

# ADVOCATES' GUIDE '23

A PRIMER ON FEDERAL AFFORDABLE HOUSING & COMMUNITY DEVELOPMENT PROGRAMS & POLICIES



NATIONAL LOW INCOME  
HOUSING COALITION



## NATIONAL LOW INCOME HOUSING COALITION

Established in 1974 by Cushing N. Dolbeare, the National Low Income Housing Coalition is dedicated to achieving racially and socially equitable public policy that ensures people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice.

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# Chapter 1:

# INTRODUCTION

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# About the *Advocates' Guide*

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**T**he *Advocates' Guide: An Educational Primer on Federal Programs and Resources Related to Affordable Housing and Community*

*Development* is a guide to affordable housing – but on many levels, it is much more. The *Guide* comprises hundreds of pages of useful resources and practical know-how, written by leading experts in the affordable housing and community development field with a common purpose: to educate advocates and affordable housing providers of all kinds about the programs and policies that make housing affordable to low-income people across America.

NLIHC is pleased to present the 2023 edition of the *Advocates' Guide*. For many years, the *Advocates' Guide* has been the leading authoritative reference for advocates and affordable housing providers seeking a quick and convenient way to understand affordable housing programs and policies.

With the right information and a little know-how, everyone can effectively advocate for housing programs with Members of Congress and other policymakers. Whether you are a student in an urban planning program, a new employee at a housing agency or community development corporation, or a seasoned affordable housing advocate looking for a refresher on key programs, this book will give you the overview of housing programs and advocacy tools you need to be a leader in the affordable housing movement and to advocate effectively for socially-just housing policy for low-income Americans.

## HOW TO USE THE *ADVOCATES' GUIDE*

The first section orients you to affordable housing and community development programs with articles that explain how affordable housing works, why it is needed, and what NLIHC believes are the highest housing priorities, including the national Housing Trust Fund. The advocacy resources section provides vital information to guide your advocacy with the legislative and

executive branches of government, as well as tips about how organizations and individuals can be effective advocates.

The next few sections cover housing programs for low-income households, additional housing and community development programs, special housing issues, housing tools, community development resources, and low-income programs and laws. These are the core affordable housing programs and issues to understand.

Take this *Guide* with you to meetings with lawmakers and share it with your friends and colleagues. The more advocates use this *Guide*, the greater our collective impact will be.

## A NOTE OF GRATITUDE

The *Advocates' Guide* was compiled with the help of many of our partner organizations. We are deeply grateful to each of the authors for their assistance as the *Advocates' Guide* would not be possible without them. Several articles build on the work of authors from previous versions of the *Advocates' Guide*, and we appreciate and acknowledge their contributions as well.

Thank you to PNC for their ongoing support for this publication.



The PNC Financial Services Group



# 2023 Public Policy Priorities

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**N**LIHC works with Members of Congress, the Administration, affordable housing and community development organizations and advocates, low-income renters, and other stakeholders across the nation to ensure that the lowest-income people – including people of color, seniors, people with disabilities, families with children, people experiencing homelessness, and others – have a safe, affordable, and accessible place to call home.

In 2023, NLIHC will focus on ongoing housing challenges facing renters with the lowest incomes and people experiencing homelessness as a result of the coronavirus pandemic and rampant inflation. NLIHC will also advocate our long-term policy priorities, including:

- Ensuring federal responses to the pandemic and other disasters are fair and equitable;
- Protecting, monitoring, and expanding the national Housing Trust Fund;
- Preserving and increasing resources for federal affordable housing programs serving extremely low-income families;
- Ensuring protections for low-income renters;
- Promoting equitable access to affordable housing; and
- Championing anti-poverty solutions.

## PROTECT AND EXPAND THE NATIONAL HOUSING TRUST FUND

The national Housing Trust Fund (HTF) is the first new federal housing resource in a generation exclusively targeted to help build, preserve, and rehabilitate housing for people with the lowest incomes. NLIHC, its members, and other stakeholders played a critical role in the creation of the Housing Trust Fund in the “Housing and Economic Recovery Act of 2008.”

While the HTF has been provided with \$2.6 billion to date, far more resources are needed to address the severe shortage of housing affordable

and available to people most impacted by America’s housing crisis: those with the lowest incomes. NLIHC leads the [Housing Trust Fund Implementation and Policy Group](#), a coalition of national advocates committed to protecting and expanding this new resource.

In 2023, NLIHC will continue to build congressional support to increase funding to the Housing Trust Fund through legislative opportunities.

## PRESERVE AND INCREASE RESOURCES FOR FEDERAL AFFORDABLE HOUSING PROGRAMS

Any new federal housing resources must be targeted to address the underlying cause of the affordable housing crisis: the severe shortage of affordable homes for people with extremely low incomes.

### Increasing Federal Budgets for Affordable Housing

Despite a proven track record, federal housing programs are chronically underfunded. Today, just one in four families eligible for federal housing assistance receives the help they need. NLIHC leads a continuum of affordable housing and community development organizations through the [Campaign for Housing and Community Development Funding \(CHCDF\)](#), a coalition of 75 national and regional organizations dedicated to ensuring the highest allocation of resources possible to support affordable housing, homelessness, and community development.

In 2023, NLIHC will advocate for increasing resources for key affordable housing programs, including Housing Choice Vouchers, public housing, project-based rental assistance, homeless assistance grants, and legal aid to prevent evictions, among many other programs, through the appropriations process.

## Expanding and Reforming Resources in the Tax Code

NLIHC supports the creation of a new, innovative renters' tax credit to help the lowest-income families afford a place to call home. NLIHC supports efforts to expand and reform the Low Income Housing Tax Credit (LIHTC) program to better serve households with the greatest, clearest needs. Any expansion of LIHTC should be paired with reforms to allow the program to increase its ability to serve extremely low-income renters and encourage development in challenging markets, like rural communities and tribal lands. Any effort to divert scarce federal resources to address the limited housing challenges faced by higher income households is wasteful and misguided.

## Increasing Resources to Build and Preserve Housing in Tribal and Rural Areas

Native Americans living in tribal areas have some of the most pressing housing needs in the United States, with exceptionally high poverty rates, low incomes, overcrowding, lack of plumbing and heat, and unique development issues. Despite the pressing need for safe, decent homes, federal investments in affordable housing on tribal lands are historically underfunded.

NLIHC works with tribal leaders and advocates to increase housing resources for tribal nations with the greatest needs, improve data collection on tribal housing needs, and reduce federal barriers to housing development. In 2023, there may be an opportunity to expand tribal housing resources through appropriations and other legislative opportunities.

NLIHC also works to preserve and expand affordable housing available in rural areas by supporting funding for USDA Rural Development programs and through opportunities to preserve the agency's rental housing portfolio.

## ENSURE PROTECTIONS FOR LOW-INCOME RENTERS

### Opposing Efforts to Cut Housing Benefits

NLIHC opposes efforts to cut housing benefits through rent increases, work requirements, time limits, and other restrictions. These reforms are neither cost effective nor a solution to the very real issue of poverty impacting millions of families living in subsidized housing or in need of housing. NLIHC leads the [Preventing Benefit Cuts](#) coalition to educate Members of Congress on proven solutions to ending housing poverty, including expanding—not slashing—investments in affordable homes, job training, education, childcare, and other policies to help families thrive.

### Opposing Anti-Immigrant Proposals

NLIHC opposes proposals that deter eligible immigrant families from seeking housing benefits or that force immigrant families currently receiving housing benefits to forego that assistance or face eviction. NLIHC co-leads the [Keep Families Together](#) campaign with the National Housing Law Project to oppose proposals to prohibit “mixed-status” families from living in public and other subsidized housing at HUD and USDA. NLIHC also participates in the [Protecting Immigrant Families](#) campaign, which opposed a harmful rule issued under the Trump Administration that would have made it easier for the Departments of Homeland Security and Justice to declare certain immigrants to be a “public charge,” denying them admission to the U.S., and possibly threatening deportation. The Biden Administration a [final “public charge” regulation](#) issued in September 2022 that added critical protections to immigrant families' access to social safety net programs, including housing.

In 2023, these coalitions will work to expand access to housing for immigrant households.

### Preventing Evictions and Housing Instability

During the coronavirus pandemic, NLIHC advocated for [essential resources and protections](#) to address the health and housing needs of

people experiencing homelessness and low-income renters. Through our End Rental Arrears to Stop Evictions (ERASE) project, NLIHC tracks, analyzes, and shares best practices for emergency rental assistance programs. More information is available on [NLIHC's ERASE website](#).

NLIHC advocates for the creation of a permanent emergency rental assistance program, building on the infrastructure created during the pandemic to keep families stably housed. NLIHC advocates for the “Eviction Crisis Act,” which would provide direct financial assistance to extremely low-income households facing an unexpected economic crisis that threatens their housing stability. Temporary assistance can stabilize households experiencing sudden economic shocks before it leads to eviction and, in worst cases, homelessness, which can be traumatizing and require more prolonged and extensive housing assistance. NLIHC supports legislation advocating for “just cause” eviction standards, a national right to counsel, increased funding for legal aid, and other renter protections.

### **Promoting Healthy Housing**

All low-income renters deserve to live in decent, accessible, and affordable high-quality homes. NLIHC supports efforts to improve housing conditions in federally assisted housing, including providing at least \$70 billion to address the capital needs backlog in public housing, efforts to revise Real Estate Assessment Center inspection processes, and addressing lead-based paint, carbon monoxide poisoning, and other unsafe and unhealthy housing conditions.

### **Protecting Federally Assisted Residents**

For decades, Congress has failed to provide adequate funding to maintain public housing in good condition, and as a result, public housing faces a more than \$70 billion backlog in capital improvement needs. In response, HUD has sought to “reposition” public housing by reducing the number of homes in the public housing stock through the demolition or disposition of public housing, voluntary conversion of public housing

to vouchers, and the retention of assets after a Declaration of Trust release. NLIHC monitors these efforts and those of the Rental Assistance Demonstration Program, which converts public housing to Section 8 funding streams, to help ensure that current and future public housing residents are not negatively impacted and that resident protections and other requirements are enforced.

In 2023, NLIHC will work to secure major investments to repair and rehabilitate public housing, and to advance policies that protect renters living in public housing.

### **Protecting Survivors of Domestic Violence**

NLIHC supports federal protections to ensure survivors of domestic violence, dating violence, sexual assault, stalking, and human trafficking have access to safe, accessible homes and the ability to leave an unsafe housing situation without risking possible homelessness. NLIHC supports legislation to bar federally assisted housing providers from screening out applicants or evicting tenants because of the criminal activity of an abuser and to prohibit retaliation against a tenant for calling law enforcement or emergency assistance for help.

## **PROMOTE EQUITABLE ACCESS TO AFFORDABLE HOUSING AND OPPORTUNITY**

NLIHC believes in just communities, where everyone has access to economic and educational opportunities, as well as affordable housing. Evidence shows that access to stable, affordable housing in communities of opportunity has broad, positive impacts. It can lead to better health and education outcomes and higher lifetime earnings, especially for children.

### **Advancing Fair Housing**

For more than 50 years, the “Fair Housing Act” has barred housing discrimination on the basis of race, color, religion, sex, familial status, national origin, or disability and required communities take active steps to end racial segregation. In 2023, NLIHC will continue to lead efforts to advance fair housing and other important

regulations, such as the 2015 Affirmatively Furthering Fair Housing rule, the 2013 Disparate Impact rule, and the 2016 Equal Access in Accordance with an Individual's Gender Identity rule. These policies help promote more equitable communities, prevent hidden discrimination through biased policies or practices, and ensure appropriate access to services regardless of race, sexual orientation or gender identity.

NLIHC advocates for the enactment of the "[Fair Housing Improvement Act](#)," which would expand the "Fair Housing Act of 1968" to prohibit housing discrimination on the basis of "military status," "veteran status," and "source of income," making it easier for low-income households, veterans, and servicemembers to access affordable housing in the communities of their choice.

NLIHC supports increasing mobility opportunities through new allocations of mobility vouchers and expanded mobility counseling, and continued implementation of HUD Small Area Fair Market Rents in certain metropolitan areas that protect current and future tenants.

### **Achieving Criminal-Legal System Reform**

The United States incarcerates its citizens at a shockingly high rate and nearly one in three Americans has a criminal record. Because of bias inherent to the criminal-legal system, Black and Latino people, people with a disability, and members of the LGBTQ community are disproportionately impacted by the criminal legal system. Formerly incarcerated individuals who return to their communities face barriers to accessing affordable housing, putting them at risk of homelessness and recidivism. NLIHC advocates for safe, stable, affordable and accessible housing for those who have been involved in the criminal or juvenile legal system so that formerly incarcerated people and those with conviction and arrest histories can successfully reintegrate into their communities and make the most of their second chance. In 2023, there will be opportunities to advance these priorities through legislative and administrative reforms.

### **Advancing Housing First**

NLIHC advocates to end the criminalization of homelessness and advance Housing First, a bipartisan, evidence-based practice to ending homelessness that prioritizes access to stable, affordable, accessible housing with voluntary supportive services, without imposing prerequisites. Housing First is a flexible model that can be adapted to address the unique needs in local communities and is tailored to the challenges facing individuals.

Misguided efforts to undermine Housing First, criminalize homelessness, impose punitive requirements, and prevent the development of affordable housing are counterproductive and will make it even harder to people to exit homelessness. Nationwide, people experiencing homelessness are targeted, arrested, and jailed under laws that criminalize homelessness by making illegal basic acts that are necessary for life. These laws are ineffective, expensive, and often violate homeless persons' civil and human rights. NLIHC will work in 2023 to ensure federal policies discourage local governments from criminalizing homelessness and advance Housing First models.

### **Creating Greater Opportunities for Employment**

NLIHC supports efforts to improve HUD's Section 3 program, which has the potential to serve as a robust resource for job creation in low-income communities. Section 3 aims to ensure jobs, training, and contracting opportunities associated with HUD-assisted projects go to low-income people, including residents of federally assisted housing, and to the businesses that hire them. NLIHC also supports an expansion of the Family Self Sufficiency program, linking HUD residents to services and educational opportunities that can lead to improved employment and earned income.

## ENSURE FEDERAL RESPONSES TO DISASTERS ARE FAIR AND EQUITABLE

NLIHC leads the Disaster Housing Recovery Coalition (DHRC) of 850 national, state, and local organizations, including many working directly with disaster-impacted communities and with first-hand experience recovering after disasters. We work to ensure a complete and equitable housing recovery for the lowest-income and most marginalized households, including people of color, people with disabilities, people experiencing homelessness, seniors, families with children, immigrants, and other individuals and their communities.

The coalition will work in 2023 to advance a comprehensive set of recommendations for Congress, FEMA, and HUD on disaster housing recovery issues. We will work to promote policy recommendations to overcome barriers to an equitable disaster housing recovery, and advocate for increased funding to respond to the needs of disaster survivors with the lowest incomes.

## CHAMPION ANTI-POVERTY SOLUTIONS

Beyond ensuring access to affordable housing, NLIHC is strongly committed to enacting legislation and protecting resources that alleviate poverty. NLIHC supports efforts to protect and expand vital safety net programs, including the Supplemental Nutrition Assistance Program, Earned Income Tax Credit, Child Tax Credit, unemployment insurance, Social Security, Medicaid, Medicare, the Children's Health Insurance Program, the "Affordable Care Act," Supplemental Security Income, Social Security Disability Income, and Temporary Assistance for Needy Families. Moreover, NLIHC strongly supports efforts to increase the minimum wage and to target federal resources to communities with persistent poverty.



# A Brief Historical Overview of Affordable Rental Housing

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**A**ffordable housing is a broad and complex subject intertwined with many disciplines including finance, economics, politics, and social services, among others. Despite this complexity, advocates can learn the essential workings of affordable housing and be prepared to advocate effectively for the programs and policies that ensure access to decent, accessible, and affordable, housing for all.

This article provides a broad, though not exhaustive, overview of the history of affordable rental housing programs in the United States and describes how those programs work together to meet the housing needs of people with low incomes.

## HISTORY

As with any federal program, federal housing programs have grown and changed based on the economic, social, cultural, and political circumstances of the times. The programs and agencies that led to the establishment of the federal department now known as HUD began in the early 1930s with construction and finance programs meant to alleviate some of the housing hardships caused by the Great Depression.

An act of Congress in 1934 created the Federal Housing Administration (FHA), which made home ownership affordable for a broader segment of the public with the establishment of mortgage insurance programs. These programs made possible the low down payments and long-term mortgages that are commonplace today but were almost unheard of at that time. However, the FHA openly discriminated against households of color, and particularly Black households, in issuing loans and in subsidizing housing construction. FHA further entrenched neighborhood segregation through a process called “redlining,” refusing to issue mortgages in and near Black neighborhoods, and requiring homes constructed with an FHA subsidy only be sold to white households.

In 1937, the “U.S. Housing Act” sought to address the shortage of affordable housing for low-income people through public housing. The nation’s housing stock at the time was of very poor quality in many parts of the country, and inadequate housing conditions such as a lack of hot running water or dilapidation was commonplace for poor families. Public housing provided significant improvements, but primarily for low-income white families; Black families were confined to lower-quality, segregated public housing. The federal government eventually opened all public housing to Black households, while at the same time subsidizing white families moving into more segregated suburbs, leading to disinvestment from urban cities. Federal programs were developed to improve urban infrastructure and to clear “blight,” which often meant the wholesale destruction of neighborhoods and housing occupied by immigrants and people of color. These discriminatory practices were part of the foundation for the racial and social inequities in housing and economic opportunity our country continues to grapple with today.

The cost of operating public housing soon eclipsed the revenue brought in from resident rent payments, a reality endemic to any program that seeks to provide housing or other goods or services to people whose incomes are not high enough to afford marketplace prices. In the 1960s, HUD began providing subsidies to Public Housing Agencies (PHAs) that would help make up the difference between revenue from rent and the cost of adequately maintaining housing. In 1969, Congress passed the Brooke Amendment, codifying a limitation on the percentage of income a public housing resident could be expected to pay in rent. The original figure was 25% of a person’s total income and was later raised to the 30% standard that exists today. Advocates often refer to these as “Brooke rents,” for Senator Edward W. Brooke, III (R-MA), for whom the amendment is named.

In 1965, Congress elevated housing to a cabinet-level agency of the federal government by establishing HUD, which succeeded its predecessors the National Housing Agency and the Housing and Home Finance Agency. HUD is not the only federal agency to have begun housing programs in response to the Great Depression – the U.S. Department of Agriculture (USDA) sought to address the poor housing conditions of farmers and other rural people with the 1935 creation of the Resettlement Administration, a predecessor to the USDA’s Rural Development programs. USDA’s rural rental and homeownership programs improved both housing access and housing quality for the rural poor.

Beginning in the late 1950s and continuing into the 1960s, Congress created several programs that leveraged private investment to create new affordable rental housing. In general, these programs provided low interest rates or other subsidies to private owners who would purchase or rehabilitate housing to be rented at affordable rates. The growth in these private ownership programs resulted in a boom in affordable housing construction through the 1970s, but once the contracts forged by HUD and private owners expired, or owners decided to pay their subsidized mortgages early, those affordable units were vulnerable to being lost from the stock.

The “Civil Rights Acts” of 1964 and 1968 included housing provisions intended to prevent discrimination against members of protected classes – including discrimination on the basis of race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, and disability – in private or public housing. Different administrations have prioritized these fair housing provisions to varying extents, but their existence has provided leverage to advocates seeking to expand access to affordable, decent housing, particularly for people of color.

In January 1973, President Richard Nixon created a moratorium on the construction of new rental and homeownership housing by the major HUD programs. The following year, the “Housing and Community Development Act of 1974” made

significant changes to housing programs, marked by a focus on block grants and an increase in the authority granted to local jurisdictions (often referred to as “devolution of authority”). This act was the origin of the tenant-based and project-based Section 8 rental assistance programs and created the Community Development Block Grant (CDBG) from seven existing housing and infrastructure programs.

Structural changes in the American economy, deinstitutionalization of persons with mental illnesses without adequate supports for community integration and independent living, and a decline in housing and other support for low-income people resulted in a dramatic increase in homelessness in the 1980s. The shock of visible homelessness spurred congressional action and the “McKinney Act of 1987” (later renamed the “McKinney-Vento Act”) created new housing and social service programs within HUD specially designed to address homelessness.

Waves of private affordable housing owners deciding to opt out of the project-based Section 8 program occurred in the 1980s and 1990s. Housing advocates, including PHAs, nonprofit affordable housing developers, local government officials, nonprofit advocacy organizations, and low-income renters, organized to preserve this disappearing stock of affordable housing using whatever funding and financing was available.

The Department of the Treasury’s Internal Revenue Service was given a role in affordable housing development in the “Tax Reform Act of 1986” with the creation of the Low-Income Housing Tax Credit, which provides tax credits to those investing in the development of affordable rental housing. That same act codified the use of private activity bonds for housing finance, authorizing the use of such bonds for the development of housing for homeownership as well as the development of multifamily rental housing.

The “Cranston-Gonzales National Affordable Housing Act of 1990” (NAHA) created the Comprehensive Housing Affordability Strategy (CHAS). It was now the obligation of jurisdictions to identify priority housing needs and to



determine how to allocate the various block grants (such as CDBG) that they received. CHAS is the statutory underpinning of the current Consolidated Plan obligation. Cranston-Gonzales also created the HOME program, which provides block grants to state and local governments for housing. In addition, NAHA created the Section 811 program, which has provided production and operating subsidies to nonprofits for housing persons with disabilities.

Housing advocates have worked for more than a decade for the establishment and funding of the national Housing Trust Fund (HTF), which is the first new housing resource in a generation. The HTF is highly targeted and is used to build, preserve, rehabilitate, and operate housing affordable to extremely low-income people. HTF was signed into law by President George W. Bush in 2008 as a part of the “Housing and Economic Recovery Act.” In 2016, the first allocation of HTF dollars was provided to states.

Outside of the HTF, no significant investment in new housing affordable to the lowest income people has been made in more than 30 years and there still exists a great shortage of housing affordable to that population. As studies from NLIHC show, federal investment in housing has not increased at pace with the overall increase in the federal budget, and expenditures on housing go overwhelmingly to homeownership, not to rental housing for people with the greatest need. Federal spending caps enacted in 2011 further strained efforts to adequately fund programs.

The coronavirus pandemic underscored the inextricable link between housing and health, and Congress provided nearly \$85 billion in federal funding to help communities respond to the housing needs of low-income renters and people experiencing homelessness during the pandemic. The “Coronavirus Aid, Relief, and Economic Security Act of 2020” provided more than \$12 billion in funding for HUD programs, including \$4 billion to respond to the needs of people experiencing homelessness through HUD’s Emergency Solutions Grants program, \$5 billion for Community Development Block Grants, \$1.25 billion for the Housing Choice Voucher Program,

and \$1 billion for the project-based rental assistance program, among other investments.

The emergency COVID-19 relief package, passed with the omnibus spending package for fiscal year 2021, provided \$25 billion in emergency rental assistance to keep families experiencing a COVID-19 related hardship with the assistance needed to pay rent and remain stably housed. The “American Rescue Plan Act of 2021” allocated another \$27.4 billion for emergency rental assistance and \$5 billion for new Emergency Housing Vouchers, targeted to people experiencing or at imminent risk of homelessness and survivors of domestic violence, dating violence, sexual assault, stalking, or human trafficking.

## STATE AND LOCAL HOUSING PROGRAMS

State and local governments play a role in meeting the housing needs of their residents. The devolution of authority to local governments that began in the 1970s meant that local jurisdictions had greater responsibility for planning and carrying out housing programs. Some communities have responded to the decrease in federal housing resources by creating emergency and ongoing rental assistance programs, as well as housing production programs. These programs have been important to low-income residents in the communities where they are available, but state and local efforts have not been enough to make up for the federal disinvestment in affordable housing.

Cities, counties, and states across the country have begun creating their own rental assistance programs as well as housing development programs, often called housing trust funds, to meet local housing needs and help fill in the gaps left by the decline in federal housing production and rental assistance. Local funding sources may be targeted to specific income groups or may be created to meet the needs of a certain population, such as veterans, seniors, or families transitioning out of homelessness. Funding sources include local levy or bond measures and real estate transaction or document recording fees, among others.

Federal decision-making has had a direct impact on states' responses to the shortage of housing affordable to extremely low-income people. In 1999, the U.S. Supreme Court found in *Olmstead v.L.C.* that continued institutionalization of people with disabilities who were able to return to the community constituted discrimination under the "Americans with Disabilities Act." This decision means that states are now developing and providing community-based permanent supportive housing for people with disabilities in response to *Olmstead* litigation or to avoid future litigation.

## DEVELOPING AFFORDABLE HOUSING AT THE LOCAL LEVEL

The expense of producing and operating housing affordable to low-income renters, and the multitude of funding sources available to finance it, make affordable housing development a complicated task.

Affordable housing developers, including PHAs redeveloping their housing stock, must combine multiple sources of funding to finance housing development or preservation. These funding sources can be of federal, state or local origin, and can include private lending and grants or donations. Some developers include market-rate housing options within a development to generate revenue to cross-subsidize units set aside for lower-income tenants. Each funding source will have its own requirements for income or population targeting, as well as oversight requirements. Some funding sources require developers to meet certain environmental standards or other goals, such as historic preservation or transit-oriented development.

Accessing these many funding sources requires entry into application processes which may or may not have complementary timelines and developers risk rejection of even the highest merit applications due to a shortage of resources. Developers incur costs before the first shovel hits the ground as they work to plan their developments around available funding sources and their associated requirements.

Developers encounter another set of requirements in the communities in which they work. They must

operate according to local land use regulations, and sometimes encounter community opposition to a planned development, which can jeopardize funder support for a project.

Once developments open, depending on the needs of the residents, services and supports may be included in the development. These can range from after-school programs to job training to physical or mental health care. This can mean working with another set of federal, state, and local programs, and nonprofit service providers.

Despite these challenges, affordable housing developers succeed every day, building, rehabilitating, and preserving quality housing for low-income people at rents they can afford.

## THE FUTURE OF AFFORDABLE HOUSING

The need for affordable housing continues to grow, particularly the need for housing affordable to the lowest-income people. Nationwide, there are only 36 units of housing affordable and available for every 100 extremely low-income Americans. Federal housing assistance only serves one quarter of those who qualify and special populations, such as disabled veterans returning from combat or lower income seniors, are increasing in number and need.

At the same time, the existing stock of affordable rental housing is disappearing due to deterioration and the exit of private owners from the affordable housing market. According to the National Housing Trust, our nation loses two affordable apartments each year for each one created. Local preservation efforts have seen success, and resources like the National Housing Preservation Database are helpful, but it is a race against time.

Finally, the very funding structure of most affordable housing programs puts them at risk at both the federal and local levels. Most federal housing programs are appropriated, meaning that the funding amounts can change from year to year, or disappear altogether. State and local programs can be similarly volatile, because they are often dependent on revenue from fees or

other market-driven sources and are vulnerable to being swept into non-housing uses. Ensuring funding at amounts necessary to maintain programs at their current level of service, much less grow them, is a constant battle.

## THE ROLE OF ADVOCATES

Affordable housing advocates have a unique opportunity to make the case for affordable rental housing with Members of Congress as well as with local policymakers. As the articles in this *Guide* demonstrate, subsidized rental housing is more cost-effective and sustainable than the alternative, be it institutionalization, homelessness, or grinding hardship for the lowest-income families. After decades of overinvestment in homeownership, the housing market collapse, and the growth of a gaping divide between the resources and prospects of the highest and lowest income people, it is necessary for Congress to significantly expand resources to help end homelessness and housing poverty once and for all.

Those who wish to see an end to homelessness must be unyielding in their advocacy for rental housing that is affordable and accessible to low-income people. Over the decades of direct federal involvement in housing, we have learned much about how the government, private, and public sectors can partner with communities to create affordable housing that will improve lives and heal whole neighborhoods. We must take this evidence, and our stories, to lawmakers to show them that this can, and must, be done.

# The National Need for Affordable Housing

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By Andrew Aurand, Senior Vice President for Research, and Emma Foley, Research Analyst, NLIHC

**T**he United States faces a significant shortage of affordable rental housing. The shortage is most severe for households with extremely low incomes, defined as income at or below the poverty guideline or 30% of their area's median income, whichever is higher. According to the 2020 American Community Survey (ACS), only 7.4 million rental homes are affordable for the nation's 11 million extremely low-income (ELI) renter households under the assumption that households should spend no more than 30% of their income on housing costs (unless otherwise noted, figures are based on the 5-yr 2020 ACS Public Use Microdata Sample). Not all 7.4 million homes, however, are available. Approximately 3.4 million are occupied by higher-income households. As a result, approximately 4 million rental homes are affordable and available for ELI renters, leaving a shortage of nearly 7 million. In other words, there are fewer than four affordable and available rental homes for every ten ELI renter households. ELI renters have the greatest housing needs relative to all other income groups and addressing their needs should be the highest national housing priority.

The severe shortage of affordable homes for the lowest-income renters is systemic, affecting every state and metropolitan area. Without public subsidy, the private market is unable to produce new rental housing affordable to these households because the rents that the lowest-income households can afford to pay typically do not cover the development costs and operating expenses of such housing. New private rental housing, therefore, is largely targeted to the higher-price end of the market and the lowest-income renters must rely on older, private rental housing or subsidies.

The private market, however, does not generate

an adequate supply of affordable older rental homes and subsidies are woefully inadequate. In strong markets, owners of older rental homes have an incentive to redevelop their properties to receive higher rents from higher-income households. In weak markets, owners of older rental homes have an incentive to abandon their rental properties or convert them to other uses when rental income is too low to cover basic operating costs and maintenance. Between 2011 and 2019, the number of rental homes renting for under \$600 per month fell by 3.9 million, and their share of the national rental stock fell from 32% to 22% (Joint Center for Housing Studies, 2022: *America's Rental Housing 2022*). Meanwhile, just one in four households eligible for federal housing assistance get the help they need (Center on Budget and Policy Priorities, 2017: *Chart Book: Federal Housing Spending Is Poorly Matched to Need*).

As a result of these challenges, 86% of ELI renter households spend more than 30% of their income on housing and 71% spend more than half of their income on housing, making them severely cost burdened. ELI households account for more cost burdened and severely cost burdened renter households than any other income group. The 7.8 million severely cost burdened ELI renter households account for 72% of the 10.9 million severely cost burdened renter households in the U.S.

The most vulnerable ELI renters, such as people with disabilities relying on Supplemental Security Income (SSI) and minimum wage workers, typically face the greatest burdens. A renter relying on SSI could only afford a rent of \$252 per month in 2022, while the average monthly rent for a modest one-bedroom home was \$1,105. For the 4.6 million people with disabilities whose sole source of income is SSI, such costs are unsustainable (Technical Assistance Collaborative, 2022: *Priced Out*). Workers earning the minimum wage also face significant barriers to affording housing. In only 274 counties out of more than 3,000 counties

nationwide can a full-time worker at minimum wage afford a modest one-bedroom apartment at the fair market rent (NLIHC, 2022: *Out of Reach 2022: The High Cost of Housing*).

Low-wage employment often does not pay enough for workers to afford housing and other necessities. A person working full-time every week of the year needs to earn an hourly wage of \$25.82 to afford a modest two-bedroom rental home without spending more than 30% of their income on housing, or \$21.25 for a modest one-bedroom apartment. These wages are far higher than the federal minimum wage and higher than wages paid in many of the most common occupations in the country, such as food and beverage service workers, retail workers, nursing assistants, and home health aides.

Rents have historically been out of reach for the lowest income renters, but dramatic rent increases over the last two years have likely made finding and maintaining affordable housing even harder for low-income households. Between the first quarter of 2021 and 2022, median rents for two-bedroom apartments increased nearly 18% (NLIHC, 2022: *Out of Reach 2022: The High Cost of Housing*). These rent increases were widespread nationwide, with 85% of metropolitan counties experiencing a rent increase of over \$100 during this time period. Rent growth continued into 2022, increasing nearly 6% between January and October (Apartment List, 2022: *National Rent Report*).



# A Racial Equity Lens is Critical to Housing Justice Work

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By Renee M. Willis, SVP, Racial Equity, Diversity, and Inclusion, NLIHC

*During the 20th century, federal, state, and local governments systematically implemented racially discriminatory housing policies that contributed to segregated neighborhoods and inhibited equal opportunity and the chance to build wealth for Black, Latino, Asian American and Pacific Islander, and Native American families, and other underserved communities. Ongoing legacies of residential segregation and discrimination remain ever-present in our society. These include a racial gap in homeownership; a persistent undervaluation of properties owned by families of color; a disproportionate burden of pollution and exposure to the impacts of climate change in communities of color; and systemic barriers to safe, accessible, and affordable housing for people of color, immigrants, individuals with disabilities, and lesbian, gay, bisexual, transgender, gender non-conforming, and queer (LGBTQ+) individuals.*

*—January 26, 2021, Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies, President Joe Biden*

**R**acial, residential segregation, displacement, and exclusion are mechanisms to exacerbate racial inequality in housing. Federal, State, and local governments—as President Biden acknowledges in his memorandum to Secretary of Housing and Urban Development Marcia Fudge—systematically and purposefully implemented racially discriminatory housing policies that excluded African Americans and others from equal access to housing and opportunities for economic mobility.

When all people have accessible and affordable homes in diverse and inclusive communities, we all benefit. Our economy benefits. Research shows that housing influences outcomes across many sectors. Students do better in school when they live in stable, affordable homes. People are

healthier and can more readily escape poverty and homelessness. Yet, people of color are significantly more likely than white people to face systemic barriers to quality, accessible, and affordable homes.

Housing is the pathway to economic mobility and opportunity. Yet for far too many people in this country, the pathway is full of roadblocks.

To learn more about the role of the government's role in designing and perpetuating racial inequality in housing, read the article *Lofty Rhetoric, Prejudiced Policy: The Story of How the Federal Government Promised—and Undermined—Fair Housing* in Chapter 2 of this *Advocates' Guide*.

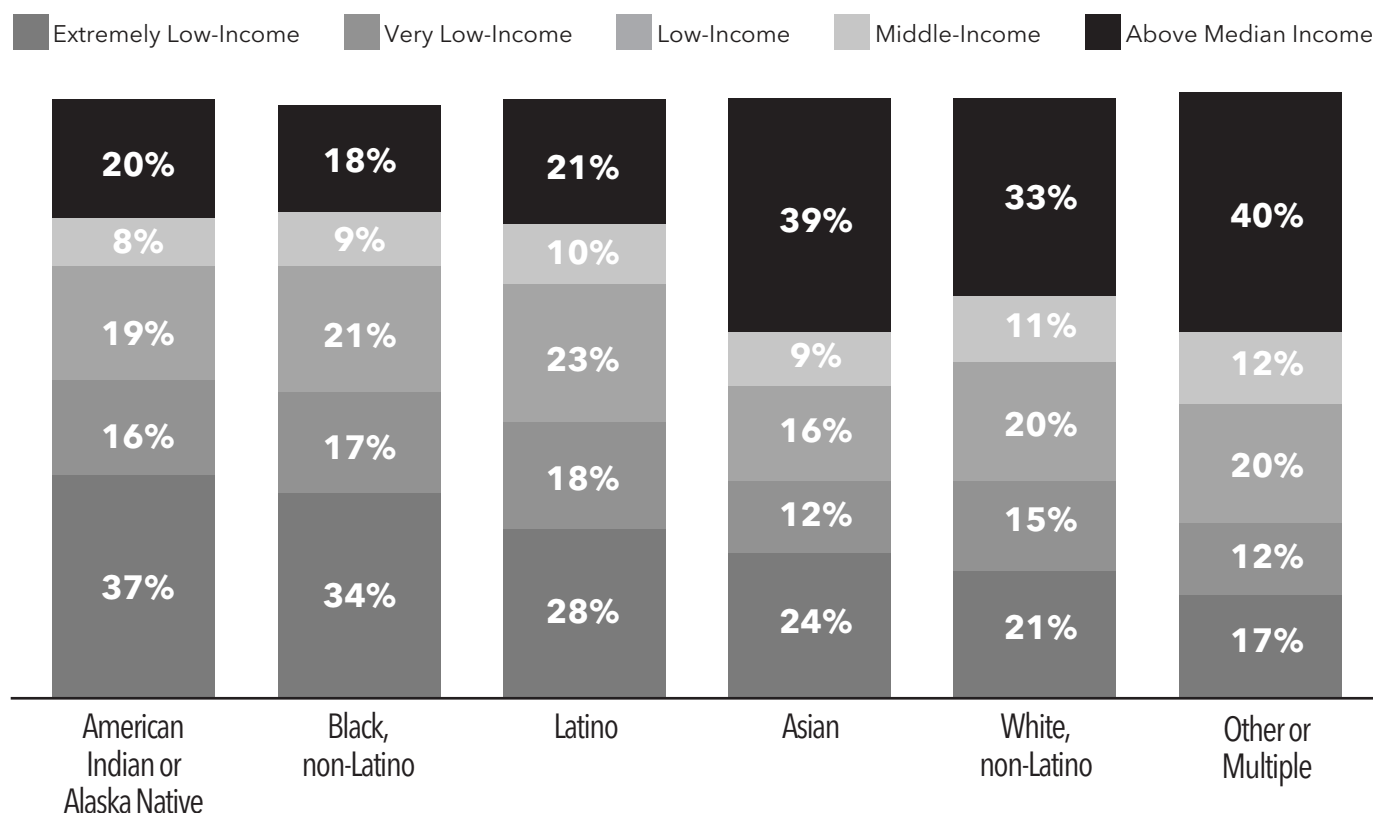
## RACIAL DISPARITIES IN HOUSING

The orchestrated displacement, exclusion, and segregation of people of color by the United States government have exacerbated racial inequality in the United States. The effects are seen and felt today. According to NLIHC's 2022 *The Gap: A Shortage of Affordable Rental Homes*, "Households of color and Latinos are much more likely than white households to be extremely low-income renters who face the most severe shortages of affordable housing." The report finds that 6% of white non-Hispanic households are extremely low-income renters, yet 20% of Black households, 18% of American Indian or Alaska Native households, 15% of Hispanic households, and 10% of Asian households are extremely low-income renters.

As Figure 10 illustrates, renter households of color are more likely to be extremely low-income. Thirty-seven percent of American Indian or Alaska Native renters, 34% of Black renters, 28% of Latino renters, and 24% of Asian renters have extremely low incomes, compared to 21% of white, non-Latino renters.

This racial disparity is the result of historical inequities and racist policies and practices that have engendered higher homeownership rates, greater wealth, and higher incomes among white

FIGURE 10: INCOME DISTRIBUTION OF RENTERS BY RACE AND ETHNICITY



Source: NLIHC tabulations of 2020 5-Year ACS PUMS data. Some columns do not sum to 100% due to rounding.

households.

## STRUCTURAL RACIALIZATION

When talking about racism, most people tend to focus on individual beliefs, biases, and actions. However, it is so much more. Understanding that racism exists not simply in individuals, but “[in] our societal organization and understandings,” [John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. Miami L. Rev. 1067, 1073 (1998)] is key to developing strategies and solutions to combat it. Our practices, cultural norms and institutional arrangements help create and maintain racialized outcomes.

Structural racialization (also referred to as structural racism) “is a set of processes that may generate disparities or depress life outcomes without any racist actors” [John A. Powell, *Deepening Our Understanding of Structural Marginalization*, *Poverty & Race*, Vol. 22, No. 5, (September-October 2013)]. A structural framing allows us to “take the focus off intent, and even

off conscious attitudes and beliefs, and instead turn our focus to interventions that acknowledge that systems and structures are either supporting positive outcomes or hindering them” [John A. Powell, *Understanding Structural Racialization*, *Journal of Poverty Law and Policy*, Vol. 47, Numbers 5-6 (September-October 2013)]. The structural model helps us to understand how housing, education, transportation, employment and other “systems interact to produce racialized outcomes” [John A. Powell, *Structural Racism: Building Upon the Insights of John Calmore*, *HeinOnline*, 86.N.C.L. Rev. 791 (2007-2008)]. It also helps us to “show how all groups are interconnected and how structures shape life chances” (*Ibid*).

## RACIAL EQUITY

Race Forward defines racial equity as “the process of eliminating racial disparities and improving outcomes for everyone” (Race Forward, <https://www.raceforward.org/about/>



what-is-racial-equity-key-concepts). They further define racial equity as “the intentional and continual practice of changing policies, practices, systems, and structures by prioritizing measurable change in the lives of people of color.” Advocates who want to be more intentional about how they bring a racial equity lens to their work should strive to do the following:

1. Understand the function of racism,
2. Focus on systemic racism instead of individual instances of racism,
3. Use data to show evidence of housing disparities,
4. Include people of color and others with marginalized identities in the process, and
5. Dismantle racist systems and structures and rebuild them more equitably.

Advocates should inform legislators of the ways through which they can create or lend support for policies that reduce inequities in housing. Policymakers at every level of government must advance anti-racist policies and redress the impacts of decades of intentionally racist housing and transportation policies, including redlining, blockbusting, restrictive covenants, restrictive zoning, and highway systems. Policymakers must work to advance additional anti-racist policies and achieve the large-scale investments and reforms necessary to ensure that the lowest-income and most marginalized renters have an accessible, affordable place to call home.

## FOR MORE INFORMATION

- Visit NLIHC’s website, [www.nlihc.org/ideas](http://www.nlihc.org/ideas).
- Othering & Belonging Institute, <https://belonging.berkeley.edu/>.
- Race Forward, [www.raceforward.org](http://www.raceforward.org).
- Equal Justice Institute, [www.eji.org](http://www.eji.org).
- The Opportunity Agenda, [www.opportunityagenda.org](http://www.opportunityagenda.org).
- Opportunity Starts at Home, *Racial Equity Advocates Are Housing Advocates*, <https://tinyurl.com/3837nsfv>.

- NLIHC, *The Gap: A Shortage of Affordable Rental Homes*, <https://nlihc.org/gap>.
- White House, *Memorandum on Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies*, <https://tinyurl.com/ycku5vv7>.

# Income Targeting and Expenditures for Major Housing Programs

**E**nsuring federal housing programs prioritize extremely low-income (ELI) renter households is a primary policy goal of NLIHC. Federal rental housing assistance is not an entitlement and only one in four eligible households receive it. Income targeting helps ensure scarce federal housing resources reach ELI households who, because of their great needs, can be more difficult to serve than higher income groups. Targeting ELI renter households also helps ensure federal housing resources benefit populations impacted by systemic racism, ageism, and ableism.

ELI households have income less than or equal to 30% of area median income (AMI) or the federal poverty guideline, whichever is greater. The nation's 11 million ELI renter households account for 25% of all renter households. Due to systemic racism, people of color are much more likely to head ELI renter households than white, non-Latino people. Twenty percent of Black-headed households, 18% of households headed by American Indians or Alaska Natives, 15% of Latino-headed households, and 10% of Asian-headed households are ELI renter households. Just 6% percent of households headed by white, non-Latinos are extremely low-income renter households. ELI renter households are also disproportionately headed by seniors and people with disabilities.

ELI renters have the greatest housing needs. There is a shortage of almost 7 million rental homes affordable and available to them. As a result, 86% of ELI renter households are cost-burdened, spending more than 30% of their income on housing costs. Cost-burdened households have difficulty affording other necessities such as food, health care, and transportation. Seventy-one percent of ELI renter households are severely cost burdened, paying more than half of their income for housing. These severely cost-burdened ELI households account for 72% of all severely cost-burdened renter households in the U.S.

Housing Program	Income Targeting Requirements	National Annual Funding
Public Housing	At least 40% of new admissions during a Public Housing Agency's fiscal year must be households with income less than 30% of area median income (AMI), with the remainder for households earning up to 80% of AMI.	\$8.5 billion (FY23 HUD appropriation)
Housing Choice Vouchers	At least 75% of new and turnover vouchers are for households with income less than 30% of AMI, with the remainder for households earning up to 80% of AMI.	\$30.3 billion (FY23 HUD appropriation)
Project-Based Rental Assistance	At least 40% of new admissions during an annual period must be households with income less than 30% of AMI, with the remainder for households earning up to 80% of AMI.	\$14.9 billion (FY23 HUD appropriation)
Sections 202 and 811	For Section 202 and the 811 Capital Advance/Project Rental Assistance Contract programs, all units are for households with income less than 50% of AMI. For the 811 Project Rental Assistance program, all units are for households with income less than 30% of AMI.	Section 202: \$1.1billion Section 811: \$360 million (FY23 HUD appropriation)

HOME Investment Partnerships	If used for rental, at least 90% of units assisted by the jurisdiction must be for households with income less than 60% AMI, with the remainder for households with income up to 80% AMI. If more than five HOME-assisted units are in a building, 20% of the HOME-assisted units must be for households with income less than 50% AMI. Assisted homeowners must have income less than 80% AMI.	\$1.5 billion (FY23 HUD appropriation)
Community Development Block Grant	At least 70% of households served must have income less than 80% AMI. Remaining funds can serve households of any income group.	\$3.3 billion (FY23 HUD appropriation)
McKinney-Vento Homeless Assistance Grants	All assistance is for participants who meet HUD's definition of homeless: those who lack a fixed, regular, and adequate nighttime residence.	\$3.6 billion (FY23 HUD appropriation)
Housing Opportunities for Persons with AIDS	All housing is for households with income less than 80% of AMI.	\$499 million (FY23 HUD appropriation)
Low-Income Housing Tax Credit	All units are for households with income less than 50% or 60% of AMI, dependent upon whether the developer chooses 20% of units at 50% AMI or 40% of units at 60% AMI. Income averaging was authorized in 2018, allowing households with income up to 80% AMI to receive tax credit as long as the average income is less than 60% AMI.	\$11.4 billion (FY23 estimated tax expenditure)
Federal Home Loan Banks' Affordable Housing Program	All units are for households with income less than 80% of AMI. For rental projects, 20% of units are for households earning less than 50% of AMI.	\$352 million (2021 FHLB assessment)
Section 515 Rural Rental Housing	All units are for households with income less than the U.S. Department of Agriculture (USDA) definition of moderate income, which is 80% of AMI plus \$5,500. Households in substandard housing are given priority.	\$70 million (FY23 USDA appropriation)
Section 521 Rural Rental Assistance	In new projects, 95% of units are for households with income less than 50% of AMI. In existing projects, 75% of units are for households with income less than 50% of AMI.	\$1.49 billion (FY23 USDA appropriation)
National Housing Trust Fund	At least 90% of funds must be for rental housing, and at least 75% of rental housing funds must benefit households with income less than 30% AMI or poverty level, whichever is greater. Remaining funds can assist households with income less than 50% AMI. Up to 10% may be for homeowner activities benefitting households with income less than 50% AMI.	\$739.6 million in 2022

*National Low Income Housing Coalition, 2023*

# Housing as a Human Right

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By Eric Tars, Legal Director, National Homelessness Law Center

In 2021, the United States inaugurated a president, vice-president, and HUD Secretary who repeatedly affirmed “housing should be a right, not a privilege.” Representative Cori Bush (D-MO) held the nation’s conscience to account to extend the eviction moratorium with a sleep-out on the steps of the Capitol on the principle that housing is a human right. The U.S. Interagency Council on Homelessness (USICH) stated the right to housing would be a “core value” of its new federal strategic plan to end homelessness. Further, California and Connecticut have ongoing campaigns to add housing as a human right to state constitutional or statutory protections.

None of these steps should be taken for granted. They are a sign that advocates have shifted the conversation to lay a strong basis for things like the eviction moratorium and the right to eviction counsel campaigns across the country.

The human right to housing is a holistic and powerful frame, carrying the weight of international law and tapping into our deep cultural understanding of the importance of upholding human and civil rights. The human right to housing frame is necessary because it addresses not only the affordability and basic supply of housing, but interdependent issues such as racial equity, public health, and educational opportunity. Pairing legal standards with the popular resonance of the call for the human right to housing is how this holistic approach is uniquely able to prevent homelessness and housing instability from happening in the future.

However, language pertaining to the right to housing can become co-opted. Sacramento Mayor Darrell Steinberg introduced a city ordinance creating a so-called “right to housing and obligation to use it” that re-defines housing to include tents and shelters, and threatens those who refuse to relocate with criminal penalties.

This is *not* a rights-based approach to addressing homelessness and housing insecurity. Indeed, thanks to well-organized advocacy, the USICH, the Department of Justice, and HUD have taken enforcement actions and adopted human rights language against the criminalization of homelessness.

While stating that housing is a human right and making it happen in policy are two different things, changing the rhetorical frame is important to changing the policy. Faced with unprecedented threats from the pandemic, but also unprecedented opportunities to try to ensure we do not return to unacceptable pre-pandemic norms, housing advocates can use the human right to housing framework to reframe public debate, craft and support legislative proposals, supplement legal claims in court, advocate in international fora, and support community organizing efforts. Numerous United Nations (U.N.) human rights experts have recently visited the United States or made comments directly bearing on domestic housing issues including housing obligations during the COVID crisis, providing detailed recommendations for federal- and local-level policy reforms. In 2023, advocates must work to consolidate these gains and push for action to accompany the rhetoric.

## HISTORY

In his 1944 State of the Union address, President Franklin Roosevelt declared that the United States had a Second Bill of Rights, including the right to a decent home. In 1948, the United States signed the Universal Declaration of Human Rights (UDHR), recognizing adequate housing as a component of the human right to an adequate standard of living.

The UDHR is a non-binding declaration, so the right to adequate housing was codified into a binding treaty law by the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1966. The United States signed the ICESCR, and thus must uphold the “object and purpose”

of the treaty, even though the U.S. has not yet ratified it. The U.S. ratified the International Covenant on Civil and Political Rights in 1992 and the International Convention on the Elimination of All Forms of Racial Discrimination in 1994. Both recognize the right to be free from discrimination, including in housing, on the basis of race, gender, disability, and other status and emphasize the need for equitable policies to make up for past discrimination. The U.S. also ratified the Convention Against Torture in 1994, protecting individuals from torture and other cruel, inhumane, and degrading treatment, including the criminalization of homelessness.

More recently, the U.S. government supported, in part, a recommendation from the Human Rights Council in 2015 to “guarantee the right by all residents in the country to adequate housing, food, health and education, with the aim of decreasing poverty, which affects 48 million people in the country.” In October 2016, the U.S. signed onto the New Urban Agenda, “commit[ing] to promote national, sub-national, and local housing policies that support the progressive realization of the right to adequate housing for all as a component of the right to an adequate standard of living, that address all forms of discrimination and violence, prevent arbitrary forced evictions, and that focus on the needs of the homeless, persons in vulnerable situations, low-income groups, and persons with disabilities, while enabling participation and engagement of communities and relevant stakeholders in the planning and implementation of these policies including supporting the social production of habitat, according to national legislations and standards.”

The U.S. has hosted several official and unofficial visits from top U.N. human rights officers in recent years that garnered significant press, as well as meetings with high profile elected officials. In 2019, the National Law Center on Homelessness and Poverty and others worked with Senator Cory Booker’s (D-NJ) office to host a packed-room congressional briefing on the U.N.’s special rapporteur on extreme poverty and human rights report on his mission to the U.S.

When Vice President Harris joined President-Elect Biden’s ticket, she brought the housing as a right framing into his platform.

The rhetoric has now moved into the political mainstream, with countless local, state, and federal officials stating their belief that housing is a human right in recent years. What is needed now is to pair that rhetoric with accountability to the full scope of the standards of the human right to adequate housing described below.

## ISSUE SUMMARY

The human right to housing, as defined by international law, is a powerful framework that considers the current, imperfect reality, while also setting forth the numerous, interdependent and holistic pieces that are required for the full realization of the right. It promotes racial justice and housing justice, and supports other human rights. The right to housing includes negative and positive rights: for example, the government must refrain from imposing cruel and unusual punishments, such as punishing individuals for sleeping or sheltering themselves outdoors in the absence of adequate alternatives (negative right) but must also ensure adequate supply of affordable housing (positive right).

According to the U.N. Committee on Economic, Social, and Cultural Rights, which oversees the ICESCR, the human right to adequate housing consists of seven elements: (1) security of tenure; (2) availability of services, materials, and infrastructure; (3) affordability; (4) accessibility; (5) habitability; (6) location; and (7) cultural adequacy.

In the human rights framework, every right creates a corresponding duty on the part of the government to respect, protect, and fulfill the right. Having the right to housing does not mean that the government must build a house for every person in America and give it to them free of charge. It does, however, allocate ultimate responsibility to the government to progressively realize the right to decent, accessible, and affordable housing, whether by devoting resources to public housing, universal vouchers, or renters tax credits, by creating



incentives for the private development of affordable housing such as inclusionary zoning or the Low-Income Housing Tax Credit, through market regulation such as rent control, through legal due process protections from eviction or foreclosure, and upholding the right to counsel to enforce those protections and ensuring habitable conditions through housing codes and inspections, or by ensuring homeless persons are not threatened with civil or criminal penalties for sheltering themselves in the absence of adequate alternatives. Contrary to the current framework that views housing as a commodity to be determined primarily by the market, the right to housing framework gives advocates a tool for holding each level of government accountable if any of those elements are not satisfied. Crucially, the human rights framework states clearly that the right to housing includes the right to participate in decisions on housing policy for those directly impacted by those policies. Human rights also actively embraces “special measures” for historically-marginalized populations, including affirmative action or reparations.

France, Scotland, South Africa, and several other countries have adopted a right to housing in their constitutions or legislation, leading to improved housing conditions. In Scotland, the “Homelessness Act of 2003” includes the right for all homeless persons to be immediately housed and the right to long-term, supportive housing for as long as needed. The law also includes an individual right to sue if one believes these rights are not being met and requires jurisdictions to plan for the development of adequate affordable housing stock. Complementary policies include the right to purchase public housing units and automatic referrals by banks to foreclosure prevention programs to help people remain in their homes. All these elements work together to ensure that the right to housing is upheld. Although challenges remain in its implementation, in general, Scotland’s homelessness is brief, rare, and non-recurring.

## FORECAST FOR 2023

Building on recent successes in mainstreaming the human right to housing into the policy conversation, 2023 could be a breakout year for moving the right into practice.

On the positive side, increasing adoption of the language around the human right to housing by presidential candidates and Members of Congress indicates a comfort with this framing and a potential for a mutually reinforcing cultural shift. Ambitious legislative proposals including the “Ending Homelessness Act”, “Housing is a Human Right Act”, and others show a move toward a rights-based approach, as opposed to one that accepts artificial budget limitations as an excuse to not meet the need.

That said, the threat posed by COVID-19 and the accompanying economic crisis, and Congress’ failure to pass meaningful longer-term measures to address housing inequality, could make things far worse before they get better. Millions could lose their homes, with life-long consequences, and state and local budgets will be cut due to lost tax revenue. Without a major COVID-relief package that adopts a human rights approach, it will be difficult to “build back better”. It is precisely in this time of ongoing economic hardship that a rights-based approach to budgeting and policy decisions will help generate the resolve to protect basic human dignity first, rather than relegating it to the status of an optional policy. The National Homelessness Law Center, together with many other housing and homelessness organizations (including NLIHC), launched the Housing Not Handcuffs Campaign in 2016 and the National Coalition for Housing Justice in 2020, both of which call for human right to housing policies in the U.S.

## TIPS FOR LOCAL SUCCESS

Local groups wishing to build the movement around the human right to housing in the United States can use international standards to promote policy change, from rallying slogans to concrete legislative proposals. Groups like the #Moms4Housing use human rights to take

direct action like taking over vacant buildings and to support broader local and statewide legislative advocacy. The UN has created model guidance for implementing the human right to housing, including policies to ensure it during the COVID-19 crisis, and a former UN official has created numerous resources to help advocates Make the Shift to a rights-based conversation. Advocates can also hold local governments accountable to human rights standards by creating an annual Human Right to Housing Report Card. Using international mechanisms (like those described above) can also cast an international spotlight on local issues.

## WHAT TO SAY TO LEGISLATORS

It is important for legislators and their staff (as well as other advocates) to hear constituents say that housing is a human right and ask for them to say it too, as we work toward policies that support it as such. This helps change the normative framework for all of the housing issues that we work on: *because* housing is a human right, we need to create a right to counsel in eviction court; *because* housing is a human right, we need to fund universal vouchers or create a renters tax credit; all this creates the momentum for the next time we need to say “*because* housing is a human right, we need to [insert your housing priority]”. Tying the concept to the United States’ origins and acceptance of these rights in Roosevelt’s “Second Bill of Rights,” polling data, and the growing widespread acceptance by political leaders all emphasize that it is a homegrown idea rather than one imposed from abroad. On a somewhat converse point, using the recommendations made by human rights monitors can also reinforce advocates’ messages by lending them international legitimacy.

Numerous national associations, including the American Bar Association, American Medical Association, American Public Health Association, and International Association of Official Human Rights Agencies have passed resolutions endorsing a domestic implementation of the human right to housing, which local groups are using as tools in their advocacy. In reaching out

to religiously motivated communities, it may be helpful to reference the numerous endorsements of the U.S. Conference of Catholic Bishops in favor of the human right to housing and to point out that Pope Francis called for the human right to housing to be implemented during his 2015 visit to the U.S. All of these can lead us to a future where housing is enjoyed as a right by all Americans.

## FOR MORE INFORMATION

National Homelessness Law Center (formerly the National Law Center on Homelessness & Poverty), 202-638-2535, <https://homelesslaw.org/>.





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# **Chapter 2:**

## ADVOCACY RESOURCES

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# How Laws Are Made

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**T**he lawmaking process can be initiated in either chamber of Congress, the House of Representatives, or the Senate. Revenue-related bills must originate in the House of Representatives. Legislators initiate the lawmaking process by crafting a bill or a joint resolution.

Although Members of Congress introduce bills and help maneuver legislation through the lawmaking process, congressional staff also play an essential role in the process. Members of Congress have staff working in their personal offices and those who serve as Chair or Ranking Members of committees or subcommittees have separate committee staff as well. Both personal and committee staff have significant input in the legislative process.

The following steps, adapted from the Government Printing Office (GPO), describe the process of enacting a bill into law that is introduced in the House of Representatives. Enacting a joint resolution into law requires the same steps as a bill.

## ENACTING A BILL INTO LAW

1. When a representative has an idea for a new law, he or she becomes the sponsor of that bill and introduces it by submitting it to the clerk of the House of Representatives or by placing it in a box called the hopper. The clerk assigns a legislative number to the bill, with H.R. for bills introduced in the House of Representatives (and S. for bills introduced in the Senate). GPO then prints the bill and distributes copies to each representative.
2. The bill is assigned to a committee by the Speaker of the House so that it can be studied. The House has standing committees, each with jurisdiction over bills in certain areas. The standing committee, or often a subcommittee, studies the bill and hears testimony from experts and people interested in the bill. The committee then may release the bill with a recommendation to pass it, or revise the bill and release it, or lay it aside so that the House cannot vote on it. Releasing the bill is called “reporting it out,” while laying it aside is called “tabling.”
3. If the bill is released, it then goes on a calendar, which is a list of bills awaiting action. Here the House Rules Committee may call for the bill to be voted on quickly, may limit the debate, or may limit or prohibit amendments. Undisputed bills may be passed by unanimous consent or by a two-thirds majority vote if members agree to suspend the rules.
4. The bill then goes to the floor of the House for consideration and begins with a complete reading of the bill. Sometimes this is the only complete reading. A third reading of the title only occurs after any amendments have been added. If the bill is passed by simple majority (218 of 435), the bill moves to the Senate.
5. In order to be introduced in the Senate, a senator must be recognized by the presiding officer and announce the introduction of the bill. Sometimes, when a bill has passed in one chamber, it becomes known as an act; however, this term usually means a bill that has been passed by both chambers and becomes law.
6. Just as in the House, the bill is then assigned to a committee in the Senate. It is assigned to one of the Senate’s standing committees by the presiding officer. The Senate committee studies and either releases or tables the bill just like the House standing committee.
7. Once released, the bill goes to the Senate floor for consideration. Bills are voted on in the Senate based on the order in which they come from the committee; however, an urgent bill may be pushed ahead by leaders of the majority party. When the Senate considers the bill, it can be debated indefinitely. When there is no more debate, there is a vote on the bill. In recent years, the Senate has needed

60 votes to overcome the threat of a filibuster, rather than a simple majority (51 of 100).

8. The bill now moves into a conference committee, which is made up of Members from each chamber of Congress. The conference committee works out any differences between the House and Senate versions of the bill. The revised bill is sent back to both chambers for their final approval. Once approved, the bill is printed by the GPO in a process called enrolling. The clerk from the introducing chamber certifies the final version.
9. The enrolled bill is now signed by the Speaker of the House and then the vice president. Finally, it is sent for presidential consideration. The president has 10 days to sign or veto the enrolled bill. If the president vetoes the bill, it can still become a law if two-thirds of the Senate and two-thirds of the House then vote in favor of the bill and override the veto.

## FOR MORE INFORMATION

*The Legislative Process*, from the U.S. House of Representatives: <https://www.house.gov/the-house-explained/the-legislative-process>.

*Ben's Guide to the U.S. Government*: <https://bensguide.gpo.gov/how-laws-are-made>.



# The Federal Budget and Appropriations Process

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By Kim Johnson, Public Policy Manager, NLIHC

**F**unding the federal government is a two-part process that occurs annually. First, a federal budget resolution is passed, and then funds are appropriated among federal agencies and programs.

Both the Administration and Congress participate in the process of developing a federal budget resolution that establishes the overall framework and maximum dollar amount for government spending in a fiscal year (FY). The appropriations process is also handled entirely by Congress and establishes the amount of funding for individual activities of the federal government. Although the budget resolution should be completed and funds appropriated before the new FY begins on October 1, in recent years Congress has not completed the appropriations processes in advance of the start of the FY due to disagreements between the House and Senate over top line budget amounts.

