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FY 2013 Budget Request for Affordable Rental Housing Programs

Effective Date or Deadline

Funding levels in the budget request are proposed for Fiscal Year 2013, which begins on October 1, 2012. The budget request is subject to the approval of Congress.

Background

On February 13, 2012, President Obama submitted his Fiscal Year (FY) 2013 budget request to Congress. Submission of the budget begins a process, which, if it runs smoothly, will be resolved before October 1, with all of the annual appropriations bills signed into law.

The problem is that the budget process almost never runs smoothly. It has now become routine for the new fiscal year to begin without a finalized budget for that year. Congress and the President then fund the government through temporary spending measures known as "continuing resolutions" (CR).

Between now and October, Congress is supposed to go through the following exercises:

- Adopt a non-binding "budget resolution" which sets spending caps for the upcoming fiscal year (April);
- Hold hearings on the President's budget (through May);
- Begin the FY 2012 appropriations process (May through September or until completed); and
- Resolve outstanding differences on the House and Senate versions of appropriations bills which are likely to be introduced by the Subcommittee Chairs in late May or early June.

Summary

For FY 2013, the Obama Administration is proposing a HUD budget of $44.8 billion, an increase of $1.4 billion over FY 2012 appropriations and a decrease of $3.2 billion below the FY 2012 Presidential budget request.

The Administration's funding priorities in FY 2013 are very different from the FY 2012 budget request. For the first time, the Obama Administration did **not** request full funding for all project-based Section 8 contract renewals for their 12-month terms. In fact, the budget recommendation for the project-based Section 8 account is $640 million below the FY 2012 appropriation level.

The majority of HUD's other accounts would receive flat-finding under the budget request at FY 2012 appropriations levels. In terms of multifamily housing, the Obama Administration is proposing flat-funding the tenant-based Section 8 contract renewals, HOME, and CDBG funding.

Nevertheless, the budget does request increased funding for Section 202 and 811 PRACs, LEP translations and assistance, and the Choice Neighborhoods initiative when compared to the FY 2012 appropriations. The budget also contains proposal to reduce the frequency of Management and Occupancy Reviews as part of its cost savings efforts.

HUD's budget also includes two mandatory spending proposals that account for the increase in the FY 2013 request over the FY 2012 appropriations level. For the third year in a row, the Obama Administration is requesting $1 billion for the Housing Trust Fund, since Fannie Mae and Freddie Mac cannot fund the program for the near future. The Administration is also proposing increasing the FHA Mutual Mortgage Insurance Capital Reserve Account by $2.6 billion.

The FY 2013 Treasury budget request calls for four reforms to the LIHTC program: income averaging, a basis boost for the preservation of public and assisted housing, increasing private investment in the program by making LIHTCs beneficial to Real Estate Investment Trusts, and requiring LIHTC developments to provide protections for victims of domestic violence.

For USDA Rural Housing Service (RHS), the Obama Administration is proposing increasing funding above FY 2012 appropriations levels for all multifamily accounts except for Section 515. The budget is requesting zero funding for Section 515 new construction in FY 2013 and shifting the focus to preserving existing affordable rural properties. To that end, the budget requests $34.4 million for the Multifamily Housing Revitalization Program's preservation demonstration program. The proposed FY 2013 budget also requests increases for rural rental assistance and Section 538 loans.

During the Bush Administration, the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART) scorecards acted as a rating system to examine the effectiveness of every federal program. However, under the Obama Administration, OMB has provided supplemental documentation justifying the termination of and cuts/savings for affected federal programs in the FY 2013 budget request. These justifications have been incorporated into the NAHMAnalysis program summaries below.

A copy of OMB's "Terminations, Reductions, and Savings" document for the FY 2013 budget can be found here:
http://www.whitehouse.gov/sites/default/files/omb/budget/fy2013/assets/ccs.pdf

It is important to note that the Obama Administration's FY 2013 budget request is dead on arrival in Congress. House Republicans strongly oppose the budget request and the Senate Democratic leadership does not plan to bring a budget resolution to the floor for a vote. Both parties in Congress, however, agree they will use the spending caps specified by the Budget Control Act, passed last August, and its subsequent sequestration requirements when formulating their appropriations allocations for FY 2013.

Funding for Specific Multifamily Housing Programs

HUD

Tenant-Based Section 8: $19.07 billion (total); $17.24 billion for voucher contract renewals

The FY 2013 Presidential budget request is a $200 million increase over the FY 2012 appropriations. However, the increase in the account is due to an increase in proposed administration fees. The Administration has proposed flat funding the housing choice voucher contract renewals for FY 2013. HUD believes the funding requested for FY 2013 is enough to assist 2.2 million low-income households, a slight increase above the number of households assisted in FY 2010 and FY 2011. The account would also provide $111 million for Section 811 tenant-based vouchers, $1.575 billion in administrative fees, $75 million for tenant protection actions, and $75 million for the HUD-Veterans Affairs Supportive Housing Program.

