

FEDERAL POLICY UPDATE



**AMERICAN
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Living Longer Better

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PRESIDENT OBAMA SUBMITS TO CONGRESS HIS FINAL BUDGET PROPOSAL

On February 9th, the President sent Congress a \$4.1 trillion FY2017 budget blueprint. In most respects, this year's budget package is similar to the budgets he submitted in prior years and, as previously noted, President Obama is not likely to bring many of the proposals across the finish line during his remaining term. Still, many of the ideas detailed in the final Obama budget proposal could be picked up by congressional Democrats, and they could be a starting point for the next Administration if a Democrat wins the White House.

Once again, most of the President's proposed individual income tax increases are aimed at upper income taxpayers and his budget continues to propose tax increases that would have adverse implications for the real estate sector. On the positive side, the President's budget again emphasizes Alzheimer's research and proposes increased funding for in-home and community-based services. Below is a summary of key provisions that could impact seniors housing.

Tax Proposals

Most of the President's tax increase proposals are retreads from prior budgets and they will not receive a warm reception in the Republican Congress outside of the context of major tax reform. Although the two parties remain far apart on details, both sides remain very interested in pursuing some version of tax reform, and particularly international tax reform. And the tax increases in the President's budget discussed below remain among the primary policy changes under consideration to finance those reforms. They include the following:

- **Like-Kind Exchanges.** Limit the amount of capital gain deferred under section 1031 to \$1 million (indexed for inflation) per taxpayer per year.

- **Capital Gains.** Increase the top capital gains rate from 20% to 24.2%. The current-law 3.8% tax on net investment income would continue to apply, thus the maximum total rate, including the net investment income tax, would rise to 28%.
- **Low-Income Housing Tax Credit (LIHTC).** Several proposed changes to the low-income housing tax credit program, including allowing conversion of private activity bond volume cap into LIHTCs, allowing LIHTC-supported projects to elect a criterion employing a restriction on average income, adding preservation of federally-assisted affordable housing to the selection criteria for LIHTC allocation, removing the Qualified Census Tracts population cap, and requiring that LIHTC-supported housing protect victims of domestic abuse.
- **Estate and Gift Taxes.** Restore and permanently extend estate, gift, and Generation Skipping Tax parameters as they applied for calendar year 2009. Under this proposal, the top estate tax rate would be 45% and the lifetime exclusion would be \$3.5 million. Gifts would be taxed at a maximum rate of 45%, with a lifetime exclusion of \$1 million.
- **Limit the Value of Itemized Deductions and other Tax preferences to 28%.** The proposal would limit the value of specified deductions or exclusions from AGI and all itemized deductions to 28 cents on the dollar for higher wage earners.
- **Carried Interest.** Another repeat proposal to tax as ordinary income a partner's share of income on an "investment services partnership interest," regardless of the character of the income at the partnership level. In addition, the proposal would require the partner to pay self-employment taxes on such income.

- **Cadillac Tax.** Employer-sponsored health coverage in excess of a threshold is subject to a 40% excise tax starting in 2020. Proposal adjusts the thresholds in high-cost geographic areas.

Health Initiatives

- **Alzheimer's Disease.** The budget continues to prioritize Alzheimer's research education, and outreach by including \$910 million for the NIH to conduct basic neuroscience research, \$20 million to address the unique needs of Alzheimer's caregivers. and \$68 million will be provided to evaluate biomarkers and validate biological targets that play a key role in the progression of Alzheimer's disease.
- **BRAIN Initiative.** Provides \$195 million within NIH for the Brain Research through Advancing Innovative Neurotechnologies (BRAIN) Initiative, an increase of \$45 million over last year's funding.
- **In-Home and Community-Based Services.** The budget provides \$358 million to fund in-home and community-based services to help older Americans live independently, including support for in-home personal care, transportation assistance, and adult day care.
- **Long-Term Care Pilot Program.** Proposes pilot program to create a Medicaid comprehensive long-term care state plan option for up to five states, that would provide long-term care services across the continuum of care under one authority, creating equal access to home and community-based care and nursing facility care.

GSEs

- **Future of the GSEs.** The President does not propose specific housing finance reforms, but a discussion of the issue states that the Administration will work with Congress to pass comprehensive reforms. The budget says that absent those reforms, the Administration will continue to take actions intended to reduce taxpayer risk while ensuring the continued flow of mortgage capital.

HOUSE REPUBLICAN TASK FORCES TO DEVELOP POLICY AGENDA

On February 4th, House Republican leaders announced the formation of six task forces to develop a "bold, pro-growth agenda that will be presented to the country in the months ahead."

Ways and Means Committee Chairman Kevin Brady (R-TX) will lead the tax reform task force which has been charged with coming up with ideas to "create jobs, grow the economy, and raise wages by reducing rates, removing special interest carve-outs, and making our broken tax code simpler and fairer." No deadline for the task forces to complete their work has been announced, although Chairman Brady has indicated that he believes international tax reform should be tackled as the first step toward a bigger rewrite of the U.S. tax code that would lower rates and eliminate many narrow tax breaks.

SENATE CONSIDERATION OF TAX REFORM CONTINUES

Senate Finance Committee Chairman Orrin Hatch (R-UT) continues his work on a major tax reform proposal that would reduce taxes on companies while stopping short of cutting the corporate income tax rate. At the same time, the Finance Committee's leading Democrat, Ron Wyden (D-OR) is seriously considering resurrecting a proposal to completely rewrite the depreciation rules. Wyden is looking at a proposal released by former (and now retired) Finance Committee Chairman Max Baucus that would have included repeal of the like-kind exchange rules. ASHA and others in the real estate community intend to meet with the respective staffs to reemphasize the importance of the like-kind exchange rules with respect to real estate and to educate them on the need for fairer depreciation rules with respect to residential real estate.