## TYPES OF FEDERAL SPENDING AND REVENUE

There are three categories of spending for which the budget and appropriations process establishes limits and defines uses: discretionary spending, mandatory spending, and tax revenue.

### Discretionary Spending

As the name suggests, government expenditures in the discretionary portion of the budget are subject to annual evaluation by the president and Congress. Although the discretionary portion of the budget represents less than half of total annual expenditures, it is the area of spending that the president and Congress focus on most. Each year, the Administration and Congress re-evaluate the need to allocate funds for federal departments, programs, and activities. Discretionary spending amounts vary

annually, depending upon the Administration and congressional policy priorities.

### Mandatory Spending

Mandatory spending is almost entirely made up of spending on entitlements, such as Social Security and Medicaid. Expenditures for entitlements are based on a formula applied to the number of households eligible for a benefit. The amount of funding in a given year is determined by that formula. Typically, the Administration and Congress do not focus much on this spending in the budget and appropriations processes. However, Congress can use the budget resolution to direct authorizing committees to participate in a budget cutting processes called budget reconciliation, whereby authorizing committees are required to suggest savings from mandatory programs.

### Tax Revenue

Taxes provide revenue to the government to fund spending priorities. Tax policy includes not just revenues, but also expenditures in the form of deductions, credits, and other tax breaks. These expenditures reduce the total tax amount that could potentially be collected to provide revenue for the federal government. Each year, the Administration and Congress decide what tax revenues to collect and what tax expenditures to make by forgoing revenue collection in pursuit of certain policy priorities.

## BUDGET PROCESS

The federal FY runs from October 1 through September 30. Planning for the upcoming FY begins as early as a year-and-a-half before the beginning of the FY.

### President's Budget Request

The budget process officially commences on the first Monday of February, when the president is required by law to provide a budget request to

Congress for all Administration activities in the coming FY.

The president's budget request to Congress includes funding requests for discretionary programs, mandatory programs, and taxes. The majority of housing programs are funded through the discretionary portion of the budget. The president's funding request for discretionary programs varies from year to year to reflect the Administration's evolving policy priorities.

### **Congressional Budget Resolution**

Once the president submits a budget to Congress, the House and Senate Committees on the Budget prepare a budget resolution. The budget resolution sets the overall framework for spending for a one-year fiscal term. The resolution includes a top-line spending figure for discretionary activities. The House and Senate Committees on Appropriations use this figure as the maximum amount of funding that can be appropriated in the next FY. This new discretionary cap either increases or decreases the overall amount of funding that the Committees on Appropriations have available to allocate to HUD and the United States Department of Agriculture (USDA)'s affordable housing activities. Even though the budget resolution establishes the overall spending level for the FY, it does not go into detail as to how this funding will be allocated. The details are the job of the Committees on Appropriations, which begin their work after Congress agrees to a budget resolution.

To craft the budget resolution, the House and Senate Committees on the Budget first hold hearings at which Administration officials testify regarding the president's budget request. The Committees on the Budget each craft their own budget resolutions. The House and Senate then attempt to agree on a final budget resolution. Since this is a resolution and not a bill, it does not have to be signed into law by the president.

Once Congress passes a budget resolution, the appropriations work begins. If Congress does not pass a budget resolution by the statutory deadline of April 15, the Committees on Appropriations

are free to begin their appropriations work.

If Congress does not pass its appropriations bills by the October 1 start of the FY, it must provide funding for the period after the FY ends and before an appropriations bill is passed. This funding is provided by a continuing resolution (CR). A CR continues funding for programs funded in the prior FY, usually at the funding level from the year prior, although exceptions or "anomalies" may sometimes be included for certain programs. If Congress does not pass a CR and appropriations bills have not been enacted, the government shuts down, as it did for 34 days in December 2018.

## **THE APPROPRIATIONS PROCESS**

Unlike the budget process, which is initiated by the Administration, the appropriations process rests entirely in the hands of Congress. After Congress passes a budget resolution, the House and Senate Committees on Appropriations divide the top-line figure for discretionary spending among their 12 respective appropriations subcommittees. The two appropriations subcommittees that provide the majority of funding for affordable housing and community development programs are the Transportation, Housing, and Urban Development (THUD) Subcommittee and the Agriculture, Rural Development, Food, and Drug Administration Subcommittee in each chamber of Congress.

Each subcommittee must divide the amount of funding allocated by the Committee on Appropriations between the various priorities funded in its bill. Each subcommittee must also determine the priority programs within each of their bills and provide sufficient funding for those priorities. In order to determine its priorities, the THUD subcommittees hold hearings, during which HUD or USDA officials testify regarding specific programs and initiatives included in the president's request. Witnesses in these hearings provide a far greater level of detail on programmatic activity than witnesses testifying at budget committee hearings, which focus on overall proposed spending rather than particular activities.

After appropriations hearings are completed, the subcommittees craft their bills. The subcommittees then hold a markup of their draft bills and report out the bill they pass to their respective appropriations committees. The appropriations committees hold a markup of each bill and report out on those bills to Congress. The House and Senate must then negotiate final THUD and Agriculture bills. Once these bills are passed by Congress, they are signed into law by the president.

## FORECAST FOR 2023

FY 2022 was the first year in a decade where Congress was not limited by budget caps imposed by the “Budget Control Act of 2011” (BCA), which made it difficult for Congress to fund domestic programs, including affordable housing and community development programs, at the necessary levels. Advocates and congressional champions secured a \$4 billion increase above FY21 enacted levels, although some conservative members of Congress advocated for only modest funding increases or cuts to HUD’s affordable housing programs.

Congress passed a FY 2023 budget in late December 2022 after months of negotiations and threats to forgo the appropriations process altogether and instead pass a full year continuing resolution (CR). A CR funds the government at the levels passed by Congress in the previous year. Flat funding – whether through a CR or otherwise – acts as a cut to housing programs because additional funding is needed each year to cover additional inflationary costs.

Overall, the final FY23 spending bill provided HUD programs with \$61.8 billion, a \$8.1 billion increase over FY22-enacted levels, including significant funding for NLIHC’s top priorities. The 118<sup>th</sup> Congress will be charged with enacting a FY 2024 spending bill by October 1, 2023, which is expected to pose a significant challenge in a divided Congress. Because Republicans will control the House and Democrats will maintain their slim majority Senate, any agreement on a FY24 spending bill will need to have bipartisan support in both chambers.

It is critical that housing advocates urge Congress to provide the highest level of funding possible for affordable housing, homelessness, and community development programs in the coming year. Congress must provide substantial investments in HUD and USDA’s vital affordable housing and homelessness programs to ensure no one loses their current assistance and to expand the availability of safe, affordable, accessible housing for people with the lowest incomes.

## WHAT TO SAY TO LEGISLATORS

Advocates should weigh in with the Administration and Congress on the importance of strong funding for affordable housing.

- Advocates should urge their Members of Congress to provide robust funding for HUD and USDA affordable housing, homelessness, and community development programs. If Members of Congress do not hear from advocates, they will not know how important these programs are in their districts and states.
- Advocates should let their Members of Congress know that the low spending caps required by law resulted in the loss of affordable housing opportunities in their states and districts. Budget caps should not be continued into future years, and robust funding is needed to address the severe shortage of housing for people with the lowest incomes.

## FOR MORE INFORMATION

NLIHC, 202-662-1530, <https://nlihc.org/federal-budget-and-spending>.

# FY23 Budget Chart

## FOR SELECTED FEDERAL HOUSING PROGRAMS

HUD PROGRAMS (SET ASIDES ITALICIZED; IN MILLIONS)	FY22 FINAL	FY23 PRESIDENT	FY23 HOUSE	FY23 SENATE	FY23 FINAL
<b>Tenant Based Rental Assistance</b>	<b>27,370</b>	<b>32,130</b>	<b>31,043</b>	<b>30,182</b>	<b>30,253^</b>
<i>Contract Renewals</i>	24,095	26,234	26,184	26,184	26,401
<i>Tenant Protection Vouchers</i>	100	220	230	364	337
<i>Administrative Fees</i>	2,410	3,014	2,756	2,802	2,778
<i>Section 811 Mainstream Vouchers</i>	459	667	667	667	607
<i>Veterans Affairs Supportive Hsg Vouchers</i>	50	0	50	85	50
<i>Tribal Veterans Affairs Supportive Housing Vouchers</i>	5	5	5	5	7.5
<i>Family Unification</i>	30	0	30	30	30
<i>Housing Mobility Services</i>	25	445	25	0	0
<i>Incremental Vouchers</i>	200	1,550	1,100	50	50
<b>Public Housing</b>					
<i>Capital Fund*</i>	3,388	3,720	3,670	3,405	3,380
<i>Emergency/Disaster Grants</i>	75	40	65	50	50
<i>Operating Fund*</i>	5,064	5,060	5,063	5,064	5,134
<b>Moving to Work</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Choice Neighborhoods Initiative</b>	<b>350</b>	<b>250</b>	<b>450</b>	<b>250</b>	<b>350</b>
<b>Self-Sufficiency Programs</b>					
<i>Family Self-Sufficiency</i>	109	120	125	150	125
<i>Jobs-Plus Pilot</i>	15	20	15	15	15
<b>NAHASDA</b>					
<i>Native American Housing Block Grant</i>	772	772	772	819	787
<i>Competitive Grants</i>	150	150	150	150	150
<b>Native Haw. Hsg Block Grants</b>	<b>22</b>	<b>10</b>	<b>10</b>	<b>22</b>	<b>22</b>
<b>Hsg. Opp. for Persons with AIDS</b>	<b>450</b>	<b>455</b>	<b>600</b>	<b>468</b>	<b>499</b>
<b>Community Development Fund</b>	<b>4,841</b>	<b>3,770</b>	<b>5,299</b>	<b>4,818</b>	<b>6,397</b>
<i>Formula Grants</i>	3,300	3,550	3,300	3,525	3,300
<i>Community Project Funding (Earmarks)</i>	1,516	0	1,974	1,068	2,982
<b>HOME Investment Partnerships</b>	<b>1,500</b>	<b>1,950</b>	<b>1,675</b>	<b>1,725</b>	<b>1,500</b>
<b>Self-Help Homeownership Opportunity</b>	<b>12.5</b>	<b>10</b>	<b>12.5</b>	<b>17</b>	<b>13.5</b>
<b>Homeless Assistance Grants</b>	<b>3,213</b>	<b>3,576</b>	<b>3,604</b>	<b>3,545</b>	<b>3,633</b>
<b>Project-Based Rental Assistance</b>	<b>13,940</b>	<b>15,000</b>	<b>14,940</b>	<b>14,687</b>	<b>14,907^^</b>
<b>Hsg. for the Elderly (Sec. 202)</b>	<b>1,033</b>	<b>966</b>	<b>1,200</b>	<b>1,033</b>	<b>1,075</b>
<b>Hsg. for Persons w/Disabilities (Sec. 811)</b>	<b>352</b>	<b>288</b>	<b>400</b>	<b>288</b>	<b>360</b>
<b>Housing Counseling Assistance</b>	<b>57.5</b>	<b>65.9</b>	<b>70</b>	<b>63</b>	<b>57.5</b>
<b>Policy Development and Research</b>	<b>125</b>	<b>145</b>	<b>160</b>	<b>115</b>	<b>145</b>
<b>Fair Hsg. and Equal Opportunity</b>	<b>85</b>	<b>86</b>	<b>86</b>	<b>85</b>	<b>86</b>

HUD PROGRAMS (SET ASIDES ITALICIZED; IN MILLIONS)	FY22 FINAL	FY23 PRESIDENT	FY23 HOUSE	FY23 SENATE	FY23 FINAL
Healthy Homes and Lead Hazard	415	400	415	390	410

<sup>^</sup> Of the amounts provided, \$2.65 billion is provided in a disaster supplemental for tenant based rental assistance in a separate section of the bill.

<sup>^^</sup> Of the amounts provided, \$969 million is provided in a disaster supplemental for project-based rental assistance in a separate section of the bill.

<sup>\*</sup> The spending proposals disaggregate spending for the public housing capital and operating accounts. Funding to support operating costs includes formula funding and additional resources to be made available based on need. Funding to address capital costs includes formula funding, emergency capital needs, resources to address lead-based hazards, and other funding priorities.



# Congressional Advocacy and Key Housing Committees

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By Kim Johnson, Public Policy Manager, NLIHC

**M**embers of Congress are accountable to their constituents, and as a constituent, you have the right to advocate for the issues important to you with the members who represent you. As a housing advocate, you should exercise that right.

## CONTACT YOUR MEMBERS OF CONGRESS

To find the contact information for your Members of Congress, visit [www.govtrack.us](http://www.govtrack.us), or call the U.S. Capitol Switchboard at 202-224-3121. You can also use NLIHC's Legislative Action Center to look up Members of Congress at [nlihc.org/take-action](http://nlihc.org/take-action).

## MEETING WITH YOUR MEMBERS OF CONGRESS

Scheduling a meeting, determining your main “ask” or “asks,” developing an agenda, creating appropriate materials to take with you, ensuring your meeting does not veer off topic, and following up afterward are all crucial to holding effective meetings with Members of Congress.

For more tips on how to advocate and lobby effectively, see *Best Practices and Tips for Advocacy and Lobbying* in this chapter.

## KEY CONGRESSIONAL COMMITTEES

The following are key housing authorizing and appropriating committees in Congress:

- The House of Representatives Committee on Financial Services.
- The House of Representatives Committee on Appropriations.
- The House of Representatives Committee on Ways and Means.

- The Senate Committee on Banking, Housing, and Urban Affairs.
- The Senate Committee on Appropriations.
- The Senate Committee on Finance.

See below for details on these key committees as of January 30, 2023. For all committees, members who sit on key housing subcommittees are marked with an asterisk (\*).

*Please note: The information on committee assignments below reflects the information available at the time of publication. Visit committee websites for up-to-date information on committee assignments.*

## HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES

Visit the Committee's website at <http://financialservices.house.gov>.

The House Committee on Financial Services oversees all components of the nation's housing and financial services sectors, including banking, insurance, real estate, public and assisted housing, and securities. The Committee reviews laws and programs related to HUD, the Federal Reserve Bank, the Federal Deposit Insurance Corporation, government sponsored enterprises including Fannie Mae and Freddie Mac, and international development and finance agencies such as the World Bank and the International Monetary Fund.

The Committee also ensures the enforcement of housing and consumer protection laws such as the “U.S. Housing Act,” the “Truth in Lending Act,” the “Housing and Community Development Act,” the “Fair Credit Reporting Act,” the “Real Estate Settlement Procedures Act,” the “Community Reinvestment Act,” and financial privacy laws.

The Subcommittee on Housing and Insurance oversees HUD and the Government National

Mortgage Association (Ginnie Mae). The Subcommittee also handles matters related to housing affordability, rural housing, community development including Opportunity Zones, and government sponsored insurance programs such as the Federal Housing Administration (FHA) and the National Flood Insurance Program.

\*Members marked with an asterisk sit on the Subcommittee on Housing and Insurance.

## MAJORITY MEMBERS (REPUBLICANS)

- Patrick McHenry (NC), *Chair*
- Warren Davidson (OH),\* *Subcommittee Chair*
- Frank Lucas (OK)
- Pete Sessions (TX)
- Bill Posey (FL)\*
- Blaine Luetkemeyer (MO)\*
- Bill Huizenga (MI)
- Ann Wagner (MO)
- Andy Barr (KY)
- Roger Williams (TX)
- French Hill (AR)
- Tom Emmer (MN)
- Barry Loudermilk (GA)
- Alexander Mooney (WV)
- John Rose (TN)
- Bryan Steil (WI)
- William Timmons (SC)
- Ralph Norman (SC)\*
- Dan Meuser (PA)
- Scott Fitzgerald (WI)\*
- Andrew Garbarino (NY)\*
- Young Kim (CA)
- Byron Donalds (FL)
- Mike Flood (NE)\*
- Mike Lawler (NY)\*

- Zach Nunn (IA)
- Monica De La Cruz (TX)\*
- Erin Houchin (IN)\*
- Andy Ogles (TN)

## Minority Members (Democrats)

- Maxine Waters (CA), *Ranking Member*
- Emanuel Cleaver (MO),\* *Subcommittee Ranking Member*
- Nydia Velázquez (NY)\*
- Brad Sherman (CA)
- Gregory Meeks (NY)
- David Scott (GA)
- Stephen Lynch (MA)
- Al Green (TX)
- Jim Himes (CT)
- Bill Foster (IL)
- Joyce Beatty (OH)
- Juan Vargas (CA)
- Josh Gottheimer (NJ)
- Vincente Gonzalez (TX)
- Sean Casten (IL)
- Ayanna Pressley (MA)
- Steven Horsford (NV)\*
- Rashida Tlaib (MI)\*
- Ritchie Torres (NY)\*
- Sylvia Garcia (TX)\*
- Nikema Williams (GA)\*
- Wiley Nickel (NC)
- Brittany Pettersen (CO)\*

## HOUSE OF REPRESENTATIVES COMMITTEE ON APPROPRIATIONS

Visit the committee's website at <http://appropriations.house.gov>.

The House Committee on Appropriations is responsible for determining the amount of funding made available to all authorized programs each year.

The Subcommittee on Transportation, Housing, and Urban Development and Related Agencies (THUD) determines the amount of government revenues dedicated to HUD and other relevant agencies, including the United States Interagency Council on Homelessness.

\*Members marked with an asterisk sit on the THUD Subcommittee.

### Majority Members (Republicans)

- Kay Granger (TX), *Chair*
- Tom Cole (OK),\* *Subcommittee Chair*
- Harold Rogers (KY)
- Robert Aderholt (AL)
- Michael Simpson (ID)
- John Carter (TX)
- Ken Calvert (CA)
- Mario Diaz-Balart (FL)\*
- Steve Womack (AR)\*
- Chuck Fleishmann (TN)
- David Joyce (OH)
- Andy Harris (MD)
- Mark Amodei (NV)
- Chris Stewart (UT)
- Dan Newhouse (WA)
- John Moolenaar (MI)
- John Rutherford (FL)\*
- Ben Cline (VA)\*
- Guy Reschenthaler (PA)
- Mike Garcia (CA)

- Ashley Hinson (IA)
- Tony Gonzalez (TX)\*
- David Valadao (CA)\*
- Julia Letlow (LA)
- Michael Cloud (TX)
- Michael Guest (MS)
- Ryan Zinke (MT)\*
- Andrew Clyde (GA)
- Jake LaTurner (KS)
- Jerry Carl (AL)
- Stephanie Bice (OK)
- Scott Franklin (FL)
- Jake Ellzey (TX)
- Juan Ciscomani (AZ)\*

### Minority Members (Democrats)

- Rosa DeLauro (CT), *Ranking Member*
- Mike Quigley (IL),\* *Subcommittee Ranking Member*
- Steny Hoyer (MD)
- Marcy Kaptur (OH)
- Sanford Bishop (GA)
- Barbara Lee (CA)
- Betty McCollum (MN)
- Dutch Ruppersberger (MD)
- Debbie Wasserman Schultz (FL)
- Henry Cuellar (TX)
- Chellie Pingree (ME)
- Derek Kilmer (WA)
- Matt Cartwright (PA)
- Grace Meng (NY)
- Mark Pocan (WI)
- Pete Aguilar (CA)\*
- Lois Frankel (FL)
- Bonnie Watson Coleman (NJ)\*
- Norma Torres (CA)\*

- Ed Case (HI)
- Adriano Espaillat (NY)\*
- Josh Harder (CA)
- Jennifer Wexton (VA)\*
- David Trone (MD)
- Lauren Underwood (IL)
- Susie Lee (NV)
- Joseph Morelle (NY)

## HOUSE OF REPRESENTATIVES COMMITTEE ON WAYS AND MEANS

*Visit the committee's website at <http://waysandmeans.house.gov>.*

The Committee on Ways and Means is the chief tax writing committee in the House of Representatives and has jurisdiction over taxation, tariffs, many programs including Social Security, Medicare, Temporary Assistance for Needy Families (TANF), and unemployment insurance. The Low Income Housing Tax Credit falls within its jurisdiction.

### **Majority Members (Republicans)**

- Jason Smith (MO), *Chair*
- Vern Buchanan (FL)
- Adrian Smith (NE)
- Mike Kelly (PA)
- David Schweikert (AZ)
- Darin LaHood (IL)
- Brad Wenstrup (OH)
- Jodey Arrington (TX)
- Drew Ferguson (GA)
- Ron Estes (KS)
- Lloyd Smucker (PA)
- Kevin Hern (OK)
- Carol Miller (WV)
- Greg Murphy (NC)
- David Kustoff (TN)

- Brian Fitzpatrick (PA)
- Greg Steube (FL)
- Claudia Tenney (NY)
- Michelle Fischbach (MN)
- Blake Moore (UT)
- Michelle Steel (CA)
- Beth Van Duyne (TX)
- Randy Feenstra (IA)
- Nicole Malliotakis (NY)
- Mike Carey (OH)

### **Minority Members (Democrats)**

- Richard Neal (MA), *Ranking Member*
- Lloyd Doggett (TX)
- Mike Thompson (CA)
- John Larson (CT)
- Earl Blumenauer (OR)
- Bill Pascrell (NJ)
- Danny Davis (IL)
- Linda Sanchez (CA)
- Brian Higgins (NY)
- Terri Sewell (AL)
- Suzan DelBene (WA)
- Judy Chu (CA)
- Gwen Moore (WI)
- Dan Kildee (MI)
- Don Beyer (VA)
- Dwight Evans (PA)
- Brad Schneider (IL)
- Jimmy Panetta (CA)

## SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Visit the committee's website at [www.banking.senate.gov](http://www.banking.senate.gov).

The Senate Committee on Banking, Housing and Urban Affairs oversees legislation, petitions, and other matters related to financial institutions, economic policy, housing, transportation, urban development, international trade and finance, and securities and investments.

The Subcommittee on Housing, Transportation, and Community Development oversees mass transit systems, general urban affairs and development issues and is the primary oversight committee for HUD. The subcommittee oversees HUD community development programs, the FHA, the Rural Housing Service, Fannie Mae and Freddie Mac, and all issues related to public and private housing, senior housing, nursing home construction, and indigenous housing issues.

\*Members marked with an asterisk sit on the Subcommittee on Housing, Transportation, and Community Development.

### Majority Members (Democrats)

- Sherrod Brown (OH), *Chair*
- Tina Smith (MN),\* *Subcommittee Chair*
- Jack Reed (RI)\*
- Robert Menendez (NJ)\*
- Jon Tester (MT)\*
- Mark Warner (VA)
- Elizabeth Warren (MA)
- Chris Van Hollen (MD)
- Catherine Cortez Masto (NV)\*
- Krysten Sinema (AZ)\*
- Raphael Warnock (GA)\*
- John Fetterman (PA)\*

### Minority Members (Republicans)

- Tim Scott (SC), *Ranking Member*
- Cynthia Lummis (WY),\* *Subcommittee Ranking*

### Member

- Mike Crapo (ID)\*
- Mike Rounds (SD)\*
- Thom Tillis (NC)
- John Kennedy (LA)\*
- Bill Hagerty (TN)\*
- J.D. Vance (OH)\*
- Katie Britt (AL)\*
- Kevin Cramer (ND)
- Steve Daines (MT)

## SENATE COMMITTEE ON APPROPRIATIONS

Visit the committee's website at <http://www.appropriations.senate.gov>.

The Senate Committee on Appropriations is responsible for determining the amount of funding made available to all authorized programs each year.

THUD has jurisdiction over funding for the Department of Transportation and HUD, including community planning and development, fair housing and equal opportunity, the FHA, Ginnie Mae, public housing, and indigenous housing issues.

\*Members marked with an asterisk sit on the THUD Subcommittee.

### Majority Members (Democrats)

- Patty Murray (WA),\* *Chair*
- Brian Schatz (HI),\* *Subcommittee Chair*
- Dianne Feinstein (CA)\*
- Richard Durbin (IL)\*
- Jack Reed (RI)\*
- Jon Tester (MT)
- Jeanne Shaheen (NH)
- Jeff Merkley (OR)
- Chris Coons (DE)\*
- Tammy Baldwin (WI)

- Chris Murphy (CT)\*
- Joe Manchin (WV)\*
- Chris Van Hollen (MD)\*
- Martin Heinrich (NM)
- Gary Peters (MI)

#### **Minority Members (Republicans)**

- Susan Collins (ME),\* *Ranking Member*
- Cindy Hyde-Smith (MS),\* *Subcommittee Ranking Member*
- Mitch McConnell (KY)
- Lisa Murkowski (AK)
- Lindsey Graham (SC)\*
- Jerry Moran (KS)\*
- John Hoeven (ND)\*
- John Boozman (AR)\*
- Shelley Moore Capito (WV)\*
- John Kennedy (LA)\*
- Bill Hagerty (TN)
- Katie Britt (AL)
- Marco Rubio (FL)
- Deb Fischer (NE)

## **SENATE COMMITTEE ON FINANCE**

*Visit the committee's website at [www.finance.senate.gov](http://www.finance.senate.gov).*

The Senate Committee on Finance oversees matters related to taxation and other general revenue measures, including health programs under the “Social Security Act” such as Medicare, Medicaid, and the Children’s Health Insurance Program, as well as TANF and health and human services programs financed by a specific tax or trust fund. The Low Income Housing Tax Credit falls within its jurisdiction.

#### **Majority Members (Democrats)**

- Ron Wyden (OR), *Chair*
- Debbie Stabenow (MI)
- Maria Cantwell (WA)

- Robert Menendez (NJ)
- Thomas Carper (DE)
- Ben Cardin (MD)
- Sherrod Brown (OH)
- Michael Bennet (CO)
- Bob Casey (PA)
- Mark Warner (VA)
- Sheldon Whitehouse (RI)
- Maggie Hassan (NH)
- Catherine Cortez Masto (NV)
- Elizabeth Warren (MA)

#### **Minority Members (Republicans)**

- Mike Crapo (ID), *Ranking Member*
- Chuck Grassley (IA)
- John Cornyn (TX)
- John Thune (SD)
- Tim Scott (SC)
- Bill Cassidy (LA)
- James Lankford (OK)
- Steve Daines (MT)
- Todd Young (IN)
- John Barrasso (WY)



# Federal Administration Advocacy

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**N**ot all efforts to shape federal housing policy involve congressional advocacy. Once legislation is enacted by Congress, it must be implemented and enforced by the executive branch.

Opportunities for administrative advocacy generally fall into five categories:

- Providing commentary during the regulatory process,
- Calling for enforcement of existing laws,
- Influencing policy and program implementation,
- Advocating for or against executive orders, and
- Litigating against federal agencies and officials.

These types of advocacy are not considered lobbying by the Internal Revenue Service (IRS); therefore, 501(c)(3) organizations are free to engage in such activities without limit so long as there is no intent to influence legislation. For nonprofits interested in housing advocacy, engaging federal agencies through the regulatory process falls entirely outside the definitions of lobbying.

Numerous federal agencies contribute to the development and implementation of our nation's housing policy. Seven key divisions of the federal government administer affordable housing programs and carry out a variety of functions, such as providing funding to incentivize affordable housing development, managing government sponsored enterprises (GSEs) that have an affordable housing directive, coordinating housing resources of multiple departments, or influencing the direction of affordable housing policy. It is important for advocates to weigh in with these agencies as they shape federal affordable housing priorities, determine the level of resources available to reach affordability objectives, and implement

housing laws passed by Congress.

Many other parts of the executive branch are also involved in housing and related issues. Important targets for federal administrative advocacy include, but are not limited to:

- The White House
- HUD
- The Interagency Council on Homelessness (USICH)
- The Federal Housing Finance Agency (FHFA)
- The Department of Agriculture's Rural Housing Service (USDA RHS)
- The Department of the Treasury
- The Department of Veterans Affairs (VA)

## THE WHITE HOUSE

The White House develops and implements housing policy through a variety of means and has multiple councils and offices that are involved with affordable housing.

The Domestic Policy Council (DPC) coordinates the domestic policymaking process of the White House, offers advice to the president, supervises the execution of domestic policy, and represents the president's priorities to Congress. The Office of Faith-Based and Neighborhood Partnerships is part of the DPC and works to build bridges between the federal government and nonprofit organizations, both secular and faith-based, in order to better serve Americans in need. The Office of National AIDS Policy is also part of the DPC; it coordinates the continuing efforts to reduce the number of HIV infections across the U.S. through a wide range of education initiatives and by coordinating the care and treatment of people with HIV/AIDS. The Office of Social Innovation and Civic Participation, another part of the DPC, is focused on promoting service as a solution and a way to develop community leadership, increase investment in innovative

community solutions that demonstrate results, and develop new models of partnership.

The National Economic Council coordinates policy making for domestic and international economic issues, provides economic policy advice for the president, ensures that policy decisions and programs are consistent with the president's economic goals, and monitors the implementation of the president's economic policy agenda.

The Office of Public Engagement (OPE) and Intergovernmental Affairs creates and coordinates opportunities for direct dialogue between the Administration and the public. This includes acting as a point of coordination for public speaking engagements for the Administration and the departments of the Executive Office of the President. Federal agencies, including HUD and USDA, have liaisons that work with the White House OPE. The Office of Urban Affairs is part of the OPE; it provides leadership for and coordinates the development of the policy agenda for urban areas across executive departments and agencies.

## **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

HUD is the federal government's primary affordable housing agency. The agency administers programs that provide rental and homeownership units that are affordable to low-income, very low-income, and extremely low-income (ELI) households. HUD also manages grants for community development activities and plays a vital role in the Administration's efforts to strengthen the housing market. HUD administers a variety of housing programs through the Offices of Public and Indian Housing (PIH), Community Planning and Development (CPD), Housing, Fair Housing and Equal Opportunity, Lead Hazard Control and Healthy Homes, the Federal Housing Administration (FHA), and the Government National Mortgage Association.

PIH, CPD, and the Office of Housing administer HUD's main rental assistance programs for ELI households. PIH administers funds to local public housing agencies to operate public housing

units, administer Housing Choice Vouchers, and offer programs that support residents. CPD administers funding for the national Housing Trust Fund (HTF), the McKinney-Vento Continuum of Care Homeless Assistance Grants, the Housing Opportunities for Persons with AIDS program, the HOME Investment Partnerships program, and the Community Development Block Grant program. The Office of Housing oversees a range of programs including Project-Based Section 8, special needs housing programs such as Section 202 Housing for the Elderly and Section 811 Housing for People with Disabilities, and the FHA. FHA provides insurance for mortgage loans to increase private lending interest by reducing institutions' risk. FHA's Mutual Mortgage Insurance Fund provides profits, or receipts, that have been used to offset a portion of HUD's annual costs to operate its other programs.

## **INTERAGENCY COUNCIL ON HOMELESSNESS**

The Interagency Council on Homelessness (USICH) coordinates the homeless policies of 19 federal departments that administer programs or provide resources critical to solving the nation's homelessness crisis; USICH comprises the secretaries and directors of these 19 federal agencies. The agencies with the largest roles in providing these resources include HUD, the Department of Health and Human Services, the Department of Labor, and the U.S. Department of Veterans Affairs. These agencies rotate responsibility for chairing the USICH. The USICH's main task is implementing the federal government's strategic plan to end homelessness. USICH also coordinates with state and local governments on developing and implementing their strategies to end homelessness.

## **FEDERAL HOUSING FINANCE AGENCY**

The Federal Housing Finance Agency (FHFA) was created in 2008 by the "Housing and Economic Recovery Act" as the successor to the Federal Housing Finance Board. FHFA regulates Fannie

Mae and Freddie Mac, which are both GSEs. It also regulates the Federal Home Loan Banks to ensure there is sufficient funding for housing finance and community investments.

The GSEs were taken into conservatorship by FHFA due to financial problems stemming from the housing crisis. Prior to being taken into conservatorship, the GSEs were to provide a percentage of their book of business to the HTF; these contributions were suspended in 2008. The GSEs were also meant to provide funding for the Capital Magnet Fund (CMF). On December 11, 2014, FHFA Director Mel Watt lifted the suspension so that the GSEs must set aside funds for the HTF and CMF. In 2016, the first HTF dollars were allocated to the states.

## **DEPARTMENT OF AGRICULTURE RURAL HOUSING SERVICE**

The USDA RHS administers programs that provide affordable rental and homeownership opportunities in rural areas of the country. Although HUD funding is used in rural areas, USDA's Office of Rural Development (RD) programs uniquely target the needs of rural communities and supplement HUD funding.

RHS affordable housing programs provide grants, loans, and direct funding for rental housing operations and development. Programs target low-income families, seniors, and farm workers, providing a range of housing options. RD also provides programs to support energy efficiency, economic development, and infrastructure for rural areas.

## **DEPARTMENT OF THE TREASURY**

The Department of the Treasury administers several housing and community development programs including the Low-Income Housing Tax Credit (LIHTC) program, the Making Home Affordable program, the Hardest Hit Fund, and Community Development Financial Institutions (CDFI). The CDFI administers the CMF and the New Market Tax Credit. The Treasury has overseen funding for several recent disaster recovery efforts, including special allocations of LIHTCs and other incentives to spur

redevelopment. The Treasury also oversees Housing Bonds, which finance the development of rental and homeownership units. The Treasury offers backing to HUD's FHA Mutual Mortgage Insurance Fund and played a key role in the nation's housing crisis recovery efforts by purchasing mortgage-backed and debt securities issued by Fannie Mae and Freddie Mac. The Treasury was also charged with implementation and oversight of the federal Emergency Rental Assistance Program established in response to the COVID-19 pandemic.

## **DEPARTMENT OF VETERANS AFFAIRS**

The Department of Veterans Affairs (VA) sets policy and administers a range of programs for veterans including homeownership loans and a supportive housing initiative. The VA partners with HUD to provide the Veterans Affairs Supportive Housing Voucher Program. HUD provides an allocation of Housing Choice Vouchers to certain public housing agencies to make units affordable; local VA offices select voucher recipients and provide supportive services to the individual or family prior to and during their housing tenure. The VA also works cooperatively with the Interagency Council on Homelessness, which helped coordinate resources for veterans through Opening Doors, its plan to end homelessness.

## **CONTACT FEDERAL AGENCIES**

Contact information for the agencies mentioned above, as well as additional key federal agencies and offices, can be found below and online.

White House, 202-456-1414,  
[www.whitehouse.gov](http://www.whitehouse.gov).

Office of Management and Budget, 202-395-3080, <https://www.whitehouse.gov/omb/>.

HUD, 202-708-1112, [www.hud.gov](http://www.hud.gov).

HUD USER, 202-708-1112, [www.huduser.org](http://www.huduser.org).  
(HUD USER contains valuable statistics for those interested in financing, developing, or managing affordable housing, including HUD-mandated rent and income levels for assisted housing

programs and Fair Market Rents).

Department of Agriculture, Rural Development  
Housing and Community Facilities Programs,  
202-699-1533, [www.rd.usda.gov](http://www.rd.usda.gov).

Federal Housing Finance Agency, 202-414-3800,  
[www.fhfa.gov](http://www.fhfa.gov).

Department of Health and Human Services,  
Office of Community Services, 202-690-7000,  
[www.acf.hhs.gov/programs/ocs](http://www.acf.hhs.gov/programs/ocs).

Department of Justice, 202-514-2000,  
[www.usdoj.gov](http://www.usdoj.gov).

Department of Transportation, 202-366-4000,  
[www.dot.gov](http://www.dot.gov).

Department of the Treasury, Community  
Development Financial Institutions Fund, 202-  
622-6355, <https://www.cdfifund.gov>.

Department of Veterans Affairs,  
<http://www.va.gov/>.

FEMA, 202-646-2500, [www.fema.gov](http://www.fema.gov).

Environmental Protection Agency, 202-272-  
0167, [www.epa.gov](http://www.epa.gov).

Small Business Administration, 202-205-8885,  
[www.sba.gov](http://www.sba.gov).

# Using Federal Data Sources for Housing Advocacy

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By Andrew Aurand, Senior Vice President for Research, NLIHC

**H**ousing advocates have long used federal data to measure, visualize, and communicate their communities' unmet housing needs to inform policy at the national, state, and local levels. Data from the American Community Survey (ACS), for example, allow us to quantify the critical housing shortage for extremely low-income renters and the racial disparities in housing affordability. HUD's *Picture of Subsidized Households*, meanwhile, shows the quantity and geographic distribution of HUD-subsidized housing. Nonprofit organizations also include federal data in accessible third-party public data platforms, like the *National Housing Preservation Database*.

The following section provides a brief overview of federal data sources for housing advocacy. Members of Congress often threaten to cut financial resources for data collection and dissemination, making it imperative that advocates and organizations promote and protect these programs.

## HOUSING NEED AND SUPPLY

### Comprehensive Housing Affordability Strategy Data

See <https://www.huduser.gov/portal/datasets/cp.html>

The U.S. Census Bureau provides HUD with custom tabulations of data from the American Community Survey (ACS) that show housing problems among households of different income levels. The Comprehensive Housing Affordability Strategy (CHAS) data are primarily used by Community Development Block Grant (CDBG)-entitled communities in their HUD-required Consolidated Plans, but they can also be useful for housing advocates in measuring the housing needs in their community. CHAS data

use HUD-defined income limits to categorize households as extremely low-, very low-, and low-income. The data also count the number of housing units affordable to each of these income groups. Therefore, the data provide a count of households at different income levels and the number of housing units affordable to them at the national, state, and local levels. The data also provide important information on cost burdens, overcrowding, and inadequate kitchen and plumbing by income level. The data can also be broken down by race, elderly/non-elderly status, household size, and disability status.

The most recent CHAS data are from the five year 2015-2019 ACS. HUD provides a web-based query tool that makes commonly used CHAS data readily available, particularly housing cost burdens, for communities. The CHAS raw data can be downloaded for more detailed analyses.

NLIHC uses the CHAS data to estimate the shortage (or surplus) of rental housing by income category for every county and place in the U.S. Data can be obtained by contacting the NLIHC research team at [aurand@nlihc.org](mailto:aurand@nlihc.org).

### HUD Point-in-Time Count and Housing Inventory Count

See [www.hudexchange.info/resource/3031/pit-and-hic-data-since-2007](http://www.hudexchange.info/resource/3031/pit-and-hic-data-since-2007) and <https://www.hudexchange.info/programs/hdx/guides/ahar/#reports>.

HUD's Point-in-Time (PIT) count is the primary tool for measuring the extent of homelessness in the nation. Continuums of Care (CoC) that provide housing and services to people experiencing homelessness must conduct a count each January of sheltered homeless persons in emergency shelter, transitional housing, and Safe Havens. A separate count is conducted every other January (every two years) of unsheltered homeless persons whose primary nighttime residence is not ordinarily used as a regular place



to sleep, such as a car, park, abandoned building, or bus or train station. Although not required, HUD encourages CoCs to conduct an annual count of unsheltered homeless persons.

PIT count is a labor-intensive task coordinated at the local level. The result is a point-in-time estimate of the number of people experiencing homeless in the U.S. and among specific subpopulations, such as individuals, families with children, veterans, unaccompanied youth, and the chronically homeless. These estimates are published in HUD's *Annual Homeless Assessment Report* to Congress.

The National Alliance to End Homelessness produces a series of research briefs on the state of homeless, including by race, gender, and geography, using PIT data. These are available at [https://endhomelessness.org/resources/?fwpcategories=point-in-time-counts&fwpc\\_contentfilter=data-and-graphics](https://endhomelessness.org/resources/?fwpcategories=point-in-time-counts&fwpc_contentfilter=data-and-graphics).

The Housing Inventory Count is an inventory of beds available for the homeless population by program, including emergency shelters, supportive housing, and rapid rehousing.

### **Household Pulse Survey**

See <https://www.census.gov/programs-surveys/household-pulse-survey.html>. Data tables available at <https://www.census.gov/programs-surveys/household-pulse-survey/data.html>

The Household Pulse Survey, which the Census Bureau initiated in 2020, collects real-time data on the social and economic effects of the COVID-19 pandemic on American households. Among the various questions, respondents are asked about their housing tenure, employment status, whether they are caught up on rent payments, their perceived likelihood of experiencing an eviction, and whether they applied for and received emergency rental assistance. Beginning in December 2022, the Pulse survey includes questions about household displacement and other hardships after disasters. Data are available for the nation, states, the District of Columbia, and a small number of large metropolitan areas.

### **Fair Market Rents**

See <https://www.huduser.gov/portal/datasets/fmr.html>.

Fair Market Rents (FMRs) are published by HUD each year for every metropolitan area and nonmetropolitan county in the U.S. FMRs represent the estimated cost of a modest apartment for a household planning to move. They are used to determine payment standards for Housing Choice Vouchers (HCVs), initial renewal rents for some expiring project-based Section 8 contracts, and initial rents in the Moderate Rehabilitation Single Room Occupancy program. FMRs also serve as rent ceilings for the HOME Investments Partnership program and the Emergency Solutions Grants program.

FMRs are typically set at the 40<sup>th</sup> percentile of gross rents, which is the top end of the price range that movers could expect to pay for the cheapest 40% of apartments.

HUD published a final rule on November 16, 2016 that requires local public housing agencies in 24 metropolitan areas to use Small Area FMRs rather than traditional FMRs to set HCV payment standards. Small Area FMRs reflect rents for U.S. postal ZIP codes, while traditional FMRs reflect a single rent standard for an entire metropolitan region. The intent of Small Area FMRs is to provide voucher payment standards that are better aligned with neighborhood-scale rental markets, resulting in relatively higher subsidies in neighborhoods with more expensive rents and lower subsidies in neighborhoods with lower rents. Small Area FMRs are intended to help households use vouchers in higher opportunity neighborhoods. Small Area FMRs for all metropolitan areas are available on HUD's [FMR webpages](#).

### **American Community Survey (ACS)**

See <https://www.census.gov/programs-surveys/acs/data.html>

Tutorials on obtaining and using ACS data are available at <https://www.census.gov/programs-surveys/acs/guidance/training-presentations.html>.



The ACS is a nationwide mandatory survey of approximately 3.5 million addresses conducted by the U.S. Census Bureau. The survey is distributed on a rolling basis, with approximately 295,000 housing units surveyed each month. Annual data provide timely information on the demographic, economic, and housing characteristics of the nation, each state, the District of Columbia, and other jurisdictions with at least 65,000 residents.

The sample size from one year of ACS data is not large enough to draw annual estimates for smaller populations. To produce estimates for smaller areas, the Census Bureau combines multiple years of ACS data. Five-year ACS data provide a five-year moving average for all communities, down to census tracts. The five-year data are not as timely as the annual data, but they are more reliable (because of the larger sample) and available for many more communities. ACS data are often used by federal agencies to determine how money is distributed across the country.

The ACS provides housing advocates with important information. For example, the ACS captures data on housing costs and household income, allowing us to calculate the prevalence of housing cost burdens across communities by race and ethnicity. Other important variables in the ACS include household type and employment.

The data also allow us to measure the shortage (or surplus) of housing for various income groups. NLIHC uses the ACS [Public Use Microdata Sample \(PUMS\)](#) to produce its annual report, *The Gap: A Shortage of Affordable Homes*, which estimates the shortage of affordable rental housing in each state, DC, and the largest metropolitan areas.

### **American Housing Survey**

See <http://www.census.gov/programs-surveys/ahs.html>.

The national American Housing Survey (AHS) is a longitudinal survey of housing units that provides information on the size, composition, and quality of the nation's housing stock. It is funded and directed by HUD and conducted by the U.S. Census Bureau every odd numbered year. The

AHS is unique in that it follows the same housing units over time. The survey includes questions about the physical characteristics and quality of housing units and about their occupants, so users can identify how the price, quality, and occupants of dwellings change over time. The same sample of housing units were followed from 1985 to 2013 with changes to the sample to account for new construction, demolitions, and conversions.

A new national sample of housing units was drawn for the 2015 AHS. The core national sample represents the nation plus its 15 largest metropolitan areas. For the first time in 2015, HUD-assisted units were identified through administrative data and oversampled to produce more reliable comparisons between subsidized and unsubsidized housing. Supplemental samples in the AHS provide data for additional metropolitan areas, contingent upon HUD's budget.

The AHS also includes supplemental questions that rotate in and out of the questionnaire from survey to survey. The 2015 AHS included supplemental questions on food security, healthy homes, housing counseling, and neighborhood arts and culture. The 2017 AHS included supplemental questions on delinquent housing payments, disaster preparedness, and commuting. The 2019 AHS included supplemental questions on food security, accessibility of homes for persons with disabilities, and post-secondary education. The 2021 AHS included supplemental questions on household pets, secondhand smoke, housing search, wildfire risk, and delinquent housing payments.

The AHS is the data source for HUD's *Worst Case Housing Needs Report*, which is provided to Congress every two years. This report identifies the number of very low-income households in the U.S. who either spend more than half of their income on housing or live in severely physically inadequate housing. The AHS sample is not large enough to calculate estimates for specific states or smaller areas other than the metropolitan areas for which HUD includes a supplemental sample.

## PUBLICLY ASSISTED HOUSING

### Picture of Subsidized Households

See <https://www.huduser.gov/portal/datasets/picture/yearlydata.html>.

HUD's *Picture of Subsidized Households* provides data on the location and occupants of HUD's federally subsidized housing stock. The programs represented in the dataset are Public Housing, Housing Choice Vouchers, Moderate Rehabilitation, Project Based Section 8, the Rent Supplement and Rental Assistance Project, Section 236, Section 202, and Section 811. This dataset allows users to examine the income, age, disability status, household type, and racial distribution of occupants in subsidized housing at the national, state, metropolitan area, city, Public Housing Agency, and project level. The data also include the poverty rate and percentage of minorities in census tracts of subsidized developments to examine the extent to which subsidized housing is concentrated in high-poverty or high-minority neighborhoods.

### HUD Community Assessment Reporting Tool

See <https://egis.hud.gov/cart/>.

The Community Assessment Reporting Tool allows users to map and explore HUD investments in cities, counties, metropolitan areas, and states. The tool provides information about Community Planning and Development competitive and formula grants (e.g., HOME, CDBG, and CoC grants), rental programs (e.g., Housing Choice Vouchers, Public Housing, and Project Based Rental Assistance), mortgage insurance, housing counseling, and other HUD grants and programs. The tool also provides data on selected demographics of assisted households and on the demographics and cost burdens of the general population.

### National Housing Preservation Database

See <http://www.preservationdatabase.org/>.

The National Housing Preservation Database (NHPD) was created in 2012 by NLIHC and the Public and Affordable Housing Research Corporation to provide communities and housing

advocates with the information they need to effectively identify and preserve subsidized housing at risk of being lost from the affordable housing stock. NHPD is an online database of properties subsidized by federal housing programs, including HUD Project-Based Rental Assistance, Section 202, HOME, USDA Rural Development (RD) housing programs, and the Low-Income Housing Tax Credit. This unique dataset includes the earliest date at which a property's subsidies might expire and property characteristics significant in influencing whether the subsidized property might be at risk of leaving the subsidized housing stock, such as neighborhood location and ownership information.

## OTHER DATA SOURCES

### HUD eGIS Data Storefront

See <http://hudgis-hud.opendata.arcgis.com/>.

HUD eGIS Data Storefront is a geospatial data portal that provides users with access to multiple HUD datasets, including Community Development activities, HUD-insured multifamily properties, and other rental housing assistance programs. The portal also provides access to HUD's mapping tools.

### "Home Mortgage Disclosure Act" (HMDA) Data

See <https://ffiec.cfpb.gov/data-publication/>.

The "Home Mortgage Disclosure Act" requires many lending institutions to publicly report information about mortgage applications and their outcomes. The information that institutions report includes whether the mortgage application was for a home purchase, home improvement, or refinancing; the type of loan (e.g., conventional, FHA); mortgage amount; the applicant's race, ethnicity, gender, and age; whether the application was approved; census tract of the property's location; and other features of the mortgage. The data can be used to help identify discriminatory lending practices, as well as examine the extent to which lenders meet the mortgage investment needs of communities. Small lenders and those with offices only in nonmetropolitan areas are not required to report data.

## PolicyMap

PolicyMap (<https://www.policymap.com/>) is an online mapping and data tool that provides information on demographics, housing, employment, and other characteristics of communities across the U.S. Some of PolicyMap's data are available at no charge to the public, while other data require a subscription. The site's housing data include home values, rent prices, vacancy rates, affordability, and federally subsidized housing information.

### Affirmatively Furthering Fair Housing (AFFH) Data and Mapping Tool (AFFH-T)

See <https://egis.hud.gov/affht/> and [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/affh](https://www.hud.gov/program_offices/fair_housing_equal_opp/affh)

[Click here for a video about the tool.](#)

HUD's AFFH Data and Mapping Tool (AFFH-T) provides data for CDBG-entitled jurisdictions to engage in planning for meeting their obligations to affirmatively further fair housing. The tool includes data about community demographics, job proximity, school proficiency, environmental health, poverty, transit, and housing burdens. The tools' maps, for example, indicate the spatial relationship between race and job proximity, school proficiency, and environmental quality.

The data were initially released for communities' Assessments of Fair Housing (AFH) required by the 2015 AFFH rule. The rule was subsequently suspended by the Trump Administration. In 2021, the Biden Administration published an Interim Final Rule that requires entitlement communities to certify that they will affirmatively further fair housing. The current interim rule, however, does not require communities to conduct an assessment, and instead relies on communities voluntarily undertaking planning processes to determine actions for furthering fair housing (see the AFFH section of Chapter 8 for a history of the AFFH rule).

### Other Surveys

The Current Population Survey (CPS) ([www.census.gov/cps](http://www.census.gov/cps)) is a joint venture between the Department of Labor and the Census Bureau and

is the primary source of labor force statistics for the U.S. population. The CPS Annual Social and Economic Supplement provides official estimates of income, the poverty rate, and health insurance coverage of the non-institutionalized population.

The Housing Vacancy Survey ([www.census.gov/housing/hvs](http://www.census.gov/housing/hvs)) is a supplement of the CPS that quantifies rental and homeowner vacancy rates, characteristics of vacant units, and the overall homeownership rate for states and the 75 largest metropolitan areas.

The Survey of Market Absorption ([www.census.gov/programs-surveys/soma.html](http://www.census.gov/programs-surveys/soma.html) and <https://www.census.gov/data-tools/demo/soma/soma.html>) is a HUD-sponsored survey conducted by the Census Bureau of newly constructed multifamily units. Each month, a sample of new residential buildings containing five or more units is selected for the survey. An initial three-month survey collects data on amenities, rent or sales price levels, number of units, type of building, and the number of units taken off the market (absorbed). Follow-up surveys can be conducted at six, nine, and 12 months. The data provide the absorption rate of new multifamily housing.

The Rental Housing Finance Survey (<https://www.census.gov/programs-surveys/rhfs.html>) is a HUD-sponsored survey, first conducted by the Census Bureau in 2012, that collects data on the financial, managerial, and physical characteristics of rental properties nationwide. Data are released triennially. Owners or property managers are surveyed about operating costs and revenue characteristics for the rental housing stock.

## WHAT ADVOCATES SHOULD KNOW

High-quality data that accurately reflect the population requires participation. Housing advocates should encourage everyone to fully participate in the Decennial Census, ACS, and other federal surveys for which they are selected. The accuracy and reliability of the Census's data products depend on it.

Advocacy organizations, such as NLIHC and its state partners, use federal data to quantify the scarcity of housing affordable to the lowest-income families, which makes it easier to set specific and defensible goals for expanding the affordable housing stock. NLIHC use these data to provide housing profiles for each U.S. state and congressional district, which can be found at <https://nlihc.org/housing-needs-by-state> by selecting the state and then clicking on the Resources tab.

## WHAT TO SAY TO LEGISLATORS

Housing advocates should remind Members of Congress of the importance of reliable and unbiased data to understanding and addressing housing needs. Specific issues that advocates should highlight to Members of Congress include:

- Adequate funding for the ACS, AHS, and other federal surveys is imperative for up-to-date and reliable data regarding the nation's housing supply and needs. ACS data are the foundation for HUD's fair market rents and income-eligibility thresholds.
- Participation in the ACS needs to remain mandatory. Changing the ACS to a voluntary survey would lower response rates and the reliability of the survey's findings would decline without the Census Bureau spending millions of additional dollars each year to send the survey to a larger number of households and to conduct in-person or phone follow-ups to encourage participation.

## FOR MORE INFORMATION

The [Census Project](https://thecensusproject.org/) is a network of national, state, and local organizations that advocates for sufficient funding for the U.S. Decennial Census and the ACS: <https://thecensusproject.org/>.

The [Association of Public Data Users](http://apdu.org/) advocates to strengthen and protect federal statistical agencies and programs: <http://apdu.org/>.

HUD's [Office of Policy Development and Research](https://www.huduser.gov/portal/home.html) hosts research, publications, and data sets on housing and community development: <https://www.huduser.gov/portal/home.html>.

# Introduction to the Federal Regulatory Process

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By Ed Gramlich, Senior Advisor, NLIHC

**W**hen Congress changes an existing law or creates a new one, federal agencies like HUD must implement the changes or the new law by modifying an existing regulation or by creating a new one. Federal agencies also sometimes review existing regulations and amend them even when there are no changes to the underlying law. Both the creation of a new regulation and the modification of an existing regulation provide advocates with an opportunity to shape policy.

Congress passes legislation and the president, by signing that legislation, turns it into a law. Usually, these laws spell out the general intent of Congress but do not include all technical details essential to putting Congress' wishes into practice. Regulations add those details and usually present the law's requirements in language that is easier to understand.

Two publications are key to the federal regulatory process. The *Federal Register* is a daily publication that contains proposed regulations, final rules, and other official notices, presidential documents, and other items. All final regulations published in the *Federal Register* are eventually gathered together ("codified") in the *Code of Federal Regulations* (CFR). The HUD-related rules in the CFR are usually updated each April. The federal government uses the words "regulation" and "rule" interchangeably; however, technically HUD defines a "rule" as a document published in the *Federal Register* and a "regulation" as a rule that is codified in the CFR.

## SUMMARY OF THE REGULATORY PROCESS

### Proposed Regulations

In order to carry out laws, Congress gives federal agencies, like HUD, the power to interpret laws, write rules based on that interpretation, and

enforce the rules. When housing law is created or modified, HUD will draft suggested regulations that specify how the law is to be carried out. These are "proposed" regulations.

Before publishing proposed regulations, HUD must send them to the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA), which theoretically has up to 90 days to review the regulations' consistency with Executive Order 12866, "Regulatory Planning and Review" (although OIRA has been known to hold on to proposed regulations for more than 90 days). Rules under review by OIRA and their status are listed on the EO 12866 Regulatory Review site. If OIRA judges the proposed regulations to be inconsistent, they are sent back to HUD "for further consideration." However, technically, HUD has authority from Congress to issue the rules.

Once cleared by OIRA, HUD must publish a "notice of proposed rulemaking" (NPRM) in the *Federal Register* that contains the proposed language of the regulations. The public must have an opportunity to submit written comments and is generally given a 60-day period to comment.

### Final Regulations

Once the comment period on a proposed rule is closed, HUD must consider all comments and may make changes based upon them. Once those changes are complete, and after another review by OIRA, HUD publishes a final rule in the *Federal Register*.

In the introduction, or preamble, to the final rule, HUD must discuss all meaningful comments received and explain why each was accepted or rejected. In addition to the actual text of the changed or new regulations, the final rule must state a date when it will go into effect, generally 30 or 60 days in the future. However, before the final regulations go into effect, they are sent to the Congressional subcommittee responsible for the



subject matter for at least 15 days to ensure that all rules meet, but do not overstep, Congressional intent. In practice, this 15-day Congressional review seems to simply be a courtesy; Congress seldom weighs in.

It is not unusual for more than a year to pass between publication of a proposed rule and final implementation. It is even possible for proposed rules to be withdrawn. For example, during the Obama Administration, proposed changes to the public housing demolition regulations and to the Section 3 employment opportunities regulations were not acted on by the Obama Administration for several years and were subsequently removed by the Trump Administration before they could be made final.

### Other Regulatory Options

In addition to proposed and final rules, the regulatory process can occasionally include:

- Advanced Notice of Proposed Rulemaking (ANPR). HUD can ask for information from the public to help it think about issues before developing proposed regulations. For instance, in the second year of the Trump Administration, HUD issued an ANPR regarding streamlining the affirmatively furthering fair housing (AFFH) rule and an ANPR regarding streamlining the fair housing disparate impact rule.
- Interim Final Rules. HUD can issue regulations that are to be followed as if they are final, but ask for continued public comment on some parts of the rules. Subsequent final rules can include changes based on any additional public comment. For example, the National Housing Trust Fund (HTF) program was implemented by an interim rule in 2015. HUD's intention was to allow states and developers have experience using the new program and then seek input regarding suggested changes before implementing a final rule. On April 26, 2021, HUD requested comments about the HTF Interim Final Rule; as of the date this *Advocates' Guide* article was written, a final rule was not published but will likely be published sometime in 2023. More recently, HUD under the Biden Administration issued an Interim Final Rule on June 10, 2021, restoring the statutory definition of "affirmatively furthering fair housing" and some "certifications" that were removed from the 2015 AFFH rule by the previous Administration; it also offered the public 30 days to comment on the Interim Final Rule. In the preamble to the Interim Final Rule, HUD stated that it anticipated issuing a NPRM proposing provisions that would build on and improve process in the 2015 AFFH rule.
- Supplemental Notice of Rulemaking. HUD may seek additional comment on a proposed rule in order to further focus consideration before issuing a final rule.
- Direct Final Rules. HUD can issue regulations thought to be minor and uncontroversial but must withdraw them if negative comments are submitted.
- Negotiated Rulemaking. This is a seldom-used approach that engages knowledgeable people to discuss an issue and negotiate the language of a proposed regulation, which is then submitted to the *Federal Register*. When HUD sought to change the public housing Operating Fund rule, it engaged in negotiated rule making with public housing agencies and a handful of public housing leaders.
- Petition for Rulemaking. This is a process through which anyone can submit suggested regulations along with supporting data and arguments in support of the suggestions. If HUD agrees, it will publish proposed rules; if HUD denies the petition, the denial must be in writing and include the basis for denial. For example, advocates thought the Obama Administration was not moving on improvements regarding lead-based paint hazards, so used the petition for rulemaking process. Although not officially in response to the petition, HUD did move on proposed changes.
- Informal Meetings. HUD has the authority to gather information from people using



informal hearings or other forms of oral presentations such as “listening sessions.” The transcript or minutes of such meetings are on file in the Rules Docket. For example, after the Trump Administration effectively suspended implementation of the affirmatively furthering fair housing rule, it conducted five invitation-only listening sessions. More positively, the Biden Administration held several listening sessions about restoring the affirmatively furthering fair housing rule.

## WHAT IS HUD’S PLAN FOR FUTURE REGULATORY ACTION?

On the OIRA website, <https://www.reginfo.gov/public>, there is a menu item at the top called “Unified Agenda.” Select “Current Unified Agenda and Regulatory Plan,” where you will find “Spring (or Fall) 2022 Unified Agenda of Regulatory and Deregulatory Actions.” Where it says “Select Agency” choose “Department of Housing and Urban Development,” which provides a long list of regulations in proposed and final stages. Clicking on the “RIN” link will indicate an anticipated date of action on the regulation. However, these dates are not solid – they are aspirational. For example, according to the RIN, a proposed AFFH rule is indicated as June 2022, however as of the date this *Advocates’ Guide* article was written a proposed rule has not been published.

## THE ROLE OF CONGRESS

Before HUD can publish a rule for comment or publish an interim rule, the rule must be submitted to HUD’s congressional authorizing committees for a review period of 15 calendar days (which does not depend on Congress being in session). Congressional review seems to simply be a courtesy; Congress seldom weighs in.

The “Congressional Review Act” (CRA) requires all federal agencies to submit final rules to Congress and the Government Accountability Office (GAO). The CRA provides an expedited legislative process that allows Congress to overturn a rule if both houses pass a “resolution of disapproval” and the president signs the joint

resolution of disapproval. Senate rules have a timetable for this expedited process of 60 days during which the Senate is in session. The Trump Administration made extensive use of the CRA. More information about the “Congressional Review Act” can be found in *The Congressional Review Act: Frequently Asked Questions*.

## HOW TO FIND PROPOSED AND FINAL REGULATIONS IN THE FEDERAL REGISTER

The Government Printing Office (GPO) publishes the *Federal Register* and the Code of Federal Regulations (CFR).

- The current day’s *Federal Register* and links to browse back issues are at <https://bit.ly/32BpASX>.
- A preview of the next day’s *Federal Register* is at <http://bit.ly/2iVERG4>.
- *Federal Register* notices for both proposed and final rules can be tracked by subscribing to a daily email of the table of contents of the *Federal Register* at <http://bit.ly/2iNz1sY>.

The public can read and copy comments made by others at HUD headquarters or at <https://www.regulations.gov>, which also provides all rules open for comment and enables electronic submission of comments.

## HOW TO READ THE FEDERAL REGISTER

Both proposed and final rules are standard features in the *Federal Register*. The opening heading will look like this (with different numbers and topics):

### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### 24 CFR Part 990

#### [Docket No. FR-4874-F-08]

#### RIN 2577-AC51

#### Revisions to the Public Housing Operating Fund Program

**AGENCY:** Office of the Assistant Secretary

for Public and Indian Housing, HUD

**ACTION:** Final rule

Below the heading will be the following categories:

**SUMMARY:** This is a short presentation of what is proposed or implemented and what the related issues and rulemaking objectives are.

