

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

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FY 2013 Funding for Project-Based Section 8 Contract Renewals

Background

In the Summer 2007, many affordable housing providers including NAHMA members were informed by HUD that their properties would not receive their housing assistance payments (HAP) on time or would only receive partial funding for their project-based Section 8 rental assistance contracts. NAHMA learned that HUD had not requested full funding for project-based Section 8 contracts for their 12-month terms at renewal in their previous budget requests to Congress.

Because of the delayed and partial HAP payments, many project-based Section 8 property owners and management agents (O/A) had to make difficult spending decisions. Some owners were able to use residual receipts to help offset property costs. Other properties did not have this option. As a result, mortgages payments, utility bills, maintenance, and staff salaries were delayed. In worst case scenarios, properties had to lay off staff.

The delayed and partial HAP payments also shook the confidence of the investor community. Lenders turned down opportunities to participate in preservation and rehabilitation deals of project-based Section 8 properties because they were uncertain of the government's future commitment to the program.

Furthermore, owners of project-based Section 8 properties started opting out of the program at the end of their contract terms, reducing the number of units available to low-income households in the program.

It was not until 2009, after NAHMA and our industry colleagues spent years working with Congress and gained the support of the Obama Administration, that funding for the project-based Section 8 program was stabilized and program confidence was restored in the lender and owner communities. In its FY 2010 budget, HUD began requesting full funding for all project-based Section 8 contracts for their 12-month terms at renewal and Congress appropriated \$2 billion to fill the funding gap for the program in the American Recovery and Reinvestment Act.

NAHMA welcomed language in the FY 2010 HUD budget summary which stated:

“Annual renewal funding should be predictable, timely, and sufficient to fund rental contracts for a full 12 months, a sharp contrast to the short funding of contracts that occurred in recent years. Such funding is administratively efficient and will enable sensible practices by the owners of these properties. To this end,

the Department applauds Congressional action in the American Recovery and Reinvestment Act to invest \$2 billion in the Project-Based Rental Assistance program, to help fund full 12-month renewals in fiscal year 2009.” ó *Roadmap to Transformation: HUD Fiscal Year 2010 Budget Summary*, page 11
<http://www.hud.gov/budgetsummary2010/fy10budget.pdf>.

In the following fiscal years (2010-2012), HUD requested and received full-funding for all project-based Section 8 contracts for their 12-month terms at renewal. Delayed and partial HAP payments to property owners diminished significantly. HUD also improved their processing system for project-based Section 8 payments. Short-funding the program and major payment delays associated with Federal appropriations seemed to be a problem of the past.

However, the Obama Administration did NOT request adequate funding to fully fund all project-based Section 8 contract renewals for their 12-month terms in its FY 2013 budget request. HUD specifically requested \$8.4 billion to renew contracts and \$269 million to fund performance-based contract administrators in FY 2013. The contract renewal budget request is \$611 million below the FY 2012 appropriations level. However, 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.

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, HUD’s budget also assumes that the Department will successfully be able to implement all of its proposed cost cutting measures in 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.
 - The majority of the projected “savings” is expected to come from this proposal;
- 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.

Following the submission of the Obama Administration's FY 2013 budget request to Congress in February 2012, the House and the Senate Appropriations Transportation-HUD Subcommittees held hearings on the HUD budget. Leadership of both Subcommittees were extremely disappointed that HUD proposed providing less than full funding for all project-based Section 8 contract renewals in FY 2013. They called the short-funding a "budget gimmick" which pushed funding needs into future fiscal years. They also reminded Secretary Donovan of the past problems caused by short funding the project-based Section 8 program and how Congress had to provide \$2 billion in 2009 in order to close the funding gap.

Congress will now move forward in determining spending for government agencies and programs for FY 2013.