In order to avoid increasing the Department's request for voucher contract renewals in FY 2013, HUD has proposed several cost saving measures in the general provisions: changing the definition of extremely low income for admission targeting purposes, increasing the medical expense threshold, streamlining inspections for units assisted by vouchers, and raising the minimum rent from $50 to $75. Similar proposals are in the Affordable Housing and Self Sufficiency Act, the housing choice voucher reform legislation that is currently being considered by the House Financial Services Committee.

HUD is also requesting the authority to offset PHA contract renewal allocations by the excess amount of agencies' reserves as established by the Department.

Project-based Section 8: $8.7 billion (total); $8.44 billion for contract renewals, which includes an advanced appropriation of $400 million for FY 2014, and $260 for contract administration

The Obama Administration has NOT requested adequate funding to fully fund all project-based Section 8 contract renewals for their 12-month terms for FY 2013. While the budget request for contract renewals is $611 million below the FY 2012 appropriations level, HUD has told the industry that it needs at least $1.1 billion more than the Administration requested to fully fund all contract renewals for their 12-month terms. Nevertheless, the budget request includes an advanced appropriation of $400 million for FY 2014.

Contract Renewals

HUD has estimated they will be able to fund about one-third of all contract renewals—about 5,300 contracts—for their full 12-months in the FY 2013 budget request. Under this proposal, all other contracts—10,600 contracts—would receive funding through the end of the fiscal year, September 30, 2013.

However, this language assumes that HUD will successfully be able to implement all of its cost cutting measures the Department has proposed for FY 2013, which are expected to generate $400 million in savings to the government. They are as follows:

- Use residual receipts to offset housing assistance payments (HAP) for new regulation contracts.
    - HUD has the regulatory authority to offset HAP payments using residual receipts for new regulation properties.
    - HUD plans to implement this to help reduce project-based Section 8 contract renewal costs for FY 2012.
    - However, the Department needs additional authority to use property owner remittance of residual receipts directly to the Department for application to the general PBRA program account. HUD has requested statutory authority to do so in the FY 2013 budget request;

- Apply residual receipts accounts to offset assistance payments for old regulation contracts.
    - HUD believes they have the authority to do this under the FHA regulatory agreements. Legally, HUD cannot use apply the residual receipts to the general PBRA program account.
    - Because details are scarce, the industry is still unsure of exactly how HUD would use the residual receipts to offset HAP payments for each old regulation property;

- Increase minimum rents from $50 to $75 per month.
    - HUD requires a statutory change to increase the minimum rents for the program, which has been included in the general provisions of the FY 2013 budget request;

- Hold budget based rent increases on Option 4 renewals to OCAF if the proposed rents exceed market.
    - HUD plans to implement this to help reduce project-based Section 8 contract renewal costs for FY 2012;

- Require a justification from rent comparability studies (RCS) when proposed rents exceed 110% of small area fair market rents (SAFMR).

- HUD plans to implement this to help reduce project-based Section 8 contract renewal costs for FY 2012 as well; and

- Reduce the time period over which an owner may claim vacancy payments from 60 days to 30.

Contract Administration

HUD has also requested a cut of $29 million in funding for contract administrators (PBCA) However, HUD has proposed reducing the frequency of Management and Occupancy Reviews (MOR) for high performing properties in order to justify the funding reduction.

The proposed policy would instruct performance based contract administrators (PBCA) to decrease the frequency of MORs to once every two or three years for high-performing properties. HUD would use a combination of factors (such as past MOR performance, financial history, and current physical condition) to determine which properties qualify as "high-performing."

This proposal—put forward by HUD Project Manager Eileen Hearty of Colorado—was a finalist for the Office of Budget and Management's (OMB) SAVE Award in 2011. The SAVE Award gives frontline federal employees the chance to tell the White House directly their ideas about how to make government more efficient and effective. Although the proposal did not win OMB's SAVE Award, HUD has decided to push forward with its implementation. NAHMA has been requesting a similar reduction in the frequency of MORs for high performing properties for the last several years. We strongly support the implementation of this proposal.

Transforming Rental Assistance Initiative (TRA): $0 million

HUD has not requested any funding for the Rental Assistance Demonstration (RAD) program, nor has it proposed any new transforming rental assistance initiatives in FY 2013. HUD received the authority to conduct RAD in the FY 2012 appropriations. HUD plans to transfer FY 2012 appropriations in the amount of $74 million from public housing accounts to the project-based Section 8 account to fund the demonstration.