**DATES:** Here is either: “*Comment due date*,” the date by which comments to proposed rules are due; or “*Effective Date*,” the date the final rule will go into effect.

**ADDRESSES:** For proposed regulations only, this section provides the room number and street address for sending written comments, although it is now preferable to submit comments electronically at [www.regulations.gov](http://www.regulations.gov)

**FOR FURTHER INFORMATION CONTACT:** The name of a HUD staff person responsible for the issue is presented, along with a phone number and office address.

**SUPPLEMENTARY INFORMATION:** This section is often called the “preamble” and can go on for many pages. It contains a detailed discussion of the issues and the rule-making objectives. The law or sections of a law that give legal authority for the regulations are generally mentioned. With final rules, there must also be a discussion of all of the significant public comments submitted, along with HUD’s reasons for accepting or rejecting them.

**LIST OF SUBJECTS IN *nn* CFR PART *nnn*:** The actual changes (or new provisions) begin at this heading. Key words are presented here.

Next there is a sentence that says “Accordingly, for the reasons described in the preamble, HUD revises [or proposes to revise] *nn* CFR Part *nnn* to read as follows:”

The sections of the regulations subject to change (or that are new) then follow in numerical order.

At the very end the document is dated and “signed” by the appropriate HUD official.

## SENDING COMMENTS ABOUT PROPOSED REGULATIONS

### Your Comment Letter

Be sure to follow the guidance provided in the “ADDRESSES” section of the proposed rule. For example, regarding proposed changes to the Consolidated Plan rules, one would have addressed comments to:

Regulations Division, Office of General Counsel  
Room 10276  
Department of Housing and Urban Development  
451 Seventh Street, SW  
Washington, DC 20410-0500

RE: Docket No. FR-4923-P-01; HUD 2004-0028  
Revisions and Updates to Consolidated Plan

It is very important to indicate the docket number and it is helpful to include the subject title as it appears in the heading of the proposed rule. There is no set format for writing comments, although HUD’s “How do I prepare effective comments?” (<http://bit.ly/2jjqVcg>) is a useful guide. It is best to indicate which of the proposed rules are of concern by citing them and commenting on them individually. For example:

*ABC Tenant Organization thinks that there are problems with proposed section 91.315(k)(3) because...*

*We strongly endorse proposed section 91.205(b)(1) because...*

Advocates should rely on their experiences to explicitly state why they agree or disagree. When there is disagreement, suggest words that address the concern. Don’t just write about the problems; be sure to tell HUD what is beneficial. Declaring support for key provisions is often essential to counterbalance negative comments from those in opposition.

## How to Submit Comments via Regulations.gov

It is best to submit comments electronically at [www.regulations.gov](http://www.regulations.gov). There you will see a big blue box that says, “Make a difference. Submit your comments and let your voice be heard,” and within the blue box is a white search box that reads “SEARCH for dockets and documents on agency actions.”

In the search line, type in either the docket number, the registrant identification number (RIN), or the title of the rule, such as “Affirmatively Furthering Fair Housing.” By hitting “Search” that should provide the rule open for comment. If you are submitting a comment on the day comments are due, you can also try, under “Comments Due Soon” – “Today” located at the right column.

Next, below the link for the proposed rule there is a small box to the left with “Comment” in blue letters. Select “Comment.” Under “Write a Comment,” assuming you have written at least a page of text, it is suggested that you **do not** type in your comment where it says “Start typing here...” Instead, it is recommended that you scroll down a little to where it says “Attach Files.” In the box created by dashed lines where it says “Drop files here or Browse,” click on Browse. There you will have to click on “Choose files.” That will open your own computer files. Go to your appropriate folder and select your comment letter (as a PDF). Then choose “open” on your system. That should attach your comment letter in the regulations.gov system.

Enter your email address and opt to receive an email confirmation. Next where it says “Tell us about yourself! I am...” click on one of the three icons that describes you; probably “An Organization.” Under “Your Organization Information” select the type from the dropdown menu; probably simply “Organization” and type in your organization’s name.

Finally check the reCAPTCHA box to confirm that you are not a robot. Hit “Submit Comment” in the little blue box. Sent!

## THE CODE OF FEDERAL REGULATIONS

All final rules published in the *Federal Register* are eventually collected and placed in the CFR and “codified.” To look up a rule that has not changed in the past year, turn to the CFR, which is generally updated each April for HUD-related rules. All titles updated through 2021 are available at <https://bit.ly/2Eqaj3w>.

The CFR has 50 “titles”, each representing a broad topic. HUD-related regulations are in Title 24. Each title is divided into “parts” that cover specific program areas. For example, within Title 24, Part 93 covers the national Housing Trust Fund rules and Part 982 lays out the Housing Choice Voucher program rules.

In addition, the GPO provides the Electronic Code of Federal Regulations (e-CFR). Although it is not an official legal edition of the CFR, it is an editorial compilation of CFR material and *Federal Register* amendments that is updated daily. Access the e-CFR at <http://bit.ly/YlVWrv>. On the e-CFR home page select Title 24 from the dropdown box and a list of HUD-related “parts” will appear.

## TALKING ABOUT REGULATIONS

Two levels of regulatory citation have already been mentioned, the “title” and the “part.” Below that comes the “section” that covers one provision of a program rule and then a “paragraph” that provides specific requirements.

For example, the Public Housing Authority Plan regulations are in Title 24 at Part 903, written as 24 CFR 903. Resident Advisory Boards (RABs) and their role in developing the annual PHA Plan are presented in Section 13, cited as 24 CFR 903.13. “Paragraph” (c) specifies that PHAs must consider the recommendations made by the RAB and “subparagraph” (c)(1) goes into more detail by requiring PHAs to include a copy of the RAB’s recommendations with the PHA Plan. This is written as 24 CFR 903.13(c)(1).

## FOR MORE INFORMATION

National Low Income Housing Coalition, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

National Archives and Records Administration has a good online tutorial at <http://bit.ly/2ijLMIo>.

Office of the *Federal Register*, <http://bit.ly/2jbBM3I>.

HUD's Office of General Counsel has an Overview of HUD's Rulemaking Process at <http://bit.ly/2hYyekB>.

Rules that might be at OIRA, or that have recently cleared OIRA, are at <https://bit.ly/2SFpUZw>.

The Code of Federal Regulations (CFR) is at <https://bit.ly/31MHCV1>.

The Office of Information and Regulatory Affairs (OIRA) is at <https://bit.ly/3H5NQ2p>.

The EO 12866 Regulatory Review site is at <https://bit.ly/3bWsUwq>.

# Using the “Freedom of Information Act” for Housing Advocacy

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By Ed Gramlich, Senior Advisor, NLIHC

**E**veryone has the right to request federal agency records or information under the “Freedom of Information Act” (FOIA).

Federal agencies, subject to certain exceptions, must provide the information when it is requested in writing. In order to use FOIA, advocates do not need to have legal training or use special forms. All that is necessary is a letter.

## SUMMARY

FOIA allows individuals and groups to access the records and documents of federal agencies such as HUD and the U.S. Department of Agriculture (USDA) Office of Rural Development (RD).

Requests must be made in writing. Each agency has its own practices and regulations. HUD’s FOIA regulations are at [24 CFR Part 15](#). USDA’s regulations are at [7 CFR Part 1 Subpart A](#).

HUD’s FOIA webpages are at [https://www.hud.gov/program\\_offices/administration/foia](https://www.hud.gov/program_offices/administration/foia) and RD’s FOIA webpages are at <https://www.rd.usda.gov/contact-us/freedom-information-act-foia>.

The Department of Justice FOIA webpages are at <https://www.justice.gov/oip>.

FOIA does not provide access to the records and documents of parts of the White House, Congress, the courts, state and local governments or agencies, private entities, or individuals.

Records include not only print documents, such as letters, reports, and papers, but also photos, videos, sound recordings, maps, email, and electronic records. Agencies are not required to research or analyze data for a requester, nor are they required to create a record or document in response to a request. They are only obligated to look for and provide existing records. Agencies must, however, make reasonable efforts to search for records in electronic form. The term search is defined as looking for and retrieving records, including page-by-page or line-by-line

identification of information within records. It also includes reasonable efforts to locate and retrieve information from records maintained in electronic form.

A formal FOIA request might not be necessary. By law and presidential order, federal agencies are required to make a substantial amount of information available to the public. Before considering a FOIA request, advocates should explore the HUD or RD websites and be confident that the information sought is not already available online.

If advocates cannot find the information they seek on an agency’s website, it might be readily available from agency staff in the field, regional, or headquarters’ offices. Rather than invoking the formal FOIA process, it is often quicker and easier to start with an informal approach. Simply phone or email the agency office and ask for information. Formal, written FOIA requests generally trigger a slower, formal, bureaucratic process. In recent years, HUD has been very slow in responding to FOIA requests.

- Some HUD contact information can be found under the “Contact Us” tab on the HUD website, [www.hud.gov](http://www.hud.gov). Other HUD staff might be found on a specific program area’s website, such as Public and Indian Housing (PIH) under “[About PIH](#)” or even going deeper, for example, in the Housing Choice Voucher Program’s staff directory, <https://bit.ly/2SexKJY>.
- RD state offices can be located at <https://www.rd.usda.gov/contact-us/state-offices>, and state and local offices can be located at <https://www.rd.usda.gov/browse-state>. If you are not sure where to submit a FOIA request, send it to the RD FOIA/Privacy Act Officer in Washington, DC, at <https://www.rd.usda.gov/contact-us/freedom-information-act-foia>.
- USDA Service Centers (which might



have an RD area office) can be found at <https://offices.sc.egov.usda.gov/locator/app?state=us&agency=rd>.

## MAKING A FOIA REQUEST

If an informal request does not produce the desired information, a formal request may be necessary. A formal FOIA request can be simple and short, but it must be in writing. In the letter, state that you are making a request under FOIA. Describe what you are looking for in as much detail as possible, including dates, names, document numbers, titles, types of beneficiaries you are concerned about, etc. Specify the format (paper or electronic) in which you would like to receive the requested information.

Request a waiver of any fees for copying or searching, explaining your organization's mission and its nonprofit status in order to demonstrate that you do not have a commercial interest in the information. Explain how this information will:

- Be of interest to more than a small number of people, and how your organization can distribute the information to many people.
- Lead to a level of public understanding of a HUD or RD activity that is far greater than currently exists.

Provide contact information for the individual or organization requesting the information, including mailing address, phone number, and email address. Ask the agency to provide detailed justifications for any information that it refuses to release. Include a statement that the law requires the agency to respond within 20 working days indicating whether the request will be processed.

Formal requests must be in writing, but they can be made by email, fax, or postal mail.

### HUD FOIA requests:

- To make a FOIA request of documents from a HUD regional office, advocates should locate the appropriate person and address from the HUD [FOIA Requester Service Centers](#) webpage.
- To make a FOIA request of HUD headquarters electronically, go to

- [https://www.hud.gov/program\\_offices/administration/foia/requests](https://www.hud.gov/program_offices/administration/foia/requests) which takes you to <https://hudpal.efoia-host.com/app/Home.aspx>.
- To make a FOIA request through the mail write to:  
  
Deborah R. Snowden  
Office of the Executive Secretariat  
  
U.S. Department of Housing and Urban Development  
Freedom of Information Act Office  
451 Seventh Street, SW, Room 10139  
Washington, DC 20410-3000
- To [ajhikfv23jk b, -search](#).

### RD FOIA requests:

- To make a FOIA request for documents at the local or state level, advocates should write to the RD FOIA Coordinator for their state at <https://www.rd.usda.gov/about-rd/state-offices>.
- Advocates can also make a FOIA request for RD documents at USDA's [Public Access Link](#).
- FOIA requests can also be made to the RD FOIA Officer at RD headquarters in Washington, DC, <http://www.rd.usda.gov/contact-us/freedom-information-act-foia>.

The Reporters Committee for Freedom of the Press provides an interactive tool to generate a FOIA request to any agency, <https://www.ifoia.org>.

### Timeline

Once a request is made, HUD and RD will log the request and provide a tracking number. The agencies must grant or deny a FOIA request within 20 working days of receipt. This response simply shows whether the agency intends to provide the information. There is no time limit on providing the information; however, USDA's regulations require RD to approximate the date that the information will be provided.

When an agency determines whether to comply with a FOIA request, the "FOIA Improvement Act of 2016" requires the agency to immediately notify the requester of the determination and



the reasons for it. The 2016 act also requires the agency to notify the requester that there is a right to seek assistance from the agency's FOIA public liaison.

If there are unusual circumstances, such as large numbers of records to review, staffing limitations, or the need to search for records in another physical location or from another agency, the agency must give written notice and can add an extra 10 days, as well as provide the requester with an opportunity to limit the scope of the request so that the request can be processed more quickly. The 2016 act adds that when unusual circumstances exist and an agency needs to extend the time limits by more than 10 additional working days, the written notice to the requester must notify the requester of the right to seek dispute resolution services from the Office of Governmental Information Services.

The 2016 act requires agencies to make records available for public inspection in an electronic format that, because of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records, or that have been requested three or more times.

### **Expedited Requests**

If there is imminent threat to life or physical safety, or if there is an urgent need to inform the public, advocates can ask for expedited processing. HUD and RD will issue a notification within 10 working days indicating whether a request will get priority and more rapid processing.

### **Request Denial**

Information can only be denied if it is exempt. The law lists nine exemptions, such as classified national defense information, trade secrets, personal information, and certain internal government communications. The letter denying a FOIA request must give the reasons for denial and inform the requester of the right to appeal to the head of the agency.

The "internal government communications" exemption might be relevant to housing

advocates. The intent of this exemption is to promote uninhibited discussion among federal employees engaged in policymaking. This exemption would apply to unfinished reports, preliminary drafts of materials, and other internal communications taking place as agency staff undertake a decision-making process.

### **Appeals**

Decisions to deny a fee waiver, deny a request for expedited disclosure, or failure to release the requested information can be appealed. Appeals to HUD should be made within 30 days. A letter should be sent to the HUD official indicated in the denial letter and generally include a copy of the original request, a copy of the denial, and a statement of the facts and reasons the information should be provided. Specific information for appeals pertaining to fees or expedited processing are listed at [https://www.hud.gov/program\\_offices/administration/foia/foiaappeals](https://www.hud.gov/program_offices/administration/foia/foiaappeals).

For adverse determinations, the 2016 act requires agencies to give the requester at least 90 days from the date of the adverse determination to file an appeal. In addition, the 2016 act requires agencies to notify the requester that there is a right to seek dispute resolution services from the FOIA Public Liaison or from the Office of Government Information Services.

To appeal an RD denial, advocates can send a letter to the RD official indicated in the denial letter within 45 days. If that appeal fails, advocates can appeal to the RD FOIA Officer. If still not satisfied, advocates should write to the Rural Housing Service Administrator. The agency has 20 working days to decide on an appeal.

## **SAMPLE FOIA LETTER**

Date

Agency/Program FOIA Liaison

Name of Agency or Program

Address

RE: Freedom of Information Act Request

Dear *[name]*:

Under the Freedom of Information Act, I am

requesting copies of *[identify the records as specifically as possible]*.

I request a waiver of fees because my organization is a nonprofit with a mission to *[state the organization's mission and activities, demonstrating that it does not have a commercial interest in the information]*. In addition, disclosure of the information will contribute significantly to public understanding of the operations and activities of HUD/RD.

*[Explain how the information is directly related to HUD/RD, how the information will contribute to public understanding of HUD/RD operations or activities, and how you or your organization, as well as a broader segment of the public, will gain a greater understanding of these agencies by having the requested information. Describe the role and expertise of your organization as it relates to the information and how the information will be disbursed to a broader audience]*.

As provided by law, a response is expected within 20 working days. If any or part of this request is denied, please describe which specific exemption it is based on and to whom an appeal may be made.

If you have any questions about this request, please phone me at \_\_\_\_\_.

Sincerely,

Your name

Address

## FOR MORE INFORMATION

HUD's FOIA regulations are at 24 CFR Part 15.

USDA's regulations are at 7 CFR Part 1 Subpart A.

HUD FOIA webpages, [https://www.hud.gov/program\\_offices/administration/foia](https://www.hud.gov/program_offices/administration/foia).

USDA RD FOIA webpage, <https://www.rd.usda.gov/contact-us/freedom-information-act-foia>.

Department of Justice FOIA websites, <http://www.justice.gov/oip> and <http://www.foia.gov>.

Public Citizen's "Freedom of Information Act" webpages are at <https://www.citizen.org/article/freedom-of-information-act-foia-resources>.

Reporters Committee for Freedom of the Press FOIA Wiki is at [https://foia.wiki/wiki/Main\\_Page](https://foia.wiki/wiki/Main_Page).

General Services Administration, Your Right to Federal Records, [https://www.gsa.gov/cdnstatic/Your\\_Right\\_to\\_Federal\\_Records.pdf](https://www.gsa.gov/cdnstatic/Your_Right_to_Federal_Records.pdf).

# Overcoming NIMBY Opposition to Affordable Housing

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Jaimie Ross, Former President and CEO, and Kody Glazer, Legal Director, Florida Housing Coalition

**N**ot In My Backyard Syndrome (NIMBYism), in the context of affordable housing, connotes objections made for reasons such as fear and prejudice. This is in contrast, for example, to objections over the real threat of an incompatible neighboring use, such as a hazardous waste facility near a residential area.

NIMBYism presents a particularly pernicious obstacle to producing affordable housing. Local elected officials are too often barraged by the outcry of constituents over siting and permitting affordable housing. Consequences of NIMBYism include lengthy and hostile public proceedings, frustration of consolidated plan implementation, increased costs of development, property rights disputes, and inability to meet local housing needs.

Fortunately, there are tools advocates can use to avoid or overcome these objections, usually to the eventual satisfaction of all parties.

## ISSUE SUMMARY

Local zoning and land use decisions have historically resulted in racially and economically segregated communities. In Richard Rothstein's *The Color of Law*, the thread of government lending, insurance, and appraisal requirements for housing, including redlining and the security maps used by the Homeowners' Loan Corporation and Federal Housing Administration (FHA), details the intentional segregation wrought throughout the United States. A parallel argument can be made that government planning and zoning discrimination used to entrench NIMBY opposition is the perpetuation of modern-day segregation. NIMBYism is often a proxy for intentional segregation as it keeps people confined to pre-existing demographic patterns;

demographic patterns that often reflect the overt intentional segregation of the past.

Local zoning codes that segregate uses by housing type and require subjective standards of "compatibility" with existing surroundings set the stage for NIMBYism and for segregation. Exclusionary zoning laws that create single-family only districts and use a subjective test of "compatibility" and consistency with the "character" or "neighborhood scale" perpetuate homogenous neighborhoods of low-density, single-family homes. These policies create an uphill battle when developers of affordable rental housing look for sites that will provide desperately needed homes for lower-income households.

Land use decisions are made in an ever-increasingly political environment fueled by NIMBYism and NIMTOOism (the Not In My Term Of Office syndrome). NIMBYs are residents determined to maintain homogeneous neighborhoods, "preserve" their property values, and vehemently oppose the development of affordable housing. The NIMTOOs are the local elected officials who may or may not agree with the NIMBYs but are not about to vote in favor of the affordable housing development if it will jeopardize re-election.

## BEST PRACTICES FOR HOUSING ADVOCATES TO OVERCOME NIMBYISM

The best defense to NIMBYism is a good offense. And a good offense means:

### (1) Know your legal rights.

When discrimination against an affordable housing development is really discrimination against a race, color, national origin, religion, disability, sex, or familial status, it violates the federal Fair Housing Act. State and local fair housing protections may include additional

characteristics protected from discrimination. Litigation is usually not a meaningful remedy because housing funding cycles are on a tight time clock and court actions can take years to resolve. But knowing your legal rights and making local government lawyers and elected officials aware of what you know about your rights is often all you need to benefit from fair housing protections. In cases where discrimination is clear and local elected officials act in disregard of that fact, consider reporting the incident to the U.S. Department of Housing and Urban Development (HUD) or your state or local fair housing centers. If HUD or the U.S. Department of Justice (DOJ) takes the case, it is a little like standing up to a schoolyard bully - it could make your future dealings with your local government much easier.

A non-profit developer may be hesitant to challenge a local government over land use issues if the local government provides funds to the non-profit. Establishing a good relationship with a local legal services office or other local advocates for the public interest is an effective way around the need for the affordable housing developer to cry foul when local government succumbs to neighborhood opposition. Local advocates can make these arguments on behalf of future tenants or residents directly impacted by the land use decision.

## **(2) Expand legal protections for affordable housing.**

### **(a) Fair Housing & Due Process**

Advocate for state or local laws that make it harder for NIMBYism to prevail. For example, in 2000, the “Florida Fair Housing Act” (Fla. Stat. § 760.26 (2021); the state’s substantial equivalent to the federal “Fair Housing Act”) was amended to include affordable housing as a protected class. This expansion of the “Florida Fair Housing Act” has provided the Florida Housing Coalition and other housing professionals a useful tool for advocating for local government lawyers and commissions to approve affordable housing units or face legal challenges. In 2022, an affordable housing developer successfully sued the City of Apopka for prohibiting the use of a parcel of land

for affordable housing (Southwick Commons Ltd. v. City of Apopka, 2022-CA-005470-O (Fla. 9th Cir. Ct. Nov. 28, 2022)). The court cited Section 760.26, Florida Statutes, as controlling; it would be a violation of the state’s fair housing act for the city to exclude an affordable housing development.

In 2009, North Carolina adopted a similar state law to add affordable housing as a protected class in its fair housing law (N.C.G.S. § 41A-4(g) (2021)).

### **(b) Zoning & Land Use**

Regulations that unduly restrict flexibility in housing types and densities enable NIMBYism to thrive and allow existing patterns of segregation to continue. For communities that do not look all that different from the days of redlining, NIMBYism in the form of local land development regulations requiring a subjective test of neighborhood compatibility is a way for the government to perpetuate the overt, intentional segregation of the past. Housing advocates can study their local land development processes and push for reforms that facilitate more integrated communities.

Restrictive zoning, particularly single-family zoning, creates a high hurdle for affordable housing. In December 2018, Minneapolis, Minnesota became the first major city in the United States to adopt a plan to allow up to three dwelling units on a single-family lot in areas zoned for single-family only housing. This change allows duplex and triplex rental housing in what would otherwise be an exclusively single-family homeownership area. In 2019, Oregon passed a law requiring cities with populations of 25,000 or more to allow duplexes, triplexes, townhomes, and other “missing middle” housing types in single-family districts. Cities of 10,000-25,000 in population are required to allow duplexes in single-family zones (Or. Rev. Stat. § 197.758). In 2021, California passed Senate Bill 9 which, among other policies, provides that a proposed duplex within a single-family zone be “considered ministerially, without a discretionary review or a hearing” if the proposal meets statutory requirements (Cal. Gov. Code. § 65852.21 (2021)). The state of Maine passed LD 2003 in their 2022 Session which among other housing reforms,

requires local governments to allow duplexes save for certain exceptions on all lots in the state and up to four dwelling units per lot depending on if the lot is undeveloped or served by existing infrastructure (30-A M.R.S. § 4364-A). Up-zoning policies such as these remove the obligation for an affordable housing developer to seek land use changes on a case-by-case basis and thereby avoid forums that invite NIMBYism.

Reforming other restrictive zoning policies, beyond just allowing more housing types by right, are also gaining traction at the state and local level. Enacting inclusionary housing ordinances, eliminating parking minimums, passing lot design reforms such as reducing setback and maximum lot coverages, and expedited permitting for affordable housing via administrative processes that do not require a public hearing are boons to both allow more housing and prevent opportunities for NIMBY opposition. Another land use reform could be to require a supermajority vote to deny a housing development approval. State preemptions and state authorizations of when a local government can deny an affordable housing development can also be helpful to approving more housing.

In 2020, the Florida Legislature passed a law permitting all local governments to approve affordable housing developments without zoning or land use changes on land zoned for residential, commercial, or industrial uses (Fla. Stat. § 125.01055(6) (2022); Fla. Stat. § 166.04151(6) (2022). This state permission for local governments to override its own zoning requirements may prove to be a powerful tool in avoiding NIMBYism by reducing the need for developers to secure zoning approval in a public forum. It could be particularly useful for incorporating small scale rental developments in single-family zoning districts and for adaptive reuse of commercial properties for affordable residential development. Of course, advocates will need to ensure that this zoning override is never used to site affordable housing near toxic uses.

Laws, whether federal, state, or local, that are helpful to your cause are only helpful if

decision-makers and their staff are aware of those laws. The expansion of the state fair housing act to include affordable housing in Florida, for example, has been successful in keeping local elected officials from succumbing to NIMBY opposition. The success of the law is due to housing advocates ensuring that local government lawyers know about the statute. It is now commonplace in Florida for a city or county attorney to inform the elected body during a heated public hearing that they run afoul of the state's fair housing law if they deny the affordable housing developer's application. Legal protections for affordable housing provide political cover to elected officials who are sometimes facing an electorate threatening to unseat those officials who vote in favor of affordable development.

### **(3) Educate elected officials.**

Once a NIMBY battle ensues, it is often too late to educate. Local elected officials need to understand the importance of affordable housing in general. Advocates should have an education campaign about affordable housing and its importance to the health of the entire community without regard to a particular development.

Getting good media coverage is also helpful. Whenever possible, education should include bringing elected officials to see completed developments and sharing the credit with them at ribbon cuttings and in news stories. Regarding a pending development, whether you can meet with your elected officials depends upon the ex parte rules in your jurisdiction. However, if you discover that the community opposition is meeting with elected officials about your development, you certainly should do the same.

### **(4) Garner allies for affordable housing from a broad range of interests.**

Too often, the only proponents of an affordable housing development are the developers themselves. Whenever possible, have members of the business community, clergy, and like-minded social service agencies stand up for your development to demonstrate the community value of new affordable housing construction.



The potential beneficiaries of the development (future residents) can also be effective advocates. And, if possible, recruit a former member of the opposition to speak on behalf of your development.

The media can be an important ally throughout the process of development approval. Whenever you foresee a potential NIMBY problem, it is best to contact the media first so that they understand your development plans and its beneficial public purpose. In this way, the neighborhood opposition will have to justify to the media why it makes sense to stop a development that the media already considers an asset for the community. Again, the best defense is a good offense.

#### **(5) Address all legitimate opposition.**

Key to overcoming NIMBYism is to address all legitimate concerns expressed by the opposition. Those concerns may be, for example, traffic, available infrastructure, or project design; issues that may lead you to adjust your proposed development. The developer should come prepared with professional traffic studies, infrastructure impact reports, and other important planning documents so that what may be a legitimate concern is addressed. One of the most common objections, albeit not expressed as openly as traffic concerns, is the concern that the affordable housing will bring down the value of neighboring properties. There are a multitude of empirical property value studies all reaching the same conclusion; affordable housing does not diminish the value of neighboring properties. A new study in April 2022 by the Urban Institute reports that “Although the impact of affordable housing on nearby property values is not the primary reason to build affordable housing, individuals often cite it as a reason to oppose such developments. This analysis adds to the current research on the topic, showing that affordable housing developments in the city of Alexandria, Virginia, not only do not reduce property values but also are associated with a small but statistically significant increase in values.”

If you address all legitimate concerns and the opposition persists, you are now in the enviable position of being able to state with certainty that the opposition is ***illegitimate*** - it is, therefore, opposition that would be inappropriate, arbitrary, capricious, or unlawful for the local government to consider in making its land use decision. In other words, you win!



# Lofty Rhetoric, Prejudiced Policy: The Story of How the Federal Government Promised—and Undermined—Fair Housing

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**T**he federal government has long recognized the importance of housing to the lives of all Americans. Unfortunately, this recognition has been consistently accompanied by outright complicity in the establishment and perpetuation of residential segregation and the resulting inequities. For over a century, the federal government has carried out, reinforced, or intentionally ignored discriminatory practices and systems in the housing market against racial minorities and low-income households, undermining equal opportunity at every turn. When opportunities to further the cause of fair housing have arisen, often as the result of courageous leadership and progressive legislation, they have been squandered by some combination of political cowardice and haphazard implementation. Until legislators and policymakers finally decide to directly—and sufficiently—address the obstacles that prevent universal access to safe, high-quality, affordable housing, the United States will continue to underdeliver on its promises within this hugely important aspect of American life.

## INITIAL HOUSING LEGISLATION

As with many issues that involve racial disparities in the United States, the roots of housing segregation can be traced back to the legacy of slavery and the failed promise of Reconstruction. In the aftermath of the Civil War, despite initial promises by governmental actors and widespread political advocacy by Black leaders, African Americans were systematically denied access to private land ownership, beginning a pattern of governmental overpromising and underdelivering around issues of fair access to quality housing that continues to the present day (Von Hoffman, 2021).

Abandoned by federal policymakers, Black Americans took matters into their own hands

by participating in the broader urbanization of American society, a movement known as the Great Migration. By 1920, half of Americans were living in cities, including the first wave of African Americans in Chicago, Los Angeles, Detroit, and New York City. In many cases, private actors and local governments responded with racial hostility and enforced both formal and informal boundaries, but in other cases this mass migration resulted in the country's first integrated neighborhoods. Indeed, during this era, most African Americans moved into neighborhoods that were less than 30% Black ([ProPublica, 2015](#)).

In the early 1930s, the Great Depression provided the first political opportunity for large-scale government involvement in the housing market. According to housing scholar Bradford Hunt, “High unemployment, the continued presence of slums, and the collapse of new housing construction opened the door to state action.” The first major piece of modern federal housing legislation, the “National Housing Act of 1934” was a New Deal program designed to shore up the housing market after catastrophic bank foreclosures. The act aimed to curb private mortgage lending by establishing a public loan insurance program and to motivate new residential construction by increasing available credit. To accomplish these aims, the bill established the Federal Housing Administration (FHA) and the Federal Savings and Loan Insurance Corporation (FSLIC).

As soon as the FHA started insuring loans, however, it began deploying discriminatory practices against Black Americans and households with low incomes. Local governments had already demonstrated their willingness to establish segregated living patterns through the [explicitly racial zoning ordinances](#) that arose in the 1910s, but now the federal government got

involved. The FHA selectively insured mortgages in racialized patterns, thereby directly contributing to housing segregation in cities across America. And while the shaded Home Owners Loan Corporation (HOLC) maps are the most well-known examples of redlining, the practice of denying coverage to entire neighborhoods based on racial and socioeconomic composition was already in place by the time of their publication and was the default practice for decades to come (Fishback et al, 2021). FHA underwriting manuals, for example, urged employees not to insure loans in areas that were or could become integrated.

In 1935, another New Deal program, the Public Works Administration, constructed Techwood Homes in Atlanta, GA—the first federal public housing project. This initiative, however, was also marred with discriminatory behavior; the Techwood project displaced hundreds of Black households to establish an all-white public housing community (NLIHC, 2019). The PWA later employed a “neighborhood composition rule,” which prevented new projects from changing the racial makeup of an area, thereby preventing racial integration at projects in all-white neighborhoods (Hunt, 2018). In this way, the United States’ first large-scale attempts at improving housing outcomes for all its citizens were immediately undermined by its own discriminatory actions, a pattern that would prove recurrent.

The next major housing bill, the “US Housing Act of 1937,” was passed only three years later. The focus now was on a growing list of urban housing challenges, including ‘slum removal’. The presence of unsafe, unsanitary, low-income housing in neighborhoods across the United States was, of course, an entirely predictable outcome of the intentional redlining practices carried out by the FHA but addressing state-sanctioned segregation was not included in the bill’s priorities. The bill did manage to create a United States Housing Authority (USHA) and funded the first large-scale public housing initiative in the country’s history, but these accomplishments were also undermined by discriminatory actions. Indeed, the segregationist tendencies of federal, state, and local officials continued in full force.

In fact, in many cases, federal action made segregation much worse than it had been before. New public housing and urban renewal initiatives were highly racialized, in effect bulldozing previously integrated neighborhoods and building segregated housing projects. When integrationists such as Frank Horne at the USHA and Elizabeth Wood at the Chicago Housing Authority tried to further fair housing aims, they were met with private and public backlash (Von Hoffman, 2021). This process of government engineered resegregation is a forceful rejoinder to arguments that present-day segregation reflects individual choice and personal preference, rather than intentional policy decisions.

## **GROWING RECOGNITION OF HOUSING’S IMPORTANCE: THE “HOUSING ACT OF 1949”**

With the federal government’s chosen policies actively contributing to entrenched segregation and concentrated poverty, challenges continued to grow. Recognizing the immense housing challenges facing the country, in 1944 President Roosevelt included the right of every family to a decent home in his ‘Second Bill of Rights.’ Under President Truman, housing issues became a substantial component of his “Fair Deal” program, with the stated goal of “a suitable home for every American.” These efforts to elevate housing’s importance culminated in the passage of the “Housing Act of 1949,” which was accompanied by lofty rhetoric about the importance of housing to daily life:

*The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation.*

In practice, however, the bill essentially served as an extension of earlier housing policies, just on a larger scale, with funding going to ‘slum clearance’ and ‘urban renewal’, increased authorization for federal provision of mortgage insurance, and funding for housing research and farm buildings. In the words of housing scholar Alexander von Hoffman (2000): the bill “set lofty goals—to eliminate slums and blighted areas and provide a decent home for every American family—but provided only the limited mechanisms of public housing and urban renewal to meet them.”

Perhaps the most important aspect of the bill—funding for the development of more than 800,000 public housing units—was again undermined by racial and socioeconomic segregation. Congressional Republicans used southern fears of residential integration to defeat an amendment that would have prohibited segregation, and new housing projects constructed during this time were often segregated. At the same time, the Federal Housing Administration actively contributed to the creation of all-white suburbs, encouraging the use of racially restrictive covenants in newly constructed developments (Rothstein, 2017). The result was rampant segregation in metropolitan areas across the country. Indeed, Historian Alfred Hirsch has analogized the use of federal housing policy in this era as “domestic containment” of Black Americans, similar to the strategies employed to prevent the spread of communism in Europe.

## FINALLY, FAIR HOUSING LEGISLATION

Over the next twenty years, the booming post-war economy dramatically increased housing construction, especially in the suburbs, but did little to solve the issues arising from the segregated housing patterns that the federal government had helped to create. Momentum had been building for years for a housing component to civil rights legislation passed in the mid-1960s, but a major push by President Lyndon Johnson in 1966 failed to generate

sufficient momentum. However, after the dramatic conclusions of the Kerner Commission (“Our nation is moving toward two societies, one black, one white—separate and unequal.”) and the assassination of Martin Luther King Jr. on April 4, 1968, Congress finally passed the “Fair Housing Act.”

Reading the statements of the Act’s co-sponsors, Walter Mondale and Edward Brooke, one can sense the recognition of housing’s primacy to other social ills and—more importantly—that segregation had continually undermined previous attempts at well-intentioned housing reform. Mondale argued:

*But every solution and every plan for the multiple evils in our cities and their ghettos is drastically and seriously affected by racial segregation in housing. With high concentrations of low-income, poorly educated, and unemployed persons in our cities—and without dispersal or balance throughout our communities—our cities will never be able to solve the problems of de facto school segregation, slum housing, crime and violence, disease, blight, and pollution.*

Gone were the denials that the federal government had been a major contributor to this intractable problem. In a speech urging the passage of the bill, Senator Brooke noted that “the prime carrier of galloping segregation has been the Federal Government. First it built the ghettos; then it locked the gates; now it appears to be fumbling for the key.”

The Fair Housing Act is most well-known for banning discrimination across race, color, religion, or national origin in housing transactions (including mortgage lending and renting). In 1974, sex was added as a protected characteristic, and the 1988 amendments to the bill expanded the list to include familial status (covering households with children) and disability. Most of the enforcement activity that has arisen under the FHA has fallen under this umbrella, with individuals and HUD filing complaints against discriminatory parties.

But the FHA has a second, explicitly stated goal: to reverse housing segregation and promote “truly integrated and balanced living patterns.”

Importantly, the FHA included language that required HUD to administer its programs in such a way that *affirmatively furthers fair housing* (often referred to as AFFH), with accompanying responsibilities for local governments that received HUD funds. The goal, in other words, was to infuse integrationist, fair housing principles into all HUD programs, including the FHA, public housing, and urban renewal initiatives, among others.

The Fair Housing Act was complemented by the “Housing and Urban Development Act of 1968,” which contained another large expansion of public housing construction as well as the initiation of public-private partnerships designed to increase the supply of housing and reduce rents for low-income households. These were precisely the type of initiatives that were now supposed to be imbued with fair housing principles under the AFFH provision.

In fact, following the passage of the Fair Housing Act, multiple circuit court cases (*Otero vs. NYCHA* 1973, *NAACP Boston vs. HUD* 1987) have ruled that the bill’s language requires government action in pursuit of integrated living patterns, rather than the mere absence of discriminatory practices. However, despite the attempts of advocates such as Senator William Proxmire to incorporate ‘carrot and stick’ provisions into the text of the bill, which would have outlined the specific incentives and penalties behind AFFH mandate, its practical implications were left intentionally vague (Van Hoffman, 2021).

## A PIVOTAL BATTLE BETWEEN ROMNEY AND NIXON

For a brief period, it seemed as though policymakers had finally recognized fundamental truths about the importance of housing and the perils of segregation. Indeed, as described more fully in this [ProPublica article](#), George Romney—Nixon’s HUD secretary and a Republican presidential candidate in 1968—sought to leverage the FHA’s “affirmatively further” language to address suburban segregation almost immediately. Romney, according to ProPublica, “ordered HUD officials to reject applications for

water, sewer and highway projects from cities and states where local policies fostered segregated housing.”

In describing his rationale for forceful political action, Romney argued, “The youth of this nation, the minorities of this nation, the discriminated of this nation are not going to wait for ‘nature to take its course.’ What is really at issue here is responsibility – moral responsibility,” (Lamb, 2005). One can see a path towards equitable housing patterns emerging in this moment, emboldened by federal legislation and strong political leadership.

Unfortunately, that path never materialized. Facing pressure from reactionary southern and suburban constituencies, President Nixon stepped in and prevented Romney’s proactive integrationist approach, noting that he was convinced “forced integration of housing or education is just as wrong” as legal segregation. Eventually, he pushed Romney out of his cabinet altogether. In his resignation letter, [Romney](#) decried politicians’ tendency to “avoid specific positions concerning, and discussion of, ‘life and death’ issues in their formative and controversial stage for fear of offending uninformed voters and thus losing votes.”

With Romney gone, Nixon continued his efforts to undermine substantive progress related to affordable and integrated housing; In 1974, Nixon’s moratorium on the construction of new public housing effectively signaled the end of hopes that such housing would contribute to integrated, rather than segregated, housing patterns. The “Housing and Community Development Act of 1974,” passed in the same year, established the Section 8 voucher program, part of a larger shift from a focus on publicly constructed housing to an emphasis on public-private partnerships.

## NEW POLICIES, MISSED OPPORTUNITIES

Despite vouchers’ potential as an integrative tool—in a perfect world, low-income individuals and families could use them to access well-resourced, safe neighborhoods they couldn’t



otherwise afford—implementation challenges including source-of-income discrimination, underfunding, and a lack of complementary supports have resulted in a situation where vouchers primarily subsidize the cost of living in under-resourced, segregated neighborhoods (DeLuca et al, 2012, DeLuca et al 2013). For example, a recent study found that 9 in 10 voucher holders in Massachusetts were turned away from rental units in high opportunity neighborhoods. As a result of these barriers and others, only around 20% of voucher households lived in low-poverty neighborhoods as of 2010, falling well short of accomplishing significant integrationist aspirations (Collinson et al, 2019)

Relatedly, the “Tax Reform Act of 1986” established the Low Income Housing Tax Credit (LIHTC), which allocates tax credits to states on a per capita basis, which states in turn award credits to developers to support the construction and rehabilitation of low-income, rental housing. The LIHTC quickly surpassed public housing and project-based housing as the primary form of affordable housing construction in the United States. While LIHTC has successfully increased the number of affordable units in states across the country, it has failed to improve fair housing outcomes. Studies show that LIHTC units are built in neighborhoods with higher rates of poverty compared to the average rental unit.

Making matters worse, following the passage of the Fair Housing Act, affluent, well-resourced, predominantly white neighborhoods began to turn to ostensibly colorblind single family zoning ordinances to prevent denser housing patterns that might yield more mixed-income, racially diverse communities. These ordinances drove up housing prices for current property owners at the expense of lower income renting households and voucher holders.

In the decades that followed, progress around fair housing policy was halting, and even when new initiatives arrived, they were often held back by a lack of practical measures—especially related to enforcement. For example, in 1988, lawmakers updated the criteria for HUD’s largest program, the Community Development Block Grant,

mandating that any communities requesting funding submit an ‘Analysis of Impediments,’ (AIs) which outlined local barriers to fair housing along with potential solutions. Unfortunately, HUD rarely reviewed these documents and even more rarely withheld funding for non-compliance.

Despite HUD delivering \$137 Billion to local housing authorities between 1972 and 2012, ProPublica “could find only two occasions since Romney’s tenure in which the department withheld money from communities for violating the Fair Housing Act.” Indeed, across the decades, HUD’s Office of Fair Housing and Equal Opportunity has remained the smallest of the four major divisions within the agency. Instead, for more than forty-five years after the FHA passed, “affirmatively furthering fair housing” consisted of local governments self-certifying their own compliance every few years, without any formal oversight or review by HUD.

Prior to the Obama Administration, President Clinton’s Administration was the most ambitious in its approach to fair housing since LBJ. In 1994, Clinton issued Executive Order 12892, which established the President’s Fair Housing Council, with the authority to “review the design and delivery of Federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing.” Later, under Secretary Henry Cisneros, HUD published the Fair Housing Planning Guide in 1996, which aimed to provide scaffolding for local communities’ pursuit of fair housing goals.

Both of these initiatives, however, were accompanied by a lack of practical implementation. Insufficient technical assistance was provided for the AI process, and the AIs that were submitted were rarely reviewed and never enforced (GAO, 2010). Later in Clinton’s term, HUD Secretary Andrew Cuomo attempted to provide greater clarity around the AFFH rule but was met with pushback from the Council of Mayors, among other stakeholder groups (ProPublica, 2015). Another Clinton-era housing initiative, HOPE VI, which included the demolition of large-scale housing projects in

favor of mixed income housing also fell short of its fair housing potential, in many cases actually reducing the supply of affordable housing and leading to widespread displacement ([NLIHC, 2007](#)).

## PROGRESS UNDER OBAMA, BACKSLIDING UNDER TRUMP

Early in Obama's first term, several factors led to an uptick in interest around improving the federal approach to fair housing. First, the housing crisis's disproportionate impacts on highly segregated communities led to an increased sense of urgency around the concentration of poverty and racial disparities in the housing market. Second, HUD conducted an internal review of its fair housing protocols and found them to be severely lacking. Finally, the GAO conducted its own [review](#) of the AFFH compliance process, and its conclusions were also damning. The GAO report "detailed a lack of clarity for grantees" and noted that HUD had overseen "inconsistent compliance requirements" for decades; more than half of jurisdictions receiving HUD funding could not produce their AIs and those that could were largely out of date (Bostic et al, 2021).

In response, the Obama Administration, led by HUD Secretaries Shaun Donovan and Julian Castro, adopted a much more aggressive interpretation of the AFFH rule. This new policy, published in 2015 after years of internal debate, provided cities and towns applying for HUD funding with an extensive data and mapping tool to analyze demographic trends—including race, disability, familial status, socioeconomic status, and English proficiency—across neighborhoods to identify specific barriers that explain segregated patterns and come up with potential strategies to address them, a process known as Assessment of Fair Housing (AFH). Communities were also required to publish public reports on their progress, and to set and track goals in pursuit of fully integrated housing patterns.

This rule was rolled back by Trump HUD appointee Ben Carson, citing complaints about the burden of reporting, and while the Biden

Administration has reimposed some of the language from the Obama rule, it has kept the reporting requirements light to alleviate unnecessary administrative mandates. Even supporters of the more assertive AFFH regulations noted that there were issues with the quality data and mapping tool and that the reporting requirements were unwieldy and hard to navigate without extensive technical support well beyond HUD's current capacity ([Pritchett et al, 2021](#)). The appropriate resting place in the balancing act between transparency and autonomy is an open question that will continue to be debated in the future. Indeed, the Biden Administration has committed to providing an updated rule in the near future.

## THE CURRENT STATE OF FAIR HOUSING

Since the passage of the Fair Housing Act in 1968, the rate of white homeownership has increased, from 66% of white households owning a home to 71%. During this same time, the Black homeownership rate has remained low—roughly 44%—despite a brief climb to 49% prior to the financial crisis in 2007. Furthermore, while metropolitan areas have, on the whole, become more diverse in the last half century, neighborhood composition tells a different story. In the largest 100 cities in the United States, the average white person lives in a very segregated neighborhood, with over 70% white neighbors. Additionally, suburbs and rural areas are even more segregated than metropolitan areas. This is at least partially due to discrimination—studies have routinely found that minority renters are told about and shown fewer homes and apartments than equally qualified whites (Christensen et al, 2021).

Even in neighborhoods where integration has increased, it is largely Latino or Asian households moving in, rather than Black households, a trend that indicates the seemingly intractable nature of Black-white racial prejudice in the United States. Nor has the limited racial integration that has occurred led to equivalent rates of socioeconomic integration. Over the last forty years, the



percentage of low-income households living in predominantly low-income census tracts has increased (from 23% to 28%), and so has the level of high-income households in predominantly high-income census tracts (9 to 18%), coming at the expense of middle class and mixed income neighborhoods, which have declined over the same time period (Pew, 2012).

The FHA's failure to live up to its author's hopes has not been lost on co-sponsor Walter Mondale. In a 2015 [speech](#) at HUD, he noted:

*“When a black family with an income of \$157,000 a year is less likely to qualify for a prime loan than a white family with an income of \$40,000 a year, the goals of the Fair Housing Act are not fulfilled. When real estate agents only show integrated schools and suburbs to black and Latino middle-class families, and steer white families away from those same neighborhoods and schools, the goals of the Fair Housing Act are not fulfilled. When the federal and state governments will pay to build new suburban highways, streets, sewers, schools, and parks, but then allows these communities to exclude affordable housing and non-white citizens, the goals of the Fair Housing Act are not fulfilled.”*

An early [memo](#) from the Biden Administration, *Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies*, echoes similar challenges, noting—among other concerns—the racial gap in homeownership, persistent undervaluation of properties owned by families of color, a disproportionate burden of pollution and exposure to climate change falling on low-income communities of color, and the presence systemic barriers to safe, accessible, and affordable housing for all. Since the passage of the FHA, the memo notes, “access to housing and creation of wealth through homeownership have remained persistently unequal.”

Racial discrimination, such as steering by real estate agents and selective renting by landlords, remains an issue. Perhaps more importantly, however, the rights-based approach that has defined the implementation of the Fair Housing Act neglects the importance of socioeconomic

status in determining access to certain societal benefits. In the words of housing scholar Wendell Pritchett, “In a society in which property ownership provided one of the primary means to achieving middle class status, the use of rights-based strategies was of limited assistance to persons who lacked the financial means to take advantage of newly won rights.” Richard Rothstein also notes that following the act's passage, lack of affordability became the primary driver of segregation (Rothstein, 2017). Without concrete measures to enable households with limited financial means the ability to move to well-resourced areas, protection from racial (or any other protected characteristic) discrimination offers little consolation. In other words, to achieve the goal of integrated living patterns, the federal government must fulfill its affirmative duty to further fair housing.

## THE NEED FOR AN AFFIRMATIVE AGENDA

In a speech advocating for passage of the Fair Housing Act in 1968, Senator Phillip Hart argued, “This problem of where a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions.” Exactly 50 years later, in 2018, the National Low Income Housing Coalition launched the Opportunity Starts at Home Campaign (OSAH) in recognition of this exact premise: that where one lives dramatically influences all other facets of their life. But as the implementation of the Fair Housing Act has failed to fundamentally address the profound legacy of segregation in our housing patterns, and because those patterns are in many ways more entrenched and damaging today, there is an urgent need to imbue the fair housing effort with new meaning—and new policies.

The Biden Administration's *Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies* contains a pledge to rectify the government's discriminatory history, particularly noting the repealed AFFH rule as an area of focus. So, nearly one year after this initial pledge, where

do we stand, and where should we go from here?

### **The AFFH Rule**

The Biden Administration needs to issue a final version of the Affirmatively Furthering Fair Housing Rule. A successful rule will balance the legitimate concerns about regulatory burden and efficiency with the moral and political imperatives of making substantive progress towards equalizing access to opportunity. After interviewing both federal and local fair housing stakeholders, a group of housing experts from the University of Pennsylvania and the Reinvestment Fund offered a set of recommendations for a revised rule (and process): provide additional financial and expert assistance for communities (especially around identifying action steps) completing the AFH, improve the quality of the data and mapping tool, allow communities to focus on a smaller number of meaningful goals, and expand all-government fair housing efforts grounded within the Domestic Policy Council.

Additionally, as noted by Megan Haberle of the NAACP Legal Defense Fund, even the efforts under the Obama Administration to fulfill the intentions of the AFFH provision largely existed within the purview of the EEO office within HUD. Truly fulfilling the mandate of AFFH, however, requires that fair housing is not merely a compliance process; fair housing principles should infuse all HUD programs. An improved AFFH process would align the grant and implementation processes for key programs such as Housing Choice Vouchers and the Low-Income Housing Tax Credit with fair housing goals.

### **Additional Improvements**

There are also several important legislative proposals that have been introduced in Congress that could make important fair housing contributions. The “Fair Housing Improvement Act,” for example, would ban source of income discrimination and discrimination based on veteran status. The “Fair and Equal Housing Act,” meanwhile, expands the FHA to cover sexual orientation and gender identity. Finally, the “Housing Fairness Act of 2021” makes more general improvements to the fair housing

programs at HUD. Furthermore, the “Housing Supply and Affordability Act,” the “American Housing and Economic Mobility Act,” and the “Yes In My Backyard Act” focus specifically on zoning reform, but each would make important contributions to advancing the cause of fair housing if enacted because of the discriminatory impact of exclusionary zoning.

Additionally, other pieces of housing legislation make indirect, but important contributions to furthering integration and equalizing access to opportunity. For example, the “Eviction Crisis Act” is a bipartisan bill that would create a fund for short term financial assistance for low-income households experiencing financial shocks, thereby avoiding the catastrophic consequences of an eviction. Because evictions often start a downward spiral that results in moving to neighborhoods with fewer resources, the “Eviction Crisis Act” would likely have significant fair housing consequences.

If implemented, these policies would finally take a much-needed affirmative and resource-intensive approach to promoting integration and addressing the segregated nature of housing that has been embedded in American society throughout the modern era. After nearly a century of missed opportunities, it is time to act on the lessons of our mistakes, time to implement policy that we know is feasible, sound, and fundamentally right.

## **WORKS CITED (IN ORDER OF APPEARANCE)**

Von Hoffman, Alexander (2021). The Origins of the Fair Housing Act. In Stell, Kelly, Vale & Woluchem, *Further Fair Housing: Prospects for Racial Justice in America’s Neighborhoods*. Temple University Press.

Fishback, Price, Rose, Jonathan, Snowden, Kenneth & Storrs, Thomas (2021). *New Evidence on Redlining by Federal Housing Programs in the 1930s*. National Bureau of Economic Research.

Hunt, D. Bradford (2018). *Public Housing in Urban America*. American History.

Van Hoffman, Alexander (2000). *A Study in Contradictions: The origins and legacy of the housing act of 1949*. Housing Policy Debate.

Rothstein, Richard (2017). *The Color of Law: A Forgotten History of How Our Government Segregated America*. W.W. Norton.

Lamb, Charles (2005). *Housing Discrimination in Suburban America since 1960: Presidential and Judicial Politics*. Cambridge Press.

DeLuca, Stefanie & Garboden, Phillip (2013). *Segregating Shelter: How Housing Policies Shape the Residential Locations of Low-Income Families*. Annals.

DeLuca, Stefanie & Garboden, Phillip (2012). *Why Don't Vouchers Do A Better Job of Deconcentrating Poverty? Insights from Fieldwork with Poor Families*. Poverty & Race.

Collinson, Robert, Ellen, Ingrid, & Ludwig, Jens (2019). *Reforming Housing Assistance*. Annals.

Bostic, Rafael, O'Regan, Katherine, & Pontius, Patrick with Kelly, Nicholas. (2021). Fair Housing from the Inside Out: A Behind-the-Scenes Look at the Creation of the Affirmatively Furthering Fair Housing Rule . In Stell, Kelly, Vale & Woluchem, *Further Fair Housing: Prospects for Racial Justice in America's Neighborhoods*. Temple University Press.

Pritchett, Wendell, Rodarte Costa, Erica, Goldstein, Ira, Dowdall, Emily (2021). *An "All Out" Effort to Achieve Desegregation and Equality of Opportunity: Assessment of Fair Housing 2.0*. Penn Law and the Reinvestment Fund.

Christensen, Peter & Timmins, Christopher (2021). *The Damages and Distortions from Discrimination in the Rental Housing Market*. National Bureau of Economic Research.

# Resident and Tenant Organizing

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By Sidney Betancourt, Housing Advocacy Organizer, NLIHC

## WHY ORGANIZE?

Organizing balances power. When ordinary people come together to take collective action on their own behalf, they have a greater ability to influence people in decision-making positions. Organizing undermines existing social structures and creates a more just distribution of power.

## WHY DO TENANTS ORGANIZE?

Tenants organize to address immediate problems and create ongoing solutions. If tenants have mold in their apartments and the landlords keep saying that they will address it but never do, chances are that other tenants in the building are facing the same problem. It is easy for the landlord to avoid each person individually, but when tenants come together and put pressure on the landlord as a group, they become much harder to ignore. It is important to acknowledge that low-income people, and especially low-income women of color, tend to be the highest percentage of people living in affordable housing. Often these groups of people need to be the central agent of change to ensure tenant organizing initiatives can flourish. It's important that tenants also lead the movements and drive the change themselves.

Organizing does not stop when an immediate problem is fixed. As a group, tenants can identify systemic problems in their building. They can see patterns of neglect or harassment and demand long-term solutions that prevent problems instead of only dealing with them once they occur. It does not have to stop at the building level; an organized group of tenants may identify issues, such as local school conditions, that need to be addressed on their block or in their neighborhood. A united tenant organization with experience dealing with their landlord and building management knows how to work together as a group to demand accountability

from people in positions of power, like the local school board.

Ultimately, tenants organize to gain power. In an apartment building, a small minority of people hold almost all the power. Landlords and management companies have the power to withhold repairs, to raise rents in many cases, and to refuse to renew leases and even evict people. In federally assisted buildings, tenants have rights and protections provided by the government. Some cities and states also provide additional protections, but even these are more effective if tenants are organized. Organizing gives tenants more power to draw attention to problems and get them resolved.

Typically, there are several types of issues that prompt tenants to organize:

- Substandard living conditions.
- Systematic harassment or intimidation.
- The threat of an end to assistance programs that keep units affordable to existing tenants.
- Extreme increases in rental pricing.

## TENANT ORGANIZING TIPS

### Learn From Others

Unfortunately, tenants around the country, if not the world, must organize against unfair housing practices. Organizing, however, presents a learning opportunity as there are many examples to use. Find out what other communities have done, what was successful, and what challenges they faced.

### Be Open

To function well, a tenant association must be open to all residents in a building. If it is not, competing tenant organizations can develop and landlords or management companies can exploit this lack of unity among residents. Look for unlikely partners or allies and tap into existing networks.

## **Be Democratic**

For long-term success, it is crucial for a group to function democratically. When the special interests of only a few members begin to dictate group decisions and interactions with landlords or management companies, the cohesion and strength of a group is weakened.

## **Keep an Eye on Process**

While there is no one-size-fits-all decision-making process or leadership structure for tenant associations, it is important for residents to figure out what works well for them, build consensus, and formalize their processes in some way. A group may re-evaluate and change its structure at some point, but it is critical to have a defined and agreed upon method so that when decisions need to be made, they can be made without conflict or disarray.

## **Be Informed**

Tenants need to know what is going on in their building and in their community. Tenants should determine whether their landlord owns other buildings in the neighborhood or city and if residents in those buildings experience similar problems. Tenants should also learn about federal, state, or local laws that apply to the right to organize, affordability restrictions, or living-condition standards. They should figure out who can help them get the resources they need to be successful.

## **Know Your Elected Officials**

Tenants should learn who their elected officials are at every level of government and engage them on the issues facing residents in the building. For local offices, attending neighborhood and city meetings can often be a great way to make connections with elected officials or their staff.

## **Find a Location to Hold Meetings and Access Community Resources**

A public library, community center, or local church may be willing to provide space. Does the group need to create and photocopy meeting notices? A community-based organization in your neighborhood may be able to help you access

a computer, a photocopier, and other useful resources.

## **Set a Goal or Goals as a Group**

Most importantly, tenants must determine their goal(s) as a group, identify and engage allies who can help achieve the goal(s), make sure that all interested residents have a role to play, and develop solidarity within the group. Strength in numbers and unity of purpose are instrumental forces in organizing.

Ultimately, an organized tenant group becomes a critical resource for advocates. No one knows the direct implications and effects of housing policy better than the residents who live each day in subsidized housing properties. A tenant organization can solve immediate problems in an individual building and can also play an important role in advocating for better, more just public policy over the long term.



# Creating and Participating in a Tenant Group

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By Sidney Betancourt, Housing Advocacy Organizer, NLIHC

**T**he United States has a rich history of tenant organizing, and the tenant movement has built a stronger foundation following the onset of the COVID-19 pandemic. With the increased evictions and discrimination that occurred to tenants during the pandemic, many tenants used their experiences with housing injustice to fuel their tenant organizing. While there are many different models for tenant groups, this article will highlight three models in particular: the tenant association, a statewide resident network, and the National Alliance of HUD Tenants. Not every model mentioned below will work for every group, but this article should serve as a starting place for your organizing.

## WHY ARE TENANT GROUPS IMPORTANT?

Addressing issues as a tenant are often much stronger when done in a group.

On your own:

- If rents are rising, you may have to find a higher paying job, hope that your landlord doesn't cancel your subsidy.
- If your management is neglectful, you can get an attorney or write a complaint.

With a Tenant Group:

- You can negotiate a multi-year section 8 subsidy to keep rent affordable.
- Organize with tenants to keep rents reasonable.
- Organize with the group to present a list of grievances.
- Organize things like protests and media outreach to pressure the landlord.

## TIMELINE FOR DEVELOPING A TENANT ASSOCIATION

The timeline for developing a tenant association will vary from building to building, depending on the issues facing residents in the building, the dynamics among residents, and other factors unique to any given community. Here is a sample timeline that contains some useful tips.

### WEEK 1: RESEARCH

To start, ask yourself the following questions:

- What issues do residents in the building experience?
- What are the relevant affordability programs affecting the building such as the national Housing Trust Fund, HOME, or the Low Income Housing Tax Credit?
- Does the building have a subsidized mortgage?
- Is there a federal rental assistance program in place?
- Are there state or local assistance programs supporting the building or its tenants?
- Who governs and regulates these programs?
- Are there protections in place for the tenants as a result of these programs?
- Who are the elected officials representing the area where the building is located?
- What other issues do community members face?

### WEEK 2: DOOR KNOCKING

Prepare. Make sure you have everything you need to door knock effectively: a clipboard or an electronic tablet that includes both a sign-up sheet where people can share contact information and a place to make notes about the conversations you have with people. Bring a copy of any regulations, federal or local, ensuring



your right to organize in case you are confronted by the landlord, property manager, or building security. Bring business cards or information about your organization.

Knock on doors. This is the most effective way to find out about the issues facing tenants and how likely they are to organize than by talking to them face to face. It is usually most effective to door knock in the evening, since that is when most people will be home from work.

Identify potential leaders. Use door knocking to identify both problems and potential leaders. Note whether there are any tenants who people seem to defer to, listen to, and respect. Who are the long-time tenants? Who seems enthusiastic about taking action? Don't predetermine leaders; let leaders emerge.

Door-knocking is about listening, observing, and beginning to build trust.

### **WEEKS 3 AND 4: PLANNING AND MEETINGS**

Get the group started. After door knocking, engage a small group of tenants who seem the most enthusiastic about addressing the problems facing residents in the building.

Organize one or two smaller meetings. Meetings will likely take place in one of the tenants' apartments. Brainstorm with this small group about the following:

- What are the underlying common issues facing the building?
- Who seems to be the decision maker?
- How should things change?
- How can things change?

Determine a goal for the building that has consensus among the small group. Pick a date for a building-wide meeting. Develop an agenda for the big meeting. Delegate roles and tasks among the group:

- Who is going to create, copy, and distribute meeting notices?
- Who is going to facilitate the meeting?
- Who is going to take notes?

- Will you need spoken-language translation or sign-language interpretation?
- If so, what community resources are available to provide translation or interpretation?

Make sure that everyone who wants a responsibility has one. Remember that the role of the organizer is not to lead, or even talk much; it is to provide the resources that the tenants need to meet their goals and to facilitate this small group's leadership.

Consider a resident survey. Organizers should consider developing and conducting a resident needs/satisfaction survey to measure resident perceptions about building maintenance, security, responsiveness of management and maintenance, interest in social activities, etc. Organizers could conduct in-person interviews and/or distribute surveys under tenant doors with return information included.

### **WEEK 5: FIRST BUILDING-WIDE MEETING**

Once a date is determined, choose a location that is physically accessible to all who may want to attend. Many buildings have a community room, which is a great resource because these rooms don't require people to travel anywhere to get to the meeting. If the building does not have a meeting place, try to find a space in the neighborhood. Public libraries, community centers, or churches often have adequate space that is open to the community.