Summary

The House and Senate have taken the first steps in the FY 2013 budget and appropriations process. Both chambers of Congress have determined their top-line discretionary spending levels for their FY 2013 budgets. Now, the House and Senate Appropriations Committees will determine the funding levels for government agencies and programs in FY 2013, as well as make specific funding recommendations for the coming fiscal year— including funding levels for the project-based Section 8 program.

House Budget and Appropriations Action

The House adopted its FY 2013 budget resolution, H. Con. Res. 112, in late March. The budget resolution establishes non-binding spending ceilings for discretionary spending— which includes security spending (i.e. defense, homeland security, etc.) and non-security spending (i.e. housing, education, energy, commerce, justice, etc.)— and limits for total government revenue and mandatory spending.

H. Con. Res. 112 would significantly cut discretionary spending for FY 2013 below the FY 2012 appropriation levels. The budget resolution would also cut \$98 billion from the FY 2013 pre-sequestration security and non-security discretionary spending caps set by the Budget Control Act (BCA), which Congress passed by a bipartisan vote last August.¹ Furthermore, the House budget resolution would shift the entirety of these cuts to the non-security discretionary account. This violates the spending reduction agreements of the BCA, which required that these cuts be split equally between the non-security and security discretionary spending accounts.

The budget resolution also directed several House Committees to find additional areas to cut spending in order to shift the BCA sequestration requirements from security to non-security spending. Specifically, the resolution directed the House Financial Services Committee— which oversees USDA and HUD housing programs— to find at least \$3 billion in spending reductions for FY 2013. Fortunately, the

¹ The Budget Control Act (BCA) set government discretionary spending caps for the next 10 years to offset the increase in the U.S. debt ceiling. The BCA also required a bipartisan group of Members of Congress to find areas to cut spending by at least \$1.2 trillion over the next decade. If the Congress did not approve the group's proposed cuts, automatic spending cuts, or "sequestration," would be triggered. The group was supposed to develop a proposal for government spending reduction by November 23, 2011. However, the group failed to do so. Sequestration will now be applied to both security and non-security discretionary spending, in addition to the agreed upon BCA spending caps, on January 2, 2013.

Committee did not include cuts to HUD housing programs in its budget reconciliation legislative recommendations.

Nevertheless, the cuts to non-security discretionary spending in the FY 2013 budget resolution adopted by the House will reduce the 302(b) allocation for FY 2013 below the FY 2012 enacted appropriations. The 302(b) allocation sets the top-line funding— also known as “budget authority”— for each of the 12 spending bills, including the Transportation-HUD bill. The Transportation-HUD legislation is extremely important because it provides the appropriations for all of HUD’s housing programs for the coming fiscal year. NAHMA is particularly concerned because a reduction in the 302(b) allocation means there will be less money available for Transportation and HUD programs for the upcoming fiscal year in an already tight budget environment.

NAHMA has spoken with Republican and Democratic staff members of the House Appropriations Transportation-HUD Subcommittee. They have informed us that, if the Transportation-HUD 302(b) allocation receives significant cuts, then the Subcommittee may not have enough budget authority to provide full-funding for all project-based Section 8 contracts for their 12 month terms at renewal in its FY 2013 appropriations bill. Instead, the Subcommittee may consider funding the project-based Section 8 account at HUD’s request of \$8.7 billion, which would only provide enough funding for program contracts through September 30, 2013.

Senate Budget and Appropriations Action

The Senate Democratic leadership will not consider the House’s budget resolution. Instead, the Senate used the pre-sequestration discretionary spending caps to develop its 302(b) allocations for FY 2013, including those for the Transportation-HUD account. The Senate’s spending caps would provide an additional \$98 billion in discretionary spending above H. Con. Res. 112. This would slightly increase non-security discretionary spending by \$2 billion above FY 2012 appropriations levels.

The Senate’s 302(b) allocation for Transportation-HUD is \$53.4 billion, \$3.9 billion less than FY 2012 enacted appropriations.