RAD allows public housing and mod-rehab properties to enter a small-scale competition to convert up to 24,000 units to long-term project-based Section 8 contracts or project-based vouchers. The RAD language also allows RAP and Rent Supp properties that have lost their rental assistance or long-term affordability restrictions after October 1, 2006 to be eligible to convert their tenant protection vouchers to project-based housing choice vouchers in FY 2012 and 2013.

Additional authorization and appropriation language for this program has been included in the Affordable Housing and Self-Sufficiency Act. The authorization language in the act would also allow RAP and Rent Supp properties to convert to long-term project-based Section 8 contracts or project-based vouchers.

Section 202: $475 million

The Obama Administration has recommended significant cuts to the Section 202 program below the FY 2012 budget proposal. However, the FY 2013 budget proposal is almost $100 million more than the FY 2012 appropriations level and includes funding for new construction. The bill also includes $90 million for service coordinators.

Under the FY 2013 budget request, HUD has proposed replacing the statutory capital advance distribution method with a new "operational assistance" line-item. Under the new "operational assistance" program, state housing agencies—in partnership with state health care agencies—would act as HUD's delegated processing agent for awarding and administering Section 202 funds. HUD's goal is to create a new subsidy program where projects can successfully leverage additional capital from private and public sources to complete the construction of new 202 units. According to HUD, the first round of funding is expected to support up to 3,500 new operating assistance-only units. HUD has requested that statutory changes required to implement the "operational assistance" program in the FY 2013 budget request.

The budget also requests funding for senior preservation assistance contracts, which would provide project-based assistance to elderly tenants residing in units not covered by a rental assistance contract.

Section 811: $150 million

The Obama Administration has recommended some cuts to the Section 811 program. HUD has requested a $15 million cut below the FY 2012 appropriations allocation.

The FY 2012 budget proposes $96 million to renew and amend operating subsidy contracts for existing Section 811 housing. It also proposes $54 million for the project rental assistance demonstration program authorized by the Frank Melville Supportive Housing Investment Act. Under this program, state housing agencies that have entered into partnerships with state health and human services and Medicaid agencies can apply for Section 811 Project Rental Assistance for new or existing affordable housing developments funded by LIHTC, HOME, or any other sources of funds. HUD expects this demonstration program to support approximately 1,850 additional units of Section 811 housing.

There are no funds set aside for new construction or rehabilitation.

HOME: $1 billion

The Obama Administration's funding request for HOME is $650 million below the FY 2012 budget proposal. However, the President has proposed flat funding HOME when compared with the FY 2012 appropriation's level.

HUD estimates that this funding will:

- Create 18,348 units of affordable housing for new homebuyers;

- Provide 16,545 units of newly constructed and rehabilitated affordable rental units;
- Allow 8,494 low-income households to own their homes;
- Provide 10,550 low-income households with HOME tenant-based rental assistance; and
- Create approximately 17,870 jobs.

The FY 2013 budget request also proposes statutory changes to allow recaptured Community Housing Development Organization (CHDO) funds to be reallocated by formula as regular HOME funds, and to facilitate the eviction of HOME rental unit tenants who pose a direct threat to tenants or employees of the housing or an imminent, serious threat to the property.

HOPE VI: $0

HUD has proposed no additional funds for this account. No funding was provided for this account in the FY 2012 appropriations either. Instead, the Administration and Congress have shifted their focus to the Choice Neighborhoods Initiative.

Choice Neighborhoods Initiative: $150 million

The Choice Neighborhoods Initiative is a program the Obama Administration first requested in its FY 2010 budget. The Initiative expands the HOPE VI program beyond public housing by including assisted and privately-owned distressed housing as eligible projects for funding and allowing public, private, and non-profit partners to become eligible grant recipients. It is also intended to expand the scope of the program's initiatives beyond the demolition of distressed housing and improving school, transportation, and community programs; providing access to jobs; and helping to alleviate concentration of poverty in urban areas.

The Obama Administration has requested a $30 million increase for FY 2013 for Choice Neighborhoods above the FY 2012 allocation. HUD believes that $150 million will provide enough funding for four to six transformation grants in high poverty urban areas.

Under the FY 2012 appropriations legislation, the Choice Neighborhoods Initiative is still a demonstration program. Formal authorizing language for this program has been introduced the House and Senate in the 112th Congress.

Community Development Fund: $2.95 billion for the Community Development Block Grant (CDBG)

The FY 2013 budget funds the CDBG formula grant program at significantly lower levels than the President requested in his FY 2012 budget. However, this proposal is flat-funded in comparison with the FY 2012 appropriations.

According to HUD, CDBG grants help municipalities and states design and implement community and economic development programs, which create jobs in their communities. In FY 2011, local governments used this funding to:

- Create and retain 21,482 jobs;

- Assist 96,615 households to maintain or gain access to safe, decent, and affordable housing;
- Provide public service activities to 10.1 million people; and
- Benefit approximately 4.1 million persons through public improvement investments.

