

Highlights of President Obama's FY 2012 Budget

On February 14, 2011, President Obama released his proposed Budget for FY 2012. The Budget includes cuts aimed at reducing the deficit, but does not project a balanced Budget even as far out as 2020. As is always the case, the President's Budget is the starting point for the work of Congress and will be changed extensively during that process. The following is NAR's assessment of the impact of the Budget on real estate.

On February 11, 2011, the President released his Report to Congress: Reforming America's Housing Finance Market. The eventual decision on the future of Fannie Mae and Freddie Mac will likely have a much more significant effect on mortgage financing than the Budget proposals. Restructuring the mortgage market is likely to take at least several years of debate before legislation is enacted.

Department of Housing and Urban Development

Overall, the Budget for FHA single family insured mortgage loans remains essentially the same. It would not be surprising if higher premiums and possibly lower loan limits were to result in lower use of FHA mortgage insurance, but many variables will affect how much borrowers decide to use FHA mortgage insurance.

The Budget proposes new commitments for single family FHA mortgage insurance of \$400 billion for FY 2012, an increase of \$15 billion from the annualized amount in the Continuing Resolution for FY 2011. The Budget assumes a MIP increase of 0.25 percent in April 2011.

The Budget also requests \$230 million to allow FHA to implement improved risk management systems for FHA's increased role in the real estate market.

The HOME program, which provides grants that communities use to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing for rent or homeownership or provide direct rental assistance to low-income people, is cut by \$175 million. This is a 9% cut in the current budget.

The Budget proposal continues the same level of funding for housing counseling at \$88 million. The housing counseling money is awarded in grants to local counseling agencies and State Housing Finance Agencies, and is designed to expand homeownership opportunities, improve access to affordable housing and preserve homeownership.

The Budget includes an increase for Section 8 project-based funding to \$9.4 billion (from \$8.6) to ensure they can fully fund all contracts. The Project-Based Rental Assistance program assists approximately 1.3 million extremely low- to low-income households in obtaining decent, safe, and sanitary housing in private accommodations.

Tenant-based Section 8 vouchers also are increased to \$19.2 billion. This program provides housing assistance to over two million extremely low- to very low-income families to rent in the neighborhoods of their choice.

Department of Veterans Affairs

Beginning January 1, 2012, maximum guaranty amounts will be based on Freddie Mac county loan limits (this will result in lower limits in most areas). The FY 2012 Budget estimates \$58.5 billion in loan commitments through the VA Home Loan Guaranty Program, which is a reduction of \$11 billion from the annualized amount in the Continuing Resolution for FY 2011.

U.S. Department of Agriculture: Rural Development.

The Section 502 Guaranteed Loan Program would be funded at \$24 billion for FY 2012, the same as the annualized amount in the Continuing Resolution for FY 2011. The \$24 billion level is an increase of more than \$10 billion from the FY 2010 appropriation, reflecting an increase in this program to make up for major reductions in the Section 502 Direct Loan Program. The upfront fee on purchases will be 2 percent with an annual fee of 0.3 percent, which will result in a negative subsidy (i.e., result in a “profit”) for the fund of 0.3 percent. The Budget requests \$211 million for the Section 502 Direct Loan Program. This is a major reduction from the approved FY 2010 Budget of \$1.02 billion. In the multifamily arena, the budget includes an increase for the Section 515 Direct Multifamily Housing Loan Program, to \$95.2 million (from \$56 million), but does not include any money for Section 538 guaranteed multifamily loans.

Federal Emergency Management Agency: Floodplain Modernization and Mapping Activities

The Budget would preserve FEMA’s previous investment in updating and modernizing FEMA’s floodplain maps, which determine flood risk in floodplains nationwide, and also determine flood insurance premium rates. The Budget proposal of \$252 million is a decrease of \$119 million from the annualized amount in the Continuing Resolution for 2011.

Department of Energy: Building Technologies Program

The Budget proposal of \$471 million is an increase of \$227 million from the annualized amount in the Continuing Resolution for FY 2011.

DOE’s Building Technologies program develops and promotes activities to make buildings more energy efficient and affordable through incentives, model building codes, consumer education, and research and development. This includes the voluntary Home Energy Performance Label program that was recently instituted by DOE.

Federal Communications Commission: Technology

The Budget proposes \$354 million in FY 2012 for the FCC’s annual operating budget, an increase of \$18 million.

The Budget calls for spending \$5 billion to help the agency overhaul the Universal Service Fund (USF), a federal program that subsidizes phone bills in rural and impoverished areas. FCC Chair Genachowski wants to redirect the subsidies toward reducing costs associated with broadband deployment and adoption. The expenditure would be funded through savings that would result from a multiyear overhaul of the USF program.

The \$5 billion expenditure is also intended to support the president’s national wireless initiative, designed to help carriers reach 98 percent of the country with advanced 4G wireless service over the next five years. The initiative could help the FCC accomplish a core goal outlined in its national broadband plan: connecting at least 90 percent of Americans to high-speed Internet service by 2020.