The Senate Appropriations Committee passed S. 2322, the FY 2013 Transportation-HUD appropriations bill, with a strong bipartisan vote of 28-1. The Committee provided \$9.8 billion for the project-based Section 8 program, with \$9.6 billion set aside for contract renewals in FY 2013. Both the Senate Appropriations Transportation-HUD Subcommittee Chair Patty Murray (D-WA) and Ranking Member Susan Collins (R-ME) strongly rejected the FY 2013 HUD budget request, calling the short-funding an “ill-conceived budget gimmick” that shifts funding needs to future fiscal years. This amount is enough to fully fund all project-based Section 8 contracts for their 12-month terms at renewal if HUD is able to realize their projected “savings” from the proposals contained in the FY 2013 budget request. To that end, the Subcommittee included HUD’s FY 2013 legislative language that would allow residual receipts to be remitted to HUD to help offset the cost of renewing contracts.

S. 2322 will now go to the Senate floor for a vote.

Positive Aspects

NAHMA strongly supports the funding levels provided by S. 2322, the Senate’s FY 2013 Transportation-HUD appropriations bill: \$9.875 billion for project-based Section 8, which \$9.6 set aside for contract renewals. This funding level indicates that the Senate Appropriations Committee understands the importance of and is committed to providing full-funding for this important program.

With continued grassroots advocacy assistance from members, NAHMA and our industry colleagues have been able to convince Senate appropriators that the project-based Section 8 is a successful program. It provides housing to over 1.2 million low-income households and creates jobs for over 100,000 people annually. The rental assistance program provides economic stability and benefits to local communities. It also functions 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. Finally, Senate appropriators understand that it is their obligation to ensure the Federal government is meeting its financial and contractual obligations to property owners and management agents.

However, the project-based Section 8 funding level in the Senate's FY 2013 Transportation-HUD appropriations bill is also dependent on HUD's ability to successfully implement its FY 2013 budget "savings" proposals.

Issues of Concern to NAHMA

First and foremost, the House and Senate are operating with very different levels of non-security discretionary budget authority, which will make the eventual reconciliation process between the House and Senate appropriations bills – including Transportation-HUD – very difficult. In fact, we believe that the House's 302(b) allocation for Transportation-HUD will likely be below the Senate Appropriations Committee 302(b) allocation, \$53.4 billion. The depth of the cut remains to be seen. Furthermore, the White House has publically stated that President Obama will veto any spending bills that violate the Budget Control Act, which was passed last August.

Additionally, if the FY 2011 appropriations battle after the mid-term elections was any indication, the FY 2013 appropriations process could be long and drawn out. NAHMA expects that Congress will fund *at least* the first portion of FY 2013 through a continuing resolution² until after the 2012 Presidential election cycle.

However, there is also a small chance that Congress may pass a few of the least controversial appropriations bills before October 1, 2012, the start of FY 2013. The appropriations bills for USDA, Transportation-HUD, and Commerce, Science, and Justice were the first bills to be passed in FY 2012, albeit six weeks after the beginning of the fiscal year, because they were the least controversial. Both the House and the Senate Appropriations Committees are considering appropriations bills much earlier than in previous years. Senate Appropriations Committee Democratic staff indicated to NAHMA that the chamber wanted to move quickly on the Transportation-HUD appropriation bill to force the House to move a companion bill. Therefore, there is a possibility that Congress could pass a Transportation-HUD appropriations bill before the start of FY 2013, but this outcome is unlikely based on recent history.

Because there are so many factors at play in Congress, the outcome of the FY 2013 appropriation for the project-based Section 8 program is far from certain. Short-funding the program is still a strong possibility. Funding the program at FY 2012 levels through a continuing resolution is at least \$600 million below what is necessary to fully fund all contract renewals in FY 2013.

In addition, the Senate's FY 2013 Appropriations bill provides \$9.6 billion to fund project-based Section 8 contract renewals, which will only be enough to fully-fund all contracts for their 12-month terms if HUD's FY 2013 budget proposals can generate \$400 million in "savings." The Committee's report language on S. 2322 specifically states:

² A continuing resolution provides funding for government programs at the previous fiscal year's appropriations level, unless otherwise specified.

