

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

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Sequestration Implementation Update

Effective Date or Deadline

The sequestration requirements (i.e. across-the-board mandatory cuts to government spending) from P.L. 112-25 (S. 365)—the Budget Control Act—are set to take effect on January 2, 2013, unless Congress and President Obama take additional legislative action.

Background

Budget Control Act

In May 2011, the United States reached its debt limit. Congress was required to enact a statutory change to raise the debt ceiling so the U.S. government could meet its financial obligations. House Republicans used this opportunity to force the government to enact cuts to government spending in exchange for Congress increasing the debt ceiling.

To that end, Congress passed P.L. 112-25 (S. 365), the Budget Control Act. President Obama signed the bill into law on August 2, 2011. The bill raised the debt limit through the end of the calendar year of 2012 and required \$2.1 trillion in government spending cuts over the next decade. It contained no provisions to increase tax revenues in order to offset some of the cuts.

First, the legislation required Congress to cap discretionary spending over the next 10 years, which would save about \$917 billion. Those spending caps have been already been applied to projected spending in both the House and Senate budget proposals for FY 2013 and beyond.

Second, the bill required Congressional leaders to appoint a bicameral, bipartisan Joint Select Committee on Deficit Reduction. The Committee was charged with identifying and providing a report on \$1.2 trillion in deficit reduction proposals to Congress by November 23, 2011. After receiving the report, Congress had to vote on the proposals by December 23, 2011.

However, the Committee failed to identify specific deficit reduction proposals by the November 23 deadline. As a result, the BCA now requires the government to undertake mandatory, across-

the-board spending cuts known as “sequestration” beginning on January 2, 2013. These cuts will be applied to both defense and non-defense programs.

Almost all of the multifamily affordable housing programs administered by the Department of Housing and Urban Development (HUD) and the Department of Agriculture (USDA)-Rural Housing Service (RHS) are eligible for sequestration. The BCA exempted Social Security and Medicaid from sequestration. Medicare would face cuts to providers and insurers, but not beneficiaries.

Sequestration Alternatives

As the implementation date for sequestration draws nearer, there have been discussions in both the public and private sector regarding the potential consequences of sequestration. Congress and the Obama Administration recognize that this policy could result in massive job losses and a reduction in economic productivity. In fact, HUD Secretary Shaun Donovan strongly cautioned against enacting sequestration for housing programs when testifying before Congress. He called the across-the-board cuts bad public policy that would result in several low-income households losing their housing. However, the Democrats and Republicans disagree on the best methods to avert sequestration.

The House passed two Republican-backed proposals that would repeal sequestration for defense programs and enact deeper, across-the-board cuts on non-defense discretionary spending programs. In May, the House passed H.R. 5652, the Sequester Replacement Reconciliation Act of 2012. This bill makes specific recommendations for how to offset the \$19.1 billion required under sequestration for the defense programs in 2013. Fortunately, this bill does not include specific cuts for any federal affordable multifamily housing programs.

In September, the House passed H.R. 6365, the National Security and Job Protection Act. The bill would also shift the burden of sequestration required by the BCA from defense discretionary spending entirely on to non-defense discretionary spending. Unlike H.R. 5652, the bill does not specify how those cuts should be distributed across non-defense discretionary spending accounts.

Nevertheless, the Senate does not plan to consider either of these bills at this time. Senate Democrats favor an approach that combines tax increases with spending cuts. In addition, the Obama Administration has threatened to veto any legislation that shifts the BCA-required sequestration from defense discretionary spending into non-defense discretionary spending.

Impact of Sequestration

In order to determine the exact impact sequestration will have on government spending, Congress passed H.R. 5872, the Sequestration Transparency Act of 2012. The bill required the Office of Management and Budget (OMB) to publish a detailed report on the impact of sequestration on government spending. The report had to provide estimates on the impact of sequestration at the account, program, project, and activity level for all federal programs. Congress expected the report to help them determine the actual impact of the mandatory across-the-board cuts to the economy. President Obama signed H.R. 5872 into law as P. L. 112–155 on August 7, 2012.

Summary

OMB Sequestration Report

On September 13, 2012, the Obama Administration released its “OMB Report Pursuant to the Sequestration Transparency Act of 2012 (P. L. 112–155).” The report estimated that, if sequestration goes into effect, defense discretionary spending would be cut by 9.4 percent and non-defense discretionary spending would be cut by 8.2 percent.