Create and distribute flyers detailing the logistics of the meeting. Make sure that everyone is aware of the meeting. Not every tenant will come, but everyone should have the opportunity to attend if they choose.

Consider multilingual and sign language needs. Not all residents may speak the same language. Additionally, some residents may be hearing impaired and need sign language interpretation. Therefore, it is important to consider interpreter needs in terms of fliers and translation. A great way to accomplish this is by reaching out to bilingual and hearing-impaired residents for help with translation.

Finalize the agenda. Make sure that everyone who will speak knows their role. Keep the agenda very tight. Address why you are meeting, build consensus around your goal(s), and determine the date for your next meeting and the next steps that need to happen. Make sure that every action item has a person assigned to it.

#### **WEEK 6: DEVELOP AN ACTION PLAN**

Once you have determined your goal(s) as a group and have developed some immediate next steps, begin the process of creating an action plan.

Figure out contingency plans. For example, if you are writing the landlord a letter asking them to meet with your group, what are your next steps if they say yes? What are your next steps if they say no? If your city has a tenant advocate or public advocate within the local government, at what point will you involve that office? At what point will you engage your elected and appointed public officials? At what point might you go to the media? How might a combination of your local media and public officials place pressure on your landlord, if your group considers it necessary?

Your action plan will develop and change over the course of your campaign as events unfold, but it is useful to plot out your steps and expectations as a group in advance.

#### **WEEKS 7 THROUGH 10: ELECTIONS AND BY-LAWS**

After you have developed your action plan and taken initial steps in your campaign, it is useful to begin formalizing leadership and decision-making processes.

Determine the group's leadership and bylaws. There are many different leadership structures. Tenants should consider different options and determine what makes the most sense for their group. Do they want a president? Co-chairs? Does a non-hierarchical structure make the most sense? Does a committee structure make the most sense? Tenants must determine the basic functions that need to be fulfilled within their group and then craft a leadership structure that meets those needs. The organization's bylaws document should answer these questions

and provide processes for your organization's operation.

Determine the decision-making process. This should be a process that all active members of the group are comfortable with, and one that is formalized in writing. Without basic rules and regulations in place, a group can fracture, and a fractured group loses power.

### **CREATING A STATEWIDE RESIDENT ORGANIZING NETWORK**

Statewide organizing networks can be created through different methods, but the main method mentioned in this article is adapted from Community Change's Housing Trust Fund Project. The goal of this project is to build a powerful movement of people impacted by lack of affordable and accessible housing. In addition to empowering residents, the project also aims to shift the culture found within non-profit housing organizations and service providers so that residents are included in the work at the same level that staff is. This often means that non-profit community must be willing to take a risk and equally join forces with individuals who have experience with housing injustice. Non-profits and service providers play an important role here because they can provide the leadership and skill development needed for residents to become the strongest advocates they can be. To properly address the housing crisis, it is important for residents to be a part of the organizing.

Here are some steps Community Change wants to organizers to consider when creating a statewide resident organizing network:

- To help with capacity building, seek commitment to build a network from a statewide housing/homeless nonprofit organization or service provider.
- Be strategic when deciding who will be in the network and where in the state you will need to work harder to build people power.
- Assess organizing capacity by looking at where you need to build relationships and what organizing mode you will need to use.

- Spend time planning how to train and provide leadership development to residents/tenants in your movement.

Another statewide model you may consider, is New York's Housing Justice For All group, which formed in 2017. Since then, they have fought for tenant protections in New York state. To learn more about Housing Justice For All, view their website: <https://housingjusticeforall.org/>

## **PARTICIPATING IN A NATIONAL TENANTS' UNION**

The National Alliance of HUD Tenants (NAHT) is an alliance of tenant organizations that advocate for the 2.1 million low-income families in privately owned, multi-family HUD assisted housing. Through advocacy, NAHT aims to implement stronger tenant protections, empower tenants, promote resident control and ownership, and improve the conditions of HUD assisted housing. NAHT's membership includes a diverse list of groups including building-level tenant unions, area and state-wide coalitions, tenant organizing projects, legal service agencies, and other housing-related tenant organizations. These groups convene bi-weekly via Zoom meeting.

To get more involved with NAHT, you can e-mail [naht@saveourhomes.org](mailto:naht@saveourhomes.org) to join the NAHT Network ListServe. NAHT has 2 types of memberships: voting membership which is open to tenant organizations and non-voting membership which is open to non-profit organizations. You can find out more about how to become a NAHT member at [https://www.saveourhomes.org/join\\_naht\\_network](https://www.saveourhomes.org/join_naht_network)

## **SUSTAINING A TENANT GROUP**

Many tenant groups emerge in moments of crisis. After the immediate problem that brought a group together is addressed, the group may lose momentum, stop meeting, and begin to dissolve. Below are some tips to preserve the group.

### **Stay Engaged, but Set Realistic Expectations**

It is important to keep members engaged, but it is just as important to understand that the level of

activity within a tenant group can vary depending on how urgently tenants wish to address issues at hand. During an active campaign a group may meet every week. Once the issue is resolved, the group may decide to scale back to meeting once a month. Scaling back is okay. Although you want to keep the group going, you don't want to burn people out or make them feel like they are meeting for no reason. Whether you meet once a week, once a month, or even once a quarter, holding regular meetings is a good way to build and maintain rapport with your fellow tenant and neighbor. Keep in mind that these meetings should be held in a safe and public space for all your members.

### **Look to the Community**

For tenant associations, it is usually a problem in the building that brings tenants together. However, there may be broader issues in the community around which a tenant group can organize or stay organized once initial problems are resolved, such as conditions of the local schools or public transportation systems. Give members of the tenant association space to raise issues of greater concern. If common issues arise, brainstorm ways the tenant association can address those issues and influence the community.

### **Look Beyond the Community**

- Does the tenant group have concerns about the way a federal or local program is regulated or run? How can they best advocate for themselves and their neighbors?
- Finding ways to maintain a strong tenant group is important. Although the group may win one fight, another crisis could arise at any point and having a strong and unified body in place means you will be ready to respond quickly and effectively.

### **Consistently Engaging New Members**

It's important for tenant groups to grow on a consistent basis. You can engage new members through a variety of methods. For more locally based groups, you can go door-knocking to spread the word about your organization. If you

are a larger organization that is statewide, you might consider attending or putting on events to engage potential members. It is important to maintain a sign-on form of some sort to keep track of new members.

### **Maintain Shared Values and Goals**

As the tenant group continues to grow, keep track of shared issues and grievances among the group to help inform the groups values and goals over time. These goals will then help inform the group's action plan. To help guide your shared values, goals, and regulations, you can delegate shared leadership roles in your tenant group.

### **Organizing with a Team**

If you are organizing a building, you will want at least 7 other team members to help organize people in your building. If you are working statewide or even nationally, it's important to get involved with other tenant groups and other advocacy groups to help spread the message of your tenant group.

### **Preparing for Virtual Organizing**

New York State's Tenants & Neighbors works to help tenant organizations prep their Zoom accounts for tenant organizing. You can learn more about how to get assistance by calling their office at 212-608-4320.

The information in this article has been adapted from several sources including:

- ONE DC: [https://www.onedconline.org/tenant\\_organizing](https://www.onedconline.org/tenant_organizing).
- Community Change Housing Trust Fund Project: <https://housingtrustfundproject.org/>
- National Alliance of HUD Tenants: <https://www.saveourhomes.org/>.
- New York State Tenants & Neighbors' 2008 Organizers' Manual, by Michele Bonan. For more information, visit the Tenants & Neighbors' website at <http://tandn.org/>.

# ***Our Homes, Our Votes: A Guide to Nonpartisan Voter and Candidate Engagement for the Housing and Homelessness Field***

By Courtney Cooperman, Housing Advocacy Organizer, NLIHC

**O**ur Homes, Our Votes is NLIHC's nonpartisan campaign to boost voter turnout among low-income renters and educate candidates about housing solutions. The campaign empowers the housing and homelessness field—including housing advocates, social services organizations, tenant leaders, and affordable housing providers—to register, educate, and mobilize their communities to vote. To support housing and homelessness organizations that have limited experience with elections, the campaign provides an abundance of resources for getting started on nonpartisan voter and candidate engagement work. This guide provides an overview of key considerations for planning a nonpartisan voter and candidate engagement campaign. For a comprehensive set of resources, visit [www.ourhomes-ourvotes.org/](http://www.ourhomes-ourvotes.org/)

## **WHY ENGAGE IN ELECTION WORK?**

The same communities that face the greatest barriers to securing stable, accessible, and affordable housing also face the greatest barriers to voting. Low-income people with less flexible work schedules or lack of transportation face obstacles to getting to their polling places. Polling place closures, voter purges, and other voter suppression tactics disproportionately impact low-income communities and communities of color. In states with restrictive voter ID laws, people experiencing homelessness often lack the documents that they need to register and have their votes counted. Returning citizens, who face significant barriers to stable housing, must navigate a patchwork of state-level felony disenfranchisement laws, some of which involve



BECAUSE HOUSING IS BUILT WITH BALLOTS



a complex voting rights restoration process. Many people who have consistently been failed by public policy may feel apathetic towards the process and skeptical that voting is worth their time. Because renters move more frequently than homeowners, they must update their voter registration more often, creating yet another hurdle to overcome before casting their ballots. Research even shows a direct link between higher eviction rates and declining voter turnout, as those who are displaced from their communities and grappling with the trauma of eviction are less likely to have the time or resources for civic participation.

These obstacles contribute to persistent disparities in voter turnout between renters and homeowners. In the 2020 presidential election, 71% of homeowners voted, compared with a turnout rate of 55% for renters. High-income people also vote at much higher rates than low-income people. While 83% of people with incomes over \$100,000 voted in 2020, just 49% of people with incomes below \$20,000 voted. This voter turnout gap is one of the root causes of the threadbare social safety net for housing, as elected officials sideline the concerns of the lowest-income renters and pay more attention to their constituents who vote at higher rates. To increase political participation and build the political will for bold housing solutions, housing and homelessness organizations must bring civic engagement to the forefront of their work.



Fortunately, organizations that work directly with low-income renters and people experiencing homelessness are in a strong position to help their communities overcome these obstacles and cast their ballots. According to research from Nonprofit VOTE, engagement with nonprofits is proven to significantly increase turnout among voters traditionally overlooked by political campaigns – including low-income voters, first-time voters, voters who move often, and returning citizens. In 2020, low-income voters engaged by nonprofits had a voter turnout rate 7 percentage points higher than that of comparable low-income voters who were not engaged by nonprofits. Tenant leaders are also trusted messengers that can empathetically address their neighbors' concerns about voting and help them navigate the barriers they face.

Voter engagement is a powerful way to further the mission of housing and homelessness organizations. Below are some of the primary reasons why nonprofits, tenant associations, and housing providers choose to register, educate, and mobilize voters:

- Residents and clients engage in civic life and learn about the democratic process;
- The issue of homelessness and housing scarcity is elevated in public debate;
- Elected officials learn about low-income housing issues and see renters as a voting bloc with the power to hold them accountable;
- Housing and homelessness organizations build strong relationships with elected officials;
- People with lived experience of homelessness and housing instability develop civic leadership skills; and
- Housing programs earn positive press.

## GETTING STARTED

Nonprofit organizations can, and should, engage in nonpartisan election-related activity, including voter registration, education, and mobilization. There are, however, legal considerations that are important to understand before getting

started on voter and candidate engagement. The basic rule is that 501(c)(3) organizations cannot support or oppose candidates or political parties. 501(c)(3) organizations can register and educate voters, engage with candidates on issues, host election-related public events, and get voters to the polls. While 501(c)(3) nonprofit organizations cannot endorse candidates, they can endorse ballot measures that fit within the organization's mission. Engagement on ballot measures is treated as lobbying on a bill, but with the voters acting as the legislators. Finally, if any staff member engages in partisan political activities, they must do so without representing the organization or using organizational resources. For detailed legal guidance, you may want to consult:

- Nonprofit VOTE, [www.nonprofitvote.org](http://www.nonprofitvote.org).
- Bolder Advocacy, <https://bolderadvocacy.org/>.
- League of Women Voters, [www.vote411.org](http://www.vote411.org).

Organizations that receive specific types of federal funding might face limitations on electoral engagement. After consulting the above resources, organizations with additional legal questions are encouraged to contact an attorney who specializes in election law. It is important to remember that 501(c)(3) organizations cannot consult with campaign staff or political parties, even on simple technical questions.

When developing your voter engagement plan, you should assess your existing resources to determine the scope of your election activities. Take time to gather information on existing election efforts and identify critical gaps where you could plug in. Identify potential funding sources for your project or in-kind donations to cover expenses like voter databases, supplies, transportation, training sessions, and community events. Once you know what you would like to accomplish, plan out how to maximize staff and volunteer capacity. Look for opportunities to build and leverage partnerships—for example, student groups may be interested in registering voters as part of a community service project, or a civic group may already coordinate rides to the polls and could include your clients in its plans.



Remember to partner only with nonpartisan organizations. Consider formalizing a coalition devoted to increasing voter participation among low-income renters, people experiencing homelessness, and other underrepresented communities. A coalition can bring a greater range of resources, volunteers, and audiences into your efforts. Some of the benefits of an election engagement coalition include the following:

- Social media – Elevate your messages about the election, low-income housing issues, and candidates by cross-posting with other organizations.
- Spotlights – By featuring the efforts of key partners on your website in your newsletter, you can direct your members, renters, or clients to other resources that might be beyond your capacity to organize, such as candidate forums or rides to the polls.
- Website – Joining with other community organizations to house all relevant and important election information on one website can prevent confusion and ensure greater visibility for your resources.
- Pooling volunteers – Each coalition partner will have different types of volunteer support. Sharing volunteer networks can maximize your impact.

There are five components of nonpartisan election work in which housing and homelessness organizations commonly participate: voter registration, voter education, voter mobilization, candidate engagement, and ballot measure advocacy. These should be considered as a menu of possible activities; your organization's mission and capacity will determine where you should concentrate your efforts. To map out your voter engagement strategy, use the *Our Homes, Our Votes* Engagement Plan, which can be found at: [www.ourhomes-ourvotes.org/resource-library](http://www.ourhomes-ourvotes.org/resource-library)

## VOTER REGISTRATION

The first step to boost voter turnout among low-income renters and people experiencing

homelessness is to ensure that they are registered to vote. Here are some tips for effective voter registration efforts:

1. Set goals. Define who you want to register, and how many people you hope to register. How will you choose which voters to target? Will you target young voters who recently became eligible to vote? How will you identify new residents who just moved into the community? Request the voter rolls for your community, so you will know who is already registered. Voter lists may cost a small fee, but they are essential to track who is registered and who should be the target of your outreach.
2. Familiarize yourself with voter registration rules. Your local Board of Elections or County Clerk can offer a wealth of information for your voter registration efforts. You will want to check in with them to learn the registration deadline for the general election in your state. Ask whether anyone can register voters in your state, or whether a person must first become authorized to register voters or meet other requirements. Learn about identification requirements for registration and voting. You can partner with organizations like Voteriders or Spread the Vote if any community members need to resolve voter ID issues before registering.
3. Determine what materials you need. Explore whether online voter registration is an option – this might allow your voter registration drive to be done on tablets or smartphones. Request enough voter registration forms to meet your registration goals, and make sure you have materials available in multiple languages if members of your community primarily speak languages other than English.
4. Offer registration trainings. Staff and volunteers who plan to register voters will benefit from receiving training on the process. You may want to bring in someone from the local Board of Elections or County Clerk's office who can explain the state's registration requirements and how voter registration forms must be filled out, whether online or

on paper. It is also helpful to practice voter registration updates for renters who have recently moved and to know the process for registering voters experiencing homelessness.

5. Integrate voter registration into existing activities. Registration can usually be incorporated with few resources and little hassle into client intake processes, training sessions, resident association meetings, and any other gatherings. Staff or volunteers can be prepared to help with voter registration in day-to-day interactions that are already taking place. Organizations can also display voter registration information in common areas that are highly visible to clients and volunteers.
6. Organize a door-to-door campaign. Resident leaders can volunteer to receive training and serve as “building captains” or “floor captains” for canvassing efforts in their own buildings. Captains take on responsibility for registering, keeping registration records, and then turning out to vote all the people in their building or on their floor. Residents are trusted messengers who can answer their neighbors’ questions and get them excited to vote! Be sure that captains keep well-organized records of all the voters they register so that they can reach out again and help them make a voting plan.
7. Organize voter registration events. Hold social events, like block parties, at which low-income renters are encouraged to register to vote. Consider hosting an event for the annual nonpartisan Civic Holidays (National Voter Registration Day, National Voter Education Week, Vote Early Day, and Election Hero Day). Ensure that events are accessible to families by making the events kid-friendly or providing childcare. To boost attendance, offer food so that low-income renters will not need to plan their meal schedules around the event.
8. Positive messaging matters. Many low-income renters may not be registered to vote because they feel that elected officials do not have their interests in mind. Research

shows that positive messages can help voters overcome their skepticism towards voting. Connect an individual’s personal experience to the democratic process and the potential for social change. Be prepared to share reminders of very close elections where a small number of voters determined the difference. If someone is frustrated with the political process, you might tell them that you share the same concern, which is why you are registering voters to elect new leaders.

9. Explain what’s at stake. If you are organizing in public housing or registering low-income renters in subsidized properties, you should encourage them to protect their housing program by voting. Remind them that it’s important to vote for leaders who will maintain or increase the budget for subsidized housing programs so they can make needed repairs and increase the number of community members who have access to affordable housing.

Many organizations encounter questions about voting eligibility for people experiencing homelessness. In every state, people experiencing homelessness have the right to vote. The National Voter Registration Form allows a voter to designate an outdoor place where they regularly stay as their place of residence, for the purpose of determining their voting precinct and which ballot they should receive. Shelters and social services agencies should also consider allowing clients to use their addresses and to receive mail-in ballots at their sites. Each state has its own procedure for processing the registrations of voters without a permanent address; it is always best to confirm the requirements with your local election officials.

The US Interagency Council on Homelessness offers helpful resources for navigating the process of voting while experiencing homelessness: a checklist for voters experiencing homelessness to make sure they have everything they need to register and have their votes counted ([www.usich.gov/tools-for-action/step-by-step-voting-guide-for-people-experiencing-homelessness](http://www.usich.gov/tools-for-action/step-by-step-voting-guide-for-people-experiencing-homelessness)), and a step-by-step guide for homeless service

providers ([www.usich.gov/tools-for-action/step-by-step-guide-for-homeless-service-providers-to-help-people-vote](http://www.usich.gov/tools-for-action/step-by-step-guide-for-homeless-service-providers-to-help-people-vote)). The National Alliance to End Homelessness and National Coalition for the Homeless also compile helpful resources about engaging voters experiencing homelessness.

Another common misconception is that returning citizens who have been convicted of a felony are permanently barred from voting. This is only true in the states of Kentucky and Virginia. In most states, returning citizens have their voting rights restored when their sentence is completed or when they are released. In Vermont, Maine, and the District of Columbia, people convicted of felonies never lose the right to vote and can vote while incarcerated. In other states, returning citizens will need to take specific steps to restore their voting rights. Nonprofit organizations can play a powerful role in helping returning citizens navigate this process and cast their ballots with confidence. For a state-by-state breakdown of these voting rights, see the ACLU's map on felony disenfranchisement laws at [www.aclu.org/issues/voting-rights/voter-restoration/felony-disenfranchisement-laws-map](http://www.aclu.org/issues/voting-rights/voter-restoration/felony-disenfranchisement-laws-map).

## VOTER EDUCATION

Once voters are registered, the next step is to ensure that they are prepared to vote and know what to expect on their ballots.

Prepare to educate voters about deadlines for voter registration, how to find their polling locations, the logistics of early voting and vote-by-mail, and how to protect their voting rights if they encounter a problem at their polling place. You can always refer them to the Election Protection Hotline—866-OUR-VOTE—if their right to vote is being challenged, they face voter intimidation, or see voter misinformation. Make sure voters know that all voters who show up to the polls should cast a ballot. If voters are in line at the time the polls close, they must be allowed to vote. Encourage voters to bring a charged phone, water, or snacks to ensure they are prepared to wait in line. You may consider producing a “What to Bring with You” sheet so voters can gather what they need in advance.

If there is a question about any person's identification or residency in the ward where they are voting, the voter should cast a provisional ballot that will be counted after the initial run of results. Provisional ballots should always be completed, especially as protection from “voter caging.” The Brennan Center defines voter caging as, “the practice of sending mail to addresses on the voter rolls, compiling a list of the mail that is returned undelivered, and using that list to purge or challenge voters' registrations on the grounds that the voters on the list do not legally reside at their registered addresses.” This practice largely targets low-income renters as they change addresses at higher rates than homeowners.

You may also want to educate voters about what to expect on their ballots. Vote411.org offers sample ballots, which allows voters to enter their address and preview what their ballot will look like. Consider distributing a voter guide that highlights the candidates' positions on affordable housing and any relevant ballot measures. Keep in mind that you can only inform voters about candidates' positions—you cannot endorse a candidate or present information in a way that favors one candidate over the other. If you do not have the capacity to create a voter guide, consider distributing voter education materials from a trusted, nonpartisan partner organization that shares your organization's values and priorities.

## VOTER MOBILIZATION

Voter mobilization, or get out the vote (GOTV), efforts are traditionally focused on Election Day. As vote-by-mail and early voting become increasingly common, it is important to mobilize voters throughout election season and to develop the timeline for your voter engagement efforts accordingly. Here are some tips for getting out the vote:

- Encourage vote-by-mail and early voting. Rather than turning out the vote all on one day, encourage voters to request mail-in ballots. Check your state's laws to determine which voters are eligible to vote by mail. Keep a list of mail-in voters in your network and contact them at least 10 days before Election Day to

be sure that ballots are being put in the mail in time to be counted. If your state allows it, it can be effective to allow volunteers to collect and deliver the ballots themselves. In states where it is available, encourage early voting, which offers more opportunities for people with inflexible schedules or limited transportation options. Consider participating in Vote Early Day, a nonpartisan Civic Holiday that educates voters about early voting options and builds enthusiasm for early voting.

- Ask voters to make a plan. Contact voters in the days leading up to Election Day to ask them how and when they plan to vote, and how they plan on getting to their polling place. Asking voters to express this plan allows organizers to verify their polling location details and work through transportation obstacles.
- Provide childcare on Election Day. Consider recruiting volunteers to provide childcare for residents who need flexibility to get to polls and cast their ballot.
- Provide rides to and from polling locations. Recruit volunteers with cars, or perhaps fundraise to rent vans for Election Day, so that low-income renters with limited transportation options can cast their ballots.
- Become a polling location. Organizations should connect with their local Board of Elections far in advance of Election Day to begin the process of becoming a polling location. Voting will be more accessible to low-income voters if they can vote in a location that they visit frequently, such as an agency's office or the community rooms of their buildings.
- Organize group voting. Many voters are more likely to make it to the polls if they are joined by their neighbors. Resident councils and other peer organizing efforts should consider selecting times when groups of residents can walk or ride to the polls together, making it a community activity. People are more likely to vote when there are others expecting them to do so.

Once renters have made their plan to vote, you may also want to encourage them to sign up with the county as poll workers. This provides an additional, and often paid, way for low-income voters to participate in the democratic process.

Nonprofits can play an important role in making sure that people's rights are protected when they get to the polls. You may want to designate leaders in your voter engagement efforts to be poll watchers who spend Election Day recording and reporting instances of voter harassment or unlawful voter suppression. Poll watchers can identify potential issues in your community and can be on call if anyone experiences problems voting.

## CANDIDATE ENGAGEMENT

Elections are a prime opportunity to get decision-makers thinking about housing issues. Too often, affordable homes are ignored in the public debate leading up to elections. Raising housing on the national agenda will happen only when candidates for elected office understand that the issue of affordable housing is important to voters. There are two main reasons why low-income renters should engage with candidates: to make their concerns heard, and to learn how candidates plan to address affordable housing issues so they can vote accordingly. Low-income renters can effectively engage and educate candidates through community events, letters to the editor, factsheets, and candidate questionnaires.

When engaging with candidates, be sure to stay nonpartisan. To do this, remember:

- Never criticize candidate statements. You can, however, add perspective or correct the record.
- Do not rank or rate candidates. This constitutes an endorsement. You can only create legislative scorecards for incumbent legislators; these are distinct from voter guides.
- Even in nonpartisan candidate elections, you still cannot endorse candidates or coordinate with campaigns.



- Candidates can visit your organization as public figures (elected officials or field experts), as a candidate, or of their own initiative. If a candidate is visiting your organization as a public official, there should be no mention of their candidacy, although they can discuss their legislative accomplishments. It is also fully legal and acceptable for an elected official to receive an award from your organization for work on housing.
- If candidates are visiting as part of a campaign, then they should not be fundraising.
- Invite all candidates to events and make an equal effort to get them to attend, otherwise you may be perceived as favoring one candidate.

Candidate engagement can take many forms: candidate forums, town hall meetings, candidate surveys, and candidate fact sheets. There are also opportunities to invite candidates to interact directly with residents or community members through meetings and site visits.

Inviting candidates to interact with low-income renters through events at your agency or in your community creates a space for community voices to be heard. These events can range from neighborhood block parties or coffee with the candidates to candidate forums or town hall meetings. Regardless of the type of event, be sure to (1) choose an accessible location; (2) invite all candidates and make an equal effort to get all candidates to attend; (3) offer enough time for the candidates to discuss their visions and campaigns; and (4) conduct outreach ahead of time to ensure a good turnout. Hosting an effective candidate event requires sufficient planning time. You will want to ensure that both candidates and attendees know about the event far in advance.

When hosting a forum or town hall meeting, you can further ensure your event is a success by (1) choosing a skilled moderator; (2) setting time limits for responses to questions and giving all candidates a chance to respond; (3) screening

audience questions ahead of time, if possible, to get diverse views; (4) setting participation rules for the audience at the start of the event; and (5) offering voter registration forms to attendees. If you cannot host a meeting yourself, consider promoting nonpartisan candidate forums and town hall meetings in your community. Forums tend to be moderator-led discussions, while town halls allow for larger audience participation. To ensure that your priorities are addressed, be sure to submit a question in advance, and share your question on social media before the event using the #OurHomesOurVotes hashtag. Try to sit near the microphone, and ask direct questions while including facts. To amplify the candidate's response, record the question and answer, and share the exchange on social media using the #OurHomesOurVotes hashtag.

Another powerful way to engage candidates is through written materials such as letters to the editor, factsheets, and questionnaires. Candidates often learn what issues are important to voters in the community by reading the Letters to the Editor page of the newspaper. This platform can be used to share your experience with affordable housing issues and communicate the urgent need to prioritize affordable housing. Consider having low-income renters write letters about issues that are important to them; letters can often be published as a response to a story in which candidates have discussed poverty issues. Sharing factsheets about affordable housing issues in your community is another way to educate candidates. Finally, asking candidates to fill out a questionnaire is a useful way to learn more about candidates' views and to make them aware of the issues that affect low-income renters. Candidate questionnaires should go to all candidates and be publicly posted. Provide clear instructions for the word limit, deadline, and how to submit, and share how answers will be used. Keep the survey brief, and use open-ended questions to solicit the candidates' opinions on a range of issues. Consider publicizing the candidates' responses on social media or on your organization's website.

The *Our Homes, Our Votes* Toolkit includes comprehensive candidate engagement resources,

such as a template candidate questionnaire and tips for successful candidate events. The toolkit can be found in the *Our Homes, Our Votes* resource library at: [www.ourhomes-ourvotes.org/resource-library](http://www.ourhomes-ourvotes.org/resource-library)

## BALLOT MEASURE ADVOCACY

Elections offer a critical opportunity to take the issue of affordable housing directly to the voters through ballot measures. Over the past few years, voters have approved significant new funding for affordable housing and enacted tenant protections through ballot measures at the state and local levels. Although 501(c)(3) nonprofit organizations can never endorse candidates, they can endorse and campaign for ballot measures, within the usual restrictions that govern 501(c)(3) lobbying activities. Your organization should consider forming or joining a coalition to support housing-related ballot measures in your community—or even working to place a question on the ballot in a future election.

For further guidance on organizing a housing-related ballot measure campaign, refer to NLIHC's report, "Housing on the Ballot: How to Organize a Successful Campaign for Affordable Homes," which can be found in the *Our Homes, Our Votes* resource library: [www.ourhomes-ourvotes.org/resource-library](http://www.ourhomes-ourvotes.org/resource-library)

## BUILD ON YOUR MOMENTUM

Once Election Day is over, take a few days to rest. You deserve it! Then, be sure to celebrate your accomplishments and honor your volunteers. Evaluate your project and discuss what you will do differently in the next election cycle.

After the election, you may want to report the number of new voters your organization has registered, which demonstrates the strength of your constituency. Cultivate relationships with newly elected leaders to further educate them about your priorities and hold them accountable to their campaign promises.

Talk with low-income renters, volunteers, and staff who took on leadership roles in your voter engagement campaign, and see who might be

interested in running for local office themselves.

Most importantly, treat your voter engagement project as an ongoing effort. Even when the next election feels far away, continue to integrate voter engagement into your organization's day-to-day activities.



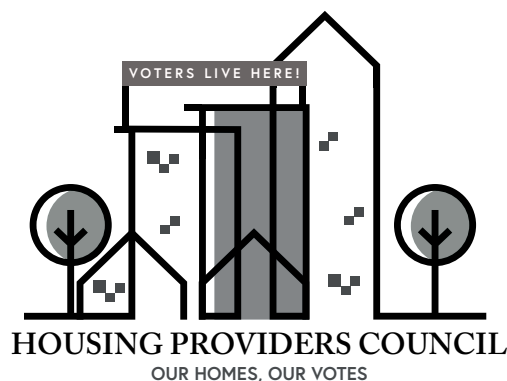
# Housing Providers and Nonpartisan Voter Engagement

By Courtney Cooperman, Housing Advocacy Organizer, NLIHC

Low-income renters face many structural barriers to casting their ballots and having their votes counted. When a voter moves into a new home, they must update their voter registration to reflect their current residential address. Because renters move more frequently than homeowners, they must update their voter registration more often. This additional hurdle contributes to the gaps in voter registration and turnout rates between renters and homeowners, and – alongside transportation barriers, less flexible work schedules, strict voter identification laws, language barriers, polling place closures, voter purges, and other restrictive voter laws – even greater disparities between low-income and high-income people. The underrepresentation of renters in the voting population is one reason why housing policy fails to meet the needs of the lowest-income renters and often skews toward wealthy homeowners.

Affordable housing providers are in a strong position to help their residents overcome these obstacles by offering accessible voter registration opportunities and getting out the vote. Many affordable housing developers and property managers, both for-profit and nonprofit, partner with their residents to increase election participation. Boosting voter turnout is a win-win for housing providers and residents. Making voting more accessible and creating a culture of civic engagement can strengthen the fabric of residential communities, ensure that residents have a voice in the democratic process, and even improve resident health and wellbeing. High voter turnout shows that residents of affordable housing are a powerful voting bloc, which galvanizes policymakers to pay greater attention to their concerns and prioritize funding for subsidized housing programs.

In 2020, NLIHC's nonpartisan *Our Homes, Our*



*Votes* campaign established the Housing Providers Council, a network of owners and operators of affordable housing that are committed to boosting civic participation among their residents. The Housing Providers Council meets regularly to discuss best practices in resident voter engagement, workshop voter outreach plans, and receive trainings from election experts on topics, including: using voter roll data to organize targeted voter registration campaigns, complying with the National Voter Registration Act, and resolving voter ID issues. More than 40 organizations are official members of the Housing Providers Council. A full list of participants is available at: <https://www.ourhomes-ourvotes.org/housing-providers-council>.

The efforts of the Housing Providers Council in the 2020 and 2022 election cycles offer valuable lessons for affordable housing developers and property managers that are seeking to engage renters in the political process. Below are some best practices for housing providers to consider as they develop their nonpartisan voter outreach plans.

## BEST PRACTICES FOR HOUSING PROVIDERS

- 1. Research relevant election laws!** Before planning and implementing any voter engagement efforts, developers and housing providers should research state-level voting laws. Each state has different rules for conducting voter registration drives,

hosting polling places or ballot drop boxes, transporting voters to the polls, and assisting with mail-in ballots. Voter registration deadlines, early voting and mail-in voting opportunities, and voter ID requirements also differ by state. Each state's Board of Elections or Secretary of State's office will offer the most comprehensive, up-to-date list of election rules.

- 2. Build engagement efforts into ongoing programs and processes.** Resident services staff can integrate voter registration opportunities into their everyday activities and responsibilities. For example, adding registration forms to a welcome packet for new residents will encourage residents to update their registration when they move into the property. Confirming that renters are registered to vote should also be included in checklists for annual income recertification in subsidized properties. Throughout the pandemic, residential services coordinators (RSCs) at many properties have called tenants on a weekly or monthly basis to make sure they are doing well and have necessary medical and other supports; voter registration and get out the vote reminders should be included in these check-in calls.
- 3. Host special events and celebrate the act of voting.** Many housing providers offer voter registration tables at block parties, picnics, and other community events. Some providers hosted events for nonpartisan Civic Holidays, including National Voter Registration Day, in the 2022 election cycle. Signing up as a Civic Holidays partner can increase the visibility of these efforts and even provide access to funding opportunities. Make sure that these events are widely publicized and accessible to all community members. Successful events will have printed materials in multiple languages and onsite translation, which will encourage voter registration among new citizens whose primary language is not English.
- 4. Contact residents directly.** Call, text, email, or have in-person conversations

with residents in the leadup to Election Day. Confirm that residents are registered to vote at their current address and that they have a voting plan. Voters are more likely to cast their ballots when they have already determined when, where, and how they will vote. *Our Homes, Our Votes* offers template voter registration and mobilization scripts that housing providers can adapt for their calls. Another creative strategy to boost voter registration rates is to make birthday calls to residents when they turn 18 and remind them to register to vote.

- 5. Establish partnerships with external organizations to add capacity.** Property managers, developers, RSCs and other property staff are often stretched thin and have limited capacity to register and mobilize voters. Asking staff to add voter engagement to their full plates can seem impossible. To decrease staff burden, housing providers should coordinate voter engagement activities with external partners, such as the local League of Women Voters. External partners can help by providing voter guides, staffing voter registration tables, or going door-to-door to provide information about voting options. Some providers also partner with local law schools to help residents resolve barriers to voting, such as voting rights restoration for formerly incarcerated residents.
- 6. Coordinate with tenant associations.** Many developers partner with tenant associations as part of their voter engagement efforts. At many properties, tenant leaders coordinate rides to the polls for residents or organize group walks to nearby polling locations. Tenant associations are trusted messengers that can provide trainings on the logistics of voting, promote civic engagement, and encourage first-time voters to cast their ballots. These updates and trainings can be paired with other tenant events such as barbecues, social events, or volunteer opportunities at the property. Although tenant associations and housing providers are sometimes in conflict, increasing tenant

participation in elections is an activity where the best interests of tenants and providers align.

- 7. Utilize community spaces for civic engagement.** One major asset of multifamily residential properties is the space! Meeting rooms and common areas can be used to host voter engagement efforts. A centralized space for civic engagement where voter information is available is a powerful reminder for tenants to engage in the democratic process. Housing providers and tenant associations can also use community spaces to organize nonpartisan forums with candidates for local, state, and federal office. Bringing the candidates face-to-face with renters gives them a chance to share their concerns and ensures that the candidates see the impact of affordable housing on their voters' lives.
- 8. Be the polls.** Community rooms and meeting spaces can easily be turned into polling locations on Election Day. Housing providers should consider applying to host polling locations or ballot drop boxes at their properties. To begin the process, reach out to the local Board of Elections or county clerk's office. Low-income renters are more likely to turn out if they only need to travel to the first floor to vote!
- 9. Get visual.** Displaying visuals in common spaces throughout a property is a great way to provide simple reminders to residents about upcoming elections. *Our Homes, Our Votes* provides templates for posters, door hangers, and flyers for housing providers to spread the word about voter registration deadlines, mail-in ballots, in-person voting, and other key information. Keeping visuals accessible, straightforward, and eye-catching is a great way to get the message across to all residents. Materials should also be displayed in multiple languages if many residents' primary language is not English. Some housing providers send voting toolkits directly to their residents with buttons, stickers, and customizable door signs. These materials empower residents to publicly

display their commitment to vote and inspire their neighbors to do so, too.

- 10. Track the data.** Using voter files is a great way to pinpoint residents' voter registration status, target voter engagement campaigns, and measure success. Voter data is publicly available and can be obtained from the local elections office, often for a small fee. Many organizers use software such as VAN or PDI to sort their data and target their voter outreach. The voter files can also be obtained after the election to track the success of registration and mobilization efforts. By comparing the number of registered voters and actual voters post-election with the numbers before the election and in previous years, housing providers can quantify the extent to which their efforts boosted registration and voter turnout.

## WELCOME TO VOTE PLEDGE

To build further momentum for resident civic engagement, the Housing Providers Council launched the Welcome to Vote Pledge in September 2022. The initial list of pledge signers includes 22 organizations that collectively own or manage more than 257,000 units across 41 states, the District of Columbia, and the U.S. Virgin Islands. Signers of the Welcome to Vote Pledge commit to integrating voter registration into the lease-up and income recertification processes at their properties, encouraging nonpartisan voter education and mobilization activities, and undertaking all voter engagement work in a fully nonpartisan manner and in compliance with all relevant state election laws.

The "National Voter Registration Act of 1993," commonly known as the Motor Voter Law, is an instructive model for these activities. The law requires that motor vehicle authorities treat drivers' license applications and renewals as simultaneous voter registration applications, which seamlessly ties voter registration into the process of filling out other forms. Similarly, integrating voter registration into lease-up and income recertification will make voter registration less burdensome for residents of

subsidized housing. Because voters must update their registration when they move to a new address, lease-up is an especially well-timed moment for residents to access voter registration. Housing providers are encouraged to sign onto the Welcome to Vote pledge. The full text of the pledge can be found at: <https://nlihc.org/sites/default/files/2022-Welcome-to-Vote-Pledge.pdf>

## **A NOTE ON NONPARTISAN VOTER ENGAGEMENT IN HUD-ASSISTED PROPERTIES**

Some owners of HUD-assisted properties worry that federal funding prohibits them from doing voter engagement work. Fortunately, this is not the case! President Biden's Executive Order on Promoting Access to Voting (March 2021) affirms that the right to vote is fundamental to American democracy and that it is the obligation of the federal government to ensure that American citizens can exercise that right. In response to the executive order, HUD circulated announcements to its email lists on February 9, 2022, clarifying that Public Housing Agencies (PHAs) and recipients of HUD funding are permitted – and actively encouraged! – to facilitate nonpartisan voter engagement activities. The announcements specifically state that PHAs and owners of HUD-assisted properties can pursue the following nonpartisan engagement activities:

- Permit the use of community space on an incidental basis to hold meetings, candidate forums, or voter registration, provided that all parties and organizations have access to the facility on an equal basis and are assessed equal rent or use charges.
- Collaborate with local election administrators to permit the use of space for voter drop boxes and voting sites, including for early voting. All voter engagement activities – including voter registration, voting sites, and ballot drop boxes – must be accessible for people with disabilities. Visit [https://www.ada.gov/ada\\_voting/ada\\_voting\\_ta.htm](https://www.ada.gov/ada_voting/ada_voting_ta.htm) for additional information.

The Public and Indian Housing (PIH) announcement lists additional ways that PHAs can support voter participation for residents of public housing and Section 8 voucher holders:

- Provide documentation of residence (e.g., address verification, leases, etc.) to public housing residents when requested to ensure that residents can register and vote.
- Apply to states to operate as a voter registration agency under the National Voter Registration Act. States are allowed to designate state, federal, and nongovernmental offices as voter registration agencies.
- Make voter registration resources available to residents. A PHA that is not designated by the state as a voter registration agency can still facilitate residents' access to voter registration. Such permissible actions include:
  - Making voter registration forms available to residents.
  - Accepting completed voter registration application forms and transmitting these forms to the appropriate state election official, where permissible by state law.
  - Running PHA-initiated voter registration drives, where permissible by state law. PHAs should consult with their legal counsel and state election director to identify the rules and laws around voter registration drives in each state.

The PIH announcement clarifies that PHAs may use Section 8 administrative fees and public housing operating subsidies to fund permissible nonpartisan voter engagement activities. Where PHAs fund Resident Councils, the Resident Councils may use their funds to provide transportation to the polls as a resident service. Resident Councils should consult with their PHAs to determine whether tenant participation funds can be used for additional voter engagement activities.

HUD funding cannot finance the use of facilities or equipment for partisan political purposes or partisan political activities that favor one

candidate, party, or political position over another. Voter registration activities must be nonpartisan. Voter engagement activities must not give the impression that benefits are tied to a resident's voting activity or suggest that voter registration and voting are not voluntary processes. For example, the residence cannot host an Election Night party and offer rewards only to community members who voted – they must be available to all who choose to attend.

Many voting laws are set at the state level. PHAs and private owners of HUD-assisted housing should always check with their legal counsel to ensure that their voter engagement activities comply with state and local laws.

For more information, visit: <https://nlihc.org/sites/default/files/The-Dos-and-Donts-of-Voter-Engagement-in-HUD-Assisted-Properties.pdf>



# Best Practices and Lessons Learned: Building Multi-Sector Coalitions

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By Mike Koprowski, Campaign Director for Opportunity Starts at Home, and Chantelle Wilkinson, Housing Campaign Manager, Opportunity Starts at Home

**R**esearch clearly demonstrates that housing is inextricably linked to an array of outcomes in other sectors. The consequences of our current housing affordability crisis are spilling over into many other areas of life including education, health, civil rights, economic mobility, food security, criminal justice, and more.

These sectors are increasingly recognizing that affordable homes are inextricably linked to their own priorities and concerns. It makes sense, then, that these sectors are growing more ready to join in on advocacy efforts to expand affordable housing for the most vulnerable people. The work to expand affordable housing solutions cannot be done by housing advocates alone. In the face of an unprecedented housing affordability crisis, along with the undeniable, cross-cutting realities of the research, powerful new constituencies are now possible in ways that they have not been before.

## ABOUT THE OPPORTUNITY STARTS AT HOME CAMPAIGN

The *Opportunity Starts at Home* campaign launched in March 2018 with the goal of broadening the affordable housing movement into other sectors. The campaign's Steering Committee represents a wide range of leading national organizations working shoulder-to-shoulder to advance federal policies that expand affordable housing for renters with the lowest-incomes: NLIHC, National Alliance to End Homelessness, Center on Budget and Policy Priorities, Children's HealthWatch, Catholic Charities USA, Children's Defense Fund, Community Catalyst, Food Research & Action Center, NAACP, JustLeadershipUSA, National Alliance on Mental Illness, National Association of Community Health Centers, National Association of Social Workers, National Education



OPPORTUNITY  
STARTS AT HOME

Association, National League of Cities, National LGBTQ Task Force, National Women's Law Center, Natural Resources Defense Council, and UnidosUS. Together, these multi-sector partners are working to advance federal housing policies that: 1) expand rental assistance for every income eligible household, 2) expand the supply of deeply affordable housing, and 3) provide emergency assistance to people experiencing unforeseen economic shocks to avert housing instability and homelessness.

The campaign deploys policy analysis, communications, and advocacy to impact opinion leaders, policymakers, and the public. It has full-time dedicated staff at the national level and is leveraging the capacity of participating organizations. Moreover, the national campaign is providing technical assistance to twenty-three state-based organizations to help the organizations build multi-sector coalitions and to support their advocacy efforts to impact federal policy. The twenty-three state-based organizations are: Housing California, Idaho Asset Building Network, Maine Together, Oregon Housing Alliance, Utah Housing Coalition, Coalition on Homelessness and Housing in Ohio, Housing and Community Development Network of New Jersey, Housing Network of Rhode Island, Prosperity Indiana, Housing Action Illinois, Partnership for Strong Communities, Colorado Coalition for the Homeless, Minnesota Housing Partnership, North Carolina Housing Coalition, Texas Homeless Network, Hawaii Appleseed, Mississippi Center for Justice, Empower Missouri, Arizona Housing Coalition, Wisconsin Community Action Program Association, Arkansas Coalition of Housing and Neighborhood Growth for Empowerment, the Kentucky Equal

Justice Center, and the West Virginia Coalition to End Homelessness.

To further expand the multi-sector network, raise awareness about the intersections of housing and other sectors, and reach a diverse array of new stakeholders the campaign has a Roundtable. Representatives from 106 multi-sector organizations, including housing, education, healthcare, civil rights, anti-poverty, seniors, faith-based, anti-hunger, veterans, LGBTQ, and more have joined the Roundtable designed to foster cross-sector engagement.

## WHY BUILD MULTI-SECTOR COALITIONS TO ADVANCE HOUSING POLICY?

### Enrich Your Content

Multi-sector partners enrich content by adding diversity in expertise. For example, when the campaign began creating a “Fact Sheet” that demonstrated how housing is connected to health, it relied heavily on the knowledge of its health-sector partners to assist with framing, messaging, and research. The healthcare organizations were aware of powerful research unknown to campaign staff and helped incorporate language and messages that they knew would resonate with healthcare professionals. This type of collaboration is simply not possible if multi-sector voices are not at the table. The same process happened in the development of other fact sheets such as education/housing, civil rights/housing, food security/housing, and more. Having “unusual suspects” in a campaign will also help mainstream communications so that non-housing experts and novices can understand the message.

### Pique the Interest of Policymakers

The use of non-housing voices advocating for housing policies will pique the interest of policymakers in ways that traditional housing groups cannot do alone. For example: the national campaign’s Steering Committee and members of the Roundtable sent a letter to appropriators urging their FY23 spending bills

to include President Biden’s budget request to expand Housing Choice Vouchers to an additional 200,000 households. Signatories included 23 leading national organizations from an array of sectors. The support for these funds by Children’s HealthWatch sends a clear signal to policymakers that it has implications for child health. Similarly, endorsement by the Children’s Defense Fund highlights implications for child wellness and health, endorsement by the National League of Cities highlights implications for local governments, and endorsement by the Food Research & Action Center highlights implications for food security. Not only does this grab the attention of policymakers, it also provides housers with new inroads to policymakers. Housing advocates often lament that certain elected officials “just don’t care about housing.” Chances are, though, that policymakers have prioritized an issue in their agenda to which housing is deeply connected. If a policymaker is, for example, primarily concerned with education, then housers can deploy their education partners to help make the case for why better housing policies will improve educational outcomes. When housers are working alongside educators, doctors, anti-hunger advocates, civil rights attorneys, anti-poverty experts, and faith-based leaders, it enables housers to approach policymakers in new ways.

## HOW TO BRING NON-HOUSING PARTNERS TO THE TABLE

### Be Armed with Facts and Research

Mountains of research demonstrate how housing is connected to other sectors, but it is often surprising how little of that research is known to other sectors. For example, education professionals may not be aware of the research showing that low-income children in affordable housing score better on cognitive development tests than those in unaffordable housing, or the research showing that local inclusionary zoning policies have been proven to dramatically improve the performance of low-income students and narrow the achievement gap between them and their more affluent peers. Fact sheets will

help make the case: provide the hard numbers, the infographics, and the landmark studies showing that success in their own field of work depends on whether people have access to safe, decent, affordable housing. The national campaign's [Fact Sheets](#) are a great resource.

### **Stress Mutual Interdependencies**

Once the facts are established, stress to prospective non-housing partners that you both need each other to be successful and that their goals are advanced with better housing policies. It is also important to emphasize that you are more likely to be successful if they add their sector's voice to the mix. The goal is to convince prospective non-housing partners that affordable housing is not simply a "nice to have," but rather a "need to have."

### **Do Your Homework on Their Language**

Before you even approach potential non-housing partners, study their work in advance, including their websites, goals, videos, reports, and published works. Learn the language with which they speak and then use their own language when explaining the importance of housing. The reality is that each sector has its own unique language and chances are high that you will talk past each other if you use language comfortable among housers.

### **Be Patient and Have Flexible "Entry Points"**

Multi-sector work is the long game. Most non-housing organizations are unlikely to pivot overnight to housing issues. It takes persistence. Some organizations have been thinking about the intersections of housing for a while and might be primed to align with housing advocacy efforts quickly, but many will be unsure exactly how they want to approach cross-sector work. Therefore, it is important to have flexible "entry points" through which organizations can participate in advocacy efforts. On the campaign's Roundtable these flexible "entry points" are possible. Participating in the Roundtable does not indicate endorsement of the campaign's policy goals, but rather a general commitment to ongoing dialogue and engagement. If the commitment you are asking for is too big and too fast, then you

run the risk of potential multi-sector partners balking. Many want the space and freedom to learn about the campaign, stay updated on its progress, and occasionally engage in advocacy where it makes sense for them. Even though the Roundtable is a lighter commitment, these types of structures enable advocates to get their foot in the door. Subsequently you can start to build meaningful relationships and formalize regular communication channels, which eventually could blossom into something more robust. It is also important to regularly ask multi-sector partners for feedback about your work; after all, people are more likely to support what they help build.

## **THE CHALLENGES OF BUILDING MULTI-SECTOR COALITIONS**

Building multi-sector coalitions is hard work and time consuming. There are certainly inherent challenges, but they can be navigated successfully.

### **Bandwidth of Multi-Sector Partners**

Organizations that do not specialize in housing will have a myriad of other priority issues and limited bandwidth to expand their focus. They may want to participate and be supportive of your housing work but will have limited capacity to advance your priorities while focusing on their own issues. To overcome this, you must be prepared to shoulder the workload: provide them with the tools and resources in "bite size" pieces, write the first drafts of every call to action, sign-on letter, and fact sheet, and email simple instructions when the time is right to act.

### **Lack of a Common Language**

As mentioned earlier, each sector has its own unique language. For example: housers tend to talk about area median income, anti-hunger advocates tend to talk about the federal poverty level, and educators often talk about free/reduced priced lunch. Language barriers can be mitigated through consistent dialogue and by deeply researching other sectors to learn how they speak.

## **Sectors Are Not Monolithic**

When building your multi-sector table, it is never as simple as having one seat for education, one seat for health, one seat for hunger, and so on. Just like there are different “camps” within the housing sector, there are also different “camps” in other sectors. For example, in the education sector, there are organizations that are pro-charter schools and anti-charter schools, and they each tap into different types of advocacy within their respective sector. Sectors are diverse within themselves, and these realities must be considered and discussed from the outset.

## **Lack of Relationships across Siloes**

The staff of housing organizations might not have deep relationships with staff in other sectors. Those in the same sector tend to flock together, which certainly poses a challenge when building cross-sector tables. You may be able to identify a specific organization from another sector that you would like to engage with, but there is often the practical reality of “who do you email first?” This can be time consuming and requires being intentional about building relationships across sectors.

## **Navigating the Weeds of Housing Policy**

When building multi-sector coalitions, you will be bringing in organizations that do not have expertise in housing policy. Non-housing organizations will not know the nuances of the Low-Income Housing Tax Credit, the Community Development Block Grant, or Housing Choice Vouchers. Yet the whole point of bringing them to the table is to eventually advocate for specific types of housing policy. This poses an inherent challenge: on the one hand, you must make sure that you do not lose them by getting too in the weeds about specific housing policies. Yet, as a houser, you know well that whether a particular housing policy is effective depends on the details. The devil is indeed in the details, but your partners from other sectors will not necessarily be equipped to discuss those details with you. You may have some multi-sector partners that are ready and willing to dive deep into the weeds of housing policy, but chances are that many

will have neither the bandwidth nor interest in becoming housing policy wonks. An effective multi-sector coalition does not seek to make everyone an expert on housing policy, but rather seeks to leverage the respective expertise already in the room. Your multi-sector partners will eventually get to the point where they defer to you as the housing expert and trust your judgment on which housing policies will be most effective. Also, it can be helpful to identify a smaller working group that is reflective of your broader coalition but specializes in day-to-day policy advocacy work, such as identifying prospective legislative champions and coordinating meetings with policymakers.



# Advocacy and Lobbying Tips for Communities and Beyond

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By Gabrielle Ross, Housing Advocacy Organizer, NLIHC

**A**dvocacy is the act of providing information and spreading awareness about an issue and organizing support for a cause.

Anyone can participate in advocacy, including individuals, community groups, and nonprofits. Advocacy can be done at all levels of government. NLIHC focuses on federal advocacy, but many of the best practices and tips included here also can be applied to state and local advocacy.

Lobbying is a specific type of advocacy when a position is taken on a certain piece of legislation. All lobbying is advocacy, but not all advocacy is lobbying. Most nonprofit organizations can lobby if it fits within their mission (see *Lobbying: Important Legal Considerations for Individuals and 501 (c) (3) Organizations* for more information about the permissions and limitations of lobbying for individuals and organizations).

Advocacy can take many forms, including organizing, educating decisionmakers and the public, engaging the media, utilizing social media, hosting events, and lobbying. The most common type of advocacy is contact with elected officials or their staff, but housing advocacy should not be limited to legislators. At the federal level, it is often important to advocate with the White House or officials at HUD and other agencies. The president's budget proposal each year sets the tone for budget work to come in Congress, so annual advocacy work around this is especially important.

Whether engaging with Members of Congress or officials in the Administration, it is important to remember that constituent feedback is a valued and necessary part of the democratic process. You do not have to be an expert on housing policy to advocate for it. Providing your perspective on the housing situation in your state and local community is extremely valuable to officials in Washington, DC, and can make a real difference

on the decisions made that impact advocates and their communities.

Building strong relationships with policymakers and their staff is essential for ongoing advocacy efforts. This continued relationship building where advocates educate lawmakers about the state of housing in the country and their communities, can shift them from opponents to champions, however this process can be a slow process. After advocates hold their first meeting with an official and their staff, they should continue to build that relationship by regularly engaging with that office. There are several ways to continue engagement. A best practice is to expose them to the issues of homelessness and affordable housing by inviting them to your events or to tour your organization or an affordable housing development. Officials that are supportive of your issues also should be engaged regularly so that housing remains a top priority on their agenda.

## DETERMINING ADVOCACY STRATEGIES

There are several key factors to consider for effective advocacy. You should begin by identifying your ultimate goals, the reason you are engaging in this advocacy. Once you determine this, you will be able to identify the direction your advocacy should take, and who you should meet with. On federal issues, you will want to decide whether it is best to bring your message to a Member of Congress for legislative action or to Administration officials in either the White House or agencies for executive or regulatory actions. Once you establish your advocacy goals, consider who you are advocating for, whether it is for yourself, your organization, or your community. After you determine this, you can shape the message your advocacy should present. If advocating or lobbying on behalf of an organization, specific records of activity may need to be kept.



Once the audience is identified, craft the key points to convey, then determine how you will share this information. There are several ways to advocate with government officials and their staff. Meetings are an important and effective tool for both starting conversations on housing issues and strengthening relationships with housing champions. Meetings can take place in person, over the phone, or virtually on an online video platform. The overall location, timing, materials, and structure of a meeting can dictate how effective your efforts will be. Other than meetings, there are alternative strategies that can be more interactive and inclusive of your community. Some of these include events your community can participate in, such as holding a teach-in, planning a film screening, or organizing a rally. Outside of face-to-face interactions, sending emails, making phone calls, writing letters, and engaging the media are also effective strategies to encourage support and build momentum around housing efforts.

## STORYTELLING

A powerful aspect of advocacy is being able to bring your real-life experiences straight to lawmakers, so they can see the real consequences and effects that policy has on their constituents, whether it is positive or negative. Storytelling as an advocacy tool is when one shares personal narrative and experience in a way that aligns with their advocacy goals. Advocates can use a combination of statistics and facts with a personal experience with a specific housing program or policy can add emotional weight to your advocacy, eliciting more empathy from a policymaker and even establishing a sense of commonality. Storytelling provides some humanity shows firsthand expertise on the policy decisions for which you are advocating.

## EFFECTIVE MEETINGS

A face-to-face meeting is often the most effective way to get your voice heard. If you have never participated in an advocacy meeting before, it can be helpful to think of it as a simple conversation in which you can briefly share your

experiences, insight, and positions on affordable housing issues and solutions.

Consider your meeting an opportunity to build working relationships with decision makers and to educate them on the issues you care about and how these impact your community. Remember, advocates do not need to be experts. Oftentimes staff and elected officials will have less information about the topic than advocates, and additional information can be provided by the advocate after the meeting. If a housing or service provider group is being represented, you can also use the meeting as an opportunity to share examples of the impact of advocate work in the area that the elected official represents.

Given the busy schedule of elected officials, they may ask you to meet with a staff person who handles housing issues. Oftentimes, meeting with staff members is just as good or better than meeting with the official. Staffers often have more time to discuss concerns than an elected official would be able to devote, so getting to know influential staff people and building relationships with them is crucial.

During the meeting, it is a best practice to frame your message in a way that connects the information you wish to share to the official's interests as much as possible. Connecting advocate work on affordable housing issues to the elected official's interest in, for example, veterans' issues, will often have a greater impact and can create a key connection that will lead to a stronger relationship with the office as you move forward.

The steps to planning and executing an effective meeting include scheduling the meeting, crafting an agenda that is mindful of your priorities and the limited time you will have, walking through your priorities with any others who will be joining the meeting, reviewing logistics, and maintaining momentum after the meeting.

### Scheduling a Meeting

The first step to arranging a meeting is to call the office you hope to meet with to request an appointment. A best practice is to call about two to four weeks ahead of your intended

meeting date. It may take a while for the office to schedule the meeting once you have made the request. In some cases, legislative offices do not assign specific staff to meetings more than one week in advance to remain flexible as committee hearings and floor votes are being scheduled. However, offices receive many meeting requests, so do not hesitate to follow up as your requested meeting time gets closer.

Members of Congress have offices in Washington, DC, as well as in their home state. If you are setting up a local meeting, locate the contact information for your Congressperson's local office or for the local field office of the administrative agency you wish to meet with. This can usually be found on their respective websites. If planning to visit Washington, DC, contact congressional members' Capitol Hill offices or the appropriate federal agency (for key Members of Congress and offices of the Administration, see *Congressional Advocacy and Key Housing Committees* and *Federal Administrative Advocacy*). Members of Congress can be reached by calling the U.S. Capitol Switchboard at 202-224-3121 or by dialing their direct number listed on their office's website. Find who your Members of Congress are at [www.govtrack.us](http://www.govtrack.us).

When calling to schedule a meeting with elected officials, identify yourself by how you are connected to the official, such as a constituent or that you work in the official's area of representation. Many offices give priority to arranging meetings with people connected to the area they represent. Once you have identified yourself, ask to schedule a meeting with the official. If the scheduler indicates that they will not be available during the timeframe you request, ask to meet with the relevant staff person. This will most often be the legislative assistant who covers housing issues. Some offices will ask you to fill out an online form, but a phone call will usually suffice.

Be sure to tell the office where you are from or where you work in the district or state, the purpose of the meeting, the organization you represent if applicable, and the number of people who will be attending the meeting so the staffer

can reserve an appropriately sized meeting room. The scheduler may ask for a list of names of attendees; this information can often be sent closer to the date of the meeting if needed. If you would like to schedule a meeting over email, you can email the scheduler by stating your name, your organization, what your mission is, and briefly describing what you would like to discuss during the meeting. If scheduling a meeting that will take place over a virtual platform or conference call, be sure to specify this in your meeting request. Once the meeting is scheduled, confirm with the office which virtual platform will be used and who will be setting up and sharing the virtual meeting details. If you need assistance scheduling a meeting, please reach out to NLIHC's field team at [outreach@nlihc.org](mailto:outreach@nlihc.org).

Call or email the office at least 24 hours before the meeting to confirm the details of your meeting. If you are meeting with a specific staff person, you can call or email them directly. Be sure to confirm the meeting date and time, the meeting location (i.e., the building and room number, or virtual platform and login or call-in instructions), and reiterate the purpose of the meeting. You can also send relevant materials for them to review in advance such as factsheets. If there are others attending the meeting with you, be sure they also have this information and your contact information in case they need to reach you the day of the meeting.

### **Crafting Agenda and Talking Points**

Developing an agenda for your meeting will help you maximize your time to ensure that the main points and priorities are addressed. Set an agenda based on how much time you have, usually no more than 20 or 30 minutes. Important elements to consider including in your agenda are introductions of the people in the meeting, an overview of the issue and how it impacts your community, two or three key elements of the issue or solutions to discuss, and a specific yes or no question to ask the official or staff member. Determine how long you think you will need for each section to ensure you have time to make it to all your agenda items during the meeting.

Once you have determined the key items you want to discuss, it can be helpful to prepare a set of talking points for each. Include data, stories, and your own experiences where possible. Use the goal of your meeting to develop a specific “ask” on the issues you raise in the form of a yes or no question. The ask should be a concrete action you would like to see them take as a step in resolving the affordable housing challenges you have presented. For example, ask if the Member of Congress will commit to supporting an expansion of funding for affordable housing programs in this year’s budget.

When deciding how to frame your message, it is useful to research the official you are meeting with to gain insight on their interests, affiliations, committee assignments, and past positions and statements on housing issues. Committee assignments and interests are often listed on the official’s website. You can find out how a Member of Congress has voted on key affordable housing legislation at [www.govtrack.us/congress/votes](http://www.govtrack.us/congress/votes). If you need help, do not hesitate to contact the NLIHC Housing Advocacy Organizer for your state at [www.nlihc.org/sites/default/files/NLIHC\\_Field-Team-Map.pdf](http://www.nlihc.org/sites/default/files/NLIHC_Field-Team-Map.pdf).