öThe Committee's recommendation also includes several cost-saving measures proposed in the Administration's budget, including applying residual receipts to offset assistance payments for new and old regulations contracts; limiting exception rent levels to the operating cost adjustment factor [OCAF]; applying Small Area Fair Market Rents as a benchmark for rents subject to comparability; and shortening vacancy payments.ö

To that end, the Committee included legislative language that HUD requested in its FY 2013 budget, which would allow residual receipts to be remitted to HUD to help offset the cost of renewing contracts. However, NAHMA remains concerned about the cost savings included in the Senate's billö particularly concerning the old regulation property contracts. We do not support those particular cost savings measures and we will not advocate for them. In fact, NAHMA and other industry colleagues are seeking additional information to determine how many old regulation contracts would be affected by the Committee's residual receipts language and whether this language would change current contracts.

Nevertheless, we will continue working with Congress, HUD, and our industry colleagues to ensure Congress includes full funding for all project-based Section 8 contracts for their 12-month terms at renewal in the FY 2013 appropriation.

Regardless of the outcome in FY 2013, the FY 2014 budget and appropriations process will be even more contentious. It is already very difficult to restore funding to a program in future fiscal years once it is cut. Congress will be making even deeper discretionary spending cuts in FY 2014 than they are discussing for the coming fiscal year. The governmentö no matter which party is in powerö will need to make some extremely difficult decisions that could result in the loss of rental assistance to some properties and individuals. NAHMA strongly opposes any effort to reduce funding for rental assistance programs, especially the project-based Section 8 program. We believe that spending decisions must be prioritized to ensure there is no harm done to those households currently receiving assistance. NAHMA will work with Congress, HUD, and our industry partners to ensure contract rental assistance programs receive full funding in future fiscal years as well.

NAHMA's Position

NAHMA strongly opposes providing less than full funding for the 12-month terms for all project-based Section 8 contract renewals in FY 2013. Short-funding the program will hurt property owner and investor confidence in the program, deter preservation details, hurt property operations, reduce services, potentially decrease the housing available for America's most vulnerable populations, and encourage property opt-outs at contract renewals.

To that end, we support the Senate's efforts to provide full funding for the program in S. 2322, the FY 2013 Transportation-HUD appropriations bill. NAHMA has also strongly urged the House Appropriations Transportation-HUD Subcommittee to provide full funding for all project-based Section 8 contracts for their 12-month terms at renewal.

Now, more than ever, NAHMA needs your assistance to ensure Congress provides full funding for all project-based Section 8 contract renewals. We need you, your staff, and your industry partners to **contact your Congressional Representatives and let them know that short-funding project-based Section 8 contract renewals is unacceptable. In addition, please share your past experiences with the project-based Section 8 shortfall.**

When contacting your Representatives in the House, please ask your Representatives to contact House Appropriations Transportation-HUD Subcommittee Chair Tom Latham (R-IA) and let him

know that they support at least \$9.875 billion for the project-based Section 8 program with at least \$9.6 billion set aside for contract renewals in the House's FY 2013 Transportation-HUD appropriations bill.

If you would like to contact your Member of the House of Representatives, please visit:

<http://www.house.gov/writerep/>

When contacting your Senators, please ask them to support the Senate Appropriations Committee's FY 2013 Transportation-HUD bill (S. 2322) when it comes to the Senate floor for a vote.

If you would like to contact your Senators, please visit:

http://www.senate.gov/general/contact_information/senators_cfm.cfm

For talking points about short funding the project-based Section 8 contract renewals in FY 2013, including a phone script and model letters to use when contacting your Congressional members, please visit: http://www.nahma.org/content/grassroots_PBS8.html

For more information on contacting your Representatives and for additional information on affordable housing issues, please visit: <http://www.nahma.org/content/grassroots.html>