The following affordable multifamily housing programs administered by HUD would receive automatic 8.2 percent across-the-board cuts (based on FY 2012 appropriations) under sequestration:

- HUD’s Project-based Section 8—An estimated cut of \$772 million;
- HUD’s Tenant-based Section 8 (except for the veteran’s programs administered by Veteran’s Affairs, which are exempt) —An estimated cut of \$1.5 billion;
- HUD’s Section 202—An estimated cut of \$31 million;
- HUD’s Section 811—An estimated cut of \$14 million;
- Community Development Fund—An estimated cut of \$279 million;
- HOME—An estimated cut of \$82 million;
- Choice Neighborhoods—An estimated cut of \$10 million;
- Ginnie Mae’s Guarantees of Mortgage-backed Securities Loan Guarantee Program Account—An estimated cut of \$2 million; and
- Lead Hazard Reduction—An estimated cut of \$10 million.

The report also included FHA’s general and Special Risk Program Account as eligible for sequester, but did not provide a sequestration cut estimate.

The following USDA-Rural Housing Service affordable multifamily housing programs would also receive 8.2 percent across-the-board reductions (based on FY 2012 appropriations) under sequestration:

- Section 521 Rural Rental Assistance—An estimated cut of \$74 million;
- The Rural Housing Insurance Fund Program Account (which includes Section 538 and Section 515 loans)—An estimated cut of \$42 million; and
- The Multifamily Revitalization Program—An estimated cut of \$1 million.

The report did not provide the program, project, and activity details for each account, as required by P.L. 112-155. OMB stated that it simply did not have enough time before the congressionally mandated deadline to analyze the impact of sequestration at the lower levels. Federal agencies identified thousands of programs, projects, and activities within the accounts eligible for sequestration. Federal agencies also use different definitions for programs, projects, and activities, which made it difficult for OMB to provide a standard for analysis in the timeframe available.

A copy of the sequestration report may be found here:

http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/stareport.pdf

Estimated Impact of Sequestration

At a presentation to the Florida Low-Income Housing Coalition in September, HUD Secretary Shaun Donovan announced that sequestering HUD's budget alone could result in a loss of:

- 53,000 jobs;
- Housing choice vouchers for 250,000 households—consisting of about 1 million individuals, many of which are elderly, disabled, and/or veterans; and
- Homelessness assistance for 100,000 households.¹

The Secretary did not discuss the direct impact of sequestration on other affordable multifamily programs, including the project-based Section 8, Section 202 elderly housing, and Section 811 disabled housing programs. NAHMA has repeatedly asked HUD for additional information regarding the impact of sequestration on these programs in order to help the Agency avert the mandatory cuts. Previously, we were told that it is internal information and would not be released to the public at the time. Now, all inquiries related to sequestration are being referred to OMB.

However, the National Low-Income Housing Coalition has developed their own estimates of the direct impact of sequestration on a large number of housing programs. The Coalition has estimated that, if sequestration is enacted:

- 92,400 households would lose their project-based rental assistance housing; and
- **At least** 140,000 households residing in Section 202 and Section 811 properties would receive reduced unit maintenance and lower levels of supportive services.²

Issues of Concern to NAHMA

Impact of Sequestration

Although the Obama Administration's sequestration estimates are preliminary, the cuts would devastate HUD and USDA's affordable housing programs if they are accurate.

The FY 2012 appropriations levels for both the project-based Section 8 program and the tenant-based Section 8 program are already below what is necessary to fully fund all 12-month contract renewals in FY 2013. Sequestration, if enacted, would essentially guarantee that some housing providers would receive delayed or partial payments for their rental assistance contracts—including project-based Section 8, tenant-based Section 8, Section 202 PRACs, Section 811 PRACS, and Section 521 rural rental assistance—in FY 2013.

¹ Shaun Donovan, "Prepared Remarks of Secretary Shaun Donovan at the Florida Housing Coalition 2012 Conference"(speech, Orlando, FL, September 11, 2012), Department of Housing and Urban Development.

http://portal.hud.gov/hudportal/HUD?src=/press/speeches_remarks_statements/2012/Speech_09112012 (accessed on October 1, 2012).