If you will be joined by a group of people, decide what roles everyone will play, including who will open the meeting, speak to each key point, and deliver your asks, and who will run the technology if meeting virtually. It can be helpful to host a planning call with your group a couple of days before your meeting to review the agenda and roles, talking points, and any relevant materials you plan to share. If meeting virtually, test the technology beforehand to make sure you and other group members feel comfortable using it and everything is working smoothly. It also can be helpful to establish cues for when each person should speak to avoid long pauses or talking over each other.

### **Leave Behind Written Materials**

It is useful to have information to reference throughout your meeting and leave with the official or staffer for further review and reference as needed. To emphasize the extent of the

housing crisis in your community, provide information such as your state’s section of *Out of Reach*, which shows the hourly housing wage in each county; the appropriate NLIHC Congressional District Profile or State Housing Profile that shows rental housing affordability data by congressional district and state; and your state’s Housing Preservation Profile, which can be found under “Reports” at [preservationdatabase.org](http://preservationdatabase.org). These and other NLIHC research reports can be found at [nlihc.org/housing-needs-by-state](http://nlihc.org/housing-needs-by-state) under “Resources.” Legislation-specific resources can be found on NLIHC’s Legislative Action Center at [nlihc.org/take-action](http://nlihc.org/take-action). The Opportunity Starts at Home campaign also offers factsheets about the intersection of housing with other sectors which can be found at [www.opportunityhome.org](http://www.opportunityhome.org).

### **Meeting Logistics**

Running through the logistical details of your meeting beforehand will contribute to a successful meeting. Make sure you know the building address and room number where your meeting is being held, or the call-in or login information if using a virtual meeting platform. It is important to arrive early to allow for time to get through security and find the meeting location, or to troubleshoot any potential technology issues if applicable. Capitol Hill office buildings are large, and it takes time to navigate to the office where your meeting will be held. It is helpful to have the name of the person with whom you are meeting and the room number readily available in case you need to ask for directions.

Security can be tight at federal offices, especially those on Capitol Hill. To ensure that you do not bring items that may trigger a security concern and delay your entry into a building, review the list of prohibited items in Capitol Hill offices at [www.visitthecapitol.gov/plan-visit/prohibited-items](http://www.visitthecapitol.gov/plan-visit/prohibited-items).

### **Conducting the Meeting**

During the meeting, remember to stick to your agenda and the speaking times you previously set for each item. If meeting virtually, remember to pause and allow the next speaker to unmute

when switching speakers. Take detailed notes when possible, especially of any feedback you receive or any follow-up information you promise. If the meeting is being held virtually, avoid background clutter and background noise. Whether in person or virtual, a best practice is to arrive about ten minutes before the start time.

At your meeting, have each attendee briefly introduce themselves. Each introduction should mention your connection with the official, whether you are a constituent or whether your organization serves their constituents, and your connection to the meeting's topic. If your organization does not allow you to advocate or lobby as their representative, you can say you are speaking for yourself but still refer to your work as informing your perspective on any given issue during the meeting.

If you are meeting with an ally of affordable housing efforts, acknowledge the official's past support at the beginning of the meeting by thanking them. If meeting with an office that has an unfavorable record on your issues, indicate that you hope to find common ground to work together on issues critical to your local community. Keep in mind that as you educate policymakers and develop positive relationships with them over time, they may eventually shift their positions favorably. Be sure to make the meeting conversational by asking the perspective of the official in addition to making your points.

Next, provide a brief overview of the affordable housing challenges in your community and the nation. Unless you already have a relationship with the person you are meeting with, do not assume they have a deep understanding of the problem. Be sure to keep these first portions of the meeting brief so that you have time to substantively discuss your key issues of concern. You can find national and state-specific housing data and factsheets at <https://nlihc.org/housing-needs-by-state> under "Resources."

Move into the main portion of the meeting by going over the top two or three specific housing issues you want to discuss. Try to present the issues positively as solvable problems and share

data, personal stories, and experiences where possible. Utilize what you know about the official you are meeting with to frame your message in a way that connects with their professional interests, personal concerns, memberships, affiliations, and congressional committee assignments. The Opportunity Starts at Home multisector factsheets mentioned previously can be helpful to make this connection and are available at [www.opportunityhome.org/related-sectors](http://www.opportunityhome.org/related-sectors).

Remember, do not feel like you must know everything about the topic. If you are asked a question you cannot sufficiently answer, it is perfectly acceptable to say you will follow up with more information. In fact, offering to provide further detail and answers is an excellent way to continue engaging with the office after the meeting. If the conversation turns to a topic that is not on your agenda, listen and respond appropriately but steer the meeting back to your main points since you have limited time.

Before you end your meeting, make a specific ask about something that the official can support or oppose, such as a solution you discussed, a piece of legislation, or the budget for affordable housing programs. Explain how your ask fits within the official's priorities where possible. The office will agree to this ask, decline, or say they need time to consider.

After your meeting make a follow-up plan based on this response, including additional information or voices. Confirm with whom in the office you should follow up and ensure you have their contact information. If they say no to your ask, ask how else they might be willing to address the issues you have raised, and keep the door open for future discussion.

In closing the meeting, be sure to express thanks for their time and interest in the topics discussed, share any materials you would like to leave behind with the office if you have not already, and encourage the office to be in touch any time you or your office can be helpful in achieving the end goal of solving housing poverty. Finally, asking for a picture together to share on social



media afterwards can be a great way to publicly thank the office for their time. If meeting virtually on video, you can ask to take a screenshot of everyone on screen or a selfie with the screen to share later.

### **Follow Up after Your Meeting**

The best advocacy focuses on sustained relationship building, rather than a single one-time conversation. Therefore, it is important to continue conversations with officials and staff after your meeting. Following your visit, send a letter or email thanking the official or staff member for their time, reaffirming your views, and referencing any agreements made during the meeting. Include any additional information that you promised to provide.

Social media and online blogs are great tools for publicly thanking officials and their staff. Be sure to tag the official in your social media posts and include the photo from your meeting if you have one. Utilizing online platforms allows you to publicly express your gratitude for the availability of the official and their staff and is an opportunity to strengthen your relationship. Sharing about your meeting publicly also reminds the office that they are accountable to follow up on the commitments they made to you or get information on questions they had.

Once you have thanked the office and provided any promised follow-up information, monitor action on your issues and asks over the coming months. Contact the official or staff member to encourage them to act during key moments or to thank them for acting in support of these issues. Be sure to share any relevant feedback you receive from the office with your statewide affordable housing coalition or NLIHC. Feedback related to each group's priorities helps build on your efforts and keep you informed as issues move forward. If you met with an office on behalf of your organization, it is also helpful to share what you learn during your meeting with your network where applicable, including your members, your board, and your volunteers.

## **CONGRESSIONAL RECESS**

Throughout the year, Congress takes breaks from being in session called recesses or district work periods when senators and representatives leave Washington, DC to spend time in their home communities. Recess provides advocates with a great opportunity to interact with Members of Congress face-to-face without having to travel to Washington, DC. Members spend time on recess meeting with constituents and conducting other local work. You can take advantage of congressional recesses by scheduling district meetings with your Senators and Representative or inviting them to attend your events or tour your organization or property. You can also take this opportunity to organize different community events that your elected officials can participate in while they are in their home district. This includes hosting a teach in, where you can educate community leaders and members the lack of affordable housing in your community. You can also hold a film screening, where you can show a relevant documentary or movie that can be followed by a facilitated conversation about the issues raised in the film. Another thing advocates can do is organize a rally or march to demonstrate community support and awareness for the housing crisis.

Many Members of Congress also hold town hall meetings during recesses. These events provide the opportunity to come together as a community to express concerns and ask questions about an official's positions on important policy issues. If your Members of Congress are not planning to convene any town hall meetings during a recess, you may be able to work with others in the district to organize one and invite your senators or representative to participate.

It is important to note that, Members of Congress cannot officially introduce, co-sponsor, or vote on legislation during recess because these items can only take place when in session. It is therefore especially important to follow up on any meetings held during recess once Congress resumes session.

To find out when Congress is not scheduled to be



in session and therefore will be on recess, visit <https://www.rollcall.com/congressional-calendar/>, or contact NLIHC's Field Team at [outreach@nlihc.org](mailto:outreach@nlihc.org) for the latest as these schedules can sometimes change at the last minute.

## SENDING EMAILS

Email is the most common way to communicate with Members of Congress and their staff. Many congressional staff prefer emails because they can be easily labeled, archived, and tallied, and emails do not have to go through the lengthy security process of mailed letters. Congressional offices can receive tens of thousands of emails each month, so it is important to present affordable housing concerns concisely and reference specific solutions or bills when possible.

The best way to ensure your email is received is to reach out to the dedicated housing staff person in a congressional office when possible. If you do not know how to find the email address of the best person for a particular office, contact NLIHC's Field Team at [outreach@nlihc.org](mailto:outreach@nlihc.org). NLIHC provides email templates for key legislation on our Legislative Action Center at [nlihc.org/take-action](https://www.nlihc.org/take-action).

## MAKING PHONE CALLS

Calls can be an effective strategy, especially if an office receives several calls on the same topic within a few days of each other. You may want to encourage others in your district or state to call around the same time that you do to reinforce your message. If you do organize a group of advocates to call in, it might be helpful to create a script that everyone can follow to have consistency in your asks and messaging.

When you call, ask to speak to the staff person who deals with housing issues. If calling a Member of Congress, be sure to identify yourself as a constituent, say where you are from, and if applicable, have the names and numbers of specific bills you plan to reference. The days before a key vote or hearing are an especially effective time to call. Factsheets and other resources for key legislation can be found and

used as talking points on NLIHC's Legislative Action Center at [nlihc.org/take-action](https://www.nlihc.org/take-action).

To call your Members of Congress, locate Members of Congress at [www.govtrack.us](https://www.govtrack.us), then call the U.S. Capitol Switchboard at 202-224-3121, and an operator will connect you directly with the office you request. Additionally, Members of Congress each have their own website that will list the direct phone numbers for each of their offices.

## WRITING LETTERS

Mailing written letters are a decreasingly effective tool for advocating with Members of Congress and other decision makers because of extensive security screening that delays delivery, but they can still be used as an advocacy tool for less pressing matters. For Members of Congress, address the letter to the housing staffer to ensure it ends up in the right hands. Use the following standard address blocks when sending letters to Congress:

### Senate

The Honorable [full name of official]  
ATTN: Housing Staffer  
United States Senate  
Washington, DC 20510

### House of Representatives

The Honorable [full name of official]  
ATTN: Housing Staffer  
United States House of Representatives  
Washington, DC 20515

## ADDITIONAL WAYS TO ENGAGE ELECTED OFFICIALS

Meetings, emails, calls, and letters are not the only effective ways to engage with officials about issues that concern you. Other ways to advocate include:

### In-Person and Virtual Engagement

- Inviting an official to speak at your annual meeting or conference (in person or virtually).
- Organizing a tour of your organization or affordable housing developments and

featuring people directly impacted sharing their stories and expertise.

- Holding a public event and inviting an official to speak (in person or virtually).
- Hosting a community discussion and inviting an official to participate (in person or virtually).

For information on key Members of Congress and offices of the Administration, see *Congressional Advocacy and Key Housing Committees* and *Federal Administrative Advocacy*, and find your Members of Congress at [www.govtrack.us](http://www.govtrack.us).

### **Social Media and Traditional Media**

- Tweeting at officials or commenting on their social media posts.
- Getting media coverage on your issues and forward the coverage to housing staffers of Members of Congress. For example:
  - Organize a tour for a local reporter or set up a press conference on your issue.
  - Call in to radio talk shows.
  - Write letters to the editor of your local paper or submit opinion pieces.
  - Call local newspaper editorial page editors and set up a meeting to discuss the possibility of the papers' support for your issue.

### **Utilizing Influential Supporters**

- Eliciting the support of potential allies who are influential with officials, like your city council, mayor, local businesses, unions, or religious leaders. Asking them to speak out publicly about the issue and weigh in with your state's congressional delegation.

## **FOR MORE INFORMATION**

- For information about NLIHC's policy priorities and opportunities to take action, visit NLIHC's Legislative Action Center at [www.nlihc.org/take-action](http://www.nlihc.org/take-action).
- For state and local data and other resources, visit [www.nlihc.org/housing-needs-by-state](http://www.nlihc.org/housing-needs-by-state).
- Contact NLIHC's Field Team by visiting [www.nlihc.org/sites/default/files/NLIHC\\_Field-Team-Map.pdf](http://www.nlihc.org/sites/default/files/NLIHC_Field-Team-Map.pdf) to find the Housing Advocacy Organizer for your state or email [outreach@nlihc.org](mailto:outreach@nlihc.org).

# Lobbying: Important Legal Considerations for Individuals and 501(c)(3) Organizations

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By Brooke Schipporeit, Manager of Field Organizing, NLIHC

## LOBBYING AS A 501(C)(3) ORGANIZATION

**D**espite what many nonprofits believe, 501(c)(3) organizations are legally allowed to lobby in support of their organization's mission as long as they adhere to certain limitations outlined in this article. The Internal Revenue Service (IRS) defines lobbying as activities to influence legislation or ballot measures, whereas advocacy is the act of generally educating and organizing around an issue (see the previous chapter *Advocacy and Lobbying Tips for Communities and Beyond* for more information about advocacy and lobbying best practices). Electoral activities that support specific candidates or political parties are forbidden, and nonprofits can never endorse or assist any candidate for public office.

If 501(c)(3) groups do lobby in support of their mission, the amount of lobbying an organization can do depends on how the organization chooses to measure its lobbying activity. Two options determine lobbying limits for 501(c)(3) groups: the insubstantial part test and the 501(h) expenditure test.

### Insubstantial Part Test

The insubstantial part test requires that a 501(c)(3)'s lobbying activities be an "insubstantial" part of its overall activities and automatically applies unless the organization elects to come under the 501(h) expenditure test. The insubstantial part test is an activity-based test that tracks both the organization's spending, as well as activity that does not cost the organization anything. For example, when unpaid volunteers lobby on behalf of the organization, these activities would be counted under the insubstantial part test. The IRS and courts have been reluctant to define the

line that divides substantial from insubstantial, though federal court case from 1952 establishes that if up to 5% of an organization's total activities are lobbying, then this does not constitute a "substantial part" of the organization's activities.

### 501(h) Expenditure Test

The 501(h) expenditure test provides an alternative to the insubstantial part test and clearer guidance on how much lobbying a 501(c)(3) can do and what activities constitute lobbying. The 501(h) expenditure test was enacted in 1976 and implementing regulations were adopted in 1990. This option offers a more precise way to measure an organization's lobbying limit because measurements are based on the organization's annual expenditures. The organization is only required to count lobbying activity that costs the organization money (i.e., expenditures); activities that do not incur an expense do not count as lobbying. A 501(c)(3) can elect to use these clearer rules by filing a simple, one-time form: IRS Form 5768 (available at [www.irs.gov](http://www.irs.gov)).

### CALCULATING OVERALL LIMITS

To determine its lobbying limit under the 501(h) expenditure test, an organization must first calculate its overall lobbying limit. This figure is based on an organization's "exempt purpose expenditures," or generally, the amount of money an organization spends per year. Once an organization has determined its exempt purpose expenditures, the following formula is applied to determine the organization's overall lobbying limit. Organizations are allowed to spend 20% on lobbying with overall annual expenditures of \$500,000. The allowable amount lowers to 15% for overall expenditures between \$500,000 and \$1 million, and further reduces to 10% for organizations with expenditures between \$1 million and \$1.5 million. A 5% threshold applies to organizations with expenditures between \$1.5 and \$17 million.

An organization's overall annual lobbying limit is capped at \$1 million. This means that if an organization chooses to measure its lobbying under the 501(h) expenditure test, it also agrees not to spend more than \$1 million on lobbying activity each year.

## LIMITS BY TYPE OF LOBBYING

Two types of lobbying under the 501(h) expenditure test are possible: direct lobbying and grassroots lobbying. Limitations dictate how much money can be used for each. An organization can use its entire lobbying limit on direct lobbying, but it can only use one-fourth of the overall limit to engage in grassroots lobbying.

Direct lobbying is communicating with a legislator or legislative staff member (federal, state, or local) about a position on specific legislation. Remember that legislators also include the President or governor when you are asking them to sign a bill into law or veto a bill, as well as Administration officials who can influence legislation.

Grassroots lobbying is communicating with the general public in a way that refers to specific legislation, takes a position on the legislation, and calls people to take action. A call to action contains up to four different ways the organization asks the public to respond to its message: (1) asking the public to contact their legislators; (2) providing the contact information, for example the phone number, for a legislator; (3) providing a mechanism for contacting legislators such as a postcard or a link to an email portal that can be used to send a message directly to legislators; or (4) listing those voting as undecided or opposed to specific legislation. Identifying legislators as sponsors of legislation is not considered a call to action.

Regulations clarify how the following communications should be classified:

- **Ballot Measures:** communications with the general public that refer to and state a position on ballot measures (for example, referenda, ballot initiatives, bond measures, and constitutional amendments), count as direct, not grassroots lobbying, because the public are presumed to be acting as legislators when

voting on ballot measures.

- **Organizational Members:** the 501(c)(3)'s members are treated as a part of the organization, so urging them to contact public officials about legislation is considered direct, not grassroots, lobbying.
- **Mass Media:** any print, radio, or television ad about legislation widely known to the public must be counted as grassroots lobbying if the communication is paid for by the nonprofit and meets other more nuanced provisions. These provisions include referring to and including the organization's position on the legislation; asking the public to contact legislators about the legislation; and appearing on the media source within two weeks of a vote by either legislative chamber, not including subcommittee votes.

Although the 501(h) election is less ambiguous than the insubstantial part test, it is important to carefully consider which option is best for your organization.

## Lobbying Exceptions

Some activities that might appear to be lobbying but are considered an exception are listed below. It is not lobbying to:

- Examine and discuss broad social, economic, and similar problems. For example, materials and statements that do not refer to specific legislation are not lobbying even if they are used to communicate with a legislator. Additionally, materials and statements communicating with the general public and expressing a view on specific legislation but that do not have a call to action are also not considered lobbying.
- Prepare and distribute a substantive report that fully discusses the positives and negatives of a legislative proposal, even if the analysis comes to a conclusion about the merits of that proposal. The report cannot ask readers to contact their legislators or provide a mechanism to do so, and it must be widely distributed to those who would both agree and disagree with the position. This non-partisan

distribution can be achieved through a posting on an organization's website or a mailing to all members of the legislative body considering the proposal.

- Respond to a request for testimony or assistance at the request of the head of a government body such as a legislative committee chair.
- Litigate and attempt to influence administrative (regulatory) decisions or the enforcement of existing laws and executive orders.
- Support or oppose legislation if that legislation impacts its tax-exempt status or existence. This lobbying exception is narrow and should be used with caution after consultation with an attorney.

## RECORD KEEPING

Whether measuring lobbying under either the insubstantial part test or the 501(h) expenditure test, a 501(c)(3) organization is required to track its lobbying in a way sufficient to show that it has not exceeded its lobbying limits. This may include tracking time spent on lobbying activities and/or associated costs, depending on how the organization is measuring its lobbying activities.

Three costs that 501(h)-electing organizations must count toward their lobbying limits and track are:

- Staff Time: for example, paid staff time spent meeting legislators, preparing testimony, or encouraging others to testify.
- Direct Costs: for example, printing, copying, or mailing expenses to get the organization's message to legislators.
- Overhead: for example, the pro-rated share of rented space used in support of lobbying. A good way to handle this is to pro-rate the cost based on the percentage of staff time spent lobbying.

## LOBBYING AS AN INDIVIDUAL

No limitations or record keeping requirements exist for individuals who want to lobby. While

lobbying in an official capacity on behalf of an organization or coalition can deepen the impact of your message through the broad reach of the group's membership, clients, and staff, lobbying as an individual allows you to freely discuss issues you care about in a more personal manner. Remember that even when you do not speak on behalf of your organization or employer, it is always appropriate to mention what affiliations or work have informed your individual perspective as long as you are clear about what capacity you are speaking (i.e., as an individual or on behalf of an organization).

Much like organizational lobbying, the key to lobbying as an individual is to ensure that your voice is heard and that congressional and Administration officials are responding to your particular concerns. In-person meetings, phone calls, and emails can all be effective and influential strategies (see *Advocacy and Lobbying Tips for Communities and Beyond* for more).

## FOR MORE INFORMATION

Bolder Advocacy, an Alliance for Justice campaign, offers several resources for advocates navigating 501(c)(3) lobbying rules. One resource by Bolder Advocacy is a plain-language book on the 501(c)(3) lobbying rules called *Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities*. Another Bolder Advocacy publication, *The Rules of The Game: A Guide to Election-Related Activities for 501(c)(3) Organizations (Second Edition)*, reviews federal tax and election laws which govern nonprofit organizations with regard to election work and explains the right and wrong ways to organize specific voter education activities. Other Bolder Advocacy guide topics include influencing public policy through social media, praising or criticizing incumbent elected officials who are also candidates, and rules on coordinating with 501(c)(4) organizations. Bolder Advocacy maintains a free technical assistance hotline and offers workshops or webinars for nonprofit organizations.

Bolder Advocacy, 866-NP-LOBBY (866-675-6229), [www.bolderadvocacy.org](http://www.bolderadvocacy.org).



# Working with the Media

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By Jen Butler, Vice President of Media Relations and Communications, NLIHC

**M**edia relations is the process of working with the media with the goal of informing the public of an organization's mission, policies, and practices in a positive, consistent, and credible manner. Cultivating and building strong relationships with the media are important to any organization's ability to advocate effectively. To successfully share key messages and campaigns, strategize and consider the communication tactics that will be the most useful in ensuring that the right audience is reached, and meaningful allies are secured. Consistent and comprehensive communication strategies will lead to deeper audience engagement and an increase in media activation.

## CAMPAIGN COMMUNICATION TOOLS

Working on a campaign can be labor-intensive. Advocates may work for months, even years, to develop and implement a campaign. A campaign may involve researching, branding/messaging, sharing, and measuring success. The success of a campaign could be measured by media engagement, social media metrics, and/or member/network participation. Think through the tools needed for a higher likelihood of success before deciding which to use to help share/amplify your campaign. Tease the campaign for people outside of your network, including the media.

### Media Toolkits

Develop a media toolkit and share it with your partners and stakeholders. A media toolkit compiles top-line information about your campaign into one document and can be used as a quick and handy guide for consistent messaging. Partners can quickly refer to the toolkit for source information. Share your toolkit ahead of the launch of your campaign and provide guidance for its use. A toolkit may include:

- **National & State/Local Talking Points** – Identify between ten and 15 points of interest that can be referenced in a press release and/or in an interview.
- **Frequently Asked Questions** – Review news stories and social media for what people are talking about related to your campaign. Include popular questions and their answers to assist with messaging control.
- **Social Media Suggestions** – Research shows that reporters and stakeholders use social media as a resource for news. Social media is an important communications tool because it is designed to quickly disseminate information and reach wide audiences. Reporters often use Twitter to identify possible news stories, and stakeholders often use LinkedIn to share company updates. Include five or six sample posts for Twitter and Facebook as these are the most popular platforms for reaching audiences relevant to affordable housing issues. Include a hashtag in your samples so that you and others can track discussions about your issue.
- **Images, Graphs, Factsheets, and Infographics** – Posts with images trend at a higher impression and engagement rate than posts without images. Include approximately three images related to your campaign that may involve a “Coming Soon”, “Now Available”, or creative tagline from your campaign. Also, if any graphs or charts are a part of your campaign, include them in the toolkit with a suggestion to circulate on social media. Use factsheets and infographics to help promote snapshots of your message.
- **Testimonies** – Gather quotes from key leaders and influencers about your campaign. Testimonials from outside your organization or network are preferred. Suggest including a testimonial in a press release or reference one in an interview with the media. This helps to legitimize your campaign as being relevant beyond your network.

- **Press Release and Op-ed Templates** – Include a press release and op-ed sample/template that includes quotes from key state and organization leaders. Quotes from partnering national organizations could be included as well. Reporters tend to copy and paste press releases, so including quotes will help the reporter write the story and highlight your message. Include no more than three quotes in the press release from three different sources. Op-eds will help mobilize your campaign and garner more attention and reach, utilizing the media publication’s platform.

## INTERACTIONS WITH THE MEDIA

Interactions with the media often start with a cold call or email to a specific outlet to pitch (sharing relevant key points of your campaign to garner media interest) a story. The first interaction is often quick. Regardless of the type of interaction, reporters usually devote about 30 seconds to listen to or read a pitch. Therefore, your initial pitch must be pithy, precise, and honest.

Pitches are sometimes made on Twitter to generate an organic buzz around a topic. Pitching on Twitter is an effective strategy to increase earned media. This strategy circumvents cold calls or relying on one outlet to show interest in covering your campaign. Pitching on Twitter gets your message out using a platform that you control.

When pitching a story:

- Pitch the right news hook: think about current events and how they relate to the campaign. Ask the questions:
  - Why is this story important right now?
  - What makes the story or the angle unique?
  - Why should anyone care?
  - Is this story the first of its kind?
  - Is the event or development the largest or most comprehensive of its kind?
- Pitch the right person: use tools like [Muck Rack](#), or [Google Alerts](#) to track and identify the right reporter for the right beat.

- Include a Press Release: circulate a press release to all media contacts using tools like email, Muck Rack, or a wire service about one week before the campaign starts but pitch the press release to key reporters prior to the wide release. Connect with a few key reporters that you’ve fostered relationships with or reporters who have recently covered your campaign topic. Share an embargoed copy of a report or highlight new data/research discussed in your campaign. On the date the press release is widely distributed, circulate it on Twitter and tag a few additional key reporters who are active on Twitter.

## GENERAL TIPS FOR SPEAKING WITH THE PRESS

It is important to foster relationships with appropriate media outlets to increase the opportunity for leading the narrative. This may require tracking coverage of your issue on social media and through media hits. Stay aware of a reporter’s beat and track reporters who may be new to covering affordable housing. Shift your communication accordingly and respect a reporter’s preferred method of communication. If you are interested in fostering a relationship with a reporter, share relevant new research with that reporter ahead of a wide release.

Media relationships are reciprocal and should generate benefits for both parties. Before initiating any relationship, it will be important to determine your overall goal in reaching out to press and to identify your key messages around ending homelessness and increasing housing affordability. Gather background on your key press contacts to determine if they are the right press contacts for your campaign. Determine if they are currently on the housing beat and if they work for traditional newspapers, online media, television, or radio. If you encounter difficulty generating national press, utilize your local press to generate interest on a national level.

Once you’ve successfully managed to schedule a phone or in-person interview with a member of the media, be prepared with talking points,

citations, and testimonials. Other tips for an interview are:

- Review your main points before the interview: decide on two to three key messages to convey.
- Remember that everything is on the record.
- Steer reporters toward the big picture: this is a systemic problem.
- Learn to pivot.
- Connect local issues to national problems.
  - Share affordable housing challenges specific to your community,
  - Share examples of what life is like for extremely low-income renters in your state, or
  - Use data to emphasize the importance of state or local housing initiatives and funding.
- Make your points brief and simple and avoid jargon.
- It's ok to say, "I don't know."
- Always end the interview by repeating your key messages or the one key takeaway.

## FOR MORE INFORMATION:

The OpEd Project: <https://www.theopedproject.org/>.

HubSpot *23 PR Tools for Monitoring & Managing Media Relations*: <https://bit.ly/2EiUOzr>.

*Extraordinary PR on Ordinary Budget*: <https://bit.ly/2qauZf3>.

Nonprofit Tech for Good: <https://nptechforgood.com/>.

# The HoUSed Campaign

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By Kim Johnson, Public Policy Manager,  
NLIHC

**W**ith congressional champions and national, state, and local partners, NLIHC in March 2021 launched the HoUSed campaign to advance anti-racist policies and achieve the large-scale, sustained investments and reforms necessary to ensure renters with the lowest incomes have an affordable and accessible place to call home.

## SOLUTIONS TO THE HOUSING CRISIS

The HoUSed campaign advocates for four solutions to America's housing crisis:

1. Bridge the gap between incomes and housing costs by expanding rental assistance to every eligible household.
2. Expand and preserve the supply of rental homes affordable and accessible to people with the lowest incomes.
3. Provide emergency rental assistance to households in crisis by creating a national housing stabilization fund.
4. Strengthen and enforce renter protections.

### Expanding Rental Assistance

A major cause of today's housing crisis is the fundamental mismatch between growing housing costs and stagnant incomes for people with the lowest incomes. In the U.S., renters need to make \$25.82 an hour on average to afford a modest, two-bedroom apartment. This is far above the incomes of many working families, seniors, and people with disabilities. Since 1960, renters' incomes have increased by 5%, while rents have risen 61%. Over the past year, renters have experienced dramatic rent increases – between the first quarter of 2021 and first quarter of 2022, the median rent for a two-bedroom apartment in a metropolitan county increased 15%, a more than four and a half times greater increase than increases over the previous four years.



In only 9% of U.S. counties can a full-time minimum-wage worker afford a one-bedroom rental home at fair market rent, and there are no counties where a minimum wage worker can afford a two-bedroom rental home at fair market rent. Nearly eight million of the lowest-income renters pay at least half of their income on rent, leaving them without the resources they need to put food on the table, purchase needed medications, or make ends meet.

People of color are most impacted due to generations of discrimination in the housing and labor markets. Black households account for 13% of all households, yet they account for 20% of all extremely low-income renters and 40% of people experiencing homelessness. Latino households account for 12% of all U.S. households, 15% of extremely low-income renters, and 22% of people experiencing homelessness. Native Americans are dramatically overrepresented among people experiencing homelessness. This harm is compounded for women of color.

Despite the clear and urgent need, only one in four households who qualify for housing assistance receives it due to decades of chronic underfunding by Congress. Millions of eligible households are on waiting lists – often for several years – waiting for help. While people wait for assistance, many are pushed into homelessness, institutionalization, or incarceration.

Making rental assistance available to all eligible households – a core element of President Biden's housing platform – is central to any successful strategy to solve the housing crisis. A growing body of research finds that rental assistance

can improve health and educational outcomes, increase children’s chances of long-term success and increase racial equity. Rental assistance is a critical tool for helping the lowest-income people afford decent, stable, accessible housing, and the program has a proven track record of reducing homelessness and housing poverty.

Additional reforms are needed to ensure equitable access to these resources, including employing small area Fair Market Rents, simplifying applications, aggressively enforcing fair housing and civil rights, expanding the “Fair Housing Act” to ban discrimination on the basis of source of income, sexual orientation and gender identity, and marital status, among others.

### **Building and Preserving Homes Affordable to People with the Lowest Incomes**

A major cause of today’s housing crisis is the severe shortage of rental homes affordable and available to people with the lowest incomes. Nationally, there is a shortage of 6.8 million homes affordable and available to the lowest-income renters. For every 10 of the lowest-income renter households, there are fewer than 4 homes affordable and available to them. There is not a single state or congressional district in the country with enough affordable homes to meet this demand.

The shortage of affordable homes disproportionately impacts Black people, Native Americans, and Latinos, who are more likely than white households to have extremely low incomes, pay more than half of their income on rent, or experience homelessness. Decades of structural racism and ongoing discrimination have created racial disparities in housing, which contribute to inequities in wealth, education, health and more. Housing segregation was designed through intentional public policy, resulting in highly segregated communities today.

People with disabilities face barriers to affordable housing because of the lack of accessibility, locations far from critical services, and low payment standards for Supplement Security Income (SSI). A person relying on SSI can only afford to pay \$252 per month on rent, while the

average cost of a one-bedroom apartment at Fair Market Rent is \$1,105.

The private sector cannot – on its own – build and maintain homes affordable to the lowest-income renters without federal support. Zoning and land use reforms at the local level are needed to increase the supply of housing generally, and federal investments are needed to expand rental assistance and build and preserve decent homes affordable to the lowest-income renters.

To increase and preserve the supply of affordable rental homes, Congress should expand the national Housing Trust Fund to at least \$40 billion annually to build and preserve homes affordable to people with the lowest incomes. Congress should also provide at least \$70 billion to preserve and rehabilitate our nation’s deteriorating public housing infrastructure, make energy-efficient upgrades, and guarantee full funding for public housing in the future. By using federal transportation investments to require inclusive zoning and land use reforms, Congress can help reverse residential segregation and increase the supply of affordable and accessible homes.

Congress should also ensure states and communities use investments to affirmatively further fair housing, build the capacity of community-based organizations, including those led by Black and Asian people, Native Americans, and Latinos, and prioritize ownership by nonprofit entities, among other reforms.

Increasing the supply of deeply affordable housing not only helps the lowest-income people, but it can also alleviate rent pressure on those with higher incomes. Millions of low-income renters occupy units they cannot afford, and a greater supply of affordable, accessible rental housing for those with the lowest incomes would allow these renters to move into affordable units and free up their original units for renters who can better afford them.



## **Providing Emergency Rental Assistance to Stabilize Households**

Today, tens of millions of households are one crisis away from major economic hardship that could quickly spiral out of control. Most families in poverty who rent spend at least half of their incomes on housing, leaving virtually no margin for an unexpected expense. Broken-down cars, unreimbursed medical bills, or temporary declines of income can quickly send vulnerable households down the spiral of housing instability, eviction, and even homelessness.

Black women face the greatest threat of losing their homes to eviction. Black women renters are twice as likely as white renters to have evictions filed against them. Families with children are also at particularly high risk of eviction.

Eviction is not just a condition, but a cause, of poverty. An eviction record makes it harder for a family to find decent housing in a safe neighborhood and it negatively impacts employment, as well as physical and mental health.

Emergency rental assistance can stabilize households experiencing economic shocks before they cause instability and homelessness, which often require more prolonged and extensive housing assistance. A National Housing Stabilization Fund would provide emergency assistance to cover the gaps between income and rental costs during a financial crisis. Resources could also be used to provide housing stability services, such as counselors and legal aid. When combined, emergency housing assistance and support services can significantly reduce evictions and homelessness.

During the pandemic, Congress provided \$46 billion in emergency rental assistance (ERA) to help millions of struggling renters at risk of losing their homes. Thanks to the hard work of advocates and program administrators creating and running ERA programs, ERA is being distributed in an historically equitable way, with the majority of funds going to extremely low-income households, households of color, women, and other disproportionately impacted groups.

Congress should build on the successes and lessons learned from this program by creating a permanent National Housing Stabilization Fund.

Congress should enact the “Eviction Crisis Act,” introduced by Senators Michael Bennet (D-CO) and Rob Portman (R-OH). The bill would create a permanent program to provide short-term, emergency assistance to help renters avoid eviction and remain stably housed.

## **Strengthening and Enforcing Renter Protections**

Affordable, stable, and accessible housing and robust housing choice are the foundation upon which just and equitable communities are built but the power imbalance between renters and landlords puts renters at greater risk of housing instability, harassment, and homelessness, and it fuels racial inequity.

Congress should enact legislation to establish vital renter protections. A national right to counsel would help more renters stay in their homes and mitigate harm when eviction is unavoidable. “Just cause” eviction protections would ensure greater housing stability and prevent arbitrary and harmful actions by landlords. Laws protecting voucher-holding households from source of income discrimination would help ensure voucher recipients are more easily able to find quality housing in the neighborhood of their choosing. Reforms are needed to ensure immigrants, people exiting the criminal legal system, and other marginalized people can fully access housing resources, among other needed changes.

## **PRIORITY LEGISLATION**

NLIHC worked with Members of Congress to introduce or advance legislation supported by the HoUsed campaign, including:

- “[Ending Homelessness Act of 2021](#)” ([H.R.4496](#)) – a bill introduced by Representatives Waters (D-CA), Emanuel Cleaver (D-MO), and Ritchie Torres (D-NY) that proposes to establish a universal voucher program, bans source of income discrimination, increases housing choice, and

invests \$5 billion over 5 years in the national Housing Trust Fund.

- “[Family Stability and Opportunity Vouchers Act](#)” (S.1991) – a bill that would provide 500,000 new housing vouchers and counseling services to help families with children move to areas of opportunity.
- “[Eviction Crisis Act](#)” (S.2182) – a bill to establish a national housing stabilization fund to help families facing a financial shock avoid eviction. The bill is supported by the Opportunity Starts at Home campaign.
- “[American Housing and Economic Mobility Act](#)” (S.1368; H.R.2768) – a bill introduced by Senator Elizabeth Warren (D-MA) and Representative Emanuel Cleaver (D-MO) that would invest nearly \$45 billion annually for the national Housing Trust Fund, provide resources to repair public housing, expand Fair Housing protections, and include additional resources to help end housing poverty and homelessness.
- “[Fair Housing Improvement Act](#)” (S.4485; H.R.8213): a bill introduced by Senator Tim Kaine (D-VA) and Representative Scott Peters (D-CA) that would prohibit housing discrimination based on “source of income,” as well as military and veteran status.

A full list of legislation endorsed by the HoUSed campaign can be found [here](#).

## WHAT TO SAY TO LEGISLATORS

- Advocates should weigh in with the Administration and Congress on the importance of the HoUSed campaign and its top policy priorities.
- Advocates should encourage members of Congress to cosponsor [legislation](#) endorsed by the HoUSed campaign.

## FOR MORE INFORMATION

Visit the HoUSed campaign website at [www.nlihc.org/housed](http://www.nlihc.org/housed).



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# **Chapter 3:**

## NATIONAL HOUSING TRUST FUND

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# The National Housing Trust Fund

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** HUD's Office of Affordable Housing Programs within the Office of Community Planning and Development.

**History:** The trust fund was enacted by the "Housing and Economic Recovery Act of 2008" on July 30, 2008 and was implemented in May, 2016.

**Population Targeted:** Extremely low-income renters.

**Funding:** In calendar year 2022 \$740 million was available, up from \$690 million in 2021 and \$323 million in 2020.

**See Also:** The *National Housing Trust Fund: Funding, Fannie Mae, Freddie Mac* section of this guide.

The national Housing Trust Fund (HTF) was established as a provision of the "Housing and Economic Recovery Act of 2008," which was signed into law by President George W. Bush on July 30, 2008. The primary purpose of the HTF is to close the gap between the number of extremely low-income renter households and the number of homes renting at prices they can afford. NLIHC interprets the statute as requiring at least 90% of the funds to be used to build, rehabilitate, preserve, or operate rental housing (HUD guidance sets the minimum at 80%). In addition, at least 75% of the funds used for rental housing must benefit extremely low-income households. One hundred percent of all HTF dollars must be used for households with very low income or less.

In the years since enactment of the HTF, the shortage of rental housing that the lowest-income people can afford has remained at around seven million units. The HTF offers the means to prevent and end homelessness if funded at the level advocated by NLIHC.

## HISTORY AND ADMINISTRATION

The HTF was created on July 30, 2008 when the president signed into law the "Housing and Economic Recovery Act of 2008" (HERA), Public Law 110-289, 12 U.S.C 4588. The statute specified an initial dedicated source of revenue to come from an assessment of 4.2 basis points (0.042%) on the new business (this is unrelated to profits) of Fannie Mae and Freddie Mac (the "Enterprises"). Although NLIHC led the National Housing Trust Fund Campaign promoting the use of the assessment on the Enterprises, ultimately the HTF was to receive just 65% of the assessment, while the Capital Magnet Fund (CMF) was to receive 35%. Due to the financial crisis in September of 2008, Fannie Mae and Freddie Mac were placed into a conservatorship overseen by the Federal Housing Finance Agency (FHFA), which placed a temporary suspension on any assessments for the HTF and CMF.

On December 11, 2014, the new FHFA director Mel Watt lifted the temporary suspension of Fannie Mae and Freddie Mac assessments for the HTF and CMF, directing the Enterprises to begin setting aside the required 4.2 basis points on January 1, 2015. Sixty days after the close of calendar year 2015, the amounts set aside were to be transferred to HUD for the HTF and to the Department of the Treasury for the CMF.

On April 4, 2016, HUD announced that there was nearly \$174 million for the HTF in calendar year 2016. On May 5, 2016, HUD published a notice in the *Federal Register* indicating how much HTF money each state and the District of Columbia would receive in 2016. The amounts available in subsequent years were \$219 million (2017), \$267 million (2018), \$248 million (2019), \$323 million (2020), \$690 million (2021), and \$740 million (2022).

HUD published proposed regulations to implement the HTF on October 29, 2010. NLIHC and others provided extensive comments on how the regulations could be improved. On January

30, 2015, an [HTF Interim Rule](#) was published in the *Federal Register*. HUD explained that after states gained experience implementing the HTF, HUD would open the Interim Rule for public comment and possibly amend the rule. HUD published a [notice in the \*Federal Register\*](#) on April 26, 2021, inviting public comment about the HTF Interim Rule. [NLIHC's comment letter](#) supported some features of the interim national Housing Trust Fund (HTF) regulations while urging key improvements. As of the date this article was drafted, a final HTF rule had not been published.

The HTF is administered by HUD's Office of Affordable Housing Programs (OAHP) within the Office of Community Planning and Development (CPD). The interim HTF regulations are at [24 CFR part 93](#). Where the HTF statute did not require specific provisions, HUD modeled the HTF interim rule on the Home Investment Partnerships Program (HOME) regulations.

In February 2017, NLIHC published [Housing the Lowest Income People: An Analysis of National Housing Trust Fund Draft Allocations Plans](#). Following that, in September 2018, NLIHC published a preliminary report examining the 2016 HTF awards, [Getting Started: First Homes Being Built with National Housing Trust Fund Awards](#), later supplementing the report with additional data as more states provided the necessary information ("[Supplemental Update to Getting Started](#)"). In addition, in September 2022, NLIHC published [The National Housing Trust Fund: An Overview of 2017 State Projects](#), which addressed how states proposed awarding their 2017 HTF allocations. On October 27, 2022 another HTF report was released, [The National Housing Trust Fund: A Summary of 2018 State Projects](#). NLIHC will continue providing such reports in the future

## PROGRAM SUMMARY

The HTF is principally for the production, rehabilitation, preservation, and operation of rental housing for extremely low-income households (ELI), those with income less than 30% of the area median income (AMI) or with income less than the federal poverty line. It is funded with dedicated sources of revenue on the

mandatory side of the federal budget and thus does not compete with existing HUD programs funded by appropriations on the discretionary side of the federal budget.

The HTF is a block grant to states. The funds are distributed by formula to states based on four factors that only consider renter household needs. Seventy-five percent of the value of the formula goes to the two factors that reflect the needs of ELI renters because the HTF statute requires the formula to give priority to ELI renters. The other two factors concern the renter needs of very low-income (VLI) households, those with income between 31% and 50% of AMI.

A state entity administers each state's HTF program and awards HTF to entities to create new affordable housing opportunities. The state designated entity might be the state housing finance agency, a state department of housing or community development, or a tribally designated housing entity. HUD's list of designated entities is available at <https://www.hudexchange.info/programs/htf/grantees> (although the staff on that list is not kept up-to-date). NLIHC attempts to keep the key staff of state designated entities up-to-date at <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund/allocations> (scroll down to select a state).

## KEY PROGRAM DETAILS

### Funding

As a result of the decision by FHFA to lift the suspension on Fannie Mae's and Freddie Mac's obligations to fund the HTF and the CMF, the first funds for the HTF became available for distribution to the states in summer 2016. The amount of funding was determined by the volume of the business conducted by Fannie and Freddie in calendar year 2015, which yielded nearly \$174 million for the HTF for 2016. Based on their total business for 2017, 4.2 basis points provided \$219 million for the HTF in 2017, \$267 million in 2018, \$248 million in 2019, \$323 in million in 2020, \$690 million for 2021 and \$740 million for 2022.

## Targeted to Rental Housing

The overview section of the Interim Rule declares that the HTF program will provide grants to states to increase and preserve the supply of housing with primary attention to rental housing for ELI and VLI households. ELI is defined as income less than 30% of the area median income (AMI) or income less than the federal poverty line. VLI is generally defined as income between 31% and 50% AMI; the HTF statute adds that for rural areas VLI may also be income less than the federal poverty line. The statute limits the amount of HTF used for homeownership activities to 10%, inferring that at least 90% of a state's annual HTF allocation must be used for rental housing activities. However, the preamble to the Interim Rule interprets the law differently, asserting that only 80% must be used for rental activities.

## Income Targeting

The HTF statute requires that at least 75% of each grant to a state be used for rental housing that benefits ELI households and that no more than 25% may be used to benefit VLI renter households. For homeowner activities, the statute requires that all assisted homeowners have income less than 50% of AMI. When there is less than \$1 billion for the HTF in an allocation year, the rule requires 100% of a state's allocation benefit ELI households.

## HTF Distribution Formula

To distribute HTF dollars, the statute established a formula based on the number of ELI and VLI households with severe cost burden (households paying more than half of their income for rent and utilities), as well as the shortage of rental properties affordable and available to ELI and VLI households, with priority for ELI households. Low-population states ("small states") and the District of Columbia are to receive a minimum of \$3 million. On December 4, 2009, HUD issued a proposed rule, endorsed by NLIHC, describing the factors to be used in the formula.

Responding to the statute's requirement that the formula give priority to ELI households, HUD's Interim Rule formula assigns 75% of

the formula's weight to the two ELI factors. The Interim Rule adds a provision for instances in which there are not sufficient funds in the HTF to allocate at least \$3 million to each state and the District of Columbia; in such a case, HUD will propose an alternative distribution and publish it for comment in the *Federal Register*.

NLIHC has estimated state allocations if the HTF reaches \$5 billion, available at <http://bit.ly/1m9orp0>.

## State Distribution of HTF Money

The statute requires states to designate an entity, such as a housing finance agency, housing and community development entity, tribally designated housing entity, or any other instrumentality of the state to receive HTF dollars and administer an HTF program. Each state must distribute its HTF dollars throughout the state according to the state's assessment of priority housing needs as identified in its approved Consolidated Plan (ConPlan). HUD's list of designated entities is available at <https://www.hudexchange.info/programs/htf/grantees> and more up-to-date staff of these entities is available from NLIHC at <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund/allocations> (scroll down to Select a State). See also the *Consolidated Planning Process* section in Chapter 7 of this guide.

## Allocation Plans

The HTF statute requires each state to prepare an Allocation Plan every year showing how it will distribute the funds based on priority housing needs. The Interim Rule amends the ConPlan regulations by adding HTF-specific Allocation Plan requirements to the ConPlan's Annual Action Plan rule.

The interim regulation gives states the option of passing funds to local governments or other state agencies as "subgrantees" to administer a portion or all of a state's HTF program and in turn provide funds to "recipients" to carry out projects. If a local subgrantee is to administer HTF dollars, then it too must have a local ConPlan containing a local HTF Allocation Plan that is consistent with the state's HTF requirements. Due to the limited

amount of funds in the HTF so far, only Alaska and Hawai'i opted to use subgrantees.

A “recipient” is an agency or organization (nonprofit or for-profit) that receives HTF dollars from a state grantee or local subgrantee to carry out an HTF-assisted project as an owner or developer. To be eligible, a recipient must meet four requirements:

- Have the capacity to own, construct or rehabilitate, and manage and operate an affordable multifamily rental development; or construct or rehabilitate homeownership housing; or provide down payment, closing cost, or interest rate buy-down assistance for homeowners.
- Have the financial capacity and ability to undertake and manage the project.
- Demonstrate familiarity with requirements of federal, state, or local housing programs that will be used in conjunction with HTF money.
- Assure the state that it will comply with all program requirements.

A state's or subgrantee's Allocation Plan must describe the application requirements for recipients, and the criteria that will be used to select applications for funding. The statute requires Allocation Plans to give priority in awarding HTF money to applications based on six factors listed in the statute, including:

- The extent to which rents are affordable, especially for ELI households.
- The length of time rents will remain affordable.
- The project's merit. The Interim Rule gives as examples, housing that serves people with special needs, housing accessible to transit or employment centers, and housing that includes green building and sustainable development elements.

### **Public Participation**

The statute requires public participation in the development of the HTF Allocation Plan. However, the Interim Rule does not explicitly declare that in order to receive HTF money, states

and subgrantees must develop their Allocation Plans using the ConPlan public participation rules. The Interim Rule merely requires states to submit an HTF Allocation Plan following the ConPlan rule, which does have public participation requirements.

### **Period of Affordability**

The statute does not prescribe how long HTF-assisted units must remain affordable. The interim regulation requires rental units to be affordable for at least 30 years, allowing states and any subgrantees to have longer affordability periods. The 30-year affordability period reflects HUD's prediction that the HTF will be used in conjunction with Low-Income Housing Tax Credit (LIHTC) equity. The HTF campaign had recommended a 50-year affordability period. Twenty-one states addressed longer affordability plans in their draft 2016 HTF Allocation Plans. Of these, three states and the District of Columbia required longer affordability periods (California, 55 years; Maine, 45 years; and the District of Columbia and Maryland, 40 years). Since then, Washington's HTF Allocation Plan indicates 50 years in King County or Seattle, and 40 years elsewhere. The other states either awarded competitive points or gave priority to projects with longer affordability periods.

### **Maximum Rent**

NLIHC recommended that the regulations adopt the Brooke rule so that ELI households would not pay more than 30% of their income for rent and utilities. However, the Interim Rule sets a fixed maximum rent, including utilities, at 30% of 30% AMI, or 30% of the federal poverty level, *whichever is greater*. Consequently, households earning substantially less than 30% of AMI will almost certainly pay more than 30% of their income for rent, unless additional subsidies are available. HUD acknowledged in the preamble to the proposed rule that some tenants will be rent burdened, but that a fixed rent is necessary for financial underwriting purposes.

NLIHC urges advocates to convince their states to have their Allocation Plans require HTF-assisted units have maximum rent set at “the



*lesser of* 30% of 30% AMI or 30% of the poverty line. Wherever the federal poverty guideline is higher than 30% of AMI, renters with household income at 30% of AMI will be cost burdened by the maximum rent. Households with income around 20% of AMI (approximately the income of households with Supplemental Security Income, SSI) will almost always be severely cost burdened, paying more than 50% of their income.

In 2016 NLIHC alerted HUD to the fact that in 92% of the counties in the nation, 30% of the poverty line was greater than 30% of 30% AMI. Advocates can find the 2016 values for their states and counties at <http://bit.ly/2bnPRYZ>.

In 2021 NLIHC took another look at this problem and found that maximum rents are set at 30% of the federal poverty guideline in the vast majority of all HUD Fair Market Rent (FMR) areas for apartments larger than one bedroom: 87.7% for two-bedroom units, 94.8% for three-bedroom units, and 96.7% for four-bedroom units. Even 49.6% of FMR areas used the federal poverty guideline for one-bedroom units. Maximum rents based on the federal poverty guideline are even more common in non-metro FMR areas than in metro FMR areas. Absent rental assistance, households at 30% AMI renting units with at least two bedrooms will be cost-burdened by maximum HTF rents in most HUD FMR areas.

This is particularly concerning given that the 30% standard of affordability already overestimates what poorer and larger households can afford in terms of housing costs. Using the federal poverty guideline disproportionately impacts larger, poorer households who already have greater difficulty affording rents limited to 30% of their income. The negative impacts, moreover, are most apparent in the poorest communities where the federal poverty guideline is much higher than 30% of AMI. NLIHC included this analysis in response to HUD's April 26, 2021 request for comments regarding the interim regulation. NLIHC also urged HUD to change the rent HTF-assisted tenants pay to *the lesser of* 30% of AMI or 30% of the poverty guideline in order to minimize tenants paying more than 30% or even 50% of their income for rent.

Although NLIHC does not support cost-burdening of HTF-assisted households, underwriting developments with variable Brooke rents (households paying 30% of their actual income) can be very difficult. One possible approach to avoid or minimize factors causing HTF-assisted households to be cost-burdened is to give priority to HTF projects that have a mix of units with fixed rents set at 30% of 30% AMI, 30% of 20% AMI, 30% of 15% AMI, and 30% of 10% AMI.

A volunteer Developer Advisory Group prepared two papers addressing *Funding Strategies for Developing and Operating ELI Housing* and *HTF Operating Assistance Options and Considerations*.

### **Tenant Protections and Selection**

According to the HTF statute, activities must comply with laws relating to tenant protections and tenants' rights to participate in the decision making regarding their homes. The Interim Rule does not address tenants' rights to participate in decision making. However, the interim rule provides numerous tenant protections, including:

- Owners of HTF-assisted projects may not reject applicants who have vouchers or are using HOME tenant-based rental assistance.
- There must be a lease, generally for one year.
- Owners may only terminate tenancy or refuse to renew a lease for good cause.
- Owners must have and follow certain tenant selection policies. Tenants must be selected from a written waiting list, in chronological order, if practical.
- Eligibility may be limited to or preference may be given to people with disabilities if:
  - The housing also receives funding from federal programs that limit eligibility; or
  - The disability significantly interferes with the disabled person's ability to obtain and keep housing, the disabled person could not obtain or remain in the housing without appropriate supportive services, and the services cannot be provided in non-segregated settings.



The Consortium for Citizens with Disabilities has been trying to convince HUD that these preference provisions might cause states to misinterpret the rule to mean that they can only do single-site permanent supportive housing, not integrated supportive housing.

### **Homeowner Provisions**

As provided by the statute, up to 10% of HTF money may be used to produce, rehabilitate, or preserve homeowner housing. HTF money may also be used to provide assistance with down payments, closing costs, or interest rate buy-downs. As required by the statute, homes must be bought by first-time homebuyers with income less than 50% of AMI who have had HUD-certified counseling, and the home must be their principal residence. The affordability period is generally 30 years (see exception below). To date, no state has used HTF for homeowner activities.

Although not in the statute, the Interim Rule requires the assisted housing to meet the HOME program definition of single-family housing, which includes one- to four-unit residences, condominiums and cooperatives, manufactured homes and lots, or manufactured home lots only. Following the statute and echoing the HOME regulations, the value of an assisted home must not exceed 95% of the median purchase price for the area.

As required by the statute, the Interim Rule's homeowner resale provisions echo the HOME regulations. If a homeowner unit is sold during the affordability period, the state or subgrantee must ensure that the housing will remain affordable to a reasonable range (as defined by the state or subgrantee) of income-eligible homebuyers. The sale price must provide the original owner a fair return, defined as the owner's original investment plus capital improvements. The Interim Rule added a recapture alternative for states and subgrantees to use instead of a resale provision. The purpose of a recapture option is to ensure that a state or subgrantee can recoup some or all of its HTF investment. It modifies the affordability period based on the amount of the HTF assistance: 30

years if more than \$50,000, 20 years if between \$30,000 and \$50,000, and 10 years if less than \$30,000.

### **Lease-Purchase**

Mirroring the HOME regulations, the Interim Rule allows HTF money to help a homebuyer through a lease-purchase arrangement, as long as the home is purchased within 36 months. Also, HTF dollars may be used to buy an existing home with the intent to resell to a homebuyer through lease-purchase; if the unit is not sold within 42 months, HTF rent affordability provisions apply.

### **General Eligible Activities**

The interim regulation echoes the statute by providing a basic list of eligible activities such as the production, rehabilitation, and preservation of affordable rental homes and homes for first-time homebuyers through new construction, reconstruction, rehabilitation, or acquisition. No more than 10% of a state's annual allocation may be used for homeownership. HTF-assisted units may be in a project that also contains non-HTF-assisted units. Assistance may be in the form of equity investments, loans (including no-interest loans and deferred payment loans), grants, etc. The Interim Rule limits HTF assistance to permanent housing (use of HTF for transitional housing or emergency shelter is not allowed).

### **Manufactured Housing**

The Interim Rule allows HTF money to be used to buy or rehabilitate manufactured homes or to purchase the land on which a manufactured home sits. The home must, at the time of project completion, be on land that is owned by the homeowner or on land for which the homeowner has a lease for a period that is greater than or equal to the affordability period.

### **Timeframe for Demolition or for Acquisition of Vacant Land**

Use of HTF money for demolition or for acquiring vacant land is limited to projects for which construction of affordable housing can reasonably be expected to start within one year.

## **Eligible Project Costs**

Eligible project costs include property acquisition, relocation payments, development hard costs such as construction, soft costs associated with financing and development, and refinancing existing debt on rental property if HTF is also used for rehabilitation. Operating costs are also eligible project costs.

### **Development Hard Costs**

Development hard costs are the actual costs of construction or rehabilitation, including demolition, laundry and community facilities, utility connections, and site improvements, which include onsite roads, sewers, and water connections.

### **Related Soft Costs**

Mirroring the HOME regulations, other soft costs associated with financing and/or development include: architectural and engineering services, origination fees and credit reports, builder's or developer's fees, audits, affirmative marketing and fair housing information to prospective occupants, initial operating deficit reserves to meet any shortfall in project income during the first 18 months of project rent-up, staff and overhead of the state or subgrantee directly related to carrying out the project (such as work specs, inspections, loan processing), impact fees, and costs to meet environmental and historic preservation requirements.

### **Loan Repayments**

HTF may be used to pay principal and interest on construction loans, bridge financing, a guaranteed loan, and others.

### **Operating Costs and Operating Cost Assistance Reserve**

According to the statute, HTF dollars may be used to meet operating costs at HTF-assisted rental housing. The Interim Rule allows HTF resources to be used to provide operating cost assistance and to establish an operating cost assistance reserve for rental housing acquired, rehabilitated, preserved,

or newly constructed with HTF money. The Interim Rule strictly defines operating costs as insurance, utilities, real property taxes, maintenance, and scheduled payments to a reserve for replacement of major systems (for example, roof, heating and cooling, and elevators). The purpose of an operating cost assistance reserve is to cover inadequate rent income to ensure a project's long-term financial feasibility.

The Interim Rule caps at one-third of the amount of a state's annual HTF allocation that may be used for operating cost assistance and for contributing to an operating cost assistance reserve. The preamble to the rule explains that HUD established the cap because it views the HTF as primarily a production program meant to add units to the supply of affordable housing for ELI and VLI households. HUD assumes that the HTF will be used in combination with other sources to produce and preserve units, mostly in mixed-income projects.

The preamble indicates that states have discretion in how to allocate operating cost assistance. For example, states may decide to limit each development to the one-third cap, or to raise the cap for developments that need more operating cost assistance while lowering the cap for those that do not need as much, as long as no more than one-third of a state's annual HTF allocation is used for operating cost assistance and reserves.

States and subgrantees may provide operating cost assistance to a project for a multiyear period from the same fiscal year HTF grant as long as the funds are spent within five years. An operating cost assistance agreement between a state or subgrantee and a property owner may be renewed throughout the affordability period.

For non-appropriated sources, such as the proceeds from the 4.2 basis point assessments on Fannie Mae and Freddie Mac as called for in the HTF statute, the Interim Rule provides that an operating cost

assistance reserve may be funded upfront for HTF-assisted units for the amount estimated to ensure a project's financial feasibility for the entire affordability period. If this amount would exceed the one-third operating cost assistance cap, it could be funded in phases from future non-appropriated HTF grants. This provision can be very helpful for developers of rental homes at rents that ELI households can afford.

Some general thoughts about using the HTF for operating cost assistance were prepared by NLIHC's volunteer Developer Advisory Group, *HTF Operating Assistance Options and Considerations*.

Several states wanted to use HTF for operating assistance in 2016 but found that the Interim Rule's limited definition of operating costs rendered the option financially infeasible. These states noted that the Interim Rule's definition did not include components typically considered to be part of operating cost by the development industry, such as property management and personnel costs associated with maintenance. When brought to HUD's attention, HUD indicated a willingness to consider waivers in the future, as well as to modify the rule in its final stage. In response to HUD's April 26, 2021 request for comment regarding the interim rule, [NLIHC's comment letter](#) urged HUD to expand the allowable components eligible under the definition of operating costs.

In 2017 Oklahoma awarded HTF funds to one project to fund an operating cost reserve. In 2018 California made four such awards. As the HTF grows, other states are likely to also use some portion of their annual HTF allocation to fund a project's operating cost reserve.

### **Administration and Planning Costs**

The statute limits the amount of HTF dollars that may be used for general administration and planning to 10% of each state's annual grant. The interim regulation adds that 10% of any program income (for example, proceeds

from the repayment of HTF loans) may also be used for administration and planning. The interim rule also provides that subgrantees may use HTF for administration and planning, but subgrantee use counts toward the state's 10% cap.

### *General Management, Oversight, and Coordination Costs*

HTF may be used for a state's or subgrantee's costs of overall HTF program management, coordination, and monitoring. Examples include staff salaries and related costs necessary to ensure compliance with the regulations and to prepare reports to HUD. Other eligible costs include equipment, office rental, and third-party services such as accounting.

### *Project-Specific Administration Costs*

The staff and overhead expenses of a state or subgrantee directly related to carrying out development projects may also be eligible administration and planning costs. Examples include loan processing, work specs, inspections, housing counseling, and relocation services. As with HOME, staff and overhead costs directly related to carrying out projects (as distinct from the HTF program in general) may instead be charged as project-related soft costs or relocation costs and therefore not be subject to the 10% cap. However, housing counseling must be counted as an administration cost as per the statute.

### *Other Administration and Planning Costs*

- Costs of providing information to residents and community organizations participating in the planning, implementation, or assessment of HTF projects.
- Costs of activities to affirmatively further fair housing.
- Costs of preparing the ConPlan, including hearings and publication costs.
- Costs of complying with other federal requirements regarding non-

discrimination, affirmative marketing, lead-based paint, displacement and relocation, conflict of interest, and fund accountability.

## **Public Housing**

In general, the interim regulation prohibits the use of HTF to rehabilitate or construct new public housing. HTF-assisted housing is also ineligible to receive public housing operating assistance during the period of affordability. The Interim Rule does allow a project to contain both HTF-assisted units and public housing units.