Limited English Proficiency (LEP) Program: $500,000

For the first time, the Obama Administration has recommended funding LEP as an individual line-item account within Fair Housing and Equal Opportunity. HUD has requested $200,000 more than was appropriated in FY 2012.

Affordable Housing Trust Fund: $1 billion

Because of the financial troubles and economic meltdown, the Federal Housing Finance Agency has indefinitely suspended contributions from Fannie Mae and Freddie Mac that were intended as a funding stream to the Housing Trust fund. The Obama Administration has recommended providing $1 billion in mandatory spending to increase and preserve the supply of rental housing and housing ownership for extremely low-income and very low-income families.

According to HUD, the fund is expected to leverage private capital and other public funds in order to produce approximately 10,496 units of housing affordable for extremely low-income households.

General HUD Budget Provisions

Section 210 extends HUD's authority to transfer project-based Section 8 rental assistance between properties in FY 2013 and 2014.

The general provisions also proposed a limited number of reforms, which are very similar to proposals from the Affordable Housing Self Sufficiency Act. Section 223 would authorize the minimum rent increase for all assisted housing programs from $50 to $75. Section 225 streamlines the inspection process for units assisted by a housing choice voucher. Section 232 changes the definition of extremely-low income for admission targeting purposes and raises the deduction for excess medical expenses from 3% to 10% of income. The provision would change the FMR notice and publication requirements. However, the LEP guidance language that NAHMA supports was not included in the FY 2012 budget legislative language.

Section 224 would authorize PHAs to conduct limited rent policy demonstrations in order to determine the effectiveness of different rent policies.

Section 229 changes the securitization requirements for multifamily loans insured or reinsured by Ginnie Mae.

Section 234 gives HUD the authority to change Section 202 capital advances to an operations assistance account, where grants for these programs would be processes and awarded by state housing and/or health care agencies.

The budget request proposes terminating the provision in the FY 2012 appropriations that required HUD to report to Congress quarterly on the status of the project-based Section 8 program. In the Congressional Justification for the removal of this provision, HUD stated:

> "The Department does not have the resources or capacity to collect data or report on the requirement to identify all efforts to preserve section 8 project-based units, reasons why units opted out or were lost as section 8 project-based units, and the impact of such losses on affected markets."

IRS/Treasury

LIHTC Reforms

The FY 2013 budget request proposes four reforms to the LIHTC program.

First, Treasury and HUD have once again proposed allowing new and certain rehabilitated LIHTC projects to be occupied by individuals or families earning up to 80 percent of the area median income (AMI), so long as they are offset by units occupied by individuals or families earning between 30 percent and 60 percent of AMI. This would result in an average of 60 percent of AMI at a LIHTC project. The **income averaging** proposal for new construction was first introduced in the FY 2012 budget request. The FY 2013 budget has proposed expanding the income-averaging tool to projects rehabilitated with LIHTCs that receive other federal assistance subsidies.

HUD and Treasury claim replacing the AMI cap for new LIHTC projects will:

- Allow greater income-mixing at the project level, creating opportunities for workforce housing;
- Align LIHTC with HUD's and USDA's affordable housing programs, which define low-income at 80 percent of AMI); and
- Help create and preserve more units targeted to the lowest income households.

Second, the Administration has proposed creating a **tax loophole for REITs that receive LIHTCs**. REITs would be permitted to designate some of the dividends they distribute to shareholders as tax exempt. These tax-exempt dividends would be excluded from the calculation of a shareholder's gross income. However, these dividends would be limited for each year. The Obama Administration believes that this will create an incentive for REITs to invest in LIHTCs, which would increase demand for the credits at the state and local level. This is a brand new proposal from the Obama Administration.

Third, Treasury and HUD have proposed making the 4% credit a more viable source of funding for the affordable housing preservation by giving qualifying properties a 30% **basis boost** in the context of preserving, recapitalizing, and rehabilitating existing affordable housing. This would increase the equity that could be raised by the credits by providing higher yields, which HUD and Treasury believe will generate more interest in LIHTC preservation deals. The basis boost proposal was first introduced in the FY 2012 budget request.

Finally, the Obama Administration would like to provide **protections for victims of domestic violence** residing in LIHTC properties. The proposal would require that protections for victims of domestic violence, similar to those contained in the Violence Against Women Act, be written into the long-term use agreements of LIHTC properties—put into place after the proposal is enacted—and would apply to both low-income and market rate units of these projects. If an O/A needs to bifurcate the lease in order to evict any tenants or lawful occupants that have engaged in criminal activity directly relating to domestic abuse, existing occupants who are victims of domestic violence would not have to be tested for low-income eligibility as if they were a new tenant.

HUD and Treasury/IRS plan to work with Congressional Legislative Counsel to draft legislative language for these proposals.