² "Administration Confirms: Sequestration Would Devastate Low Income Housing Programs." National Low-Income Housing Coalition, September 14, 2012. <http://nlhc.org/press/releases/9-14-12> (accessed on October 1, 2012).

As NAHMA members may recall, project-based Section 8 properties experienced delayed/partial contract payments before. In 2007, some owners received delayed or partial housing assistance payments (HAP) due to short-funding of the program. Short-funding the rental assistance contracts had very serious consequences. Property owners and management agents had to pay numerous late fees to lenders and service providers as a result of late mortgage and utility bill payments. Some properties had to lay off staff and delay much needed rehabilitation and preservation projects. Sequestration would effectively jeopardize the efficient management, financial solvency, and physical health of properties with rental assistance contracts.

If HUD and NLIHC's sequestration estimates are correct, several low-income families could lose their rental assistance. These families have very limited resources and may not be able to find adequate, stable rental housing without outside help. They may have to move in with other family members or friends, leading to overcrowding of housing and additional vacant units at affordable rental properties. Some households, unfortunately, could end up homeless and on the street.

Sequestration would also have significant economic consequences. HUD estimated that the cuts to their budget alone would result in the loss of 53,000 jobs. Local communities and businesses could lose the income due to the cuts to new construction, rehabilitation, property operations, and affiliated services for affordable housing programs. State and local governments would lose additional tax revenue as well.

Likewise, sequestration could harm the mortgage market. Many properties with Federal rental assistance contracts have mortgages insured and/or guaranteed by Federal entities—like HUD's Federal Housing Administration (FHA) and USDA—or government sponsored entities (GSE)—i.e. Fannie Mae and Freddie Mac. When properties receive delayed or partial rental assistance contract payments, there is a possibility owners may not be able to afford their mortgage payments, leading to late payment and/or defaults. Not only would these defaults increase the cost of running these programs to the government, they could lead to further downturn in the housing market and economy.

Implementation

Because of the potential for such serious unintended consequences, NAHMA is very concerned about how sequestration will be implemented for Federal affordable multifamily housing programs in 2013. To that end, NAHMA reached out to HUD, OMB, and Congressional Budget Committee staff for more information. We specifically asked these offices:

- Will some or all project-based Section 8 housing assistance payment (HAP) contracts be affected?
 - If all contracts are affected, will each contract receive an 8.2 percent across-the-board cut or will some contracts receive deeper cuts than others?
 - If only some contracts are affected, how will HUD and OMB determine which contracts receive cuts and how deep those cuts will be?
- Will sequestration be accounted for in the President's FY 2014 budget request?

However, OMB and the Congressional Budget Committee staff told NAHMA that they do not have this type of detailed information. The offices said that any plans to implement sequestration would be discussed after the November 2012 election and only if it appears that Congress will not take any action to avoid it. This is because the Obama Administration believes that Congress will take steps to circumvent or delay sequestration. OMB has also said that it has not decided if sequestration will be accounted for in the President's FY 2014 budget request.

This information is extremely disconcerting, especially considering the fast approaching deadline. It is unacceptable for Congress and the Obama Administration to be making such large public policy decisions in an information vacuum. The government should fully understand the consequences of sequestration to government programs/services, American citizens, and the economy before even thinking about implementing such cuts. However, Congress and the Obama Administration have only started trying to comprehend the detailed effects of such a policy. Additional research on sequestration, while necessary, will be time consuming. Because of the likely negative consequences and the lack of information surrounding implementation, NAHMA strongly opposes the sequestration of Federal affordable multifamily housing programs.

Administration Actions

Although OMB has no detailed plans for how it will implement sequestration, it has issued guidance in order to help circumvent the potential consequences of sequestration. First, OMB issued a bulletin on September 28 to Federal agencies informing them not to begin implementing sequestration yet. It specified that agencies should continue normal spending and operations "unless and until the Bulletin is amended."

A copy of the September 28 OMB Bulletin is located here:

<http://www.whitehouse.gov/sites/default/files/omb/bulletins/fy2012/b12-02.pdf>

Second, OMB issued a memorandum on September 28 intended to prevent government contractors, particularly defense contractors, from issuing mass layoff notices in anticipation of sequestration. Under the Worker Adjustment and Retraining Notification (WARN) Act, contractors with 100 or more employees must give at least 60 days advanced warning to employees likely to lose their jobs.³ The memo allows contracting agencies to cover any potential litigation costs or employee compensation costs that could follow due to failure to give 60 days notice to relevant employees. The Labor Department has specifically stated that there is not enough information available about how the cuts might be implemented for contractors to determine which employees to let go.