The Interim Rule allows HTF use for two categories of public housing:

- HTF resources may be used to rehabilitate existing public housing units that are converted under the Rental Assistance Demonstration (RAD) to project-based rental assistance. Currently, up to 455,000 public housing units may be converted under RAD.
- HTF resources may be used to rehabilitate or build new public housing as part of the Choice Neighborhoods Initiative (CNI) and to rehabilitate or build new public housing units that will receive LIHTC assistance. Public housing units constructed with HTF must replace public housing units removed as part of a CNI grant or as part of a mixed-finance development under Section 35 of the “Housing Act of 1937.” The number of replacement units cannot be more than the number of units removed. Public housing units constructed or rehabilitated with HTF must receive Public Housing Operating Fund assistance and may receive Public Housing Capital Fund assistance.

NLIHC is extremely concerned about these provisions regarding public housing because using HTF to rehabilitate or build new public housing units to replace demolished units will not increase housing opportunities for ELI households. RAD projects are generally multi-million dollar endeavors (in the range of \$20 million to \$35 million), relying heavily on the LIHTC and other sources such as conventional mortgages. Scarce HTF funds should not be

diverted for these very large-scale conversions. In addition, extensive use of HTF for RAD could result in an overall loss of resources for housing if Congress chooses to reduce appropriated resources for public housing due to the availability of HTF resources.

## **Ineligible Activities**

Although not in the statute, the interim rule prohibits the use of HTF money for a project previously assisted with HTF during the period of affordability, except for the first year after completion. Fees for administering the HTF program are not eligible uses (e.g., servicing or origination fees). However, annual fees may be charged to owners of HTF-assisted rental projects to cover a state’s or subgrantee’s cost of monitoring compliance with income and rent restrictions during the affordability period. The statute expressly prohibits use of HTF dollars for “political activities, lobbying, counseling, traveling, or endorsements of a particular candidate or party.”

## **HTF Must Be Committed within Two Years**

As required by the statute, the interim regulation requires HTF dollars to be committed within 24 months, or HUD will reduce or recapture uncommitted HTF dollars. “Committed” is defined in the Interim Rule as the state or subgrantee having a legally binding agreement with a recipient owner or developer for a specific local project that can reasonably be expected to begin rehabilitation or construction within 12 months. If HTF is used to acquire standard housing for rent or for homeownership, commitment means the property title will be transferred to a recipient or family within six months. The Interim Rule adds that HTF money must be spent within five years. [Notice CPD 18-12](#) provides guidance to grantees about the commitment and expenditure requirements and explains how HUD determines compliance. In recent appropriations acts, Congress has suspended the two-year commitment provision for HOME; NLIHC continues to advocate for suspension of the two-year commitment requirement for HTF.



## Public Accountability

The statute requires each state to submit an annual report to HUD describing activities assisted that year with HTF dollars and demonstrating that the state complied with its annual Allocation Plan. This report must be available to the public. The Interim Rule requires jurisdictions receiving HTF dollars to submit a performance report according to the ConPlan regulations. The HTF performance report must describe a jurisdiction's HTF program accomplishments and the extent to which the jurisdiction complied with its approved HTF Allocation Plan and all the requirements of the HTF rule.

The interim regulation presents numerous data collection obligations, including actions taken to comply with Section 3 hiring and contracting goals, and the extent to which each racial and ethnic group, as well as single heads of households, have applied for, participated in, or benefitted from the HTF.

HUD has been posting [HTF National Production Reports](#) each month showing fairly detailed information. Advocates might be interested in units by: number of bedrooms (page 3), race and ethnicity (page 4), median income, type of rental assistance, and size of household (page 5), and on page 6 type of household and unit characteristics (e.g. targeted to special needs populations).

In general, records must be kept for five years after project completion. Records regarding individual tenant income verifications, project rents, and project inspections must be kept for the most recent five-year period until five years after the affordability period ends. Similar language applies to homeowner activities. Regarding displacement, records must be kept for five years after all people displaced have received final compensation payments. The public must have access to the records, subject to state and local privacy laws.

## INFLUENCING HOW THE NATIONAL HOUSING TRUST FUND IS USED IN YOUR STATE

Advocates are urged to be actively engaged in HTF implementation at the state level, and perhaps also at the local level.

### The HTF Allocation Plan

The law requires states to prepare an Allocation Plan every year showing how the state will allot the HTF dollars it will receive in the upcoming year. Action around the HTF Allocation Plan begins at the state level and could then flow to the local level if a state decides to allocate some or all of the HTF to local subgrantees. (To date, only Alaska and Hawai'i use subgrantees.) The state HTF Allocation Plan is woven into a state's ConPlan, and if there is a local subgrantee, then a local government's HTF Allocation Plan will be woven into a locality's ConPlan.

- For advocates only accustomed to ConPlan advocacy at the local level because they have focused on attempting to influence how their local government allocates local Community Development Block Grants (CDBGs) and HOME, the state HTF process will be an important new experience.
- To better ensure that HTF dollars get to a locality in the appropriate amounts and for the appropriate uses, it will be necessary for advocates to learn how to influence their state Allocation Plan and ConPlan.
- Observing 2018 HTF Allocation Plans, NLIHC found states inserting "HTF-Specific" sections or an HTF-specific appendix to their ConPlan Annual Action Plans that provide a stand-alone HTF presentation. However, these are at the very back of long documents, so advocates will need to do a key word search.
- The statute requires states to consider six priority factors. NLIHC asserts that genuine affordability, length of affordability, and merit features of a proposed project warrant greater relative weight or priority than the other three statutory priority factors. Too many states give disproportionate weight to two of the



statutory factors: the ability of an applicant to obligate HTF funds and carry out projects in a timely manner, and the extent to which the application makes use of other funding sources. NLIHC thinks these should be threshold factors that ought to be a first-cut consideration before weighing affordability, merit, and length of affordability. If an applicant lacks the capacity to obligate funds and carry out a project in timely fashion, it should not make the initial cut, and given the nature of developing affordable housing, especially housing containing some units affordable to ELI renter households, other sources of funding have always been integral to project financing. See NLIHC's Model Allocation Plan for ideas, <http://bit.ly/1WqjTOJ>.

Advocates should learn which agency in their state administers the HTF program and get to know the person responsible. Indicate interest in being informed about and participating in the process for planning where and how HTF money will be used. Although HUD's list of state-designated HTF agencies is available at <http://bit.ly/1ONwHwN>, NLIHC has in many cases identified the person at the state level actually doing the day-to-day work and lists that person on the NLIHC HTF webpage at <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund/allocations> (scroll down to Select a State).

Keep in mind that the amount of HTF your state will receive is based on ELI and VLI households spending more than half of their income on rent and utilities (severely cost-burdened), and on the shortage of rental homes that are affordable and available to ELI and VLI households, with 75% of the formula's weight assigned to ELI factors. See NLIHC's Gap Analysis for information about each state at <http://nlihc.org/research/gap-report>.

Each year it will be important for advocates to work first at the state level, and then perhaps at the local level to:

- Ensure that the agency responsible for drafting the HTF Allocation Plan writes it to meet the genuine, high-priority housing

needs of extremely low-income people.

- Advocate for HTF-assisted projects that are truly affordable to extremely low-income people, such that they do not pay more than 30% of their income for rent and utilities. The statute offers advocates a handle because it requires funding priority to be based on the extent to which rents are affordable for ELI households.
- Advocate for HTF-assisted projects that will be affordable to extremely low-income households for as long as possible, aiming for at least 50 years. The statute offers advocates a handle because it requires funding priority to be based on the extent of the duration for which rents will remain affordable.
- Advocate for projects that have features that give them special merit, such as serving households with income less than 15% AMI, or serving people who have disabilities, are homeless, or are re-entering the community from correctional institutions.
- Advocate for the types of projects (like new construction, rehabilitation, and preservation) that are most needed.
- Advocate for the bedroom size mix that is most needed.
- Advocate for the populations to be served that are the ones who most need affordable homes (large families, people with special needs, people who are homeless, formerly incarcerated people, youth transitioning out of foster care, senior citizens).
- Make sure that the public participation obligations are truly met and that the state does not just “go through the motions.”
- Make sure that HTF-assisted projects affirmatively further fair housing.

## FORECAST FOR 2023

See the section “National Housing Trust Fund: Funding” in this *Advocates' Guide* for more details.

## Anticipating Government Accountability Office (GAO) Report

It is important for advocates to continue to educate their senators and representatives about the HTF and the critical role it plays in serving households with the most acute housing needs. Such advocacy is especially important because, periodically, there are members of Congress who seek to eliminate the HTF. Another indication of hostility toward the HTF is the [letter](#) sent to the Government Accountability Office (GAO) in 2021 by Representatives Patrick McHenry (R-NC) ranking member of the House Committee on Financial Services and Steve Stivers (R-OH) ranking member of the House Subcommittee on Housing, Community Development, and Insurance. They asked GAO to analyze the HTF.

Their letter made a number of claims that were ill-informed or outright erroneous. GAO met with NLIHC, giving NLIHC an opportunity to correct the members' misunderstanding and confusion. [NLIHC sent a detailed response to GAO](#). Highlights of NLIHC's response include:

**Claim #1:** There have been unreasonable delays in awarding HTF allocations.

**Reality:** While states were delayed in awarding the first round of HTF resources, these delays were reasonable and have largely been resolved.

**Claim #2:** It costs \$1 million on average to develop each HTF unit.

**Reality:** According to HUD, the average cost per unit of completed HTF projects at the time cited by McHenry/Stivers was \$113,522, an amount on par with or less than market rate. In subsequent months the average HTF cost per unit decreased to averages between \$95,000 and \$97,000.

**Claim #3:** States are using too many HTF resources for acquisition or rehabilitation, and not enough for new construction.

**Reality:** HUD requires states to

report using its standard Integrated Disbursement and Information System (IDIS) which only offers states three reporting options: new construction, rehabilitation, and acquisition and rehabilitation. However, upon further research NLIHC learned that all but three projects in 2016 and 2017, and two projects in 2018, indicated as "rehabilitation" preserved scarce affordable housing or created new units. The other projects using HTF kept previous federal investments in Section 8 Project-Based Rental Assistance or USDA Rural Development Section 514 properties from leaving the affordable housing stock. HTF was also used to convert to new affordable housing vacant industrial facilities, commercial office spaces, schools, and hospitals.

As of the date this article was drafted, GAO has not issued a report, but one is likely to be issued in 2023.

## Waiting for Final HTF Rule

HUD published a [notice in the \*Federal Register\*](#) on April 26, 2021 requesting comments regarding the interim HTF rule with the intent to ultimately publish a final HTF rule. As of the drafting of this article, a final rule has not been published but one is likely to be published in 2023. NLIHC will summarize the final rule when published; look for a summary in *Memo to Members* and on [NLIHC's HTF homepage](#).

[NLIHC's formal comment letter](#) in response to the *Federal Register* notice urged HUD to:

- Change the rent HTF-assisted tenants pay to *the lesser* of 30% of AMI or 30% of the poverty guideline in order to minimize tenants paying more than 30% or even 50% of their income for rent. See the comment letter for a detailed explanation.
- Maintain the income targeting rule requiring 100% of HTF funds be used for households whose income is equal to or less than 30% of the area median income or at or less than the federal poverty line (whichever is greater)

when there is less than \$1 billion for the HTF.

- Increase the affordability period to 50 years from 30 years.
- Maintain the limitation on the use of HTF funds for operating cost assistance (including reserves) to one-third of a state's annual grant.
- Modify the definition of operating cost assistance to include other operating costs that match industry standards.
- Modify HTF guidance to indicate that 90% of a state's annual HTF allocation must be used for rental housing activities.
- Modify the final HTF rule to establish as threshold requirements, rather than factors subject to a point system when states set priorities for awarding HTF to projects: an applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner, and the extent to which an application makes use of other funding sources.
- Adopt many of the technical changes suggested by the Technical Assistance Collaborative in order to better serve people with disabilities.

### **HUD's Legislative Proposal for 2023**

HUD is asking Congress to make three statutory adjustments to HTF, all of which NLIHC supports:

- Eliminate the two-year commitment requirement, as Congress has done for the HOME program in appropriations acts since 2017.
- Amend the statute so that Davis-Bacon prevailing wages apply to HTF projects as they do for HOME projects.
- Authorize a 24 CFR Part 58 environmental review process for HTF projects so that they will follow the same regulations as other HUD programs.

## **FOR MORE INFORMATION**

NLIHC's HTF webpage is at [www.nhtf.org](http://www.nhtf.org).

NLIHC's formal [comment letter](#) in response to the *Federal Register* notice on April 26, 2021.

Information from NLIHC about each state such as key personnel and draft and final HTF Allocation Plans is at <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund/allocations>.

NLIHC's interim report on how states have awarded their 2016 HTF allocations is at [https://nlihc.org/sites/default/files/NHTF\\_Getting-Started\\_2018.pdf](https://nlihc.org/sites/default/files/NHTF_Getting-Started_2018.pdf).

NLIHC's report on how states planned to award their 2017 HTF allocations is at <https://bit.ly/3TvgcIM>.

NLIHC's report on how states planned to award their 2018 HTF allocations is at <https://bit.ly/3tQeIOj>.

A five-part series about the Interim Rule regarding implementation of the NHTF is at <https://nlihc.org/issues/nhtf/videos>.

PowerPoint slides highlighting the key features of the NHTF law and regulations is at <https://bit.ly/3ESdhWs>.

Key features of the NHTF law and interim regulations presented in 15 short papers broken down by topics is at <https://bit.ly/3Tx2QLX>.

The interim regulations are at <https://bit.ly/3TuLT5z>.

HUD's NTF webpage is at <https://www.hudexchange.info/htf>.

# National Housing Trust Fund: Funding

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By Sarah Saadian, SVP of Public Policy and Field Outreach, and Kim Johnson, Public Policy Manager, NLIHC

**T**he National Housing Trust Fund (HTF) is the first new federal housing resource in a generation exclusively targeted to help build, preserve, rehabilitate, and operate housing affordable to people with the lowest incomes. Since first receiving funding in 2016, more than \$2.6 billion has been invested in the HTF. This is an important first step, but with a national shortage of 7 million affordable, available homes for renters with the lowest incomes, far greater investments are necessary to meet the current need for affordable housing. NLIHC is committed to working with Congress and the Administration to expand the HTF to serve more families with the greatest needs.

## ABOUT THE HOUSING TRUST FUND

The HTF was established in July 2008 as part of the “Housing and Economic Recovery Act of 2008” (HERA). This law requires Fannie Mae and Freddie Mac to set aside 4.2 basis points of their volume of business each year for the national HTF and Capital Magnet Fund (CMF), of which the HTF receives 65% and the CMF receives the remaining 35%. The first \$174 million in HTF dollars were allocated to states in 2016.

The HTF is the only federal housing program exclusively focused on providing states with resources targeted to serve households with the clearest, most acute housing needs. The HTF is a block grant program and can be used to address both rental housing and homeownership needs. By law, at least 90% of HTF dollars must be used for the production, preservation, rehabilitation, or operation of affordable rental housing. Up to 10% may be used to support homeownership activities for first-time homebuyers, such as producing, rehabilitating, or preserving owner-occupied housing, as well as providing down

payment assistance, closing costs, and interest rate buydowns.

The HTF is the most highly targeted federal rental housing capital and homeownership program. By law, at least 75% of HTF dollars used to support rental housing must serve extremely low-income households earning no more than 30% of the Area Median Income (AMI) or the federal poverty limit. All HTF dollars must benefit households with very low incomes earning no more than 50% of AMI. In comparison, most other federal housing programs can serve families up to 80% of AMI.

The HTF is designed to support local decision making and control. Because the HTF is administered by HUD as a block grant, each state has the flexibility to decide how to best use HTF resources to address its most pressing housing needs. States decide which developments to support.

Moreover, the HTF operates at no cost to the federal government because it is funded outside of the appropriations process. By statute, the initial source of funding for the HTF is a slight fee (0.042%) on Freddie Mac and Fannie Mae activity, 65% of which goes to the HTF.

Since first receiving funding, the amount of money collected for the HTF has grown every year: in 2016, the HTF received \$174 million; in 2017, \$219 million; in 2018, \$267 million; in 2019, \$248 million; in 2020, \$323 million; in 2021, \$690 million; and in 2022, \$740 million.

## OPPORTUNITIES TO EXPAND THE HTF

**See also:** *Fannie Mae, Freddie Mac and Housing Finance Reform*

HERA expressly allows Congress to designate other “appropriations, transfers, or credits” to the HTF and CMF, in addition to the assessment on Fannie Mae and Freddie Mac. Securing permanent, dedicated sources of revenue for



the HTF is one of NLIHC's top priorities, whether through an infrastructure or economic recovery spending bill, housing finance reform, or other opportunities.

### **Housing Finance Reform**

Housing finance reform provides an opportunity to increase resources for affordable housing solutions. The bipartisan Johnson-Crapo reform legislation of 2014 included a provision that would increase funding for the national HTF by applying a 10-basis point fee on guaranteed securities in a new mortgage insurance corporation that would replace Fannie Mae and Freddie Mac. If enacted, this would generate an estimated \$3.5 billion for the national HTF annually, making a significant contribution to ending homelessness and housing poverty in America without having to allocate additional appropriated dollars. The Johnson-Crapo bill's provision for a 10-basis point fee for affordable housing programs should be included in any housing finance reform legislation considered by Congress, although it is unclear whether there is enough political will to move comprehensive reforms forward.

### **Other Legislative Opportunities**

Several bills have been introduced to greatly expand the HTF.

**“Housing Is Infrastructure Act”:** Introduced by Representative Waters (D-CA), this bill provides \$45 billion in the HTF, alongside \$75 billion to fully address the capital needs to repair public housing, \$200 billion for rental assistance, and many other investments. This bill served as a starting point for negotiations in the “Build Back Better Act,” which provides \$15 billion for the HTF, \$65 billion for public housing, and \$25 billion for rental assistance.

**“Ending Homelessness Act”:** Introduced by Representative Waters (D-CA), the bill proposes to make rental assistance universally available for every eligible household and provide \$1 billion annually to the HTF.

**“American Housing and Economic Mobility Act”:** This bill was introduced by Senators

Warren (D-MA) Gillibrand (D-NY), Markey (D-MA), Sanders (I-VT), Hirono (D-HI), and Merkley (D-OR), along with Representatives Cleaver (D-MO), Lee (D-CA), Moore (D-WI), Khanna (D-CA), Norton (D-DC), Garcia (D-IL), Cohen (D-TN), Schakowsky (D-IL), Pressley (D-MA), and Bonamici (D-OR). If enacted, this ambitious proposal will help end housing poverty and homelessness in America by directly addressing the underlying cause of the affordable housing crisis – the severe shortage of affordable rental homes for people with the lowest incomes – through a robust investment of nearly \$45 billion annually in the national Housing Trust Fund. The bill also creates new incentives for local governments to reduce barriers that drive up the cost of housing, thereby encouraging the private sector to do more to address the housing needs of middle-income renters.

### **“Affordable Housing Production Act”:**

Introduced by Senator Cortez Masto (D-NV) in the Senate and in the House by Representative Norma Torres (D-CA) as the “Keep Your Home and Prevent Homelessness Act,” this bill would amend the “Emergency Economic Stabilization Act of 2008” to make more funding available for the HTF by redirecting Troubled Assets Relief Program (TARP) funds returned to the Department of Treasury, which would result in an estimated \$500 million to \$1.4 billion in HTF funding.

**“Fulfilling the Promise of the Housing Trust Fund Act”:** Introduced by Representative Denny Heck (D-WA), the bill would redirect a 10-basis point “guarantee fee” lobbied on Fannie Mae and Freddie Mac to the HTF.

## **HOW ADVOCATES CAN TAKE ACTION**

Advocates should be actively engaged in the process of HTF implementation in their states to ensure that the initial rounds of funding are successful and urge their Members of Congress to cosponsor and enact the bills listed above.



## FOR MORE INFORMATION

NLIHC works to document the impact of HTF investments. Learn more about how states use HTF resources to invest in the construction, maintenance, and preservation of deeply affordable housing:

- Getting Started: First Homes Being Build with National Housing Trust Fund Awards:  
[tinyurl.com/5etshszj](https://tinyurl.com/5etshszj).
- Supplemental Update to Getting Started:  
[tinyurl.com/36a2nmz2](https://tinyurl.com/36a2nmz2).
- The National Housing Trust Fund: An Overview of 2017 State Projects:  
[tinyurl.com/3ae5nrwa](https://tinyurl.com/3ae5nrwa).
- The National Housing Trust Fund: An Overview of 2018 State Projects:  
[tinyurl.com/ys8jkzd9](https://tinyurl.com/ys8jkzd9).

Learn more about the National Housing Trust Fund: [www.nhtf.org](https://www.nhtf.org).

# Fannie Mae, Freddie Mac, and Housing Finance Reform

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By Sarah Saadian, SVP of Public Policy and Field Outreach, and Kim Johnson, Public Policy Manager, NLIHC

**See Also:** For related information, refer to the *National Housing Trust Fund: Funding* section of this *Guide*.

Fannie Mae and Freddie Mac, the two federally chartered companies that provide a secondary market for residential mortgages, have been in conservatorship since September 7, 2008 when the foreclosure crisis precipitated a global financial meltdown. Much to the dismay of many, the companies remain under the control of the federal government because Congress cannot agree on a housing finance system.

The “Housing and Economic Recovery Act of 2008” (HERA) established an independent agency, the Federal Housing Finance Agency (FHFA), to serve both as a regulator and to significantly strengthen federal oversight of Fannie Mae and Freddie Mac. HERA gave the FHFA the power to take the companies into conservatorship if need be. HERA also created the national Housing Trust Fund (HTF) and the Capital Magnet Fund (CMF).

Because Fannie Mae and Freddie Mac provide the dedicated source of funding for the HTF, their status and viability are of particular interest to low-income housing advocates. NLIHC supports housing finance legislation that would provide significant new funding for the HTF.

## WHAT ARE FANNIE MAE AND FREDDIE MAC?

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) are government sponsored enterprises, known as GSEs. Congress established the GSEs to provide liquidity and create a secondary market for both single-family (one to four units) and multifamily

(five or more units) residential mortgages. Although Fannie Mae and Freddie Mac were created at different times and for different purposes, they have had effectively identical charters and responsibilities since 1992. Before September 7, 2008, when they were placed in conservatorship, they were privately owned and operated corporations.

Fannie Mae and Freddie Mac do not provide mortgage loans directly to individual borrowers. Rather, they facilitate the secondary mortgage market by buying loans from banks, savings institutions, and other mortgage originators. Lenders then use the sale proceeds to engage in further mortgage lending. For the most part, the GSEs purchase single-family, 30-year fixed rate conventional mortgages that are not insured by the federal government. They also play a major role in financing the multifamily housing market.

The GSEs either hold the mortgages they purchase in their portfolios or package them into mortgage-backed securities (MBSs), which are sold to investors. When the GSEs securitize a mortgage, they are guaranteeing that those investors receive timely payment of principal and interest. The GSEs charge mortgage lenders a guarantee fee (g-fee), generally in the form of monthly payments, to cover projected credit losses if a borrower defaults over the life of the loan.

The GSEs raise money in the capital markets to fund their activities. Their incomes come from the difference between the interest they receive on the mortgages they hold and the interest they pay on their debt, and from g-fees and income earned on non-mortgage investments.

### Single-Family Mortgages

Single-family mortgages must meet certain criteria set by the GSEs to be packaged and sold as securities. As a result, the two GSEs set the lending standards for the conventional,

conforming loan single-family mortgage market. This standardization increases the liquidity of mortgages meeting the GSE guidelines, thereby decreasing the interest rates on these mortgages and lowering costs for homebuyers.

Generally, the GSEs provide support for 30-year fixed-rate mortgages on single-family homes. Fannie Mae and Freddie Mac can only purchase mortgages with principal balances equal to or less than the conforming loan limit established annually by FHFA. The limit may also be adjusted to account for the size of a property.

### **Multifamily Mortgages**

The GSEs also purchase mortgages on multifamily properties. These mortgages are generally held in portfolio, but they can be securitized and sold to investors. In the past, the GSEs have also played a significant role in supporting the Low-Income Housing Tax Credit market.

### **Housing Goals**

As GSEs, Fannie Mae and Freddie Mac are required to achieve social goals as well assure safety and soundness in the housing finance system. In exchange for a once-implicit, now explicit, federal guarantee, Congress has required that the GSEs meet statutorily-based “housing goals” to help assure affordable homes in the U.S. The GSEs are required to purchase a certain number of mortgages on properties with specific characteristics to ensure that low- and moderate-income, underserved, and special affordable markets are served. FHFA updates these goals periodically.

Substantial partisan disagreement remains over the affordable housing goals and the role of the federal government in the housing market. Progressives believe the goals are necessary to ensure that people with low incomes and people of color have access to mortgage markets. Conservatives believe that the goals caused the GSEs to participate in overly risky business practices that triggered the foreclosure crisis.

It is important to note that the multifamily side of the GSEs’ business did not sustain losses during

the crisis; unfortunately, the GSE multifamily goals did not lead to the expansion of rental housing affordable to families with extremely low incomes.

### **Duty-to-Serve**

HERA also established a “duty-to-serve” for the GSEs, which requires them to lead the industry in developing loan products and flexible underwriting guidelines for manufactured housing, affordable housing preservation, and rural markets. FHFA published its final rule in December 2016, which outlines the GSEs’ duty-to-serve.

The [final rule](#) requires the GSEs to submit plans for improving the “distribution and availability of mortgage financing in a safe and sound manner for residential properties that serve very low-, low-, and moderate-income families.” Each GSE is required to submit to FHFA a three-year duty-to-serve plan, detailing the activities and objectives it will use to meet the rule’s requirements. The final rule gives the GSEs duty-to-serve credit for eligible activities that facilitate a secondary market for residential mortgages that originated in underserved markets. The GSEs also receive duty-to-serve credit for qualifying activities that promote residential economic diversity in underserved markets. The rule establishes the manner in which the GSEs would be evaluated for their efforts. FHFA is required to report evaluation findings to Congress annually.

Under ordinary circumstances, each GSE would have submitted a three-year Plan for 2021-2023 in accordance with the Duty to Serve mandate. Because of the uncertainty as a result of the COVID-19 pandemic, FHFA directed the GSEs to submit Plans for one year (2021) only, as an extension of their 2018-2020 Plans. For 2022, GSEs went back to their usual two-year Plan, so new Duty to Serve Plans will last from 2022-2024.

## **FANNIE MAE, FREDDIE MAC, AND THE HOUSING TRUST FUND**

In HERA, Congress established that Fannie Mae and Freddie Mac would serve as the initial

sources of funding for the HTF and the CMF. Fannie Mae and Freddie Mac are required to set aside an amount equal to 4.2 basis points for each dollar of total new business purchases. Note that the assessment is on their volume of business, not their profits. Of these amounts, 65% is to go to the HTF and 35% is to go to the CMF.

Lawmakers reasoned that requiring Fannie Mae and Freddie Mac to set aside funds for the HTF was part of the GSEs' mission responsibilities included in their charters. In addition to their affordable housing goals, which could be met through the regular course of business, funding the HTF allowed the GSEs to support housing that extremely low-income renters could afford, an activity that is not possible through any of their business product.

HERA allows FHFA to temporarily suspend the requirement that the GSEs fund the HTF and the CMF under circumstances related to threats to their financial health. In November 2008, at the height of the financial crisis, the FHFA director suspended this obligation before the GSEs even began setting aside funds. In 2014, FHFA Director Mel Watt lifted the suspension and directed both companies to begin setting aside the required amount starting on January 1, 2015. Since 2016, more than \$2.6 billion has been invested in the HTF. This is an important start, but more HTF resources are needed to begin to address the shortage of 7 million decent, accessible, and affordable, homes for households with the lowest incomes.

## **FANNIE MAE AND FREDDIE MAC IN CONSERVATORSHIP**

Before the financial crisis, Fannie Mae and Freddie Mac had never received any federal funds to support their operations. However, both companies incurred huge financial losses because of the foreclosure crisis. This prompted Congress to place the companies in conservatorship under the FHFA. Today, FHFA has all the authority of each company's directors, officers, and shareholders. Until the conservatorship ends, FHFA operates the companies through appointed management in

each company. During conservatorship the GSEs remain critically important to the housing finance system by providing liquidity for new mortgages, helping to resolve the mortgage crisis, and supporting the multifamily market.

Under an agreement between the Department of the Treasury and FHFA, the GSEs together were allowed to draw up to \$200 billion to stay afloat, which bolstered the U.S. housing market. In exchange, the U.S. government became the owner of the companies' preferred stock.

In 2012, Fannie Mae and Freddie Mac returned to profitability, and began to make dividend payments to the Treasury. Under the conditions of the conservatorship agreement between Treasury and FHFA, all of Fannie Mae and Freddie Mac's profits outside of a \$3 billion buffer were "swept" into the U.S. Treasury. In the final days of the Trump Administration, FHFA agreed to allow the GSEs to retain a combined \$45 billion worth of earnings before making dividend payments to Treasury. The GSEs' dividend payments now far exceed the \$188 billion drawdown.

In the last few years, there have been several federal lawsuits in which investors who have speculated on Fannie Mae and Freddie Mac stock are trying to end the government sweep of the GSEs' profits. Hedge funds have taken a gamble on investing in Fannie Mae and Freddie Mac shares with the hope that the courts would strike down the conservatorship agreement. The investors argue that the agreement violates their rights as shareholders, as they have been barred from receiving company dividends. The Supreme Court dismissed some claims made by hedge funds in 2021 that FHFA had overstepped its authority when requiring the GSEs to sweep profits to Treasury.

Hedge funds and some civil rights and consumer advocacy groups have been pushing to recapitalize and release the GSEs from conservatorship. They have authored several proposals, some that would provide funding for the HTF. Although the hedge funds stand to reap financial gains through "recap and release," the

civil rights and consumer advocacy organizations argue that the indefinite conservatorship has created uncertainty in the mortgage market, leading mortgages lenders to tighten their credit standards in a way that disproportionately impacts racial minority homebuyers. They also contend that without recap and release, Fannie Mae and Freddie Mac's financial health will deteriorate, jeopardizing their obligation to contribute to the HTF.

However, recap and release will not necessarily increase affordable lending and does not move Congress any closer to passing housing finance reform legislation, which promises to generate billions of new dollars for rental housing affordable to families with extremely low incomes.

## HOUSING FINANCE REFORM PROPOSALS

More than a decade after the financial crisis, policy makers are still grappling with how to reform the housing finance market. Because of philosophical differences, Members of Congress have reached a stalemate in pushing legislative proposals forward. Although many Members of Congress and numerous analysts and pundits have wanted to end the conservatorships, wind down Fannie Mae and Freddie Mac, and establish a new model for the secondary mortgage market, all efforts to do so to date have been unsuccessful.

There was considerable legislative activity on housing finance reform in the 113<sup>th</sup> Congress (2013-2014), even though no legislation was considered by either the full House or Senate.

Efforts to reform the housing finance system will continue in 2023.

### Johnson-Crapo

In 2013, Senators Bob Corker (R-TN) and Mark Warner (D-VA) introduced the "Housing Finance Reform and Taxpayer Protection Act" (S. 1217), which laid out a plan to wind down Fannie Mae and Freddie Mac and replace them with a Federal Mortgage Insurance Corporation (FMIC), modeled after the Federal Depositary Insurance Corporation. The FMIC would have offered an

explicit government guarantee, purchased and securitized single and multifamily mortgage portfolios, and provided regulatory oversight of the Federal Home Loan Banks. The bill would have assessed a 5-10 basis point user fee on all guaranteed securities that would be used to fund the HTF, the CMF, and a new Market Access Fund (MAF). The bill would have abolished affordable housing goals.

The Corker-Warner bill provided the framework for legislation subsequently offered by Senate Committee on Banking, Housing, and Urban Affairs Chair Tim Johnson (D-SD) and Ranking Member Mike Crapo (R-ID) that was introduced in the spring of 2014. The Johnson-Crapo measure would have replaced the GSEs with a new FMIC. To be eligible for reinsurance under the FMIC, any security must have first secured private capital in a 10% minimum first loss position. The bill also established a new securitization platform to create a standardized security to be used for all securities guaranteed by the new system. The securitization platform would have been regulated by the FMIC.

The bill included a 10-basis point user fee to fund the HTF, the CMF, and the new MAF. The fee was projected to generate \$5 billion a year, and 75% of the funds would go to the HTF. Even though the bill also got rid of the affordable housing goals, it included a new flex fee or market incentive to encourage mortgage guarantors and aggregators to do business in underserved areas.

The Johnson-Crapo bill also provided for a secondary market for multifamily housing. It allowed for the Fannie Mae and Freddie Mac multifamily activities to be spun off from the new system established by the bill. The bill would have required that at least 60% of the multifamily units securitized must be affordable for low-income households (80% AMI or less). The bill would have also created a pilot program to promote small (50 or fewer units) multifamily development.

The Johnson-Crapo bill was voted out of the Senate Banking Committee on May 15, 2014 by a bipartisan vote of 13-9. The Obama



Administration fully endorsed the bill but the bill was criticized by the right and the left for doing too much or not enough to assure access to mortgages to all creditworthy borrowers, and was never taken up by the full Senate.

### **Delaney-Carney-Himes**

Representatives John Delaney (D-MD), John Carney (D-DE), and Jim Himes (D-CT) introduced the “Partnership to Strengthen Homeownership Act” (H.R. 5055) in 2014, which would have wound down Fannie Mae and Freddie Mac over a five-year period and created a mortgage insurance program run through the Government National Mortgage Association (Ginnie Mae). Ginnie Mae would become a stand-alone agency, no longer part of HUD. Fannie Mae and Freddie Mac would eventually be sold off as private institutions without any government support.

The bill would have provided a full government guarantee on qualifying mortgage securities backed by mortgages that meet certain eligibility criteria. As proposed, private capital would have had a minimum 5% first-loss risk position. The remaining risk would have been split between Ginnie Mae and private reinsurers, with private capital covering at least 10% of losses. Fannie Mae and Freddie Mac’s multifamily activities would have been spun off and privatized and received a government guarantee through Ginnie Mae.

In return for insuring securities, Ginnie Mae would have charged a fee of 10 basis points on the total principal balance of insured mortgages. The bill would apply 75% of this fee revenue to the HTF, 15% to the CMF, and 10% to the MAF. This is identical to how the Johnson-Crapo and Waters (below) bills treat the HTF. However, unlike other the other bills, this measure would have added Federal Housing Administration (FHA), Department of Agriculture (USDA), and Veterans Affairs (VA) mortgages in the determining the base upon which the 10-basis point fee is assessed, generating an additional \$1 billion.

### **“Housing Opportunities Move the Economy (HOME) Forward Act”**

Congresswoman Maxine Waters (D-CA) released draft housing finance reform legislation, the “Housing Opportunities Move the Economy (HOME) Forward Act,” in 2014. The measure would have wound down Fannie Mae and Freddie Mac over a five-year period and replaced them with a newly created lender-owned cooperative, the Mortgage Securities Cooperative (MSC). The MSC would have been the only entity that could issue government guaranteed securities and would have been lender-capitalized based on mortgage volume. The bill would have also created a new regulator, the National Mortgage Finance Administration. Under the bill, private capital would have to have been in a first loss position to reduce taxpayer risk.

The “HOME Forward Act” would have preserved Fannie Mae and Freddie Mac’s multifamily business and transferred it to a new multifamily platform at the MSC. The bill also assessed a 10-basis point user fee to fund the HTF, the CMF, and the MAF. The bill was never introduced.

### **“Protecting American Taxpayers and Homeowners (PATH) Act”**

Former Congressman Jeb Hensarling (R-TX) introduced the “Protecting American Taxpayers and Homeowners (PATH) Act” (H.R. 2767) in 2013. The bill called for a five-year phase out of Fannie Mae and Freddie Mac. As part of this wind-down, the bill would have repealed the authorization of the current affordable housing goals, as well as the HTF and CMF. The bill would have established a new non-government, non-profit National Mortgage Market Utility (Utility) that would have been regulated by FHFA and required to think of and develop common best practice standards for the private origination, servicing, pooling, and securitizing of mortgages. The Utility would have also operated a publicly accessible securitization outlet to match loan originators with investors. The Utility would not have been allowed to originate, service, or guarantee any mortgage or MBS.

The bill would have also made changes to FHA, including making it a separate agency, no longer part of HUD. The bill would have limited FHA's activities to first-time homebuyers with any income and low and moderate-income borrowers and would have lowered the FHA conforming loan limit for high-cost areas. The bill was voted out of the Financial Services Committee on July 23, 2013, by a partisan vote of 30-27. Two Republicans and all Democrats opposed the bill. The bill was not taken up by the full House and was blocked by then Speaker of the House John Boehner (R-OH). It was opposed by virtually every segment of the housing industry.

### **“Bipartisan Housing Finance Reform Act of 2018”**

Representatives Hensarling, Delaney, and Himes released draft legislation to reform the nation's housing finance system in 2018. This proposal provided an affordability fee that could contribute to an overall increase in funding dedicated to affordable housing. While NLIHC appreciated the authors' stated commitment to “substantial funding in support of existing programs that contribute to the development of the supply of affordable housing options for low-income individuals and communities, such as the Housing Trust Fund and the Capital Magnet Fund,” we were concerned with the lack of details about the size of the fee and the uses for the funds generated. While the draft bill provided few details on how much funding would be provided to the HTF, the authors specifically identified the HTF as a possible recipient of such funds. Moreover, the bill was unclear about the size of the assessment. NLIHC opposes the draft bill's suggestion that dedicated funds be on budget, and instead NLIHC urges lawmakers to ensure that HTF funding remains separate from the appropriations process.

Funding for the HTF must be part of a broader commitment to ensuring access and affordability throughout the housing market. The draft legislation, however, would repeal the system's current affordable housing goals without providing anything in its place. This is unacceptable; housing finance reform must

include enforceable and measurable mechanisms to ensure that access to credit is enjoyed by all segments of the housing market.

## **HOUSING FINANCE REFORM IN THE 118TH CONGRESS**

NLIHC will continue to advocate for comprehensive reform, since it offers an important opportunity to expand the HTF in the coming years. When Congress does finally tackle housing finance reform, it is critical that low-income housing advocates remain vigilant and protect the gains made in the Johnson-Crapo, Waters, and Delaney-Carney-Himes bills to robustly fund the HTF.

## **WHAT TO SAY TO LEGISLATORS**

Fannie Mae and Freddie Mac play important roles in both the single-family and the affordable multifamily markets. These functions, as well as the contributions to the HTF, need to be part of any future secondary market. The HTF must be retained and funded in any future housing finance system.

With respect to the potential housing finance reform proposals, advocates should urge their legislators to:

- Oppose any legislation that would eliminate or prohibit funding for the HTF.
- Support legislation that provides robust funding for the HTF similar to the Johnson-Crapo and Waters and Delaney-Carney-Himes bills.
- Support housing finance reform legislation that assures access to the market for all creditworthy borrowers, as well as assuring compliance with federal fair housing laws.

## **FOR MORE INFORMATION**

Federal Housing Finance Agency, [www.fhfa.gov](http://www.fhfa.gov).

Federal Home Loan Mortgage Corporation, [www.fanniemae.com](http://www.fanniemae.com).

Federal National Mortgage Association, [www.freddiemac.com](http://www.freddiemac.com).



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# **Chapter 4:**

RENTAL

HOUSING

PROGRAMS FOR

THE LOWEST-

INCOME

HOUSEHOLDS

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# Housing Choice Vouchers

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** HUD's Office of Public and Indian Housing (PIH) as well as nearly 2,200 state and local public housing agencies (PHAs).

**Year Started:** 1974

**Population Targeted:** Seventy-five percent of all new and turnover voucher households must have extremely low income (less than 30% of the area median income, AMI, or the federal poverty line, whichever is higher); the remaining 25% of new voucher households can be distributed to residents with income up to 80% of AMI.

**Funding:** Congress appropriated \$26.401 billion for FY23 to renew existing Housing Choice Voucher (HCV) contracts. This was an increase above the FY22 final appropriation of \$24.1 billion. For PHA administration costs, Congress appropriated \$2.778 billion, compared to the FY22 appropriated amount of \$2.4 billion. Congress only appropriated \$500 million in FY23 for incremental vouchers, the amount provided for in the Senate's bill; the president proposed \$1.55 billion for an estimated 200,000 new incremental vouchers, while the House proposed \$1.1 billion.

**See Also:** For related information, see the *Project-Based Vouchers*, *Tenant Protection Vouchers*, *Veterans Affairs Supportive Housing (HUD-VASH)*, *Family Unification Program (FUP)*, and *Mainstream and Non-Elderly Disabled (NED) Vouchers* sections of this *Guide*.

Housing Choice Vouchers (HCVs) help people with the lowest income afford housing in the private housing market by paying landlords the difference between what a household can afford to pay for rent and utilities compared to the actual rent to the owner, up to a reasonable amount. The HCV program is HUD's largest rental assistance program, assisting nearly 2.3 million households as of August 2022, according to PIH's [Data Dashboard](#).

## HISTORY AND PURPOSE

Federal tenant-based rental assistance was established as part of a major restructuring of federal housing assistance for low-income families in 1974. President Richard Nixon supported the creation of the tenant-based Section 8 program as an alternative to the government's involvement in producing affordable multifamily apartments. In recent decades, the program has had broad bipartisan support. It grew incrementally between 1974 and 1996, the first year when no new, incremental vouchers were appropriated. Since then, Congress has authorized HUD to award more than 700,000 additional vouchers, but about half of these have simply replaced public housing or other federally subsidized housing that has been demolished or is no longer assisted.

Since FY08, Congress has appropriated funding for a small number of incremental vouchers (new vouchers that are not replacements for other assisted housing) each year for special populations, including for: the HUD-Veterans Affairs Supportive Housing (HUD-VASH) Program serving homeless veterans; the Family Unification Program (FUP) serving families who are experiencing homelessness, are precariously housed and in danger of losing children to foster care, or who are unable to regain custody of children primarily due to housing problems; the Foster Youth to Independence Initiative (FYI) serving youth aging out of foster care to prevent them from becoming homeless; and the Mainstream and Non-Elderly Disabled programs. There are separate sections for each of these in this *Advocates' Guide*.

## PROGRAM SUMMARY

As of August 2022, nearly 2.3 million households had Housing Choice Vouchers (HCVs), also called Section 8 tenant-based rental assistance. HUD's [Picture of Subsidized Housing](#) reports that in 2021, of all voucher households, 77% had

extremely low incomes (less than 30% of the area median income, AMI, or the federal poverty level, whichever is greater), 25% had a household member who had a disability, and 32% were elderly. The national average income of a voucher household was \$15,577. Twenty-five percent of the households had *wage* income as their major source of income, while only 3% had welfare income.

Housing vouchers are one of the major federal programs intended to bridge the gap between the cost of housing and the income of low-wage earners, people on limited fixed incomes, and other poor people. The Housing Choice Voucher Program offers assisted households the option to use vouchers to help pay rent at privately owned apartments of their choice. A household can even use a voucher to help buy a home. PHAs may also choose to attach a portion of their vouchers to particular properties (project-based vouchers, PBVs), see *Vouchers: Project-Based Vouchers* in this guide.

PIH has annual contracts with about 2,200 PHAs to administer vouchers, about 925 of which only administer the HCV program (these do not have any public housing units). Funding provided by Congress is distributed to these PHAs by PIH based on the number of vouchers in use the previous year, the cost of vouchers, an increase for inflation, as well as other adjustments. However, when Congress appropriates less than needed, each PHA's funding is reduced on a prorated basis.

To receive a voucher, residents put their names on local PHA wait lists. The HCV program, like all HUD affordable housing programs, is not an entitlement program. Many more people need and qualify for vouchers than actually receive them. Only one in four households eligible for housing assistance receive any form of federal rental assistance. The success of the existing voucher program and any expansion with new vouchers depends on annual appropriations.

### **Obtaining and Using a Voucher**

The HCV program has deep income targeting requirements. Since 1998, 75% of all new

voucher households must have extremely low incomes, at or less than 30% of AMI. The remaining 25% of new and turnover vouchers can be distributed to residents with income up to 80% of AMI.

Local PHAs distribute vouchers to qualified households who generally have 60 days to conduct their own search to identify private apartments that have rents within a PHA's rent "payment standard" (explained, next paragraph). PHAs may (and should) allow more time to households having difficulty finding a place to rent with their voucher. Generally, landlords are not required to rent to a household with a voucher; consequently, many households have difficulty finding a place to rent with their vouchers. Housing assisted by the Low-Income Housing Tax Credit (LIHTC), Home Investment Partnerships (HOME), or national Housing Trust Fund (HTF) programs must rent to an otherwise qualifying household that has a voucher. In addition, some states and local governments have "source of income discrimination" laws that also prohibit landlords from discriminating against households with vouchers. Once a household selects an apartment, a PHA must inspect it to ensure that it meets HUD's housing quality standards (HQS).

Generally, voucher program participants pay 30% of their adjusted income toward rent and utilities. The value of the voucher, the PHA's "payment standard" (see next paragraph), then makes up the difference between the tenant's actual rent payment (based on 30% of their adjusted income) and the rent charged by an owner. Tenants renting units that have contract rents greater than the payment standard pay 30% of their income plus the difference between the payment standard and the actual rent (up to 40% of adjusted income for new and relocating voucher holders). After one year in an apartment, a household can choose to pay more than 40% of their income toward rent.

### **Payment Standards**

The amount of the HCV subsidy for a household is capped at a "payment standard" set by a

PHA, which must be between 90% and 110% of HUD's Fair Market Rent (FMR), the rent in the metropolitan area for a modest apartment. HUD sets FMRs annually. Nationally, the average voucher household in 2021 paid \$395 a month for rent and utilities. In many areas the payment standard is not sufficient to cover the rent in areas that have better schools, lower crime, and greater access to employment opportunities – often called high opportunity areas. In hot real estate markets where all rents are high, households with a voucher often find it difficult to use their voucher because households with higher incomes can afford to offer landlords higher rent.

A PHA may request HUD Field Office approval of an “exception payment standard” up to 120% of the FMR for a designated part of an FMR area. An exception payment standard greater than 120% of the FMR must be approved by the PIH Assistant Secretary. For either, a PHA must demonstrate that the exception payment is necessary to help households find homes outside areas of high poverty, or because households have trouble finding homes within the 60-day time limit allowed to search for a landlord who will accept a voucher.

A PHA may also establish a payment standard of up to 110% of the Small Area FMR (SAFMR) determined by HUD. PIH approval is not required; a PHA merely needs to email the Field Office by email. Small Area FMRs reflect rents for U.S. Postal ZIP Codes, while traditional FMRs reflect a single rent standard for an entire metropolitan region – which can contain many counties. The intent is to provide voucher payment standards that are more in line with neighborhood-scale rental markets, resulting in relatively higher subsidies in neighborhoods with higher rents and greater opportunities, and lower subsidies in neighborhoods with lower rents and concentrations of voucher holders. A goal of Small Area FMRs is to help households use vouchers in areas of higher opportunity and lower poverty, thereby reducing voucher concentrations high poverty areas. PHAs may voluntarily use SAFMRs, while Small Area FMRs must be used by

24 designated metropolitan areas.

With the coronavirus pandemic, PIH introduced various waivers to regulations. One was allowing expedited PIH Field Office review of a PHA's request to increase a payment standard up to 120% of AMI. In March 2022, PIH extended the deadline for PHAs to request expedited reviews of such requests, and in September 2022 PIH again extended to December 31, 2023, the deadline of PHAs to request expedited Field Officer review.

As a result of legislation passed in 2016, the “Housing Opportunity Through Modernization Act” (HOTMA, see below), PHAs may establish an exception payment standard of up to 120% of the FMR as a “reasonable accommodation” for a person with a disability, without having to get HUD approval. PHAs may seek HUD approval for an exception payment standard greater than 120% of FMR as a reasonable accommodation.

Also due to HOTMA, PHAs have the option to hold voucher households harmless from rent increases when FMRs decline. PHAs can do this by continuing to use the payment standard based on the FMR prior to the new, higher FMR.

### **Moving with a Voucher**

Housing vouchers are “portable,” meaning households can use them to move nearly anywhere in the country where there is a PHA administering the voucher program; use is not limited to the jurisdiction of the PHA that originally issued the voucher. A PHA is allowed to impose some restrictions on “portability” during the first year if a household did not live in the PHA's jurisdiction when it applied for assistance. However, portability has been restricted or disallowed by some PHAs due to alleged inadequate funding. Recent HUD guidance requires approval of the local HUD office before a PHA may prohibit a family from using a voucher to move to a new unit due to insufficient funding.

### **Resident Participation**

HCV households are among the most difficult residents to organize because they can choose a private place to rent anywhere in a PHA's market and are thus less likely to live close to or

have contact with each other. However, the PHA Plan process, and the requirement that voucher households be included on the Resident Advisory Board (RAB), offer platforms for organizing voucher households so that they can amplify their influence in the decision making affecting their homes.

Voucher households can play a key role in shaping PHA policies by participating in the annual and five-year PHA Plan processes. PHAs make many policy decisions affecting voucher households, including determining the value of a voucher to a household and landlord by setting “voucher payment standards.” Other key policies include minimum rents, developing admissions criteria, determining the amount of time a voucher household may search for a unit, giving preferences for people living in a PHA’s jurisdiction, as well as creating priorities for allocating newly available vouchers to categories of applicants (for example, homeless individuals, families fleeing domestic violence, working families, or those with limited English-speaking capability). Voucher households can play an integral role in setting the agenda for local PHAs because the RAB regulations require reasonable representation of voucher households on the RAB if voucher households comprise at least 20% all households assisted by a PHA. See *The PHA Plan* section of this *Advocates’ Guide*.

## STATUTORY AND REGULATORY CHANGES

### Statutory Changes

On July 29, 2016, President Obama signed into law the “Housing Opportunity Through Modernization Act” (HOTMA). This law made some changes to the Housing Choice Voucher and public housing programs. Highlights of the HCV changes include:

- **Income Determination and Recertification:**

- For residents already assisted, rents must be based on a household’s income from the prior year.
- Rent must be based on an applicant’s estimated income for the upcoming year.

- A household may request an income review any time their income or deductions are estimated to decrease by 10%.
- A PHA must review a household’s income any time that income with deductions are estimated to increase by 10%, except any increase in earned income cannot be considered until the next annual income recertification.

- **Income Deductions and Exclusions:**

- The Earned Income Disregard (EID) was eliminated, no longer disregarding certain increases in earned income for residents who had been unemployed or receiving welfare.
- The deduction for elderly and disabled households increased from \$400 to \$525 with annual adjustments for inflation.
- The deduction for medical care, attendant care, and auxiliary aid expenses for elderly and disabled households will apply to expenses that exceeded 10% of income (compared to 3% of income before HOTMA).
- The dependent deduction remains at \$480 but will be indexed to inflation; it applies to each member of a household who is less than 18 years of age and attending school, or who is a person 18 years of age or older with a disability.
- The deduction of anticipated expenses for the care of children under age 13 that are needed for employment or education is unchanged.
- Any expenses related to aiding and attending to veterans are excluded from income.
- Any income of a full-time student who is a dependent is excluded from income, as are any scholarship funds used for tuition and books.
- HUD must establish hardship exemptions in regulation for households who would not be able to pay rent due to hardship. These regulations must be made in



consultation with tenant organizations and industry participants.

- **Physical Inspections:**

- HOTMA provides PHAs with two options for initial inspections:
  - HOTMA allows a household to move into a unit and a PHA to begin making housing assistance payments to an owner if the unit does not meet HQS, as long as the deficiencies are not life-threatening. However, a PHA must withhold payments to an owner if a unit does not meet HQS standards 30 days after a household first occupies a unit. If an initial inspection identifies non-life-threatening (NLT) deficiencies, a PHA must provide a list of the deficiencies to a household and offer the household an opportunity to decline a lease without jeopardizing their voucher.

A PHA must also notify a household that if an owner fails to correct NLT deficiencies within a time period specified by a PHA, the PHA will terminate the Housing Assistance Payment (HAP) contract and the household will have to move to another unit. If a household declines a unit, a PHA must inform the household of the amount of search time they have remaining to find another unit. In addition, a PHA must “suspend” (stop the clock) of an initial or any “extended term” of a voucher (to search for another unit) from the date the household submitted a request for PHA approval of tenancy until the date the PHA notifies the household in writing whether the request has been approved or denied.
  - Alternatively, a PHA may allow a household to move into a unit before the PHA conducts its own HQS inspection, as long as the unit passed a comparable, alternative inspection within the previous 24 months.

Implementing guidance published in 2017 still requires a PHA to conduct its own inspection within 15 days.

- Enforcement of Housing Quality Standards:
  - HQS deficiencies that are life-threatening must be fixed within 24 hours and HQS conditions that are not life-threatening must be fixed within 30 days. A PHA may withhold assistance (“abate”) during this time (HOTMA places into law the 24-hour and 30-day time periods that already existed in regulation). If an owner fails to make the non-life-threatening corrections within 30 days, a PHA must withhold any further HAP payments for another 60 days or until those conditions are addressed and the unit meets HQS. Once a unit is found to be in compliance, a PHA may reimburse the owner for the period during which payments were withheld.
  - If an owner fails to make the non-life-threatening corrections after 30 days (or life-threatening violations within 24 hours), a PHA must abate assistance, notify the household and owner of the abatement, and inform the household that they must move if the unit is not brought into HQS compliance within 60 days after the end of the first 30-day period. The owner cannot terminate the household’s tenancy during the abatement, but the household may terminate its tenancy if they choose. If the owner does not correct the HQS deficiencies within those 60 days, the PHA must terminate the HAP contract with the owner.

The household must have at least 90 days to find another unit to rent (a PHA may extend the search period). If the household cannot find another unit, then the PHA must give the household the option of moving into a public housing unit. The PHA may provide



relocation assistance to the household, including reimbursement for reasonable moving expenses and security deposits, using up to two months of any rental assistance amounts withheld or abated.

- **Payment Standard for Reasonable Accommodation:**

- PHAs may establish an exception payment standard of up to 120% of the FMR as a reasonable accommodation for a person with a disability, without having to get HUD approval.
- PHAs may seek HUD approval for an exception payment standard greater than 120% of FMR as a reasonable accommodation.

- **Hold Harmless Provision:**

- PHAs have the option to hold voucher households harmless from rent increases when FMRs decline. PHAs can do this by continuing to use the payment standard based on the FMR prior to the new, higher FMR.

- **Project Based Vouchers:**

- PHAs may choose to project base up to 20% of their authorized HCVs (removing the previous PBV cap of 20% of a PHA's HCV dollar allocation).
- PHAs may project base an additional 10% of their authorized HCVs to provide units for people who are experiencing homelessness, disabled, elderly, or veterans, as well as to provide units in areas where vouchers are difficult to use (census tracts with a poverty rate less than 20%).
- A project may not have more than 25% of its units or 25 units, whichever is greater, assisted with PBVs. Prior to HOTMA, the PBV cap was 25% of units. The 25%/25 unit cap does not apply to units exclusively for elderly households or households eligible for supportive services. Prior to HOTMA, the exceptions to the 25%

cap applied to households comprised of elderly or disabled people and households receiving supportive services. For projects where vouchers are difficult to use (census tracts with poverty rates less than 20%), the cap is raised to 40%.

- The maximum term of initial PBV contracts and subsequent extensions increased from 15 years to 20 years. A PHA may agree to extend a HAP contract for an additional 20 years, but only for a maximum of 40 years according to implementation guidance. However, informally HUD staff have conveyed to NLIHC that the guidance is confusing; HUD staff agree that an owner could renew a HAP contract after 40 years.
- If an owner does not renew a PBV contract, a household may choose to remain in the project with voucher assistance; however, the household must pay any amount by which the rent exceeds their PHA's payment standard.

- **Manufactured Homes:**

- Vouchers may be used to make monthly payments to purchase a manufactured home, and to pay for property taxes and insurance, tenant-paid utilities, and rent charged for the land upon which the manufactured home sits, including management and maintenance charges.

## **CARBON MONOXIDE**

"The Consolidated Appropriations Act of 2021" requires Carbon Monoxide (CO) alarms or detectors to be installed in each public housing unit, as well as other HUD-assisted properties, by December 27, 2022. HUD issued joint [Notice PIH 2022-01/H 2022-01/OLHCHH 2022-01](#) clarifying that it will enforce this requirement. In the HCV and PBV programs, property owners or landlords are responsible for the cost of CO alarms or detectors. In addition, PHAs may use their HCV administration funds for landlord outreach and education about these requirements.

## PROPOSED REGULATORY CHANGES

On September 17, 2019, HUD proposed HOTMA implementation regulations echoing HOTMA's income examination, income calculation, elderly or disabled deduction, childcare deduction and hardship provisions, and healthcare deduction and hardship provisions. In addition, HUD proposed HOTMA asset limitation provisions, including: making households ineligible if their net household assets are greater than \$100,000 (adjusted for inflation each year) or if the household owns real property suitable for occupancy; allowing a PHA to determine net assets based on a household's certification that their net family assets are less than \$50,000 (adjusted for inflation each year); revising the definition of "net family assets" by eliminating a number of previously included items such as the value of necessary "personal property" (like a car); and allowing a PHA to choose to not enforce the asset limit. NLIHC [summarized](#) key provisions of the proposed changes. A final rule was not implemented before *Advocate's Guide* went to publication. Still more HOTMA regulations were proposed for vouchers on [October 8, 2020 in the \*Federal Register\*](#). This massive proposal contains many provisions already implemented through notices that must be codified in the Code of Federal Regulations (CFR), provisions not yet implemented, and numerous non-HOTMA related changes. A final rule cleared the Office of Information and Regulatory Affairs (OIRA) during 2022, but was not published in the *Federal Register* before *Advocate's Guide* went to publication.

### Additional Regulatory Changes

- A "streamlining rule" was published on March 8, 2016. Key HCV provisions included the following options for PHAs:
  - PHAs have the option of conducting a streamlined income determination for any household member who has a fixed source of income (such as Supplemental Security Income, SSI). If that person or household member with a fixed income also has a non-fixed source of income, the non-fixed

source of income is still subject to third-party verification. Upon admission to the voucher program, third-party verification of all income amounts will be required for all household members. A full income reexamination and redetermination must be performed every three years. In between those three years, a streamlined income determination must be conducted by applying a verified cost of living adjustment or current rate of interest to the previously verified or adjusted income amount.

- PHAs have the option of providing utility reimbursements on a quarterly basis to voucher households if amounts due are \$45 or less. PHAs can continue to provide utility reimbursements monthly if they choose to do so. If a PHA opts to make payments on a quarterly basis, the PHA must establish a hardship policy for tenants if less frequent reimbursement will create a financial hardship.
- The rule implements the "FY14 Appropriations Act" provision authorizing PHAs to inspect voucher units every other year, rather than annually, and to use inspections conducted by other programs such as the Low-Income Housing Tax Credit program.

## FUNDING

Congress appropriated \$26.401 billion for FY23 to renew existing Housing Choice Voucher (HCV) contracts. This was an increase above the FY22 final appropriation of \$24.1 billion. For PHA administration costs, Congress appropriated \$2.778 billion, compared to the FY22 appropriated amount of \$2.4 billion. Congress only appropriated \$500 million in FY23 for incremental vouchers, the amount provided for in the Senate's bill; the president proposed \$1.55 billion for an estimated 200,000 new incremental vouchers, while the House proposed \$1.1 billion.

## FORECAST FOR 2023

A final rule is anticipated that would implement remaining HOTMA provisions, basically echoing the statute's income examination, income calculation, elderly or disabled deduction, child-care deduction and hardship provisions, healthcare deduction and hardship provisions, and asset limitation provisions. Each PHA's eligibility for renewal funding is based on the cost of vouchers in use in the prior year.

## WHAT TO SAY TO LEGISLATORS

Advocates should encourage Members of the House and Senate to fully fund the renewal of all vouchers.

## FOR MORE INFORMATION

NLIHC, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

National Housing Law Project, 415-546-7000, <http://nhlp.org/resourcecenter?tid=121>.

Center on Budget and Policy Priorities, 202-408-1080, <https://www.cbpp.org/topics/housing>.

Technical Assistance Collaborative, *Section 8 Made Simple*, <http://bit.ly/2hWKzYa>.

NLIHC's Summary of September 17, 2019 proposed HOTMA implementation regulations, <https://bit.ly/2kr70dt>.

HUD's Housing Choice Voucher homepage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv).

HUD's HCV Guidebook webpage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/guidebook](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidebook).

HUD's VASH webpage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/vash](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/vash).

HUD's Non-Elderly Disabled webpage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/ned](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/ned).

HUD's Mainstream Voucher webpage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/mainstream](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/mainstream).

HUD's Family Unification Program (FUP) webpage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/family](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/family).

HUD's Foster Youth to Independence Initiative (FYI) webpage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/fyi](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fyi).

HUD's HOTMA Resources webpage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/hotmaresources](https://www.hud.gov/program_offices/public_indian_housing/hotmaresources).

<https://bit.ly/3pn9xms>.

The Administration's FY23 proposal for Tenant-Based Rental Assistance, [https://www.hud.gov/sites/dfiles/CFO/documents/2023\\_CJ\\_Program\\_TBRA.pdf](https://www.hud.gov/sites/dfiles/CFO/documents/2023_CJ_Program_TBRA.pdf).