CONGRESSIONAL COMMITTEES CONTINUE TO REVIEW EB-5 PROGRAM

Congressional supporters of comprehensive reforms to the EB-5 investor visa program wasted no time in returning to their examination of the issue. The Senate Judiciary Committee and the House Judiciary Committee held hearings in early February. Both Committees received testimony from the chief overseer of the EB-5 program, Nicholas Colucci, who described regulatory actions his agency plans to propose (such as increasing

minimum investment amounts and requiring business plan filings in advance of investor filings), and discussed legislative reforms that would “benefit the integrity” of the program. Members of both Committees voiced strong concerns about fraud, abuse, and potential national security risks associated with the investor program. However, most also expressed strong support of its overall goal and the benefits of attracting foreign investment to the U.S. Significantly, the members called for reform of the program, not repeal. ASHA has been working with a broad-based coalition on reforms to strengthen the program.

BIPARTISAN POLICY CENTER’S LONG-TERM CARE INITIATIVE ISSUES FIRST SET OF RECOMMENDATIONS

On February 1st, the Bipartisan Policy Center (BPC) released a report with the first set of recommendations from its Long-Term Care Initiative. Overall, the BPC report concludes that there is no single comprehensive solution that would be financially or politically viable but rather plans to recommend a series of programmatic changes designed to target the needs of individual populations.

The February report, “Initial Recommendations to improve the Financing of Long-Term Care,” focuses on proposals to increase access to the private long-term care insurance market, improve public programs such as Medicaid, and pursue a catastrophic insurance approach for individuals with significant long-term care needs such as Alzheimer’s disease. Specifically, the report recommends:

- Creating a new lower-cost, limited-benefit LTCI product (a “retirement LTCI”) designed to cover two to four years of benefits after a cash deductible or waiting period is met.
- Allowing individuals age 45 and older to use retirement savings from defined contribution plans to purchase LTCI without early withdrawal penalties.
- Providing incentives for employers to offer retirement LTCI through workplace retirement plans.
- Making it easier for states to offer home and community-based services (HCBS) under Medicaid by streamlining and simplifying existing authorities under current law waivers.

- Pursuing a deficit neutral public insurance approach for long-term costs

BPC intends to build on these initial recommendations by exploring additional long-term care financing options, including adding a long-term care benefit to Medigap and Medicare Advantage, developing a tax credit for caregiving expenses, establishing a respite-care benefit with Medicare, and allowing LTCI as an investment option within workplace retirement plans.

FHA ANNOUNCES INSURANCE RATE REDUCTION FOR TARGETED MULTIFAMILY HOME LOANS

On January 28th, the Federal Housing Administration (FHA) announced it is reducing multifamily insurance rates to encourage capital financing of affordable and energy-efficient apartments. The rates are scheduled to take effect on April 1, 2016.

The Agency is lowering its annual rates to 25 basis points for “broadly affordable” housing where at least 90% of the units are under Section 8 contract and/or covered by LIHTC affordability requirements. Rates for affordable mixed-income properties that set aside units based on affordability will be reduced to 35 basis points and energy-efficient properties committed to industry-recognized green building standards and energy performance in the top 25% of multifamily buildings nationwide will see a reduced annual rate of 25 basis points. The multifamily insurance rates will remain unchanged for market-rate properties that are not energy-efficient (as defined above). The Agency is also reducing upfront premiums for some properties. ASHA has joined a coalition effort urging HUD to extend that same MIP reduction to its Section 232 and Section 242 loan programs.

SENIORS HOUSING GUIDE TO FAIR HOUSING AND ADA COMPLIANCE NOW AVAILABLE

This newly revised publication, in its 5th Edition, provides timely and thorough information to seniors housing owners and operators about evolving issues regarding the Fair Housing Act and the ADA, court decisions and interpretations. Author Paul Gordon of the San Francisco-based law firm, Hanson Bridgett has conducted a comprehensive review of the landscape and produced a resource that should be required reading for all seniors housing professionals given the increased scrutiny of the industry by the S Dept. of Justice and the

US Dept. of Housing and Urban Development (HUD) and other fair housing enforcement agencies and civil rights groups. Member firms received a complimentary copy of the Guide. Additional copies are available for purchase. To place an order, contact Megs at admin@seniorshousing.org.

ASHA 2016 PUBLIC POLICY SURVEY

As you can see from this update, ASHA monitors and engages on many policy issues in Congress and at the federal agencies. Tax treatment of real estate, employment law, health insurance and assistance programs, immigration, access to capital and critical research funding are all on ASHA's advocacy radar. However, it is important from time to time to seek your feedback to ensure we are on track. To that end, you will be receiving a survey via email asking you to take a few minutes and let us know the policy issues that are important to you. Be on the lookout next week for the survey. We will report the findings as soon as we compile them. Thanks in advance for your participation.

For more information, please contact:

Jeanne McGlynn Delgado
(202) 885.5561 | Jeanne@seniorshousing.org

Randy Hardock
(202) 662.2293 | rhardock@davis-harman.com

David Schless
(202) 885.5560 | dschless@seniorshousing.org