A copy of the September 28 OMB Memorandum is located here:

<http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-19.pdf>

Positive Developments

According to conversations NAHMA has had with Senate and House Budget Committees' staffs, Members of Congress have begun discussing ways to address sequestration. The consensus is

³ If sequestration takes effect January 2, 2013, contractors must give employees notice in early November under the WARN Act.

that Congress will take some sort of action in December to delay or replace across-the-board cuts. However, there are still questions on what kind of agreement will be reached.

First, Congress could agree upon a “grand plan” to completely replace sequestration with specific spending cuts and, possibly, revenue increases. Lawmakers are discussing the possibility of \$4 trillion in deficit reduction over the next 10 years. In addition to federal program cuts, this would likely include reforming the tax code, Medicare, Medicaid, and Social Security. However, this is the most unlikely scenario. Both Democrats and Republicans remain far apart in terms of what types of programs and activities they believe should be cut and how tax and entitlement reform should be achieved. In addition, Speaker of the House John Boehner (R-OH) does not believe Congress will agree upon a deficit deal during the lame-duck session.

Second, Congress could agree to reduce spending for some federal programs and close certain tax loopholes while delaying the sequestration of others for anywhere from three months to a year. It allows Congress to demonstrate its commitment to reducing government spending while avoiding the unintended consequences of sequestration as it will currently be implemented. Furthermore, the policy gives Congress additional time to figure out how to offset the remainder of the \$1.2 trillion required by sequestration. At this time, there is no consensus in Congress on what programs and activities should be cut. These discussions will likely take place after the election in November.

Finally, Congress may agree to delay sequestration of all eligible federal programs until next year. Congressional leaders are already having a difficult time agreeing upon what government spending cuts should happen. It is very possible that they may not come to an agreement on partial implementation of the sequestration and could decide to delay it entirely for three months to a year. A comprehensive deal would be worked on in the new, 113th Congress.

Nevertheless, if Congress cannot come to a legislative agreement to either delay or replace sequestration, the mandatory across-the-board spending cuts for federal programs would still be implemented on January 2, 2013.

NAHMA’s position

Sequestration is an irresponsible public policy that would have broad unintended consequences for property owners, management agents, tenants, and the economy at large. Furthermore, neither Congress nor OMB has any idea of how the government should implement this policy, which is supposed to take place in two and a half months. Therefore, NAHMA strongly opposes its implementation in Federal affordable multifamily housing programs, particularly programs with rental assistance contracts. We are actively working with Congress, the Obama Administration, and industry stakeholders to avert sequestration and its devastating consequences.

However, NAHMA needs **your** assistance in order to prevent the across-the-board cuts to Federal affordable multifamily housing programs. Your Congressional Representatives are currently in their states and districts to campaign for the upcoming 2012 election cycle. **NAHMA strongly encourages you, your staff, and your industry partners to contact Members of Congress and let them know you strongly oppose sequestering (i.e. mandatory across-the-board government spending cuts) federal affordable multifamily housing**

programs, particularly rental assistance programs. Please urge them to ensure that sequestration does not harm important affordable housing resources for America's most vulnerable by taking legislative action when they return to Washington, DC in November and December.

When you contact your Representatives, please also let them know that:

- Almost all federal affordable multifamily housing programs are eligible for sequestration and would be cut by 8.2 percent if it is enacted;
- Sequestering HUD's budget alone could result in the loss of:
 - 53,000 jobs;
 - Housing assistance for *at least* 250,000 households—many of which are elderly, disabled, and/or veterans; and
 - Homelessness assistance for 100,000 households.
- Congress and OMB do not have enough information about how the sequestration will affect individual programs to understand the consequences of implementation.

For talking points, phone scripts, model letters, and additional information on discussing sequestration with your Representatives, please visit:

http://www.nahma.org/content/grassroots_sequestration.html

For information on meeting with, calling, or emailing your Representatives, please visit:

<http://www.nahma.org/content/grassroots.html#contact>

Please contact NAHMA staff members Lauren Eardensohn (lauren@nahma.org) or Michelle Kitchen (michelle.kitchen@nahma.org) if you have any questions.