# Project-Based Vouchers

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By Barbara Sard, former Vice President for Housing Policy, Center on Budget and Policy Priorities, as updated by Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** HUD's Office of Public and Indian Housing (PIH)

**Year the Current Version Started:** 2001

**Number of Persons/Households Served:**  
Nearly 304,000 households

**Population Targeted:** Extremely low- and low-income households

**See Also:** For related information, refer to the *Housing Choice Vouchers* and *Public Housing Agency Plan* sections of this *Guide*.

Public housing agencies (PHAs) may project-base up to 20% of their authorized Housing Choice Vouchers (HCVs), plus an additional 10% (for total of up to 30%) if the additional units contain certain types of households or are located in specific areas. The term project-based means that the assistance is linked to a particular property, as opposed to tenant-based vouchers, which move with a household. According to PIH's [Data Dashboard](#), as of August 2022, about 304,000 units had project-based voucher (PBV) assistance, with another 23,000 units in the pipeline. In addition, more than an additional 97,000 former public housing or other federally assisted units converted to PBVs under the Rental Assistance Demonstration, RAD, (see the Rental Assistance Demonstration section of this *Advocates' Guide*). Only one-third (about 815) of the approximately 2,200 PHAs that administer HCVs operate PBV programs.

PBVs are an important tool to provide supportive housing for individuals with disabilities or others who need services to live stably in their own homes. PBVs can also help PHAs in tight housing markets utilize all of their vouchers by making it unnecessary for some families to search for units they can rent with their vouchers. Another benefit of PBVs is that they can encourage the production

or preservation of affordable housing, since owners of properties with PBVs receive financial security from the long-term contracts they sign with PHAs. This is particularly important in higher cost areas, where the PBV regulations may allow higher subsidies than tenant-based vouchers.

## HISTORY AND PURPOSE

The current PBV program was created by Congress in October 2000 as part of the FY01 appropriations bill for HUD and other agencies [Section 232 of Pub.L. 106-377, revising section 8(o)(13) of the "U.S. Housing Act," 42 U.S.C. §1437f(o)(13)]. The PBV program replaced the project-based certificate program, which was rarely used because it was cumbersome (e.g., PIH approval was required for each individual transaction), did not allow long-term financial commitments by PHAs, was limited to new development or rehabilitation, and did not provide incentives for owners to commit units to the program.

In addition to addressing weaknesses of the prior program, Congress included a novel feature, the "resident choice" requirement. This guarantees that a household with PBV assistance that wishes to move after one year will receive the next available tenant-based voucher. The project-based subsidy stays with the unit if a previously assisted household moves so that another household can be assisted. This mobility requirement helps ensure that PBV recipients remain able to choose where they want to live. Congress also included statutory requirements to promote mixed-income housing and to deconcentrate poverty.

PIH issued a notice on January 16, 2001 making most of the statutory changes immediately effective but did not issue final rules fully implementing the statute until 2005. Congress made several amendments to the statute in 2008 as part of the "Housing and Economic Recovery Act" (HERA), notably extending the maximum



contract period from 10 to 15 years in order to correspond to the initial affordability period for the Low-Income Housing Tax Credit (LIHTC) program. PIH revised the PBV rule incorporating the HERA amendments and make some additional changes, which became effective in July 2014.

Section 106 of the “Housing Opportunity Through Modernization Act of 2016” (HOTMA), which the president signed into law on July 29, 2016 (Pub.L. 114-201), made substantial changes to the PBV program. PIH published a notice in the *Federal Register* on [January 18, 2017](#) making most of these changes effective in 90 days (i.e., April 18, 2017). PIH issued technical corrections to the January notice in July 2017 and consolidated all PBV policy guidance in [Notice PIH 2017-21](#) on October 30, 2017. In July 2019, PIH issued revised forms for the PBV program that comply with these HOTMA changes. On [October 8, 2020](#), PIH issued proposed regulations to implement the remaining provisions of HOTMA and make other changes in the PBV program; a final rule has not been published as of the drafting of this *Advocates’ Guide*. Properties selected to receive PBVs prior to April 18, 2017 will be subject to the pre-HOTMA requirements, unless the PHA and owner agree to the HOTMA changes. This article reflects the HOTMA changes currently in effect, which include the basic regulations at [24 CFR part 983](#), yet to be updated to reflect HOTMA changes such as those implemented by the January 18, 2017 Federal Register notice and Notice PIH 2017-21.

## PROGRAM SUMMARY

Vouchers may be project-based in existing housing as well as in newly constructed or rehabilitated units, but cannot be used in transitional housing. Use in existing housing allows a more streamlined process. A PHA may initiate a PBV program by including the following in its PHA Plan: the projected number of units to be project-based, their general locations, and how project-basing would be consistent with the needs and goals identified in the PHA Plan. A PHA must include in its HCV Administrative Plan,

details about how it will select properties at which to project base vouchers, how it will maintain waiting lists, along with what, if any, supportive services will be offered to PBV residents. PIH approval is not required, but PHAs have to submit certain information to the local PIH Field Office prior to selecting properties to receive PBV contracts.

Families admitted to PBV units count for purposes of determining a PHA’s compliance with the HCV program’s targeting requirement that 75% or more of the families admitted annually have extremely low incomes. Targeting compliance is measured for a PHA’s entire HCV program, not just at the project level.

PHAs must use a competitive process to select properties, or rely on a competition conducted by another entity, such as the process used by the state to allocate LIHTCs, except if project-basing is part of an initiative to improve, develop, or replace a public housing property or site and the PHA has an ownership interest in or control of the property.

The locations where PBVs are used must be consistent with the goal of deconcentrating poverty and expanding housing and economic opportunity, but PHAs have substantial discretion to make this judgment as long as they consider certain factors specified in the PBV regulations.

### Statutory and Regulatory Limits

HOTMA increased the share of vouchers that agencies could project-base by shifting the measure from 20% of voucher funding to 20% of authorized vouchers, which increases the number of vouchers that may be project-based nationally by about 300,000. In addition, HOTMA allows a PHA to project-base an additional 10% of its vouchers, up to a total of 30%, in units that:

1. House individuals and families meeting the McKinney homelessness definition.
2. House veterans.
3. Provide supportive housing to persons with disabilities or to elderly people.
4. Are located in areas where the poverty rate is



20% or less, based on census data at the time of the PBV contract.

Former public housing or other federally assisted or rent-restricted housing, including units converted to PBVs as part of RAD, generally do not count toward this cap.

To achieve a mix of incomes, in general PBVs can be attached to no more than the greater of 25% of the units in a project or 25 units, although there are several exceptions to this requirement. The limitation does not apply to projects that were previously federally assisted or rent restricted. Also, up to 40% of the units in project can be PBV-assisted if located in a census tract that has a poverty rate not exceeding 20%. The income mixing limitation does not apply to units housing seniors, as well as non-elderly residents (including, but not limited to, people with disabilities) who are eligible for supportive services that are made available to assisted tenants in the project. (Prior to HOTMA, residents had to receive services—not just be eligible for them—in order for the units they occupied to be eligible for the supportive services exception.) By requiring owners to attract unsubsidized tenants for a majority of the units, the requirement imposes market discipline in place of direct PIH oversight. The resident choice feature described above also is intended to promote market discipline, as owners' costs will increase if there is a great deal of turnover in their units.

HOTMA increased the maximum term of the initial contract or any extension to 20 years, and PHAs may project-base vouchers provided under the Family Unification or HUD-VASH programs. PHAs and owners can modify PIH's form PBV contracts to adjust to local circumstances and to add units to existing contracts.

Units receiving PBV assistance must meet PIH's housing quality standards (HQS) before initial occupancy. HOTMA provides some new flexibility to speed initial occupancy if units have been approved under a comparable alternative inspection method (such as with the LIHTC or HOME programs) or if defects are not life-threatening and are fixed within 30

days. In situations allowing tenants to remain in place, instead of inspecting each PBV-assisted unit, PHAs may inspect a sample of PBV units biannually, reducing administrative costs.

PIH's rules now make clear that owners may evict a family from a PBV unit only for good cause (in contrast, families may be evicted from units assisted by tenant-based vouchers when their leases expire, without cause, unless state laws are more stringent). In addition, if a PBV contract is terminated or expires without extension, families have a right to use tenant-based voucher assistance to remain in the unit or move to other housing of their choice.

## RENT

With a PBV, a family typically pays 30% of its adjusted income on housing, and the voucher covers the difference between that amount and the rent to owner, plus the PHA's allowance for tenant-paid utilities. As in the tenant-based voucher program, the unit rent must not exceed the rents for comparable unassisted units in the area. However, there are three important differences in rent policy for PBV units:

1. There is no risk that a household will have to pay more than 30% of its income if the rent is above the PHA's payment standard, which is generally between 90% and 110% of the Fair Market Rent (FMR).
2. The unit rent is not limited by the PHA's payment standard but may be any reasonable amount up to 110% FMR or HUD-approved exception payment standard (up to 120% FMR). This flexibility on unit rents applies even in the case of units that receive HOME Program funds, which usually cap rents at 100% of the HUD-designated FMR. Special and more flexible rent rules apply to LIHTC units.
3. PHAs in metro areas required to or that voluntarily set FMRs at the ZIP code level (Small Area FMRs, or SAFMRs) rather than standard metro-wide FMRs, continue to use metro-wide FMRs at PBV projects – unless the PHA and owner agree to set rents based on the Small Area FMRs, which could expand use

of PBVs in higher-cost neighborhoods.

PHAs may reduce allowable unit rents below market based on the property's receipt of other government subsidies. This could be an important tool to stretch voucher funding to assist more units that receive additional capital subsidies through the National Housing Trust Fund.

## WAITING LISTS

PHAs must maintain the waiting list for PBV units and refer applicants to owners with anticipated vacancies for selection. PHAs can maintain the PBV waitlist as part of their full voucher waitlist, or maintain a separate PBV waitlist, or even maintain separate waitlists for different properties. To minimize the risk to owners of losing income due to a PHA's failure to promptly refer applicants, PHAs can pay the rent on vacant units for up to 60 days.

PHAs may use different preferences for their PBV waiting list, or the lists for individual PBV properties, than those used for the regular tenant-based list. This may include a preference based on eligibility for services offered in conjunction with a property, which may include disability-specific services funded by Medicaid. Applicants for regular tenant-based vouchers must be notified of the right to apply for PBVs and retain their place on the tenant-based list if they decline to apply for PBV units or are rejected by a PBV owner. Such notice need not be provided directly to everyone on the tenant-based waiting list at the time the project-based list is established; PHAs may use the same procedures used to notify the community that the waiting list will be opened.

## FUNDING

PBVs are funded as part of the overall Tenant-based Rental Assistance account. PHAs use a portion of their HCV funding for PBVs if they decide to offer the program. The formula Congress directs HUD to use to allocate annual HCV renewal funding provides additional funding to agencies that had to hold back some vouchers in order to have them available for use as

project-based assistance in new or rehabilitated properties.

## FORECAST FOR 2023

HUD will likely finalize proposed regulatory changes published in October 2020 to implement HOTMA policy changes that are not already effective and to incorporate other HOTMA changes already in effect into HUD rules. These policy changes include defining areas where vouchers are difficult to use differently than the initial guidance (which uses a poverty rate of 20% or less for this concept). Such a new definition could expand the types of households or areas that qualify a PHA to use more PBVs overall. The final HOTMA regulations also will likely allow owner-managed, site-based waiting lists, authorize the use of an operating cost adjustment factor to adjust PBV contract rents, streamline environmental review requirements for existing housing, and allow PHAs to enter into a contract for a property under construction.

## FOR MORE INFORMATION

Center on Budget and Policy Priorities, 202-408-1080, [www.cbpp.org](http://www.cbpp.org).

A “policy basic” on PBVs is at <https://www.cbpp.org/research/housing/policy-basics-project-based-vouchers>.

# Tenant Protection Vouchers

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** HUD's Office of Public and Indian Housing and Office of Multifamily Housing Programs

**Year Program Started:** 1996 for prepayments; 1999 for opt outs

**Population Targeted:** Low-income tenants of HUD's various project-based housing assistance programs

**Funding:** Congress appropriated \$337 million for FY23, greatly exceeding previous years' appropriations of \$100 million in FY22, \$116 million in FY21, \$75 million in FY20, and \$85 million in FY19.

**See Also:** The *Housing Choice Voucher Program* and *Project-Based Rental Assistance* sections of this *Guide*.

Tenant Protection Vouchers (TPVs) may be provided to low-income residents of project-based HUD-assisted housing when there is a change in the status of their assisted housing that will cause residents to lose their home (for example, public housing demolition) or render their home unaffordable (for example, an owner "opting out" of a Section 8 contract). HUD calls such changes "housing conversion actions" or "eligibility events." TPVs have two types: regular tenant-based Housing Choice Vouchers (HCVs) and tenant-based Enhanced Vouchers (EVs). Both types are administered by a local public housing agency (PHA). The amount of funding available for TPVs is determined by HUD estimates of need in the upcoming year and congressional appropriations. HUD's FY23 budget proposal estimated that 46,360 TPVs would be needed during FY23.

## PROGRAM SUMMARY

Residents are eligible for Tenant Protection Vouchers (TPVs), either as Housing Choice Vouchers (HCVs) or as Enhanced Vouchers (EVs), depending upon which housing program

assisted the development in which they are living, as well as certain circumstances for some of the programs. TPVs may be provided to low-income residents of project-based HUD-assisted housing when there is a change in the status of their assisted housing that will cause residents to lose their home (for example, public housing demolition) or render their home unaffordable (for example, an owner "opting out" of a Section 8 contract). HUD calls such changes "housing conversion actions" or "eligibility events." There are two types of TPVs: regular tenant-based Housing Choice Vouchers (HCVs) and tenant-based Enhanced Vouchers (EVs). Both types are administered by a local public housing agency (PHA). The amount of funding available for TPVs is determined by HUD estimates of need in the upcoming year and congressional appropriations. Each year, HUD publishes in the *Federal Register*, the names and addresses of properties awarded TPVs along with the number of units involved and the amount of TPV funding provided. The FY2021 list is [here](#).

## Replacement and Relocation Tenant Protection Vouchers

Whether a TPV is considered a "replacement" or a "relocation" TPV depends on whether the HUD-assisted housing is permanently lost. [Notice PIH 2018-09](#) remains as the key guidance document discussing HUD policy regarding replacement and relocation TPVs. In short, replacement TPVs are made available as a result of a public housing or HUD-assisted Multifamily action that reduces the number of HUD-assisted units in a community. Replacement TPVs not only assist the household affected by the loss of the HUD-assisted unit, but also make up for the loss of the HUD-assisted housing in the community. After an initial household no longer needs the replacement TPV, a PHA may reissue the TPV to households on its waiting list or project-base that TPV.

"Relocation TPVs" are provided when HUD-assisted housing units are not permanently lost,

for example when residents are temporarily relocated while waiting to return to redeveloped public housing. Since FY15, appropriations acts have made it clear that TPVs issued for temporary relocation cannot be reissued once the original household no longer uses it – for example when it returns to a redeveloped property or decides to move elsewhere.

Starting with the “FY19 Appropriations Act” and continuing through the “FY22 Appropriations Act” (as well as proposed for FY23 by HUD, the House, and the Senate) TPVs were no longer limited to units occupied at the time of a housing conversion action. Instead, appropriations language and guidance from HUD (e.g. [Notice PIH 2021-10](#)) allowed replacement TPVs to be awarded to any units that had been occupied sometime within the previous two years. In other words, a unit that might have been occupied 18 months prior to a housing conversion action, but that was vacant at the time of the housing conversion action, would still be eligible for a TPV. However, despite FY22 appropriations language, HUD guidance for FY22 ([Notice PIH 2022-14](#), page 6) no longer adheres to that of recent years; it explicitly states that “As of the publication date of this notice [Notice PIH 2022-14], HUD is suspending the allocation of replacement TPVs for vacant units.” The Notice does state that if there are any TPV funds available at the end of FY22, PIH may allocate replacement TPVs for vacant units that were occupied sometime in the previous 24 months.

HUD’s Office of Public and Indian Housing (PIH) created “[Tenant Protection Vouchers \(TPVs\) for Public Housing Actions](#),” a summary of its current policies regarding TBVs relating just to public housing. (The summary does not apply to TPVs for HUD’s Office of Multifamily Housing Programs.)

### Regular Tenant Protection Vouchers

Traditional HCVs are provided to residents to enable them to find alternative affordable homes when:

- Public housing is demolished, sold (a “disposition”), or undergoes a voluntary or

mandatory conversion to HCVs.

- A project-based Section 8 contract has been terminated or not renewed by HUD at a private, multifamily property (for example if the owner continuously fails to maintain the property in suitable condition).
- Private housing with a HUD-subsidized mortgage undergoes foreclosure.
- A Rent Supplement Payments Program (Rent Supp) or a Rental Assistance Payment Program (RAP) contract expires, an underlying mortgage is prepaid, or HUD terminates the contract.
- Certain Section 202 Direct Loans are prepaid.

TPVs issued as regular HCVs follow all of the basic rules and procedures of non-TPV HCVs.

### Enhanced Vouchers

EVs are provided to tenants living in properties with private, project-based assistance when an “eligibility event” takes place, as defined in Section 8(t)(2) of the “Housing Act of 1937.” The most typical eligibility event is when a project-based Section 8 contract expires and the owner decides not to renew the contract – the owner “opts out” of the Section 8 Project-Based Rental Assistance (PBRA) program. Prepayment of certain unrestricted HUD-insured mortgages (generally Section 236 and Section 221(d)(3) projects) is another type of eligibility event.

Several other situations trigger an eligibility event, depending on the program initially providing assistance. HUD must provide EVs for opt outs and qualifying mortgage prepayments; however, HUD has discretion regarding TPVs for other circumstances such as Rent Supp or RAP contract terminations, or Section 202 Direct Loan prepayments.

### Special Features of Enhanced Vouchers

EVs have two special features that make them “enhanced” for residents:

- 1. Right to Remain:** A household receiving an EV has the right to remain in their previously assisted home, and the owner must accept the EV as long as the home:



- a. Continues to be used by the owner as a rental property; that is, unless the owner converts the property to a condominium, a cooperative, or some other private use (legal services advocates assert that this qualification in HUD guidance is contrary to statute).
- b. Meets HUD's "reasonable rent" criteria, with rent comparable to unassisted units in the development or in the private market.
- c. Meets HUD's Housing Quality Standards.

Instead of accepting an EV, a household may move right away with a regular HCV. A household accepting an EV may choose to move later, but then their EV converts to a regular HCV.

PIH issued a Memorandum (May 22, 2014) to PHAs about the Right to Remain for Tenants who have an EV.

- 2. Higher Voucher Payment Standard:** An EV will pay the difference between a tenant's required contribution toward rent and the new market-based rent charged by an owner after the housing conversion action, even if that new rent is greater than a PHA's basic voucher payment standard. A PHA's regular voucher payment standard is between 90% and 110% of the Fair Market Rent (FMR). EV rents must still meet the regular voucher program's "rent reasonableness" requirement; rents must be reasonable in comparison to rents charged for comparable housing in the private, unassisted market (and ought to be compared with any unassisted units in the property undergoing a conversion action). EV payment standards must be adjusted in response to future rent increases.

In most cases a household will continue to pay 30% of their income toward rent and utilities. However, the statute has a minimum rent requirement calling for households to continue to pay toward rent at least the same amount they were paying for rent on the date of the housing conversion action, even if it

is more than 30% of their income. If, in the future, a household's income declines by 15%, the minimum rent must be recalculated to be 30% of the household's adjusted income or the percentage of income the household was paying on the date of the conversion event, whichever is greater. Notice PIH 2019-12 (May 23, 2019) changed the policy for instances in which a household's income increases to an amount such that the dollar value of the EV minimum rent established by the percentage of income calculation is more than the original (pre-15% income decline) EV minimum rent. In such instances, the household's EV minimum rent reverts to the EV minimum rent at the time of the eligibility event.

### **Mortgage Prepayment Eligibility Events under Section 8(t) of the "Housing Act"**

When an owner prepays an FHA-insured loan, under certain conditions EVs may be provided to tenants in units not covered by rental assistance contracts. However, EVs may not be provided to unassisted tenants if the mortgage matures.

If a mortgage may be prepaid without prior HUD approval, then EVs must be offered to income-eligible tenants living in units not covered by a rental assistance contract. Section 229(l) of the "Low-Income Housing Preservation and Resident Homeownership Act of 1990" (often referred to as LIHPRHA) spells out the various types of such mortgages.

Some properties that received preservation assistance under the "Emergency Low-Income Housing Preservation Act" (often referred to as ELIHPA) may have mortgages that meet the criteria of Section 229(l). For such properties, HUD may provide EVs to income-eligible tenants not currently assisted by a rental assistance contract when the mortgage is prepaid. However, HUD may not provide EVs if after mortgage prepayment the property still has an unexpired Use Agreement. A Use Agreement is a contract between HUD and a property owner that binds the owner to specific requirements such as the income-eligibility of tenants and maximum



rents that are less than market-rate. Some HUD programs use the term Regulatory Agreements which have similar requirements.

### **Set-Aside for TPVs at Certain Properties**

The “FY22 Appropriations Act” continued (and HUD, the House, and the Senate proposals for FY23 would continue) the provision setting aside \$5 million of the total amount appropriated for tenant protection vouchers (\$100 million in FY22) for low-income households in low-vacancy areas that may have to pay more than 30% of their income for rent. Each year HUD has issued a Notice providing guidance. The latest Notice is [Notice PIH 2019-01/Notice H 2019-02](#). Beginning with that Notice, HUD no longer issues a Notice each year; instead Notice PIH 2019-01/Notice H 2019-02 will continue to be applicable unless Congress changes the terms of the set-aside. The FY19 Notice applied to the \$5 million appropriated for FY18 and funds remaining from previous years.

To be eligible for this set-aside, one of two triggering events must have taken place:

1. A HUD-insured, HUD-held, or Section 202 loan matures that would otherwise have required HUD permission before the loan could be prepaid. These include Section 236, Section 221(d)(3) Below Market Interest Rate (BMIR), and Section 202 Direct loans.
2. The expiration of affordability restrictions accompanying a mortgage or preservation program administered by HUD. There are two groups of such properties:
  - a. Properties with matured Section 236 insured or HUD-held mortgages, Section 221(d)(3) BMIR insured or HUD-held mortgages, or Section 202 Direct loans for which permission from HUD is not required prior to mortgage prepayment, but the underlying affordability restrictions expired with the maturity of the mortgages.
  - b. Properties with stand-alone “Affordability Restrictions” that expired in FY18 or in the five years prior to the

owner’s submission. To be eligible, the project with the expired affordability restriction must not, at the time of the request for assistance, have an active Section 236 insured or HUD-held mortgages, Section 221(d)(3) BMIR insured or HUD-held mortgages, or Section 202 Direct loans.

Before 2018 there was a third possible trigger: the expiration of a rental assistance contract for which the tenants are not eligible for enhanced voucher or tenant protection assistance under existing law. These included properties with a RAP contract that expired before FY12, or a property with a Rent Supp contract that expired before FY20.

A project must be in a HUD-identified low-vacancy area. HUD updates the low-vacancy areas each year and posts them on the Office of Policy and Development ([PD&R website](#)). The 2018 joint Notice ([Notice PIH 2018-02/H 2018-01](#)) provided many more counties on HUD’s list of low-vacancy areas than in previous years because HUD decided to select counties with public housing and multifamily-assisted properties that had occupancy rates greater than or equal to 90%. Previous Notices used a county’s overall vacancy rate, which included non-assisted rental housing. Advocates had long urged HUD to revise the way it determined low-vacancy areas because many otherwise eligible properties were not allowed to apply for TPV assistance.

To determine whether a household might become rent-burdened (pay more than 30% of household income for rent and utilities), the 2019 Notice (as was the case for the first time with the 2018 Notice) requires owners to divide the 2018 Small Area FMR in metropolitan areas or FMR in non-metro areas by a household’s adjusted income. In the past, the numerator (a proxy for market rents) was HUD’s most current low-income limit for a metro area.

Other key provisions that have applied to the set-aside in previous years provided in the joint 2019 Notice include:

- As with previous Notices, only owners may request TPV assistance. Advocates have urged HUD to allow residents to request TPV assistance if an owner is not responsive. Also, like previous Notices, the 2019 version requires owners to notify residents. Starting with the 2018 Notice, owners must also notify any legitimate resident organizations. However, the Notice does not require owners of projects approaching an expiration of restrictions to provide residents a one-year advance notice, as advocates have urged.
- As in the past, applications will be accepted on a rolling basis; however, unlike previous Notices the funds will be not available until any set-aside funds are exhausted. This is an improvement advocates have long sought. In prior years set-aside funds not awarded were no longer available at the end of the relevant fiscal year. Because HUD failed to issue Notices in a timely fashion, significant sums were left unused. For example, for FY16 the Notice was issued on August 18, two months before the end of the fiscal year.
- As in the past, owners must indicate their preference for either enhanced vouchers or project-based vouchers (PBVs). Owners must state whether they are willing to accept the alternative form of assistance if the PIH Field Office is unable to find a PHA willing to administer the owner's preferred assistance type. For example, if an owner prefers PBVs, the application will have to specify whether the owner consents to enhanced vouchers if the PIH Field Office is unable to find a PHA to administer PBV assistance.

## FUNDING

The amount of funding available for TVPs should be determined by HUD estimates of need in the upcoming year and congressional appropriations. Although HUD requested \$220 million for FY23, Congress appropriated \$337 million.

## WHAT TO SAY TO LEGISLATORS

Advocates should tell Members of Congress to support funding sufficient to cover all TPVs that might be needed due to housing conversion actions so that low-income households are not displaced from their homes as a result of steep rent increases when a private HUD-assisted property leaves a HUD program, or to ensure that low-income households have tenant-based assistance to be able to afford rent elsewhere when they lose their homes due to public housing demolition, disposition, or mandatory or voluntary conversion to vouchers.

## FOR MORE INFORMATION

NLIHC, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

HUD's (somewhat outdated) Tenant Protection Voucher webpage is at: [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/tenant\\_protection\\_vouchers](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/tenant_protection_vouchers), including a June 2020 “[Tenant Protection Vouchers \(TPV\) for Public Housing Actions](#)”

HUD Fact Sheet: PHAs are now required to issue this to residents when owners of private, HUD-assisted housing decide to no longer participate in the HUD program, [https://www.hud.gov/sites/documents/ENHANCED\\_VOUCHERS\\_ENG.PDF](https://www.hud.gov/sites/documents/ENHANCED_VOUCHERS_ENG.PDF).

Notice PIH 2022-14 is at: <https://www.hud.gov/sites/dfiles/PIH/documents/PIH2022-14.pdf>

The joint Notice H-2019-02/PIH 2019-01 is at: <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2019-01.pdf>.

[Chapter 11](#) of the Multifamily Office's Section 8 Renewal Policy guidebook [https://www.hud.gov/sites/documents/508FIN\\_CONSOL\\_GUIDE6\\_8\\_17.PDF](https://www.hud.gov/sites/documents/508FIN_CONSOL_GUIDE6_8_17.PDF).

Memorandum (May 22, 2014) to PHAs about Right to Remain for Tenants who have an EV, <https://www.hud.gov/sites/documents/ENHANCEDVOUCHERREMINDER.PDF>.

# Vouchers: Family Unification Program

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By Ruth White, Executive Director,  
National Center for Housing and Child  
Welfare

**Administering Agency:** HUD's Office of Public  
and Indian Housing (PIH)

**Year Started:** 1990

**Number of Persons/Households Served:**

Nearly 27,000 households currently hold Housing  
Choice Vouchers through the Family Unification  
Program (FUP).

**Population Targeted:** Homeless or precariously  
housed families in danger of losing children to  
foster care or that are unable to regain custody  
primarily due to housing problems and youth  
aging out of foster care who are at risk of  
homelessness.

**Funding:** FUP is authorized by Section 8(x) of  
the "United States Housing Act of 1937" (42  
U.S.C. 1437f(x)). Funding is provided by the  
"Consolidated Appropriations Act," 2022 (Pub.  
L. 117-103, enacted on March 15, 2022) which  
made available \$30 million for incremental  
vouchers to serve families and youth involved  
with the child welfare system.

Appropriators divide FUP into three separate  
allocations. Two of these allocations are intended  
for foster youth and total \$25 million and the  
other is for a mix of families and youth. Of the  
\$25 million for youth, HUD made available  
\$10 million on a competitive basis through the  
FYI-Competitive NOFO (FR-6600-N-41). HUD  
offers the remaining \$15 million available on a  
non-competitive, rolling basis. Assistance for  
youth is also referred to as the Foster Youth to  
Independence Initiative (described in chapter 5  
of this *Guide*).

HUD will issue a Notice of Funding Opportunity  
for FUP for families in or around March 2023.  
Congress included a \$30 million in the FY2023  
"Omnibus Appropriations Act" for FUP, intended  
to serve both youth and families. FUP remains an  
eligible use of HUD's Tenant Protection Fund.

**See Also:** For related information, refer to the  
*Housing Choice Voucher Program*, *Foster Youth to  
Independence Vouchers*, *Tenant Protection Vouchers*,  
and *HUD-Funded Service Coordination Programs*  
sections of this *Guide*.

HUD's FUP is a federal housing program aimed  
at keeping homeless families together and safe  
and preventing homelessness among young  
adults aging out of foster care. HUD provides  
FUP Housing Choice Vouchers to Public Housing  
Authorities who must work in partnership with  
public child welfare agencies (PCWAs) in order  
to select eligible participants for the program.  
These vouchers can be used to prevent children  
from entering foster care, reunite foster children  
with their parents, and help ease the transition  
to adulthood for older former foster youth.  
Because youth vouchers are time-limited to three  
years, on January 24, 2022, HUD implemented  
"the Fostering Stable Housing Opportunities  
Act Amendments" to FUP, codifying the FYI  
distribution mechanism and requiring PHAs  
to offer youth the opportunity to extend their  
voucher assistance by two years (for a total of  
five) by pursuing paths towards self-sufficiency  
if they are able (otherwise they are granted the  
extension regardless). Voucher assistance for  
families is not time limited.

## HISTORY AND PURPOSE

FUP was signed into law in 1990 by President  
George H. W. Bush. The program was created as  
a part of the Tenant Protection Fund within the  
"Cranston-Gonzalez Affordable Housing Act of  
1990." FUP is designed to address the housing  
related needs of children in the foster care  
system. According to HHS, one in ten children  
who enter foster care are removed from their  
homes due to inadequate housing. In 2021, over  
25,000 children entered foster care because  
their families lacked access to safe, decent, and  
affordable housing. Additionally, 17,000 young  
adults aged out of foster care without finding  
any kind of permanency without family to help

them gain an independence and a solid economic footing. Consequently, nearly a quarter of these young adults are at risk of homelessness in the first year after emancipation.

Despite the obvious impact of America's affordable housing crisis on foster children, child welfare workers seldom have access to the housing resources or supportive services necessary to prevent and end homelessness among vulnerable families and youth. FUP is a long-standing and effective cross-systems partnerships that communities can draw upon to keep families together and safe and ease the transition to adulthood for young adults.

## PROGRAM SUMMARY

FUP is administered at the local level through a partnership between public housing agencies (PHAs) and public child welfare agencies. PHAs interested in administering FUP Vouchers must sign a memorandum of understanding (MOU) with their partner agency to apply to HUD in response to a Notice of Funding Opportunity. FUP vouchers for families are awarded through a competitive process. Currently, depending on the size of the PHA, communities can apply for a maximum of 75, 50, or 25 vouchers. Communities are encouraged to apply only for the number of vouchers that can be leased up quickly, meaning families and youth that have been identified as well as landlords who will rent to them. Planning accordingly will prevent an unnecessary underutilization of vouchers. If a community is no longer in need of vouchers, HUD can reallocate those vouchers elsewhere to ensure efficiency in the Program.

PHAs administer FUP vouchers to families and youth who have been certified as eligible for FUP by the local public child welfare agency. In the 2022 Notice of Funding Opportunity HUD emphasizes the importance of ensuring that families in the homeless assistance system that are involved with child welfare are aware of available FUP Vouchers. To ensure that homeless families are served expediently by local homeless Coordinated Entry systems so that their children do not linger unnecessarily in foster care, HUD

requires the local Continuum of Care (CoC) leader to sign the FUP MOU. HUD also encourages the participating FUP partners to meet regularly with local CoC groups.

FUP vouchers are administered in the same manner as Housing Choice Voucher and are subject to the same eligibility rules. The child welfare agency is required to help FUP clients gather the necessary paperwork, find suitable housing, and maintain their housing through aftercare services. If a child welfare agency elects to refer a young person aging out of foster care with a FUP voucher, the child welfare agency must offer or identify an agency that will offer educational assistance, independent living programs, counseling, and employment assistance. The housing subsidies available to youth under this program are limited to 36 months but can be extended to five years if youth participants work, go to school, and/or participate in HUD's Family Self-Sufficiency Program.

Eligible families include those who are in imminent danger of losing their children to foster care primarily due to housing problems and those who are unable to regain custody of their children primarily due to housing problems. Eligible youth include those who were in foster care aged out of foster care and are currently between the ages of 18 and 24 (have not reached their 25th birthday) and are homeless or at risk of homelessness.

## FUNDING

Each year between 1992 and 2001, HUD awarded an average of 3,560 FUP Vouchers to public housing agencies. Unfortunately, from FY02 to FY07, HUD used its rescission authority to avoid funding FUP. Funding for FUP was re-established by the Senate Appropriations Subcommittee on Transportation, Housing and Urban Development in 2009 and since then, FUP has received widespread support and a consistent investment of roughly \$20 million annually. In fact, Congress increased the funding for FUP in FY 2022 to \$30 million along with language that synchronizes vouchers for youth with foster care emancipation to eliminate homelessness for youth leaving care.



Congressional appropriators have included \$30 million for FUP in FY2023.

## FORECAST FOR 2023

There is growing interagency support for FUP at the federal level in Congress and within the Administration. Leadership in authorizing and appropriations committees have expressed a high level of confidence and support for FUP and it is likely that FUP will continue to receive steady funding as well as serve as a blueprint for similar interagency housing collaboration.

An important development in the evolution of FUP is an increasing interest in synchronizing FUP vouchers with emancipation to eliminate homelessness among youth leaving foster care. With the passage of the “Fostering Stable Housing Opportunities Act” (FSHO), Congress moved to codify the non-competitive distribution of vouchers known as FYI, so that a portion of the FUP vouchers can be issued “on demand” in such a manner that child welfare agencies can properly time the voucher request with a young adult’s emancipation from foster care. Furthermore, FSHO amends FUP to encourage participation in HUD’s Family Self-Sufficiency Program to help move youth towards economic independence and help them build wealth.

HUD requires that the local public child welfare agencies (PCWA) find partners to ensure that young people have access to a range of self-sufficiency services. Further, child welfare agencies should create relationships with local shelters and the Continuum of Care (CoC) so that youth who have been failed by the child welfare system and end up homeless are identified and referred to the PCWA for FUP. The FSHO amendments to FUP provide a real opportunity to end homelessness for older foster youth and homeless emancipated youth this year.

## TIPS FOR LOCAL SUCCESS

The most successful FUP partnerships require cross-training, single points of contact (liaisons) within each partner agency, and ongoing communication. HUD requires that FUP sites have regular communication, liaisons, and

other elements to support their partnership and provide case management and other supportive services to FUP households. FUP sites must include ongoing, intensive case management provided by the local child welfare agency or through a contract funded by the child welfare system. HUD underscores the importance of child welfare partners taking part in landlord recruitment, housing training for frontline staff, and emphasizes regular communication with the PHA point of contact. Finally, HUD encourages PHAs to enroll FUP households in the FSS program because this adds an extra layer of supportive services and helps ensure that FUP households will successfully maintain permanent housing and reduce the amount of subsidy paid by the government over time.

HUD offers the tools and training necessary to implement and operate a FUP partnership on their [website](#) free of charge. PHAs administering FUP nationwide demonstrate an extraordinary commitment to at-risk populations and the ability to match existing services to Housing Choice Vouchers to successfully serve hard-to-house families and youth leaving foster care.

## WHAT TO SAY TO LEGISLATORS

Advocates can help legislators understand that housing is a vital tool for promoting family unification, easing the transition to adulthood for foster youth, and achieving significant cost savings. Advocates can inform their elected officials that when a FUP Voucher is used to reunify a family and subsidizes a two-bedroom unit, the community saves an average of \$61,388 per family in annual foster care costs. Furthermore, supportive housing for young adults is a tenth of the cost of more restrictive placements like juvenile justice or residential treatment. This cost-benefit information is an excellent way to help legislators understand the importance of new funding for the FUP.

## FOR MORE INFORMATION

National Center for Housing & Child Welfare, 301-699-0151, [www.nchcw.org](http://www.nchcw.org).



# Vouchers: Foster Youth to Independence Initiative

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By Ruth White, Executive Director,  
National Center for Housing and Child  
Welfare

**Administering Agency:** HUD's Office of Public  
and Indian Housing (PIH)

**Year Started:** 2019

**Number of Persons/Households Served:** Since the Foster Youth to Independence (FYI) Initiative was implemented on July 26, 2019, nearly 3,500 young people have received time-limited Housing Choice Vouchers and supportive services to help them chart a path towards success.

**Population Targeted:** Current and former foster youth between the ages of 18 to 24 who are homeless or at risk of homelessness

**Funding:** FYI began in 2019 as a Secretarial Initiative which tapped HUD's ultra-flexible Tenant Protection Account to provide "on demand" Family Unification Program (FUP) Youth Housing Choice Vouchers. Shortly thereafter, appropriators added language to the FUP line item within the "FY2020 Appropriations Act" allowing HUD to distribute a portion of the youth vouchers in a "non-competitive" manner. In FY 2022, Congress increased the FUP youth allotment by an additional \$5 million for a total of \$25 million, of which \$15 million is distributed through the competitive NOFO process and \$10 million is offered on a rolling, non-competitive basis.

**See Also:** For related information, refer to the *Housing Choice Voucher Program, Family Unification Program, Tenant Protection Vouchers, and HUD-Funded Service Coordination Programs* sections of this *Guide*.

## HISTORY AND PURPOSE

Since 2014, the Fostering Stable Housing (FSHO) Coalition, a group of current and former foster youth led by ACTION Ohio in partnership with the

National Center for Housing and Child Welfare (NCHCW), has worked with HUD career staff to devise a plan to close the gaps through which youth leaving foster care fall into homelessness and human trafficking. Each year, 17,000 young people emancipate from foster care and enter adulthood alone, having not been adopted nor reunified with their parents. As they struggle to gain economic footing in their communities without the support of extended family, nearly 25% experience homelessness upon emancipation.

In 2018, the FSHO Coalition determined that best way to prevent homelessness was to synchronize HUD's existing, time limited FUP vouchers for youth with emancipation and eliminate geographic disparities. To do this, the FSHO Coalition recommended to HUD that they tap the flexible, on-demand nature of the TPVs for which FUP was already an eligible use and which can be distributed all over the country in a flexible, somewhat on-demand manner. HUD determined within weeks that the proposal was indeed viable, named the proposal the "Foster Youth to Independence Initiative," and composed the details of a notice for PHAs. On July 26, 2019, HUD issued an invitation to PHAs with contracts to administer Housing Choice Vouchers (that do not already administer FUP) to apply for FYI, thus making FUP for youth available nationwide. The first vouchers were awarded on October 31, 2019, and HUD continues to accept applications on a rolling, non-competitive basis.

The following year, on October 6, 2020, using authority offered by the "FY2020 Appropriations Act," HUD issued a new Notice inviting all PHAs with Annual Contributions Contracts (meaning that they are capable of administering tenant-based Housing Choice Vouchers) to apply for Family Unification Program Vouchers for youth on a non-competitive basis. Today, nearly 3,000 vouchers have been distributed through FYI.

In 2020, Congress passed the “Fostering Stable Housing Opportunities Act” (FSHO). Equally importantly, FSHO amends FUP to encourage participation in HUD’s Family Self-Sufficiency Program to help move youth towards economic independence and help them build wealth. Under FSHO, all youth may earn an extra two years of rental assistance (for a total not to exceed 60 months) if they choose to (and are able to) participate in activities that will move them towards economic independence and success.

## PROGRAM SUMMARY

Like FUP, FYI is administered at the local level through a partnership between public housing authorities (PHAs) and public child welfare agencies (PCWAs). To apply, PHAs sites must identify at least one eligible youth and sign a memorandum of understanding or a letter of agreement (either will satisfy the “Partnership Agreement” requirement) outlining their commitment to the success of FYI, how youth will be selected and notified, and the roles organizations will play. PHAs wishing to apply for FYI vouchers through the competitive NOFA must execute an MOU (a letter of intent will not suffice) and the maximum number of vouchers PHAs can request is based upon their housing authority size.

The PCWA must agree to provide a host of independent living services either directly or identify service providers in the community that will do so. The PCWA also must agree to identify eligible youth who would benefit from a voucher after leaving extended foster care. Eligible youth must be at least 18 years old and not more than 24 years old (has not reached his/her 25th birthday), that they will age out of foster care or have already aged out, and that the young person is homeless or at risk of homelessness at some point after the age of 16.

HUD offers all the tools and training necessary to implement and operate an FYI partnership on their [website](#) free of charge. Tools and training can also be found at [www.nchcw.org](http://www.nchcw.org).

## FUNDING

FYI is an eligible use of the \$30 million for FUP, \$25 million of which is specifically targeted to youth in the “FY2022 Appropriations Act.” FUP remains an eligible use of the Tenant Protection Account.

## FORECAST FOR 2023

FYI enjoys bi-partisan support because it offers foster youth who reach adulthood alone the opportunity to use permanent housing as a platform for economic success. Advocates should thank Congress for passing FSHO and encourage congressional appropriators to continue robust funding of \$30 million annually to ensure that both youth and families can benefit from FUP and FYI.

## TIPS FOR LOCAL SUCCESS

FYI is intended to prevent homelessness among youth leaving foster care, but it certainly is not intended to replace child welfare resources. Therefore, it is important to point out to local child welfare agencies nationwide that they can use child welfare resources, including entitlement funding through Title IV-E of the “Social Security Act” to provide housing and independent living services for youth through the age of 21. Funding for independent living services and non-recurring housing expenses is available through the age of 23 under the “John H. Chafee Foster Care Independence Program.” Community leaders must encourage child welfare agencies to provide stable developmentally appropriate housing options for youth who are younger than 21. Then, as youth move towards emancipation and independence, local PCWAs can refer youth to FYI and help them successfully lease-up.

## WHAT TO SAY TO LEGISLATORS

Advocates should thank legislators for passing the “Fostering Stable Housing Opportunities Act” and for supporting robust appropriations for FUP and FYI. Advocates can also help their elected officials understand that affordable housing is an effective and prudent investment in ending youth

homelessness. Providing affordable housing and services is a tenth of the cost of undesirable remedies to homelessness such as residential treatment and juvenile justice involvement. Coupling FYI and FSS has the potential to vastly improve each young person's individual economic security and will reduce racial wealth disparities as well. Seventy-five percent of young people who emancipate are youth of color and regardless of a young person's race or ethnicity, foster youth disproportionately reside in neighborhoods that have been stripped of wealth, infrastructure, and opportunity for years due to flawed government policies. Helping each one of these young people build wealth and move towards financial success is something we can all be proud of as advocates. Advocates should consider encouraging Congress to do everything that it can to universalize HUD's FSS Program so that every household in HUD's portfolio can begin to build wealth, especially FUPY and FYI youth.

## **FOR MORE INFORMATION**

National Center for Housing & Child Welfare, 301-699-0151, [www.nchcw.org](http://www.nchcw.org).

# Mainstream and Non-Elderly Disabled (NED) Vouchers

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By Liz Stewart, Senior Consultant,  
and Lisa Sloane, Director, Technical  
Assistance Collaborative

**Administering Agency:** HUD's Office of Housing Choice Vouchers (HCV) within the Office of Public and Indian Housing (PIH)

**Number of Persons/Households Served:** HUD estimates that there are 54,727 Non-Elderly Disabled Housing Choice Vouchers and 68,091 Mainstream Housing Choice Vouchers.

**Year Started:** Since 1997, Housing Choice Vouchers (HCVs) have been awarded under different special purpose voucher program types to serve eligible people with disabilities under age 62.

**Population Targeted:** A household composed of one or more non-elderly persons with disabilities, which may include additional household members who are not non-elderly persons with disabilities. Non-elderly persons are defined as persons between ages 18 and 61. The qualifying person with a disability does not have to be the head of household. See the specific program guidelines for eligibility criteria.

**Funding:** Consolidated "Appropriations Acts," 2017-2019, made approximately \$500 million available for new Mainstream voucher assistance, the first funding for new Mainstream vouchers since 2005. These funds resulted awards for over 50,000 vouchers.

## HISTORY

Before 1992, federal housing statutes defined "elderly" to include younger people with disabilities. As a result, many (but not all) properties built primarily to serve elders, such as the Section 202 program, also had requirements to serve people with disabilities. Depending on the HUD program and NOFA under which a property was funded, the occupancy policy might

have included a requirement to set-aside 10% of their units for people with mobility impairments of any age, a set-aside to serve non-elderly people with disabilities, or the policy might have provided non-elders with equal access to all the units.

The occupancy policies that resulted in elder and non-elders living together became controversial in the late 1980s and early 1990s. In response to this controversy, Congress passed Title VI of the "Housing and Community Development Act of 1992," which allowed public housing agencies and certain types of HUD-assisted properties to change their occupancy policies. The law allowed public housing agencies to designate buildings or parts of buildings as elderly-only or disabled-only; PHAs had to develop and receive HUD approval for a Designated Housing Plan before such a designation could be made. The law also allowed some HUD-assisted housing providers to house only elders and others to reduce the number of non-elderly applicants admitted.

Between 1996 and 2009, Congress appropriated voucher funding to compensate for the housing lost to younger people with disabilities as a result of the 1992 law. These funds were appropriated through a variety of programs; the specific programs are described in the next section of this article. Note that many of these NED vouchers are called Frelinghuysen vouchers because then House Appropriations Chair Rodney Frelinghuysen (R-NJ) advocated for their funding.

One of these programs is the Mainstream Voucher Program. Between 1996 and 2002, Congress allowed HUD to reallocate up to 25% of funding for the development of new supportive housing units for non-elderly people with disabilities toward tenant-based rental assistance. During this period, approximately 15,000 incremental vouchers were awarded to public housing agencies (PHAs) for this targeted population under the 811 Mainstream Program.

Consolidated Appropriations Acts, 2017-2019, made approximately \$500 million available for new Mainstream voucher assistance, the first funding for new Mainstream vouchers since 2005. Only PHAs that administer Housing Choice Voucher (HCV) assistance and non-profits that already administer HCV Mainstream assistance were eligible to apply. In awarding some of the voucher funding, HUD provided points for applications that included partnerships between housing and services/disability organizations, especially those that targeted housing assistance to assist people with disabilities who are transitioning out of institutional or other segregated settings, at risk of institutionalization, homeless or at risk of becoming homeless, or were previously homeless and now participate in a permanent supportive housing or rapid rehousing program (“move-on”).

## PROGRAM SUMMARY

The Mainstream and NED Voucher Programs are a component of the HCV program. Congress appropriated NED vouchers under a variety of different appropriations and HUD allocated funds under differing program NOFAs. Although different programs have differing target sub-populations, all target non-elderly people with disabilities and all operate under the HCV regulations and guidance, with slight modifications as provided in the original NOFA or subsequent Notices. Upon turnover, these vouchers must be issued to non-elderly disabled families from the PHA's HCV waiting list.

The following describes the specific NED programs administered by PHAs:

- **NED Category 1** vouchers enable non-elderly persons or families with disabilities to access affordable housing on the private market.
- **NED Category 2** vouchers enable non-elderly persons with disabilities currently residing in nursing homes or other healthcare institutions to transition into the community.
- **Designated Housing Vouchers** enable non-elderly disabled families, who would have been eligible for a public housing unit if

occupancy of the unit or entire project had not been restricted to elderly families only through an approved Designated Housing Plan, to receive rental assistance. These vouchers may also assist non-elderly disabled families living in a designated unit/project/building to move from that project if they so choose. The family does not have to be listed on the PHA's voucher waiting list. Instead, they may be admitted to the program as a special admission. Once the impacted families have been served, the PHA may begin issuing these vouchers to non-elderly disabled families from their HCV waiting list.

- **Certain Developments Vouchers** enable non-elderly families with a person with disabilities who do not currently receive housing assistance in certain developments where owners establish preferences for, or restrict occupancy to, elderly families to obtain affordable housing. These are HUD assisted private properties funded as those under the Section 8 new construction or Section 202 programs. Once the impacted families have been served, the PHA may issue vouchers to non-elderly disabled families from their HCV waiting list.
- **Mainstream Housing Opportunities for Persons with Disabilities Vouchers** enable non-elderly disabled families on the PHA's waiting list to receive a voucher.
- **Project Access Pilot Program** (formerly Access Housing 2000) provides vouchers to selected PHAs that partnered with State Medicaid agencies to assist non-elderly disabled persons transition from nursing homes and other institutions into the community.

## FUNDING

Consolidated Appropriations Acts, 2017-2019 made approximately \$500 million available for new Mainstream voucher assistance, the first funding for new Mainstream vouchers since 2005. These funds were awarded to PHAs up through the end of calendar year 2020.



## FORECAST FOR 2023

The “FY22 Appropriations Act” provided \$459 million for the Mainstream Program. Although the FY23 Appropriations bill has not yet passed as of this writing, the president’s, House and Senate’s budgets all agree to a level of \$667 million, enough to fund all allocated vouchers; funds are not intended to fund any new Mainstream vouchers in FY23.

## WHAT TO SAY TO LEGISLATORS

Advocates are encouraged to contact their Members of Congress with the message that people with disabilities continue to be the poorest people in the nation. TAC’s publication *Priced Out* reported that over \$4 million non-elderly adults with significant and long-term disabilities have Supplemental Security Income levels equal to only 20% of AMI and cannot afford housing without housing assistance. Because of this housing crisis, many of the most vulnerable people with disabilities live unnecessarily in costly nursing homes, in seriously substandard facilities that may violate the “Americans with Disabilities Act,” or are homeless. Mainstream and other NED vouchers can help the government reach its goals of ending homelessness and minimizing the number of persons living in costly institutions. Advocates should encourage their Members of Congress to continue to increase funding for Mainstream and NED vouchers in order to address these critical public policy issues. Advocates should also encourage Members of Congress to incorporate the types of waivers that made the Emergency Housing Voucher (EHV) program successful, into the Mainstream program language as well.

## FOR MORE INFORMATION

Technical Assistance Collaborative, 617-266-5657, [www.tacinc.org](http://www.tacinc.org). TAC’s Mainstream and NED voucher database by state can be found at [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/dashboard](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/dashboard).

Consortium for Citizens with Disabilities (CCD) Housing Task Force, [http://www.c-c-d.org/rubriques.php?rub=taskforce.php&id\\_task=8](http://www.c-c-d.org/rubriques.php?rub=taskforce.php&id_task=8).

HUD’s NED web page, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/ned](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/ned).

HUD’s Mainstream Voucher Program, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/mainstream](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/mainstream).

# Veterans Affairs Supportive Housing Vouchers

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By Spencer Bell, Policy Analyst, National Coalition for Homeless Veterans

**Administering Agency:** HUD's Office of Public and Indian Housing (PIH) and the Department of Veterans Affairs (VA)

**Year Started:** Formally in 1992; most active since 2008

**Number of Persons/Households Served:** More than 175,000 veterans since 2008

**Population Targeted:** Homeless veterans meeting VA health care eligibility, with a focus on chronic homelessness

**Funding:** Congress has provided HUD \$40 million in FY21 and \$50 million in FY22 for *additional* HUD-VASH vouchers, with case management funding provided through VA.

**See Also:** For related information, refer to the *Housing Choice Voucher Program*, *Veterans Housing*, *Homeless Assistance Programs*, and *Interagency Council on Homelessness* sections of this *Guide*.

## INTRODUCTION

The HUD-Veterans Affairs Supportive Housing Program (HUD-VASH) combines Housing Choice Voucher rental assistance for homeless veterans with case management and clinical services provided by VA. It is a key program in the effort to end veteran homelessness. To date, this program has helped more than 178,000 homeless veterans, many of whom were chronically homeless, achieve housing stability.

Since 2008 there have been over 111,000 HUD-VASH Vouchers allocated by HUD to support the ongoing Federal effort to end homelessness among veterans. At the end of FY21, 81,000 Veterans and their family members were permanently housed through the HUD-VASH Program. Nationwide, more than 330 Public Housing Authorities (PHAs) participate in the program. In 2015, Congress created a set-aside

pilot program to encourage HUD-VASH Vouchers to be used on tribal lands, thereby filling an important gap in our service delivery system. This program, also known as Tribal HUD-VASH, was funded at \$1 million from FY16 through FY20, \$4.2 million in FY21, and \$5 million in FY22. Additionally, HUD has released a series of project-based competitions to help spur development of new affordable housing units in high-cost markets with limited affordable housing stock with the last competition occurring in FY 2016.

The HUD-VASH program is jointly administered by VA and HUD's Office of Public and Indian Housing (PIH). The [PIH HUD-VASH Handbook](#) is updated periodically to incorporate eligibility and program updates. The vouchers are allocated to local Public Housing Agencies (PHAs), although veteran referrals usually come from the nearest VA Medical Center (VAMC). Administration of HUD-VASH is conducted by the PHA and clinical services are provided by the VAMC, or a designated party.

## HISTORY

As of January 2022, HUD estimates that 33,136 veterans were homeless on a given night. This number represents a 55.3% decline in veteran homelessness since 2010. Major declines in veteran homelessness have occurred among the unsheltered population thanks in large part to the HUD-VASH program and national efforts to end homelessness for all people, including veterans. Numbers had remained steady having plateaued for the four years preceding a small uptick in FY20. With only sheltered veteran numbers available for FY21 due to the national public health emergency, FY22 numbers indicate a decrease in veteran homelessness of 11% between FY20 and FY22.

Congress began funding these special purpose vouchers in earnest in the "Consolidated

Appropriations Act of 2008” (Public Law 110-161) with an allocation of \$75 million for approximately 10,000 vouchers. Since FY08, Congress has allocated fewer and fewer dollars to HUD for new “additional” vouchers each year, with the exception of a \$50 million award in FY11 and FY22, a \$60 million award in FY16, having plateaued at \$40 million awards in FY17, FY18, FY19, FY20 and FY21. The rising cost of housing has resulted in the amount allocated toward vouchers covering a fewer number each year with between 3,500 and 4,000 depending on locality requests, now being funded per \$40 million for additional vouchers.

In the early 2000s, advocates approximated that 60,000 chronically homeless veterans were in need of the comprehensive services offered through a HUD-VASH Voucher. These advocates encouraged Congress and the Administration to set this as a target for the number of vouchers on the street. This target has since been revised upwards, as additional target populations beyond veterans experiencing chronic homelessness have received assistance through HUD-VASH due to high need and limited alternative options. With the estimated 13,564 unsheltered homeless veterans on a given night in FY22, many chronically homeless and otherwise vulnerable veterans still need this vital resource. In total from 2008 through 2022, \$885 million dollars have been appropriated for new HUD-VASH vouchers.

## PROGRAM SUMMARY

HUD-VASH is a cornerstone in the efforts to end veteran homelessness, providing a particularly effective resource because it combines both housing and services into one housing-first oriented resource. PHAs are required to register their interest in vouchers with HUD, in consultation with their local VA medical center, in order to be considered for vouchers. When vouchers become available in a community, VA personnel, in consultation with community partners, determine which veterans are clinically eligible for and in need of the program before making referrals to local PHAs which then must

verify eligibility based on HUD regulations.

Veterans who receive HUD-VASH Vouchers rent privately owned housing and generally contribute up to 30% of any income toward rent. VA case managers foster a therapeutic relationship with veterans and act as liaisons with landlords, PHAs, and community-based service providers. In some instances, these case management services are contracted through service providers who have already established relationships with participating veterans. When a veteran no longer needs the program’s supports or has exceeded its income limits, these vouchers become available for the next qualifying veteran. By providing a stable environment with wrap-around services, veterans and their families can regain control of their lives and ultimately reintegrate into society.

As additional target populations have been identified for HUD-VASH, the need for this resource has grown. These target populations include homeless female veterans, homeless veterans with dependent children, and homeless veterans with significant disabling and co-occurring conditions. In the last longitudinal study in 2014, some 71% of veterans admitted to the HUD-VASH program met chronic homeless criteria and 91% of allocated vouchers resulted in permanent housing placement. Targeting of HUD-VASH to chronically homeless veterans has led to dramatically positive results: lease-up rates have improved and the time it takes to lease up vouchers has dropped significantly across the country. Improved staffing of HUD-VASH case management at VAMCs is needed to better voucher execution at the local level. VA has been making strides in recent years toward better levels of case management staffing at many VAMCs.

Historically, the requirement for VA health care eligibility meant that many veterans were not eligible for the program, due to their military discharge status. VA and HUD worked to pilot a program called HUD-VASH continuum, that would pair HUD-VASH vouchers with non-VA case management funded separately in a handful of communities. Recent legislative developments opened program eligibility up to include veterans

with other-than-honorable discharge statuses. Recent legislation also waived most eligibility restrictions for HUD-VASH while the nation is in a declared COVID state of emergency, which has allowed VA's Homeless Programs Office to more swiftly pair linked program outflows and effectively utilize the vouchers as needed.

Project-Based Vouchers (PBV) are needed for services-enriched multifamily developments in areas with a large concentration of chronically homeless veterans and in high-cost, low-vacancy markets. PHAs may designate a portion of their total HUD-VASH allocation as project-based vouchers based on local need. HUD has established PBV set-asides to competitively award several thousand project-based HUD-VASH Vouchers, most recently in November 2016, when HUD awarded \$18.5 million to 39 local public housing agencies for approximately 2,100 veterans experiencing homelessness. These recent PBV awards were concentrated in high-need areas, including throughout the state of California.

## **ELIGIBLE PARTICIPANTS AND VOUCHER ALLOCATION**

To be eligible, a veteran must:

- Be VA-health care eligible if not in the HUD-VASH Continuum program;
- Meet the definition of homelessness as defined by the "McKinney Homeless Assistance Act" as amended by S. 896, the "Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009" (HEARTH Act), The "National Defense Authorization Act" for Fiscal Year 2021 (PL 116-283) included provisions expanding eligibility for HUD-VASH to veterans who received an "Other Than Honorable" (OTH) discharge; and
- Be in need of case management services for serious mental illness, substance use disorder, or physical disability.

Veterans with high vulnerability are prioritized, but veterans must be able to complete activities of daily living and live independently in their community. Although the program follows a

Housing First orientation, case management is a requirement of participation in HUD-VASH.

Three major data sources help drive local voucher allocations once the Housing Authority and VAMC register interest, including: HUD's point-in-time data, performance data from both PHAs and VAMCs, and data from the VAMCs on their contacts with homeless veterans. In some communities, HUD-VASH staff work with the local Continuum of Care through the coordinated intake process to ensure that veterans who have high needs profiles on the By-Name List are connected to HUD-VASH.

## **FUNDING**

In FY08 through FY10, and FY12 through FY15, HUD was awarded \$75 million for 10,000 vouchers, and VA was awarded case management dollars to match those vouchers. In FY11, \$50 million was provided for approximately 7,500 vouchers. In FY16, HUD was awarded \$60 million for 8,000 new vouchers. In FY17, 18, 19, 20 and 21 HUD was awarded an additional \$40 million for approximately 5,500 new vouchers annually. For FY22, HUD was awarded \$50 million for between 4,500 to 5,000 new HUD-VASH vouchers, the first increase for additional vouchers since the program's inception. HUD-VASH voucher renewals are lumped into the general Section 8 tenant-based rental assistance account, and Congress has provided sufficient funding in recent years to renew all existing HUD-VASH Vouchers. Congress has gone as far as to provide veterans access in the FY21 Appropriations to the special population set aside for general section 8 vouchers which allowed veterans with discharge status issues, in addition to the other than honorable population's new eligibility provided in FY21's "National Defense Authorization Act" (NDAA - PL 116-283).

VA's funding for case management has not kept pace with funding allocated for new vouchers, due to the timing of standalone appropriations legislation in the last several years. As such, approximately 5,000 new vouchers are funded each year but VA lacks matching case management funding to operationalize the



vouchers until the next fiscal year. Attempts have been made to utilize CARES and American Rescue Plan (ARP) funding to support time-limited case management contracts to get a portion of these vouchers out to communities with limited success. 2023 efforts are best focused on ensuring that VA identifies and eliminates remaining barriers to full voucher utilization above and beyond vouchers set aside for project basing. Congress needs to pursue a few key actions. The first would be to direct VA to provide a new budgetary projection for case management of all its vouchers to end the one-year delay between voucher creation and case management funding provision. In addition, proactive outreach to veterans who have previously applied for a voucher but had been denied due to OTH discharge statuses and to currently homeless veterans would allow these vouchers to have maximum impact as we still await updated eligibility guidance nearly a year after this eligibility change became law. Second would be to conduct a review of report data requested in the FY21 and FY22 program appropriations for HUD-VASH to assist in the management contracting expansion in H.R. 7105 (P.L. 116-315), the Johnny Isakson and David P. Roe, M.D. “Veterans Health Care and Benefits Improvement Act of 2020” better known as Isakson/Roe. If VA can effectively continue to address case management understaffing issues, more opportunities will exist to improve voucher utilization as the program is modernized.

## FORECAST FOR 2023

HUD-VASH Vouchers are an incredibly important resource in ending veteran homelessness. Congress should continue to provide adequate funding in the tenant-based Section 8 account to renew all existing HUD-VASH Vouchers, as well as continue to provide new HUD-VASH Vouchers to house all chronically homeless veterans.