Carried Interest

Treasury has once again proposed increasing the tax rate on "carried interest" in an effort to increase government revenue. "Carried interest" refers to the profits made on the sale of assets for general partners of entrepreneurial enterprises, including real-estate partnerships and the sale of properties. The Treasury is specifically proposing increasing the tax rate on carried interest from the current 15 percent capital gains rate to the 35 percent tax rate for income.

There is language in the budget that suggests REITs owning carried interest in a real-estate partnership would be exempt from the tax rate increase. The FY 2013 Treasury Green Book[1] states, "The proposal is not intended to adversely affect qualification of a real estate investment trust owning a carried interest in a real estate partnership." NAHMA is currently seeking more information from the Administration on how REITs and real-estate partnerships would be treated under this proposal.

USDA-RHS

Multifamily Housing Revitalization Program: $46.9 million

The Obama budget proposes increasing funding for the Multifamily Housing Revitalization Program above the FY 2012 budget request and the FY 2012 appropriations level. Specifically, the Administration wants to focus on preserving existing rural multifamily housing. To that end, the Administration has recommended providing $34.4 million for the revitalization demonstration program, increasing funding for the housing vouchers to $12.6 million, and making the program permanent.

However, the President has proposed shifting funding away from the Section 515 loan program in order to fund this program. USDA believes that its preservation goals can be achieved more efficiently through this program than using Section 515 rehabilitation loans or housing preservation grants.

[1] Every February, Treasury releases the Treasury Green Book, which provides an explanation of the Administration's tax and revenue proposals for the following fiscal year.

Section 515 Multifamily Housing Direct Loans: $0 million

The Obama Administration has proposed no funding for the Section 515 program for FY 2013. The Administration has stated they want to shift the focus of USDA-RD to preserving existing rural housing portfolio in FY 2013.

This proposal is in stark contrast to the FY 2012 budget request, which proposed shifting funding away from the revitalization demonstration to the Section 515 loan program.

Rural Rental Assistance: $907 million

The FY 2013 Obama Administration budget request represents a flat funding request when compared to the FY 2012 budget and a $2 million increase above the FY 2012 appropriations. RHS has indicated that this is the amount necessary to fund all existing rural rental assistance contracts for their one-year terms.

For the first time, USDA has requested access to the Enterprise Income Verification (EIV) system as part of its budget request. This is part of USDA's larger efforts to reduce improper payments in their programs. However, a statutory change is still needed for USDA-RD to gain access to EIV.

Section 538 Multifamily Housing Loan Guarantees: $150 million

The Obama Administration suggested a significant increase to the Section 538 program above the FY 2012 appropriations and FY 2012 budget request. The FY 2013 budget also proposes a fee structure and would target Section 538 assistance to projects that receive LIHTCs.

Issues of Concern to NAHMA

Project-Based Section 8 Contract Renewal Funding

NAHMA strongly opposes the short-funding for the project-based Section 8 contract renewals contained in the FY 2013 budget request. This proposal represents a departure of the Administration's commitment to request full funding for 12-month HAP contracts at the time of renewal and a return to a "budget gimmick" that offers owners incremental, partially funded HAP contracts. This gimmick will not reduce the long-term cost of the contracts, but it will increase the time and paperwork associated with processing contract renewals. This is especially true if Congress approves a continuing resolution for FY 2013, which has been the standard operating procedure for the last several years.

HUD claims that the short-funding "will not reduce or delay payments to landlords or impact the number of families served by the program." However, NAHMA is skeptical due past experiences with funding shortfalls in the project-based Section 8 program. Our members may recall that, prior to FY 2009, HUD had requested enough funding to cover the project-based Section 8 program for the length of the fiscal year rather than full-funding for all 12 month contracts. This resulted in the growth of a $2 billion funding gap in the program. Property owners received partial and/or delayed housing assistance payments (HAP) because of the funding shortfalls. As a result, owners had to defer payments on property operations—including mortgages, maintenance, staff salaries, and utilities—which jeopardized the financial and physical health of the properties. It was not until 2009 that funding for HAPs stabilized when the $2 billion gap was funded by the American Reinvestment and Recovery Act and HUD began requesting funding for the full 12-month contract terms at the time of renewal.

Project-based Section 8 is a successful program that provides housing to over 1.2 million low-income households and creates jobs for over 100,000 people annually. Project-based rental assistance also serves as a redevelopment and preservation tool for private multifamily rental housing owners, which creates a credit enhancement for the financing of the project and allows owners to refinance, redevelop and preserve their assets. Now is not the time to negate the positive impacts of project-based Section 8 program by returning to erratic stop-and-go, partial funding of HAP contracts. Resuming these failed policies will make it more difficult for property owners to employ the necessary construction and service personnel to support the properties, which will endanger local jobs, economic benefits, and housing opportunities for low-income families who need it most.

