 2014 level. In testimony submitted to the Senate and House Appropriations Subcommittees on Agriculture and Rural Development, NAHMA urged the members to carefully consider whether $8 million will be sufficient to meet the demand for these Rural Housing Vouchers.

There is no justification for this cut in either Agriculture, Rural Development bills nor is a reason given in the accompanying committee reports. However, some relief could be provided in the House and Senate bills should the $8 million be insufficient. The bills include this caveat: "if the Secretary determines that additional funds for vouchers are needed, funds for the preservation and revitalization demonstration program may be used for such vouchers." There was also language in the President's budget request that would have made the Revitalization program permanent; the House and Senate bills did not adopt this language.

Both the Senate and House bills rejected some of the more controversial proposals from the President's FY 2015 budget request. First, the President's request included a provision that would have allowed the Secretary of the Department of Agriculture to renew RA contracts at his or her discretion. RD stated that this change would have given the agency the flexibility to prioritize RA contract renewals during times of funding uncertainty, such as continuing resolutions or under sequestration. In our testimony, NAHMA stated that the specific language proposed was too broad and that any flexibility given to the Agency must not absolve its financial obligations to owners for payment of RA during the term of the contract, nor should it be used as a budget gimmick. Second, the Obama Administration and Rural Development proposed a maximum rent cap of $50 for tenants participating in the RA program. This provision included a hardship exemption that would have excused the poorest tenants. Lawmakers did not adopt this rent cap.

Conclusion

The House T-HUD bill has passed and the Senate version is set to be voted upon soon. Under normal order, appropriators from both chambers will have to convene in a Conference Committee to reconcile the different funding levels and design a finalized bill. NAHMA was sorely disappointed that no member in the House of Representatives commented on the poor decision to transfer PBS8 contracts to a calendar year funding schedule and cuts to the program's funding. It is our goal to have this issue addressed on the Senate floor when senators vote on S.2438.

Overall, the FY 2015 appropriation figures for affordable housing programs administered by HUD are disappointing. While there were slight increases for some essential programs, the cuts and transition to a calendar year model for PBS8 may have serious negative consequences for property owners and managers.