Tax Proposals

The Budget proposes to raise the tax brackets for those with incomes above \$200,000 (or \$250,000 on a joint return). Thus, after 2012, the brackets would be 36% and 39.6%. After 2012, these taxpayers will lose any benefit of the Bush tax cuts.

The Budget would raise the capital gains tax rate for upper income taxpayers to 20%, starting in 2013. The higher rate applies to those in the 36% and 39.6% brackets

Itemized deductions (including the MID) would be curtailed. The value of all deductions for anyone in tax brackets above 28% would be limited to 28%. Those in lower brackets would be unaffected by this change. Thus, those in the 33% and 35% brackets in 2012 would be subject to the limitation. After 2012, this limit would affect those in the 36% and 39.6% brackets.

The Budget proposes adjustments to the low-income housing tax credit: more flexibility on tenant mix and an expanded credit mechanism to finance improvements to existing projects that were developed using tax-exempt bond financing (this addresses, but does not solve, the so-called “exit tax” problem)

The Budget proposes to tax partnership carried interest as ordinary income, but certain exceptions might soften the blow for some real estate, especially real estate investment trusts (REITs).

For IRS Form 1099 reporting, the Budget would repeal the controversial health care rules and simplify current law. The change would assure that remaining reporting rules apply only to payments of \$600 or more on services. There would be no reporting on payments made to tax-exempt entities.

For independent contractors, the Budget would allow the contractor to elect to have taxes withheld from payments received from a business.

Under the Budget the IRS would be permitted to act to reclassify independent contractors (workers) in specified situations. The proposal does NOT change any aspect of real estate independent contractor protections. Those rules remain in place, as they have for more than 25 years. (The proposal essentially provides ways for the IRS to work around the 1978 prohibition on releasing worker classification regulations.)

Consumer Financial Protection Bureau (CFPB)

The Administration is moving forward with plans to have the CFPB up and running on July 21, 2011. The Budget proposes \$134 million for the remaining half of 2011 and \$329 million for FY 2012. CFPB does not have authority to regulate real estate brokerage activities (except to the extent regulated by other agencies already, such as by HUD under RESPA; RESPA transfers to CFPB jurisdiction). Staffing levels for 2012 are estimated to be 1,225.

Health Insurance Reform: State Grants for State Exchange Planning and Establishment

The American Health Benefit Exchange Program, commonly known as the Health Insurance Exchanges, provides funding for Planning and Establishment Grants to implement State Exchanges. The Budget proposes \$201 million for the remaining half of 2011 and \$400 million for FY 2012. The Exchanges will facilitate the purchase of qualified health plans in the individual market and provide for the establishment of a Small Business Health Options Program to allow small businesses to offer qualified health plans to their employees.

Health Insurance Reform: CO-OP Program Loans and Grants

The President's Budget allocates \$376 million in new funding to grants and loans made by the Consumer Operated and Oriented Plan (CO-OP) Program authorized in Section 1322 of the Affordable Care Act (P.L. 111-148). The CO-OP Program fosters the creation of qualified nonprofit health insurance issuers that operate with a strong consumer focus to offer qualified health plans in the individual and small group markets in the States. The Secretary would award to qualified nonprofit issuers loans for start-up costs and grants to enable qualified issuers to meet state solvency requirements.

Health Insurance Reform: State Grants or Health Insurance Premium Review

The President's Budget includes \$51 million in new funding for grants to states for health insurance premium review. The Affordable Care Act authorized grants to States for a five year period beginning in fiscal year 2010. The grants are intended to allow States to improve the oversight of proposed health insurance premium increases. States may receive no less than \$1 million and no more than \$5 million in any one grant year.

Transportation/Sustainable Communities Programs

One of the few areas where the Budget proposes increased spending is in transportation. Paired with the FY 2012 Budget proposal was the administration's preliminary framework for a new six-year surface transportation authorization with spending levels that more than double those of the previous six-year authorization known as SAFETEA-LU. The \$556 billion six-year total includes \$336 billion for rebuilding roads and bridges as part of a "fix it first" strategy, a 48% increase in maintenance and rehabilitation funding over the previous authorization. It also includes \$119 billion for transit programs over that period, a 128% increase in that category relative to the previous authorization.

The six-year transportation proposal is front-loaded to stimulate economic recovery, with a proposed FY 2012 Budget of \$129 billion, an 86% increase over FY 2010 (the FY 2011 numbers are still pending given ongoing consideration of a Continuing Resolution that includes significant transportation spending cuts). The Budget also proposes the establishment of a National Infrastructure Bank that will leverage private capital to build complex large-scale projects. And as first announced last week, the Budget includes \$8 billion for the first year of a six-year, \$53 billion high-speed rail investment plan.

The Budget does include cost-cutting measures in transportation, including the consolidation of 55 separate highway programs into five core programs with a goal of eliminating overlap and waste.

Beyond transportation, the Budget sustains funding for the inter-agency Sustainable Communities Initiative, which is designed to help communities develop comprehensive, regional housing and transportation plans that result in sustainable development and more housing near transit. It does, however, propose funding reductions in the Community Development Block Grant and Community Service Block Grant programs.

As of February 15, 2011