Furthermore, HUD's proposal to return to incremental payments for HAP contracts has damaged the Department's credibility in the industry. We worry that this move may have owners questioning whether the federal government is truly committed to the project-based Section 8 program--and whether it is worth the risk of participating in the program. This growing uncertainty could result in increased opt-outs in the project-based Section 8 program upon mortgage maturity, reducing the number of affordable housing units available for low-income households.

"Incremental" payments on HAP contracts are not an acceptable standard operating procedure. NAHMA is firm in our position that Section 8 Project-Based HAP contracts must be fully funded and paid on time. We have urged HUD to immediately withdraw its proposal to cut funding for the project-based Section 8 program and insisted that the Department request the necessary appropriations from Congress to fully fund the 12 month HAP contracts at the time of renewal.

Project-Based Section 8 Savings Policies

NAHMA has substantial concerns regarding the savings policies HUD included in its FY 2013 budget request. We believe that HUD's efforts to generate savings—by reducing residual receipt accounts and limiting rent increases—may result in unintended consequences that could destabilize the operation, finances, and long-term preservation of project-based Section 8 properties.

First, HUD would like to apply residual receipt accounts to offset contract payments on new regulation properties for both FY 2012 and FY 2013. The Department has regulatory authority under 24 C.F.R. §§ 880.205(e), 881.205(e) and 883.306(e) to use the residual receipts from new regulation properties for HAP payments; however, we do not believe this action is appropriate for every property. NAHMA feels that HUD should only proceed with this initiative on a case-by-case basis after carefully examining the financial circumstances of each property. It is essential for HUD to leave properties with sufficient residual receipts that could be drawn for unforeseen situations such as bed bug infestations or for other eligible uses. Likewise, HUD must honor previous commitments with owners that the Department agreed to for using residual receipts. NAHMA will continue working to ensure that sweeping the residual receipts from new regulation properties does not deplete the accounts and leave the properties without contingency funds for unforeseen events.

Second, NAHMA strongly opposes HUD's proposed use of old regulation properties' residual receipts to reduce HAP payments in FY 2013. It has been long-settled policy that residual receipts in old regulation properties belong to the property owners. NAHMA is unconvinced that HUD has authority to use these funds as planned. Proceeding with this course of action would likely trigger lawsuits from owners and further erode any sense of partnership with HUD. We urge HUD to withdraw this proposal.

NAHMA is also concerned that holding budget based rent increases on Option 4 renewals to OCAF levels would cause hardship for some properties, particularly in rural areas. We ask the Department to allow flexibility in the policy for properties that could not operate under that limitation.

Finally, we object to the policy and methodology of requiring a justification from RCS when proposed rents exceed 110% of SAFMRs. Under M2M, the *market itself* is the benchmark for setting rents. If HUD receives flawed RCS, it should handle that problem separately. Furthermore, there is no data to show how using SAFMRs will affect properties' financial viability. Because HUD has not even implemented its demonstration program to test the impact on using SAFMRs in the Housing Choice Voucher program, it is premature to apply the untested SAFMR benchmark to project-based Section 8 rents. We strongly urge HUD to withdraw this proposal.

Section 202 and 811

In this current budget climate, we understand that funding is extremely limited for new construction and rehabilitation projects. We are interested in working with HUD to find new, more effective ways of using Section 202 funds to expand the availability of housing for elderly populations. However, we are unsure of how operational assistance may work in practice. The legislative language used to authorize the operation assistance accounts is vague, and HUD has not provided many details on how the new grant system would function. NAHMA plans to have our Senior Housing Committee review the proposal. We are also asking HUD for more information on how the operational assistance grants would function.

In the meantime, NAHMA supports the capital advance program. It has provided a necessary development tool that allows nonprofits to leverage other capital when constructing senior housing properties. We encourage HUD to maintain funding for new construction of 202 units until the Department can develop a new, industry-supported model for development funding.

We were also disappointed to learn that Section 811 request did not include funding for new construction. Instead, the Administration has proposed shifting funding for the Section 811 program into the project-rental assistance demonstration program authorized by the Frank Melville Supportive Housing Investment Act. According to HUD,

> "Under this program, state housing agencies that have entered into partnerships with state health and human services and Medicaid agencies can apply for Section 811 Project Rental Assistance for new or existing affordable housing developments funded by LIHTC, HOME, or any other sources of funds. Under the state health care/housing agency partnership, the health care agency must develop a policy for referrals, tenant selection, and service delivery to ensure that this housing is targeted to a population most in need of deeply affordable supportive housing. This Section 811 assistance comes in the form of project rental assistance alone. No funds are available for construction or rehabilitation."

NAHMA supports this demonstration, but we believe it is also essential to provide funding for new construction and substantial rehabilitation of properties in addition to rental assistance. For these reasons, NAHMA supports continuing to provide funding for Section 811 capital advances.

Treasury Proposals

Although the Treasury Green Book states that the carried interest proposal is not intended to affect REITs involved in real-estate partnerships, NAHMA still believes the carried interest proposal would negatively impact the development of affordable housing. Many other investors besides REITs participate in real-estate partnerships used to develop affordable multifamily housing. NAHMA believes the proposal would still create a disincentive for managing general partners to assume the risks and liabilities in a multifamily housing development deal, as well as discourage the construction of new affordable housing units. Therefore, we will continue to ask both the Administration and Congress to exempt real-estate partnerships of affordable multifamily housing development deals from any carried interest proposal they consider.

There are currently protections for victims of domestic violence in place for Section 8 properties, as required by the Violence Against Women Act (VAWA) of 1994. Treasury is proposing incorporating similar protections for victims of domestic violence in LIHTC properties. However, NAHMA is concerned that the Obama Administration would like to write these protections into the long-term use agreements of LIHTC projects. We are unsure of what the implications of this policy might be. NAHMA is particularly worried that writing protections for victims of domestic violence into the long-term use agreements could result in tax credit recapture for non-compliance. We are seeking clarification from Treasury at this time.

NAHMA members will also be interested to know that Congress is currently considering legislation that would extend and strengthen VAWA protections within most federal housing programs, including the LIHTC. The legislation, S. 1925, does contain language that would prevent the recapture of LIHTCs and/or denial of housing assistance payments because of non-compliance issues. The bill would provide protections for victims of domestic violence, sexual assault, dating violence and stalking. Additionally, it would require federal agencies to develop model emergency transfer policies for victims of domestic violence to be used by PHAs and O/As. It would also require O/As to provide applicants and tenants with notification of their VAWA rights if they are denied tenancy, at the time of admission, and/or with any notice of eviction or termination of assistance. NAHMA is currently working with Congress and industry colleagues to address some concerns we have with the emergency transfer language and notification requirements in the bill. The bill has passed the Senate Judiciary Committee and will now go to the Senate floor for consideration. A companion bill will also be introduced for consideration in the House.

Rural Housing

NAHMA was also disappointed with the Obama Administration's decision to zero out of the Section 515 program. While we understand and support the Administration's desire to preserve the rural housing portfolio, we feel that the Administration is removing one of the few financing sources available for new construction and rehabilitation in rural areas. New construction and preservation of existing affordable rural housing has decreased significantly due to the economic downturn and has not recovered, unlike other sectors of the housing market. The rural multifamily housing market desperately needs funding from programs like Section 515 in order to recover. NAHMA will work with Congress to ensure continued funding for all RHS programs in the FY 2013 and future appropriations bills.

<u>Positive Aspects of This Budget Request</u>

Rental Assistance Funding

Despite the short-funding of the project-based Section 8 contract renewals, the Obama Administration requested full-funding for tenant-based Section 8, Section 202 and 811 PRACs, and Section 521 rural rental assistance contract renewals. Providing full funding for these programs ensures consistent, timely payments, which contribute to the stability of program operations and ensure current assistance recipients, who are often very-low income or are part of a vulnerable population, remain in their homes. We continue to support HUD and RHS's efforts to improve budget forecasting and to evaluate the needs of their respective programs.

In addition, the budget included a proposal that would reduce MORs for high performing project-based Section 8 properties. NAHMA has been a long-time proponent of this proposal. In fact, NAHMA urged HUD to offer positive reinforcement to properties that received above average scores on MORs in our August 14, 2009 comments to HUD regarding the proposed revisions to Chapter 6 of HUD Handbook 4350.1. We wrote:

> **"**NAHMA encourages the Department to modify Chapter 6, and all other necessary rules, ACC contacts, and other policies to stagger the scheduling of management reviews, based on the overall rating listed on the HUD-9834. We believe this policy would incentivize strong management performance. NAHMA urges HUD to schedule management reviews every three years for affordable properties with "superior" overall ratings on the HUD-9834, every two years for "above average" properties and annually for all others."

We believe reducing MORs for high performing properties would reward superior properties for their excellent work, decrease the property staff time used to prepare for MORs each year, and reduce the travel costs, staff time, and fees paid by HUD to PBCAs for these reviews. We will continue to urge HUD to implement this common-sense policy.

New Construction and Rehabilitation Funding

NAHMA was pleased to see that the Administration proposed continued funding for certain programs used in multifamily new construction and rehabilitation in FY 2013. These include HOME, CDBG, operational assistance under Section 202, Section 538 and the RHS Multifamily Revitalization and Preservation programs. Due to discretionary spending caps and the sequestration required by the Budget Control Act, these programs are the most likely targets for spending cuts in FY 2013. However, these programs are crucial for rehabilitating existing affordable rental housing units, constructing new units, providing local job opportunities, and increasing state and local revenues. CDBG and HOME are also important sources of gap financing, which is used to leverage LIHTCs and other capital for affordable housing projects. We will fight for the highest possible funding level for the CDBG, HOME, Section 202, Section 538, and the RHS Multifamily Housing Revitalization programs in the FY 2013 appropriations.

Voucher Reforms

NAHMA also supports the provisions from the Affordable Housing and Self-Sufficiency Act (AHA) that the Administration included in HUD's general provisions request. These provisions would change the definition of extremely low income for admission targeting purposes and streamline inspections for units assisted by vouchers. These requests are positive steps; however, NAHMA would prefer that the Administration and Congress focus on passing AHA in its entirety. AHA makes a number of positive changes to the housing choice voucher program beyond the proposals included in the FY 2013 budget and is the legislative vehicle to carry the LEP authorization language, which NAHMA strongly supports.

LEP

For the first time, HUD included a request to fund the LEP line-item in the Fair Housing account of the FY 2013 budget. NAHMA strongly supports funding for the LEP translations and technical assistance. For the last five years, we have worked tirelessly to secure funding from Congress for LEP translations of multifamily documents. We are pleased to see that HUD finally acknowledges the merits of the line-item. However, we believe LEP authorization language is still necessary to provide guidance on the appropriate use of the line-item funding. As a result, NAHMA will continue to advocate for comprehensive LEP authorization language that will:

- Create a task force of industry and civil rights stakeholders to identify vital documents;
- Require HUD to translate the vital documents; and
- Create a HUD-administered 1-800 hotline to assist with oral interpretation needs.

LIHTC Proposals

The Obama Administration showed its continued support for the LIHTC program by proposing three reforms to the LIHTC program that would work in conjunction with HUD's preservation agenda: income-averaging, basis-boost, and tax loopholes for REITs. These proposals would improve the program's ability to assist very low and low-income households, provide an additional incentive to invest in rehabilitation deals, and increase demand for the tax credit. The proposals would also make the LIHTC program more user-friendly with other federal rental programs.

Although these are innovative ideas, NAHMA believes further discussion is necessary in order to make these proposals work in practice. For example, extremely low-income households often cannot afford to live in tax credit properties unless they have rental assistance, like a housing choice voucher. In addition, the Administration has admitted that the basis boost change for 4 percent bond credits will have little impact in small states and the REIT proposal will only yield a small increase in demand for LIHTCs. Nevertheless, NAHMA is heartened by the Administration's support for the LIHTC program and we look forward to examining the revamped LIHTC proposals and sharing them with NAHMA members for feedback.

NAHMA's Position

NAHMA opposes the FY 2013 budget. In fact, we cannot support any budget that proposes short-funding project-based Section 8 contract renewals. We are also extremely concerned by the Administration's decision to include "savings" policies in the FY 2013 budget that could destabilize the operation, finances, and long-term preservation of the project-based Section 8 portfolio.

We are disappointed that we cannot publically support the budget as a whole. The FY 2013 budget requests a number of good multifamily housing proposals that NAHMA supports on their individual merits, including:

- Full-funding for the 12-month tenant-based Section 8, Section 202 and 811 PRACs, and rural rental assistance contract renewals;
- A reduction in the number of MORs for high-performing properties;
- Continued funding for HUD and RHS new construction and rehabilitation programs;
- LEP technical assistance funding;
- Housing choice voucher reforms; and
- Reforms to the LIHTC program that would work in conjunction with HUD's preservation agenda.

NAHMA will work actively with Congress and industry colleagues to ensure the project-based Section 8 account receives full funding for all 12-month contract renewals in the FY 2013 appropriations. We continue to encourage our members to keep us informed if there are disruptions in the housing assistance payment (HAP) and PRAC processes or other ongoing problems. NAHMA also recommends that members promptly communicate problems with late or short-funded contract payments to their Congressional delegations.

Likewise, we encourage NAHMA members to contact their Congressional representatives to advocate for full-funding of all 12-month project-based Section 8 contract renewals (*at least* $9.54 billion for contract renewals), full 12-month funding for all other rental assistance contracts, and continued funding for new construction and rehabilitation programs in the FY 2013 appropriations legislation. Your continued grassroots advocacy efforts will help us ensure affordable housing O/As can continue to provide an exceptional quality of living for low-income families in the coming fiscal year and beyond.

If you would like to contact your Senators, please visit: http://www.senate.gov/general/contact_information/senators_cfm.cfm

If you would like to contact your Member of the House of Representatives, please visit: http://www.house.gov/writerep/

You may also visit NAHMA's grassroots page for more information meeting with your representatives and for additional information on affordable housing issues at: http://www.nahma.org/content/grassroots.html