VA must ensure that case management funding follows the vouchers by maintaining the special purpose designation as it distributes funds to Medical Centers.

Under a non-emergency designation, VA and local service providers have identified additional priority groups for service through HUD-VASH. VA set a target of 65% of HUD-VASH Voucher recipients being chronically homeless, with the remaining 35% of vouchers being available for other vulnerable high-priority groups including veterans with families, women, and Operation Enduring Freedom/Operation Iraqi Freedom/Operation New Dawn (or post 9/11 veterans). As we move to end all homelessness, starting with veterans, through the Federal Strategic Plan to Prevent and End Homelessness, Congress and the Administration, along with interested community partners and homeless advocates, will need to reassess what resources are needed to end homelessness for both chronically homeless as well as other homeless veterans with high needs.

## TIPS FOR LOCAL SUCCESS

Continue working with VA to increase referrals and coordinate targets for the HUD-VASH program so the most in need veterans are connected to this vital resource. Expand efforts to find additional resources for move-in costs, including but not limited to resources through the Supportive Services for Veteran Families (SSVF) program. Encourage your local VAMC to get creative with HUD-VASH staffing and to include peer support services and housing navigators. Work with PHAs to support landlord outreach and engagement to improve lease-up rates and time. Encourage your PHA to apply for Extraordinary Administrative Fees, when available, to help with these types of outreach and engagement efforts. Evaluate the need for contracted case management in your area. Evaluate if, due to exceptionally expensive or tight rental markets, your local PHA should consider project-basing additional HUD-VASH vouchers rather than letting allocated vouchers go un or underutilized due to lack of affordable housing stock.

## WHAT TO SAY TO LEGISLATORS

Advocates may find success in discussing the need for resources to end veterans’ homelessness with policymakers who have previously been found to be difficult to approach for support on



more broad affordable housing and homelessness issues. The Administration has continued to cite the successes of the HUD-VASH program in its communications around data on veteran homelessness.

Advocates should speak to senators and representatives, particularly if they are on the Appropriations or Veterans Affairs Committees and urge them to provide HUD \$85 million for additional HUD-VASH Vouchers, and additional appropriations for VA to better align case management for the approximately 13,000 unutilized (non-project-based) vouchers. Additional appropriations for HUD-VASH Vouchers will go a long way toward helping end homelessness among veterans while fully funding all existing vouchers through the regular Section 8 account.

Advocates should highlight the role that case management plays in housing stability for these veterans and should urge Members of Congress to hold VA accountable for ensuring each VAMC has sufficient funding and access to appropriate levels staffing, in-house or through contracting with service providers, to provide appropriate levels of case management for these veterans.

Advocates should also highlight to Congress how well HUD-VASH works with the other veteran homelessness relief programs, including SSVF and the Grant and Per Diem Program. Data regarding the prevalence of homeless veterans is available in HUD's [Annual Homeless Assessment Report](#), through the U.S. Interagency Council on Homelessness, or from the National Center on Homelessness Among Veterans.

## **FOR MORE INFORMATION**

National Coalition for Homeless Veterans, 202-546-1969, [www.nchv.org](http://www.nchv.org).

Corporation for Supportive Housing, 212-986-2966, [www.csh.org](http://www.csh.org).

National Alliance to End Homelessness, 202-638-1526, [www.endhomelessness.org](http://www.endhomelessness.org).

National Low Income Housing Coalition, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

# Public Housing

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** HUD's Office of Public and Indian Housing (PIH)

**Year Started:** 1937

**Number of Persons/Households Served:**

According to PIH's relatively new [Data Dashboard](#), as of November 15, 2022, 1,725,941 residents lived in public housing, 616,125 of whom were children. According to HUD's [Resident Characteristics Report](#) as of October 31, 2022, public housing served 1,494,176 residents in 733,621 households. The number of residents and households has decreased from 2021's 1,591,468 residents and 777,532 households and 2020's 1,661,575 residents in 802,805 households.

**Population Targeted:** All households must have income less than 80% of the area median income (AMI); at least 40% of new admissions in any year must have extremely low income, (income less than 30% of AMI) or the federal poverty level, whichever is greater.

**Funding:** For the Capital Fund in FY23, the president proposed \$3.720 billion, the House proposed \$3.670 billion, and the Senate proposed \$3.405 billion. For the Operating Fund, the president proposed \$5.060 billion, the House proposed \$5.063 billion, and the Senate proposed \$5.064 billion. As *Advocates' Guide* went to press, Congress had not passed an FY23 appropriation's act; a short-term Continuing Resolution keeps public housing funding at FY22 levels until further congressional action. In FY22 the Capital Fund received \$3.388 billion, and the Operating Fund received \$5.064 billion, compared to \$2.9 billion for the Capital Fund and \$4.9 billion for the Operating Fund in FY21 and \$2.9 billion for the Capital Fund and \$4.5 billion for the Operating Fund in FY20.

**See Also:** For related information, refer to the *Rental Assistance Demonstration*, *Public Housing Repositioning*, and *Public Housing Agency Plan* sections of this *Guide*.

The nation's dwindling number of public housing units, 924,377 (Data Dashboard), down from 1.1 million in previous years, still serve nearly 1.7 million residents (down from nearly 2 million in previous years). Public housing is administered by a network of 2,738 local public housing agencies (PHAs) that have 6,262 developments (Data Dashboard). Funding for public housing consists of residents' rents and congressional appropriations to HUD. Additional public housing has not been built in decades. Advocates are focused primarily on preserving the remaining public housing stock, especially as HUD aggressively pursues public housing "repositioning" (see the *Repositioning of Public Housing* section of this *Advocates' Guide*).

Public housing encounters many recurring challenges. For instance, PHAs face significant federal funding shortfalls each year, as they have for decades. In addition, policies such as demolition, disposition, and the former HOPE VI program resulted in the loss of public housing units – approximately 10,000 units each year according to HUD estimates. Congress authorized the expansion of the miss-named Moving to Work (MTW) Demonstration in 2016. MTW is fundamentally a scheme to deregulate public housing that can reduce affordability, deep income targeting, resident participation, and program accountability, all aspects of public housing that make it an essential housing resource for many of the lowest income people (see the *Moving to Work & Expansion* section in Chapter 4 of this *Advocates' Guide*). Also contributing to the reduction of public housing is HUD's Public Housing Repositioning campaign (see the *Repositioning of Public Housing* section of Chapter 4 of this *Advocates' Guide*).

HUD's two tools to address the aging public housing stock are the [Choice Neighborhoods Initiative](#) (CNI) renovation program that addresses both public housing and broader neighborhood improvements, and the [Rental Assistance Demonstration](#) (RAD) designed

to leverage private dollars to improve public housing properties while converting them to either Project-Based Vouchers (PBVs) or Project-Based Rental Assistance (PBRA). See the *Rental Assistance Demonstration* in Chapter 4 of this *Advocates' Guide*.

## HISTORY

The “Housing Act of 1937” established the public housing program. President Nixon declared a moratorium on public housing in 1974, shifting the nation’s housing assistance mechanism to the then-new Section 8 programs (both new construction and certificate programs) intended to engage the private sector. Federal funds for adding to the public housing stock were last appropriated in 1994, but little public housing has been built since the early 1980s.

In 1995, Congress stopped requiring that demolished public housing units be replaced on a unit-by-unit, one-for-one basis. In 1998, the “Quality Housing and Work Responsibility Act” (QHWRA) changed various other aspects of public housing, including public housing’s two main funding streams, the operating and capital subsidies. Federal law capped the number of public housing units at the number each PHA operated as of October 1, 1999 (the Faircloth cap).

Today, units are being lost by the cumulative impact of decades of underfunding and neglect of once-viable public housing units. HUD officials have repeatedly stated for years that more than 10,000 units of public housing leave the affordable housing inventory each year due to underfunding. As a response HUD has promoted its “Public Housing Repositioning” policy, which has three components, all of which reduce the stock of public housing: Section 18 demolition and disposition (sale) of units, Section 33 mandatory and Section 22 voluntary conversion of public housing to voucher assistance, and the Rental Assistance Demonstration (see the *Repositioning of Public Housing* in Chapter 4 of this *Advocates' Guide*).

According to HUD testimony, between the mid-1990s and 2010, approximately 200,000 public

housing units had been demolished, while about only 50,000 units were replaced with new public housing units, and another 57,000 former public housing families were given vouchers instead of a public housing replacement unit. Another nearly 50,000 units of non-public housing were incorporated into these new developments, but they serve households with income higher than those of the displaced households and do not provide deep rental assistance like that provided by the public housing program.

## PROGRAM SUMMARY

According to PIH’s relatively new Data Dashboard, as of November 15, 2022, there were 924,377 public housing units. According to HUD’s Resident Characteristics Report (RCR), as of October 31, 2022, there were 928,626 public housing units – down nearly 3% from 2021. According to the Data Dashboard, 43% of public housing residents were elderly, while RCR indicated that 36% were elderly; 19% were non-elderly disabled, and 30% were non-elderly families with children (not counting elderly and disabled households with children). The Data Dashboard does not report information about residents with disabilities or non-elderly families with children.

The average annual income of a public housing household was \$ 14,576 (Data Dashboard) or \$16,696 RCR (up from \$15,875 in 2020). RCR indicated that of all public housing households, 55% were extremely low-income (down from 58% in 2020) and 23% were very low-income (up 1%). Fully 73% of public housing households had income less than \$20,000 a year (down from 76%). Fifty-six percent of the households had Supplemental Security Income (SSI), Social Security, or pension income (unchanged), and 30% received some form of welfare assistance (up 1%). RCR indicated that 32% had wage income (up 2%), while Data Dashboard indicated that 26% had wage income.

The demand for public housing far exceeds the supply. In many large cities, households may remain on waiting lists for decades. Like all HUD rental assistance programs, public housing is

not an entitlement program; rather, its size is determined by annual appropriations and is not based on the number of households that qualify for assistance.

NLIHC's report from October of 2016, *Housing Spotlight: The Long Wait for a Home*, is about public housing and Housing Choice Voucher (HCV) waiting lists. An NLIHC survey of PHAs indicated that public housing waiting lists had a median wait time of nine months and 25% of them had a wait time of at least 1.5 years. Public housing waiting lists had an average size of 834 households.

## Eligibility and Rent

Access to public housing is means tested. All public housing households must be low-income, (have income less than 80% of the area median income, AMI), and at least 40% of new admissions in any year must have extremely low incomes, defined as income less than 30% of AMI or the federal poverty level (each adjusted for family size) whichever is greater. The FY14 HUD appropriations act expanded the definition of "extremely low-income" for HUD's rental assistance programs by including families with income less than the poverty level to better serve poor households in rural areas. PHAs can also establish local preferences for certain populations, such as elderly people, people with disabilities, veterans, full-time workers, domestic violence victims, or people who are homeless or who are at risk of becoming homeless.

As in other federal housing assistance programs, residents of public housing pay the highest of: (1) 30% of their monthly adjusted income; (2) 10% of their monthly gross income; (3) their welfare shelter allowance; or (4) a PHA-established minimum rent of up to \$50. The Resident Characteristics Report indicated that the average public housing household paid \$400 per month toward rent and utilities in 2021 (up from \$379), while the Data Dashboard reported the average was \$312. Public housing Operating and Capital Fund subsidies provided by Congress and administered by HUD's Office of Public and Indian Housing (PIH) contribute the balance of

what PHAs receive to operate and maintain their public housing units.

With tenant rent payments and HUD subsidies, PHAs are responsible for maintaining the housing, collecting rents, managing waiting lists, and other activities related to the operation and management of public housing. Most PHAs also administer the Housing Choice Voucher Program (see the *Housing Choice Vouchers* section of Chapter 4 of this *Advocates' Guide*).

Most PHAs are required to complete five-year PHA Plans, along with annual updates, which detail many aspects of their housing programs including waiting list preferences, grievance procedures, plans for capital improvements, minimum rent requirements, and community service requirements. These PHA Plans represent a key tool for public housing residents, voucher households, and community stakeholders to participate in a PHA's planning process (see the *Public Housing Agency Plan* section of Chapter 7 of this *Advocates' Guide*).

## Resident Participation

### RESIDENT ADVISORY BOARDS

QHWRA created Resident Advisory Boards (RABs) to ensure that public housing and voucher-assisted households can meaningfully participate in the PHA Plan process. Each PHA must have a RAB consisting of residents elected to reflect and represent the population served by the PHA. Where residents with Housing Choice Vouchers make up at least 20% of all assisted households served by the PHA, voucher households must have "reasonable" representation on the RAB.

The basic role of the RAB is to make recommendations to the PHA and assist in other ways with drafting the PHA Plan and any significant amendments to the PHA Plan. By law, PHAs must provide RABs with reasonable resources to enable them to function effectively and independently of the housing agency. Regulations regarding RABs are in the PHA Plan regulations, 24 CFR Part 903. See the Public Housing Agency Plan section of this *Advocates' Guide* for more information about the PHA Plan.



## PART 964 RESIDENT PARTICIPATION REGULATIONS

A federal rule provides public housing residents with the right to organize and elect a resident council to represent their interests. This regulation, 24 CFR Part 964, spells out residents' rights to participate in all aspects of public housing development operations. Residents must be allowed to be actively involved in a PHA's decision-making process and to give advice on matters such as maintenance, modernization, resident screening and selection, and recreation. The rule defines the obligation of HUD and PHAs to support resident participation activities through training and other activities.

A resident council is a group of residents representing the interests of residents and the properties they live in. Some resident councils are made up of members from just one property, so a PHA could have a number of resident councils. Other resident councils, known as jurisdiction-wide councils, are made up of members from many properties. A resident council is different from a RAB because the official role of a RAB is limited to helping shape the PHA Plan. Resident councils can select members to represent them on the RAB.

Most PHAs are required to provide \$25 per occupied unit per year from their annual operating budget to pay for resident participation activities. A minimum of \$15 per unit per year must be distributed to resident councils to fund activities such as training and organizing. Up to \$10 per unit per year may be used by a PHA for resident participation activities. On May 18, 2021, PIH issued Notice PIH 2021-16 updating guidance on the use of tenant participation funds (previously provided by Notice PIH 2013-21 issued on August 23, 2013).

Notice PIH 2021-16 echoes Notice PIH 2013-21, but in general has more details. Key changes include:

- PHAs and Resident Councils (RCs) are encouraged to develop written agreements that establish a collaborative partnership, provide flexibility, and support RC leaders'

autonomy. The Notice provides four minimum provisions that must be in a written agreement. It also has eight recommended best practices.

- If there is no duly-elected RC, PHAs are encouraged to inform residents that tenant participation (TP) funds are available. Also, PHAs are encouraged to use up to \$10 per unit to carry out tenant participation activities, including training and building resident capacity to establish and operate an RC.
- A new section officially sanctions what has always been practice – that a PHA may fund an RC above the \$15 minimum.
- Any TP funds remaining in RC-controlled accounts at the end of a calendar year may remain in those accounts for future RC expenses.
- Public housing residents in mixed-income communities are eligible to use TP funds.

More information is on NLIHC's Public Housing webpage, <https://nlihc.org/explore-issues/housing-programs/public-housing>, including an outline of key Part 964 features, <https://bit.ly/39sQXmJ>

24 CFR Part 964, *Tenant Participation and Tenant Organizing in Public Housing Regulations*, is at <https://www.govinfo.gov/content/pkg/CFR-2021-title24-vol4/pdf/CFR-2021-title24-vol4-part964.pdf>

## RESIDENT COMMISSIONERS

The law also requires every PHA, with a few exceptions, to have at least one person on its governing board who is either a public housing or voucher resident. HUD's rule regarding the appointment of resident commissioners, at Part 964, states that residents on boards should be treated no differently than non-residents.

## Public Housing Capital Fund and Operating Fund

PHAs receive two annual, formula-based grants from congressional appropriations to HUD, the Operating Fund and the Capital Fund. For FY23, the president proposed \$3.720 billion, the House



proposed \$3.670, and the Senate proposed \$3.405 for the Capital Fund. The president proposed \$5.060 billion for the Operating Fund, the House proposed \$5.063 billion, and the Senate proposed \$5.064 billion. As *Advocates' Guide* went to press, Congress had not passed an FY23 appropriation's act; a short-term Continuing Resolution keeps public housing funding at FY22 levels until further congressional action. In FY22, \$3.388 billion was appropriated for the Capital Fund and \$5.064 billion was appropriated for the Operating Fund. In FY21, \$2.9 billion was appropriated for the Capital Fund and \$4.9 billion was appropriated for the Operating Fund, while FY21 funding was \$2.9 billion for the Capital Fund and \$4.5 billion for the Operating Fund.

In 2010, a study sponsored by HUD concluded that PHAs had a \$26 billion capital needs backlog, which was estimated to grow by \$3.4 billion each year. Associations representing PHAs estimated that there was approximately a \$70 billion capital needs backlog in FY20 that continues to grow.

The public housing Operating Fund is designed to make up the balance between what residents pay in rent and what it actually costs to operate public housing. Major operating costs include routine and preventative maintenance, a portion of utilities, management, PHA employee salaries and benefits, supportive services, resident participation support, insurance, and security. Other operating costs include recertification of residents' income, annual unit inspections, and planning for long-term capital needs to maintain a PHA's properties viability. Since 2008, HUD's operating formula system, called "Asset Management," has determined an agency's operating subsidy on a property-by-property basis (called Asset Management Project, AMP), rather than on the previous overall PHA basis. HUD states that \$5 billion for FY23 is projected to be sufficient to meet 100% of all public housing operating expenses.

Capital Fund can be used for a variety of purposes, including addressing deferred maintenance, modernization, demolition, resident relocation, development of replacement housing, and carrying out resident economic

self-sufficiency programs. Up to 20% can also be used to make management improvements. The annual capital needs accrual amount (estimated in 2010 to be \$3.4 billion each year) makes clear that annual appropriations for the Capital Fund are woefully insufficient to keep pace with the program's needs. A statutory change in 2016 (HOTMA, see "Statutory and Regulatory Changes Made in 2016" below) now allows a PHA to transfer up to 20% of its Operating Fund appropriation for eligible Capital Fund uses.

## PROGRAMS AFFECTING PUBLIC HOUSING

### Demolition and Disposition

Since 1983, HUD has authorized PHAs to apply for permission to demolish or dispose of (sell) public housing units. This policy was made infinitely more damaging in 1995 when Congress suspended the requirement that housing agencies replace, on a one-for-one basis, any public housing lost through demolition or disposition. In 2016, HUD reported a net loss of more than 139,000 public housing units due to demolition or disposition since 2000. Demolition and disposition policy is authorized by Section 18 of the "Housing Act" with regulations at 24 CFR part 970 and various PIH Notices.

In 2012, after prodding from advocates, PIH under the Obama Administration clarified and strengthened its guidance (Notice PIH 2012-7) regarding demolition and disposition in an effort to curb the decades-long needless destruction or sale of the public housing stock. This guidance clarified the demolition and disposition process in a number of ways. For example, the guidance unequivocally stated that a proposed demolition or disposition must be identified in the PHA Plan or in a significant amendment to the PHA Plan, and that PHAs must comply with the existing regulations' strict resident consultation requirements for the PHA Plan process, the demolition or disposition application process, and the redevelopment plan. That guidance also reminded PHAs that HUD's Section 3 requirement to provide employment, training and economic opportunities to residents applied

to properties in the demolition and disposition process. The review criteria for demolition applications had to meet clear HUD standards, and no demolition or disposition was permissible prior to HUD's approval, including any phase of the resident relocation process.

In 2018, the Trump Administration eliminated the modest improvements to HUD's demolition/disposition guidance that advocates helped HUD draft in 2012 (Notice PIH 2012-7) and replaced it with [Notice PIH 2018-04](#) in order to make it far easier to demolish public housing, and to do so without resident input and protections. In addition, the Administration withdrew proposed regulation changes drafted in 2014 that would have reinforced those modest improvements. All of this was a part of the Administration's "repositioning" of public housing through demolition and voluntary conversion of public housing to vouchers. Its goal at the time was to reposition 105,000 public housing units in FY19 alone by streamlining the demolition application and approval process. See the *Public Housing Repositioning* section of Chapter 4 of this *Advocates' Guide*.

As of November 14, 2022, the Biden Administration has not hinted that it plans to take action to remove Notice PIH 2018-04 and replace it with more robust guidance containing resident protections similar to Notice PIH 2012-7, nor has the Biden Administration indicated an intent to issue improved demolition/disposition regulations similar to those proposed by the Obama Administration. PIH continues to promote [Public Housing Repositioning](#).

### **Rental Assistance Demonstration**

As part of its FY12 HUD appropriations act, Congress authorized the [Rental Assistance Demonstration](#) (RAD), which allowed HUD to approve the conversion of up to 60,000 public housing and Section 8 Moderate Rehabilitation Program units into either project-based Section 8 rental assistance contracts (PBRA) or project-based vouchers (PBV) by September 2015. Since then, Congress has increased the cap three times, first to 185,000 units, then to 225,000,

and now to 455,000 units by September 30, 2024. The Senate FY22 appropriations bill proposed expanding the cap to 500,000 units and extending the time to convert to September 30, 2028, which NLIHC opposed. That bill did not pass. The Senate FY23 appropriations bill and HUD's budget request to Congress proposes removing the 455,000-unit cap as well as the sunset date. NLIHC strongly opposes increasing or eliminating the cap.

The Obama and Trump Administrations, along with many developer-oriented organizations, urged Congress to allow all public housing units to undergo RAD conversion even though the "demonstration" has yet to adequately demonstrate that the resident protection provisions in the statute are being fully realized. Many residents whose public housing properties have been approved for RAD complain that PHAs, developers, and HUD have not provided adequate information, causing many to doubt that resident the protections in the authorizing legislation will be honored by PHAs and developers or monitored by HUD. The National Housing Law Project sent a [letter](#) to HUD Secretary Carson in 2017 listing numerous problems residents had experienced, such as illegal and inadequate resident relocation practices, unlawful resident re-screening practices, and impediments to resident organizing. See the *Rental Assistance Demonstration* section of Chapter 4 of this *Advocates' Guide* for more information.

### **Moving to Work**

A key public housing issue is the so-called [Moving to Work \(MTW\) demonstration](#) that provides a limited number of housing agencies flexibility from most statutory and regulatory requirements. Because the original demonstration program has not been evaluated, particularly regarding the potential for harm to residents, NLIHC has long held that the MTW demonstration is not ready for expansion or permanent authorization. Various legislative vehicles have sought to maintain and expand the current MTW program. The original MTW involved 39 PHAs. The MTW contracts for each of these 39 PHAs were set to expire in 2018, but in

2016 HUD extended all of them to 2028.

The three MTW statutory goals are:

1. Reducing costs and increasing cost-effectiveness;
2. Providing incentives for resident self-sufficiency; and
3. Increasing housing choices for low-income households.

PHAs granted MTW status (“MTW agencies”) must meet five statutory requirements:

1. Ensure that 75% of the households they assist have income at or below 50% of area median income (AMI);
2. Establish a reasonable rent policy;
3. Assist substantially the same number of low-income households as a PHA would without MTW funding flexibility;
4. Assist a mix of households by size comparable to the mix a PHA would have served if it were not in MTW; and
5. Ensure that assisted units meet housing quality standards.

In practice, HUD’s enforcement of these requirements for the original 39 MTW agencies has been highly permissive.

The FY16 appropriations act expanded the MTW demonstration by a total of 100 PHAs over the course of a seven-year period. Of the 100 new PHA MTW sites, no fewer than 50 PHAs must administer up to 1,000 combined public housing and voucher units, no fewer than 47 must administer between 1,001 and 6,000 combined units, no more than three can administer between 6,001 and 27,000 combined units, and five must be PHAs with portfolio-wide awards under RAD. PHAs were to be added to the MTW demonstration by cohort (groups), each of which will be overseen by a research advisory committee to ensure the demonstrations are evaluated with rigorous research protocols. Each cohort of MTW sites were to be directed by HUD to test one specific policy change.

The four cohorts were planned:

- “MTW Flexibilities” involves smaller PHAs that have a combination of 1,000 or fewer public housing units and vouchers. This cohort allows PHAs to use any of the regulatory waivers in the Final MTW Operations Notice (see below) in order to evaluate the overall effects of MTW flexibility on a PHA and its residents. HUD will compare outcomes related to MTW’s three statutory goals between the MTW PHAs and PHAs assigned to a control group. Applicant PHAs were assigned by lottery to be MTW PHAs, waitlist PHAs, or control group PHAs. Thirty-one PHAs were selected.
- “Rent Reform/Stepped and Tiered Rent” involves 10 PHAs testing “rent reform” ideas of using “stepped rents” or “tiered rents,” which PIH claims is designed to “increase resident self-sufficiency and reduce PHA administrative burdens.” Stepped rent is a form of time limit; it is a scheme that increases a household’s rent on a fixed schedule in both frequency and amount, starting at 35% of adjusted income and growing each year. “Tiered rents” involve a household paying a fixed amount if their income is in a set range, which could result in rent burden. Only PHAs with a combination of at least 1,000 non-elderly and non-disabled public housing residents and voucher households were eligible. NLIHC and other advocates urged PIH not to implement this cohort because of its serious potential to impose cost burdens on residents. NLIHC has a summary of the MTW Rent Reform cohort.
- “Landlord Incentives” explores ways to increase and sustain landlord participation in the Housing Choice Voucher program. Twenty-nine PHAs were selected. NLIHC has prepared a summary of key provisions of the landlord incentives Notice.
- “Asset Building” experiments with policies and practices that help residents build financial assets and/or build credit. For the purpose of this cohort, asset building

is defined as activities that encourage the growth of assisted residents' savings accounts and/or that aim to build credit for assisted households. Eighteen PHAs were selected, each offered three asset building options to implement:

- **Opt-Out Savings Account Option.** A PHA must deposit at least \$10 per month for at least one year into an escrow account for the benefit of assisted households (either public housing or Housing Choice Voucher (HCV) households) with the goal of increasing the number of households that have bank accounts, thereby strengthening household stability.
- **PHA-Designed Asset Building Option.** This option allows a PHA to design its own local asset building program that encourages the growth of savings accounts and/or aims to build credit for assisted households.
- **Credit Building Option.** For residents who given their informed consent, a PHA must report to credit bureaus, those residents' public housing rent payments for at least one year. The goal is to increase the credit scores of public housing households. A household may withdraw at any time (this option is not available for HCV households, because of the difficulty of having individual landlords report to credit bureaus).

Before PIH's implementation of the Asset Building Cohort, NLIHC and consumer advocates conveyed to PIH concern that the credit building option for the demonstration would require PHAs to report public housing residents' rent payment using "full file reporting," meaning that not only will on-time rent payments be reported, but late and missed payments would also be reported. NLIHC and others had urged PIH to only require PHAs to report on-time rent payments, which the three major credit reporting entities can accommodate. Full file reporting can harm residents if they

encounter only one or two slightly late or small missed payments that are episodic due to unforeseen circumstances and otherwise not indicative of serious rent payment problems. NLIHC also urged PIH to define "small" unpaid balances so that participating PHAs do not report minor unpaid rent balances, resulting in damage to a household's credit. As one potential definition of "small," NLIHC informed PIH that starting in 2023, the major credit reporting agencies will not include medical collection debt under \$500. In the end, PIH did not adopt these recommendations.

More details about the options are presented in NLIHC's "Summary of the Key Features of the MTW Asset Building Cohort."

- "Work Requirements" was rescinded in June 2021. NLIHC and other advocates vehemently opposed this proposed cohort.

A final Operations Notice providing overall direction to all MTW Expansion PHAs was published on August 28, 2019. As proposed in an October 11, 2018 draft Operations Notice, the final allows a PHA to impose a potentially harmful work requirement, time limit, and burdensome rent "MTW Waiver" without securing HUD approval and without the rigorous evaluation called for by the statute. NLIHC's formal comment letter in response to the draft stated that such waivers should only be allowed as part of a rigorous cohort evaluation.

The most important components of the final Operations Notice for advocates to read are the three appendices. Appendix I "MTW Waivers" charts "MTW activities" that MTW agencies may implement without HUD approval, as long as they are implemented with the "safe harbors" tied to the specific allowed MTW activity. Appendix II has instructions for any required written impact analyses and hardship policies. Impact analyses are required for certain activities, such as work requirements, term-limited assistance, and stepped rent. Written financial and other hardship policies must be developed for most



MTW activities. Appendix III explains the method for calculating the requirement that MTW agencies house substantially the same number of families as they would have absent MTW.

Four basic categories of waivers are: “MTW Waivers,” “Safe Harbor Waivers,” “Agency-Specific Waivers,” and “Cohort-Specific Waivers.”

**MTW Waivers:** MTW agencies may conduct any activity/policy in Appendix I without PIH review and approval. However, each specific eligible activity/policy has specific “safe harbor” requirements/limitations that an MTW agency must follow, for example requiring a hardship policy or not applying an activity/policy to elderly people.

**Safe Harbor Waivers:** MTW agencies may request PIH approval to expand an MTW Waiver activity/policy in Appendix I in a way inconsistent with the safe harbors for that specific MTW Waiver activity/policy. PIH has not yet provide instructions on how PHAs may justify such requests. However, when submitting a Safe Harbor Waiver, an MTW agency must hold a public meeting to specifically discuss the Safe Harbor Waivers. This meeting is in addition to following the PHA Plan public participation process requirements. The MTW agency must consider, in consultation with the Resident Advisory Board (RAB) and any tenant associations, all comments received at the public hearing. The comments received by the public, RABs, and tenant associations must be submitted by the MTW agency, along with the MTW agency’s description of how the comments were considered, as a required attachment to the MTW Supplement (see below).

**Agency-Specific Waivers:** MTW agencies may seek PIH approval for an Agency-Specific Waiver in order to implement additional activities not among those in the Appendix I. The request must have an analysis of the potential impact on residents as well as a hardship policy. A PHA must follow the same public participation process described above for Safe Harbor Waivers.

**Cohort-Specific Waivers:** MTW agencies may be provided Cohort-Specific Waivers if additional

waivers not included in Appendix I are necessary to allow implementation of the required cohort study. Cohort-Specific Waivers will be detailed in the applicable Selection Notice for that cohort study.

MTW agencies will submit an “MTW Supplement” to the Annual PHA Plan. The MTW Supplement must go through a public process along with the Annual PHA Plan, following all of the Annual PHA Plan public participation requirements. So-called “Qualified PHAs,” those with fewer than 550 public housing units and vouchers combined will be required to submit an MTW Supplement each year.

An MTW agency must implement one or multiple “reasonable rent policies” during the term of its MTW designation. PIH defines a reasonable rent policy as any change in the regulations on how rent is calculated for a household, such as any Tenant Rent Policies in Appendix I.

MTW PHAs will maintain MTW designation for 20 years, with the MTW waivers expiring at the end of the 20-year term. The previous draft Operations Notice had a 12-year term.

An MTW agency’s MTW program applies to all of the MTW agency’s public housing units, tenant-based HCV assistance, project-based HCV assistance (PBV), and homeownership units.

An MTW agency may spend up to 10% of its HCV HAP funding on “local, non-traditional activities,” as described in Appendix I, without prior HUD approval. Examples include providing: shallow rent subsidies, rent subsidies to supportive housing programs to help homeless households, services to low-income people who are not public housing or voucher tenants, and gap-financing to develop Low Income Housing Tax Credit (LIHTC) properties. An MTW agency may spend more than 10% by seeking PIH approval through a Safe Harbor Waiver. NLIHC urged PIH to remove this option because it has the effect of reducing the number of HCVs a PHA could use to house residents.

NLIHC’s Summary of Key Provisions of the MTW Demonstration Operations Notice is at: <https://bit.ly/3ocxCvk> See also, the *Moving to Work and*



*Expansion* article in Chapter 4 of this *Advocate's Guide*.

### **Choice Neighborhoods Initiative**

The Choice Neighborhoods Initiative (CNI), created in FY10, was HUD's successor to the HOPE VI Program. Like HOPE VI, CNI focuses on severely distressed public housing properties, but CNI expands HOPE VI's reach to include HUD-assisted, private housing properties and entire neighborhoods. Although unauthorized, CNI has been funded through annual appropriations bills and administered according to the details of HUD Notices of Fund Opportunity (NOFOs). HUD proposed eliminating CNI in FY19, FY20, and FY21, but Congress has continued to approve funding for CNI, approving \$150 million in FY19, \$175 million in FY20 \$200 million in FY21, and \$350 million for FY22. For FY23 the president proposed \$250 million, the House \$450 million, and the Senate \$250 million.

HUD states that CNI has three goals:

1. Housing: Replace distressed public and HUD-assisted private housing with mixed-income housing that is responsive to the needs of the surrounding neighborhood.
2. People: Improve employment and income, health, and children's education outcomes.
3. Neighborhood: Create the conditions necessary for public and private reinvestment in distressed neighborhoods to offer the kinds of amenities and assets, including safety, good schools, and commercial activity, that are important to families' choices about their community.

In addition to PHAs, grantees can include HUD-assisted private housing owners, local governments, nonprofits, and for-profit developers. The CNI Program awards both large implementation grants and smaller planning grants. CNI planning grants are to assist communities in developing a comprehensive neighborhood revitalization plan, called a transformation plan, and in building the community-wide support necessary for that plan to be implemented. One hundred and

seven planning grants totaling approximately \$52 million were awarded through December 2021. The FY 22 planning grants NOFO was posted on May 10, 2022, announcing up to \$10 million for awards, with a maximum award of \$500,000. Applications were due July 28, 2022.

CNI implementation grants are intended primarily to help transform severely distressed public housing and HUD-assisted private housing developments through rehabilitation, demolition, and new construction. HUD also requires applicants to prepare a more comprehensive plan to address other aspects of neighborhood distress such as violent crime, failing schools, and capital disinvestment. Funds can also be used for supportive services and improvements to the surrounding community, such as developing community facilities and addressing vacant, blighted properties. Forty implementation grants totaling a little nearly \$1.2 million were awarded through May 2021. HUD posted the FY22 NOFO on September 30, 2022, announcing \$379 million available for awards of up to \$50 million each. Applications were due on January 11, 2023. In January, 2022 HUD claims that implementation grants had created 4,500 HUD replacement housing units (which can include RAD conversions) plus an additional 4,600 "affordable" and market-rate units.

Although each NOFO has been different, key constant features include:

- One-for-one replacement of all public and private HUD-assisted units.
- Each resident who wishes to return to the improved development may do so.
- Residents who are relocated during redevelopment must be tracked until the transformed housing is fully occupied.
- Existing residents must have access to the benefits of the improved neighborhood.
- Resident involvement must be continuous, from the beginning of the planning process through implementation and management of the grant.

The Lead Applicant must be a PHA, a local government, or a tribal entity. If there is also a Co-Applicant, it must be a PHA, a local government, a tribal entity, or the owner of the target HUD-assisted housing (e.g. a nonprofit or for-profit developer).

## STATUTORY AND REGULATORY CHANGES MADE SINCE 2016

### HOTMA Changes

On July 29, 2016, President Obama signed into law the “Housing Opportunity Through Modernization Act” (HOTMA). This law made some changes to the public housing and voucher programs. The major public housing changes are:

- For residents already assisted, rents must be based on a household’s income from the prior year. For applicants for assistance, rent must be based on estimated income for the upcoming year.
- A household may request an income review any time its income or deductions are estimated to decrease by 10%.
- A PHA must review a household’s income any time that income with deductions are estimated to increase by 10%, except that any increase in earned income cannot be considered until the next annual recertification.
- The Earned Income Disregard was eliminated; it disregarded certain increases in earned income for residents who had been unemployed or receiving welfare.
- When determining income:
  - The deduction for elderly and disabled households increased to \$525 (up from \$400) with annual adjustments for inflation.
  - The deduction for elderly and disabled households for medical care (as well as for attendant care and auxiliary aid expenses for disabled members of the household) used to be for such expenses that exceeded 3% of income. HOTMA limits the deduction for such expenses to those that exceed 10% of income.
- The dependent deduction remains at \$480 but will be indexed to inflation; it applies to each member of a household who is less than 18 years of age and attending school, or who is a person 18 years of age or older with a disability.
- The deduction of anticipated expenses for the care of children under age 13 that are needed for employment or education is unchanged.
- Any expenses related to aiding and attending to veterans is excluded from income.
- Any income of a full-time student who is a dependent is excluded from income, as are any scholarship funds used for tuition and books.
- HUD must establish hardship exemptions in regulation for households that would not be able to pay rent due to hardship. These regulations must be made in consultation with tenant organizations and industry participants.
- If a household’s income exceeds 120% of AMI for two consecutive years, a PHA must either:
  - Terminate the household’s tenancy within six months of the household’s second income determination, or
  - Charge a monthly rent equal to the greater of the Fair Market Rent (FMR) or the amount of the monthly operating and capital subsidy provided to the household’s unit.
- A PHA may transfer up to 20% of its Operating Fund appropriation for eligible Capital Fund uses.
- PHAs may establish replacement reserves using Capital Funds and other sources, including Operating Funds (up to the 20% cap), as long as the PHA Plan provides for such use of Operating Funds.

HUD issued a final rule on July 26, 2018 implementing the 120% over-income limit.

HUD issued [Notice PIH 2018-19](#) implementing HOTMA's minimum heating standards. On September 17, 2019, HUD [proposed HOTMA implementation regulations](#) echoing HOTMA's income examination, income calculation, elderly or disabled deduction, child-care deduction and hardship provisions, and healthcare deduction and hardship provisions. In addition, HUD proposed HOTMA asset limitation provisions, including: making households ineligible if net household assets are greater than \$100,000 (adjusted for inflation each year) or if the household owns real property suitable for occupancy; allowing a PHA to determine net assets based on a household's certification that their net family assets are less than \$50,000 (adjusted for inflation each year); revising the definition of "net family assets" by eliminating several previously included items such as the value of necessary "personal property" (like a car); and allowing a PHA to choose to not enforce the asset limit. NLIHC [summarized](#) key provisions of the proposed changes. A final rule cleared the Office of Information and Regulatory Affairs (OIRA) during 2022, but was not published in the *Federal Register* before *Advocate's Guide* went to publication.

### **Streamlining Rule**

A final "[streamlining rule](#)" was published on March 8, 2016. Key public housing provisions include:

- PHAs have the option of conducting a streamlined income determination for any household member who has a fixed source of income (such as Supplemental Security Income, SSI). If that person or household member with a fixed income also has a non-fixed source of income, the non-fixed source of income is still subject to third-party verification. Upon admission to public housing, third-party verification of all income amounts will be required for all household members. A full income reexamination and redetermination must be performed every three years. In between those three years, a streamlined income determination must be conducted by applying a verified cost of

living adjustment or current rate of interest to the previously verified or adjusted income amount.

- PHAs have the option of providing utility reimbursements on a quarterly basis to public housing residents if the amounts due were \$45 or less. PHAs can continue to provide utility reimbursements monthly if they choose. If a PHA opts to make payments on a quarterly basis, the PHA must establish a hardship policy for tenants if less frequent reimbursement will create a financial hardship.
- Public housing households may now self-certify that they are complying with the community service requirement. PHAs are required to review a sample of self-certifications and validate their accuracy with third-party verification procedures currently in place.
- Many of the requirements relating to the process for obtaining a grievance hearing and the procedures governing the hearing were eliminated.

### **Smoke Free Public Housing**

A final "[smoke free](#)" rule was published on December 5, 2016. PHAs had to design and implement a policy prohibiting the use of prohibited tobacco products in all public housing living units and interior areas (including but not limited to hallways, rental and administrative offices, community centers, daycare centers, laundry centers, and similar structures), as well as at outdoor areas within 25 feet of public housing and administrative office buildings (collectively referred to as "restricted areas"). PHAs may, but are not required to, further limit smoking to outdoor designated smoking areas on the grounds of the public housing or administrative office buildings in order to accommodate residents who smoke. These areas must be outside of any restricted areas and may include partially enclosed structures. PHAs had until August 2018 to develop and implement their smoke-free policy. HUD has a public housing smoke-free housing [webpage](#).

## Carbon Monoxide Detectors

“The Consolidated Appropriations Act of 2021” requires Carbon Monoxide (CO) alarms or detectors to be installed in each public housing unit, as well as other HUD-assisted properties, by December 27, 2022. HUD issued joint [Notice PIH 2022-01/H 2022-01/OLHCHH 2022-01](#) clarifying that it will enforce this requirement. PHAs may use either their Operating Funds or Capital Funds to purchase, install, and maintain CO alarms or detectors. In addition, the act provided a set-aside in the Capital Fund Program that PHAs can compete for to secure additional funds for CO alarms or detectors

## FUNDING

For the Capital Fund in FY23, the president proposed \$3.720 billion, the House proposed \$3.670 billion, and the Senate proposed \$3.405 billion. For the Operating Fund, the president proposed \$5.060 billion, the House proposed \$5.063 billion, and the Senate proposed \$5.064 billion. As *Advocates’ Guide* went to press, Congress had not passed an FY23 appropriation’s act; a short-term Continuing Resolution keeps public housing funding at FY22 levels until further congressional action. In FY22 the Capital Fund received \$3.388 billion and the Operating Fund received \$5.064 billion, compared to \$2.9 billion for the Capital Fund and \$4.9 billion for the Operating Fund in FY21 and \$2.9 billion for the Capital Fund and \$4.5 billion for the Operating Fund in FY20.

## FORECAST FOR 2023

HUD’s budget proposal to Congress (“[Congressional Justification](#)” or “CJ”) sought several legislative changes, including:

- Under current law, Public Housing appropriations are designated as “Operating” or “Capital,” each of which has a separate list of eligible uses in statute. Small PHAs (i.e., those operating fewer than 250 units) have full flexibility to use their Operating for capital expenses and use their Capital Funds for operating expenses. Non-small PHAs are only able to use 20% of their Operating or Capital

Funds flexibly. HUD proposes to grant full flexibility to all PHAs.

- HUD proposes to remove the Community Service and Self-Sufficiency requirement. Current law requires non-working, non-elderly, non-disabled residents to participate in eight hours per month of either community service or economic self-sufficiency activities.
- HUD proposes allowing PHAs to implement income recertifications every three years, instead of annually or every other year.

Subsidy funding for public housing has been woefully insufficient to meet the need of the nation’s the remaining 928,626 public housing units as of October 31, 2022. Without adequate funds, more units will go into irretrievable disrepair, potentially leading to greater homelessness. In 2023, funding will continue to be a major issue.

## WHAT TO SAY TO LEGISLATORS

Advocates should ask Members of Congress to:

- Maintain and increase funding for the public housing Operating and Capital Funds.
- Support public housing as one way to end all types of homelessness.

## FOR MORE INFORMATION

NLIHC, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

NLIHC’s Public Housing webpage, <https://bit.ly/36UfpLU>.

NLIHC’s *Housing Spotlight: The Long Wait for a Home*.

NLIHC’s Summary of September 17, 2019 proposed HOTMA implementation regulations, <https://bit.ly/2kr70dt>.

National Housing Law Project, 415-546-7000, <http://nhlp.org/resourcecenter?tid=34>.

Center for Budget and Policy Priorities, 202-408-1080, <http://www.cbpp.org/topics/housing>.

HUD’s Public Housing homepage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph](https://www.hud.gov/program_offices/public_indian_housing/programs/ph).

HUD's Public Housing Data Dashboard, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/PH\\_Dashboard](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/PH_Dashboard).

HUD's Resident Characteristics Report page, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/systems/pic/50058/rcr](https://www.hud.gov/program_offices/public_indian_housing/systems/pic/50058/rcr).

HUD's HOTMA homepage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/hotmaresources](https://www.hud.gov/program_offices/public_indian_housing/hotmaresources).

HUD's Public Housing Occupancy Guidebook, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/mod/guidebook](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mod/guidebook).

HUD's Rental Assistance Demonstration homepage, <https://www.hud.gov/RAD>.

HUD's Public Housing Repositioning homepage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/repositioning](https://www.hud.gov/program_offices/public_indian_housing/repositioning).

HUD's Moving to Work demonstration homepage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/mtw](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw).

HUD's Moving to Work expansion page, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/mtw/expansion](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw/expansion).

HUD's Choice Neighborhoods homepage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/cn](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/cn).

HUD's Smoke Free homepage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/phecc/smokefree](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/phecc/smokefree).

The Administration's FY23 proposal for Public Housing, [https://www.hud.gov/sites/dfiles/CFO/documents/2023\\_CJ\\_PIH2\\_Program\\_PH\\_Fund.pdf](https://www.hud.gov/sites/dfiles/CFO/documents/2023_CJ_PIH2_Program_PH_Fund.pdf).



# Rental Assistance Demonstration

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** HUD's Office of Multifamily Housing Programs, Office of Recapitalization (Recap)

**Year Started:** 2012

**Number of Persons/Households Served:**

Initially, 60,000 public housing units were allowed to convert, and this number was expanded to 185,000 units in FY15, 225,000 units in FY17, and 455,000 units in FY18. The first component of the Rental Assistance Demonstration (RAD) involves public housing. As of October 20, 2022, 163,973 public housing units were converted, 54,122 units had preliminary approvals (CHAPs), and 124,467 units were in reserve (as part of a large “portfolio” of units to be converted over time). The second RAD component involves private, HUD-assisted housing. As of October 20, 2022, 42,907 units were converted, 11,516 units were expecting conversion, and 2,165 units were undergoing conversion.

**Funding:** To date, RAD has received no appropriated funds.

**See Also:** For related information, refer to the *Public Housing*, *Project-Based Rental Assistance*, *Project-Based Vouchers*, and *Public Housing Agency Plan* sections of this *Guide*.

As part of the “FY12 HUD Appropriations Act,” Congress authorized the Rental Assistance Demonstration (RAD) to help preserve and improve low-income housing. RAD allows public housing agencies (PHAs) and owners of private, HUD-assisted housing to leverage Section 8 rental assistance contracts in order to raise private debt and equity for capital improvements. RAD has two components: the first pertains to public housing and the Moderate Rehabilitation (Mod Rehab) Program, the second pertains to the Rent Supplement (Rent Supp), Rental Assistance Program (RAP), McKinney-Vento Single Room Occupancy (SRO), and Section 202 Supportive Housing for the Elderly Project - Rental

Assistance Contract (PRAC) programs, as well as the Mod Rehab Program.

## HISTORY

Throughout 2010 and 2011, HUD consulted with public housing resident leaders through the Resident Engagement Group (REG). HUD sought to create a demonstration program that would bring in non-federal resources to address insufficient congressional funding for the public housing Capital Fund. HUD also wanted to avoid the many harmful effects the HOPE VI program had on residents. Over time, HUD presented three proposals to the REG, and each time the REG would point out a resident-oriented problem. In response, HUD went back to the drawing board to present a modified proposal. The final proposal, the Rental Assistance Demonstration (RAD), addressed some of the REG's concerns.

Congress authorized RAD through the “FY12 HUD Appropriations Act” to help preserve and improve low-income housing. HUD published PIH Notice 2012-32 implementing RAD on July 26, 2012. A set of revisions were made July 2, 2013, with technical corrections on February 4, 2014, and significant revisions on June 15, 2015 and again on January 12, 2017 (Notice PIH-2012-32/H-2017-03 REV3). Still more significant revisions were published on September 5, 2019 (Notice H-2019-09/PIH-2019-23 REV4). HUD issued [Notice H 2016-17/PIH 2016-17](#) on November 10, 2016, providing guidance regarding fair housing and civil rights as well as resident relocation statutory and regulatory requirements under RAD.

The “FY14 Appropriations Act” extended the time for second component conversions to December 31, 2014, from September 30, 2013, and the “FY15 Appropriations Act” removed the second component deadline altogether. The “FY15 Appropriations Act” raised the number of public housing units that could convert under the first component from 60,000 to 185,000 and extended the first component deadline to September 30,

2018. The “FY15 Appropriations Act” made several other changes that are explained in the rest of this article. The “FY17 Appropriations Act” further raised the cap to 225,000 units by September 30, 2020. The “FY18 Appropriations Act” continued to raise the demonstration’s cap to 455,000 unit with a deadline of September 30, 2024. The Obama, Trump, and Biden Administrations have sought to remove the cap and allow all public housing units to convert under RAD.

## PROGRAM SUMMARY

The intent of RAD is to help preserve and improve HUD-assisted low-income housing by enabling PHAs and owners of private, HUD-assisted housing to leverage Section 8 rental assistance contracts to raise private debt and equity for capital improvements. RAD has two components. RAD does not provide any new federal funds for public housing. There are no RAD regulations, but RAD conversions must comply with a formal RAD Notice, PIH Notice 2012-32. The current RAD Notice is [H-2019-09/PIH 2019-23 \(REV4\)](#).

### Key Features of the First Component

Since the “FY18 Appropriations Act,” up to 455,000 units of public housing and Mod Rehab Program units are allowed to compete for permission to convert their existing federal assistance to project-based Housing Choice Vouchers (PBVs) or to Section 8 project-based rental assistance (PBRA) by September 30, 2024. Because the “FY18 Appropriations Act” expanded the number of units that could be converted far beyond the FY17 cap of 225,000 units, HUD eliminated the RAD wait list.

This article focuses on the public housing first component. However, a brief presentation of the key features of the second component precedes a deeper discussion of the first component.

### Key Features of the Second Component

The [second RAD component](#) allows owners of properties previously assisted through the Rent Supplement (Rent Supp), Rental Assistance Program (RAP), Moderate Rehabilitation (Mod Rehab), McKinney-Vento Single Room Occupancy

(SRO), and Section 202 Supportive Housing for the Elderly PRAC programs to convert to long-term Section 8 contracts—either project-based vouchers (PBVs) or project-based rental assistance (PBRA). There was no limit to the number of units that could be converted under the second component and there was no competitive selection process for it. The “FY15 Appropriations Act” permanently extended the ability to convert under the second component. The “FY15 Appropriations Act” also allowed projects assisted under the McKinney-Vento Single Room Occupancy (SRO) program to apply for RAD conversion. The “FY18 Appropriations Act” added the Section 202 Supportive Housing for the Elderly PRAC program. All 249 Rent Supp properties (with 13,670 units) closed at the end of 2018 and all 106 RAP properties (with 14,462 units) closed at the end of January 2020. As of October 20, 2022, 942 units of Section 8 Mod Rehab or Mod Rehab SRO were undergoing conversion, and 1,640 units were expecting conversion, while 524 PRAC units were undergoing conversion and 9,876 PRAC units were expecting conversion.

Owners of properties with program contracts that have not expired or terminated can enter into a 20-year PBV housing assistance payment (HAP) contract with a public housing agency (PHA) or enter into a 20-year PBRA HAP contract administered by HUD’s Office of Multifamily Housing Programs. Owners with contracts that have already expired or terminated and whose residents started receiving tenant protection vouchers (TPVs) on or after October 1, 2006 can only enter into a 20-year PBV HAP contract with a PHA (before April, 2017, PBV contracts had a maximum term of 15 years).

Owners had to notify residents of an intent to convert, follow resident participation, and adhere to the resident protection provisions as described below pertaining to the first component.

### Summary of the First Component

This section focuses on the [first component’s public housing](#) provisions. RAD is a voluntary demonstration program. There is no new funding

for RAD. Once converted under RAD, the amount of the public housing Capital Fund and Operating Fund a specific development has been receiving is used instead as PBV or PBRA.

PHAs considering RAD can choose to convert public housing units to one of two types of long-term, project-based Section 8 rental assistance contracts:

1. Project-based vouchers (PBV). These are Housing Choice Vouchers that are tied to specific buildings; they do not move with tenants as regular “tenant-based” vouchers do. If public housing units are converted to PBV, the initial contract must be for 20 years (before April 2017 the minimum was 15 years and the maximum was 20 years) and must always be renewed. HUD’s Office of Public and Indian Housing (PIH) would continue to oversee the units. Most of the current PBV rules ([24 CFR part 983](#)) would apply.
2. Project-based rental assistance (PBRA). If units are converted to PBRA, the initial contract must be for 20 years and must always be renewed. HUD’s Office of Multifamily Programs would take over monitoring. Most of the current PBRA rules ([24 CFR parts 880 to 886](#)) would apply.

As of October 20, 2022, 975 projects with 92,967 units have converted to PBV and 365 projects with 37,673 units are converting to PBV. Another 584 projects with 71,006 units have converted to PBRA, and 141 projects with 16,443 units are in the process of converting to PBRA.

Voluntarily converting some public housing to Section 8 might be good because Congress continues to underfund public housing. That underfunding leads to deteriorating buildings and the loss of units through demolition. HUD has estimated that 10,000 public housing units are lost each year. If a long-term rental assistance contract is tied to a property, private institutions might be more willing to lend money for critical building repairs. Congress is more likely to provide adequate funding for existing Section 8 contracts (whether PBV or PBRA) than for public housing. Therefore, some units that were public

housing before conversion are more likely to remain available and affordable to people with extremely low and very low incomes because of the long-term Section 8 contract.

HUD has 15 RAD Resident Fact Sheets explaining the Rental Assistance Demonstration [here](#).

## **Resident Protections and Rights**

The RAD Notice implementing the statute includes the statutory resident protections sought by the Resident Engagement Group as well as additional protections. However, it is up to residents to try to get HUD, PHAs, developers, and owners to comply. Some of the protections and rights for residents include (others are described later):

- Displacement: Permanent involuntary displacement of current residents may not occur as a result of a project’s conversion. If a household does not want to transition to PBV or PBRA, they may move to other public housing if an appropriate unit is available.
- Tenant Rent: Existing PBV and PBRA rules limit resident rent payment to 30% of income, or minimum rent, whichever is higher. Any rent increase solely due to conversion that amounts to 10% or \$25, whichever is greater, is phased in over three to five years.
- Rescreening: Current residents cannot be rescreened when they return if they were temporarily relocated while their development was rehabilitated or if their development was demolished and new units were built.
- Right to Return: Residents temporarily relocated while their development was rehabilitated or if their development was demolished and new units were built have a right to return. If while they are temporarily relocated their income increases and they would otherwise be over income, a resident household still has the right to return.
- Renewing the Lease: PHAs must renew a resident’s lease, unless there is “good cause” not to do so.

- **Grievance Process:** The RAD statute requires tenants of converted properties to have the same grievance and lease termination rights they had under Section 6 of the “Housing Act of 1937.” For instance, PHAs must notify a resident of the PHA’s reason for a proposed adverse action and of their right to an informal hearing assisted by a resident representative.

Advocates think that HUD has not adequately implemented this statutory requirement. The public housing regulations have long-established processes that residents could use to question a PHA’s actions or failure to take action regarding a lease or any PHA regulation that adversely affects a resident’s rights, welfare, or status. HUD’s RAD provisions restrict residents’ grievance rights because instead of using the well-developed public housing grievance process, residents will only have the limited grievance rights under either the PBV regulations or the PBRA regulations.

See HUD’s “[RAD Residents in Public Housing](#)” brochure for more information.

## RESIDENT INVOLVEMENT

### Resident Notices and Meetings

Before submitting a RAD application to HUD, a PHA must notify residents and resident organizations of a project proposed for conversion. The PHA is not required to notify the Resident Advisory Board (RAB) or residents of other developments. Since January 2017, as outlined in [Notice H 2016-17/PIH 2016-17](#), the form of notice must be a written RAD Information Notice ([RIN](#)) that indicates, among other things:

- The PHA’s intention to convert the units through RAD;
- A general description of the conversion (rehab, new construction, etc.);
- Resident relocation protections if relocation is involved; and
- Residents’ rights under RAD (including the right to remain in the project after conversion, the right to return to the project if there is

temporary relocation, the right to relocation benefits, and the right to not be re-screened upon returning).

In addition, a General Information Notice (GIN) must be provided informing each resident about “Uniform Relocation Act” (URA) protections if URA is triggered.

After a RIN is issued, the PHA must conduct at least two meetings with residents of projects proposed for conversion. Since January 2017, at these meetings the PHA must:

- Discuss conversion plans;
- Give residents a chance to comment;
- Describe all RAD resident rights (including the right to remain in the project after conversion, the right to return to the project if there is temporary relocation, the right to relocation benefits, and the right to not be re-screened upon returning); and
- Explain:
  - Any change in the number of units or unit sizes or any other change that might make it difficult for a household to re-occupy the property;
  - Any units that have been vacant for more than 24 months that will be demolished (see “One-for-One Replacement” below);
  - Any plans to partner with an entity other than an affiliate or instrumentality of the PHA, and if so, whether such a partner will have a general partner or managing member ownership interest in the proposed project owner; and
  - Any transfer of assistance to another property, meaning residents would have to permanently move to another location.

After these meetings the PHA must write responses to residents’ comments.

After a RAD application has received preliminary HUD approval, called a “CHAP” (Commitment to enter into a Housing Assistance Payment contract) but before the PHA requests a “Concept Call” with HUD, the PHA must have at least one meeting with residents to discuss updated



conversion plans and ask for feedback regarding the proposed improvements. The PHA must prepare comprehensive written responses to comments made by residents at this meeting.

The Concept Call is relatively new, first required after September 5, 2019. It requires a PHA to request a call with HUD before submitting a “Financing Plan,” to show that the plan is far enough along for HUD to review it. A Financing Plan is a document demonstrating that the project can be physically and financially sustained for the term of the Section 8 Housing Assistance Payment (HAP) contract.

After the Concept Call and before submitting a Financing Plan, a PHA must have at least one more meeting with residents to discuss updated conversion plans and the anticipated Financing Plan. The PHA must prepare comprehensive written responses to comments made by residents at this meeting.

After HUD has issued a RAD Conversion Commitment (RCC), the PHA must notify residents that the RAD has been approved. The notice must include: the anticipated timing of the conversion; the anticipated duration of the rehab or new construction; the revised terms of the lease and house rules (allowable and prohibited activities in housing units and common areas listed in an attachment to a lease); any anticipated relocation; and opportunities to and procedures for residents to exercise the RAD “choice mobility” option (discussed below).

More meetings with residents are required to discuss any substantial change to the conversion plans, including:

- A substantial change in the scope of work;
- A substantial change in utility allowances;
- A change in the number of units or unit sizes of assisted units or any other change that might make it difficult for a household to re-occupy the property;
- Any units that have been vacant for more than 24 months that will be demolished (see “One-for-One Replacement” below);

- Plans to partner with an entity other than an affiliate or instrumentality of the PHA, and if so, whether such a partner will have a general partner or managing member ownership interest in the proposed project owner; and
- The introduction or abandonment of a transfer of assistance to another property or a major change in the location to which assistance would be transferred.

A PHA must carry out the PHA Plan Significant Amendment process if the change involves a transfer of assistance, change in the number of assisted units, or change in eligibility or preferences for new applicants (see Significant Amendment below).

All meetings “should” be conducted in a place and at a time that fosters resident participation.

All communications and meetings must be accessible. At a minimum, a PHA must use:

- Effective means of communication for people with hearing, visual, and other communication-related disabilities.
- Hold meetings in places physically accessible for people with disabilities.
- Provide meaningful access to its programs and activities for people who have a limited ability to read, speak, or understand English.

These meetings are separate from the Significant Amendment process (see below), which does not have to take place until about five months after preliminary approval to convert through RAD.

### **Significant Amendment to the PHA Plan**

RAD conversion is a Significant Amendment to a PHA Plan (see the “PHA Plan” article in Chapter 7 of this *Advocates’ Guide*). A RAD conversion Significant Amendment must describe the units to be converted, including the number of units, the number of units by bedroom size, and type of units (e.g., family, elderly, etc.). It must also indicate any waiting list preferences and indicate any change in the number of units or units with different numbers of bedrooms, as well as any change in policies regarding eligibility, admission, selection, and occupancy of units.



However, HUD does not require a Significant Amendment process to begin until late in the conversion process, which could be as late as five months after HUD has issued a preliminary approval (CHAP) for RAD conversion of a specific development. The Significant Amendment process starts too late because when submitting the required RAD Financing Plan, HUD requires a PHA to have a letter from HUD approving a Significant Amendment. A Financing Plan is a document submitted to HUD demonstrating that a PHA has secured all necessary private financing needed to sustain the project for the term of the HAP contract. Financing Plans are due six months after HUD has issued a CHAP.

Consequently, RAB involvement and the PHA-wide notice, broad public outreach, and public hearing required by the Significant Amendment regulations will not take place until the conversion application process is too far along. Rather than engage all PHA residents before an application for RAD conversion is submitted, the public engagement process is only required to take place close to the time when a PHA has all financing and construction plans approved and is ready to proceed. At this point, comments from the RAB, other residents, or nearby community members are not likely to have any effect.

### **\$25 Per Unit for Resident Participation**

Whether a property is converted to PBV or PBRA, each year a PHA must provide \$25 per occupied unit at the property for resident participation; of this amount, at least \$15 per unit must be provided to the legitimate resident organization for resident education, organizing around tenancy issues, or training. If there is no legitimate resident organization, residents and PHAs are encouraged to form one. A PHA may use the remaining \$10 per unit for resident participation activities; however, some PHAs distribute the entire \$25 per unit to the resident organization.

### **Resident Organizing**

Residents have the right to establish and operate a resident organization. If a property is converted to PBRA, then the current multifamily program's

resident participation provisions apply, the so-called "Section 245" provisions. If a property is converted to PBV, instead of using public housing's so-called "Section 964" provisions, the RAD Notice requires resident participation provisions similar to those of Section 245. For example, PHAs/owners must recognize legitimate resident organizations and allow resident organizers to help residents establish and operate resident organizations. Resident organizers must be allowed to distribute leaflets and post information on bulletin boards, contact residents, help residents participate in the organization's activities, hold regular meetings on site, and respond to a PHA's request to increase rent, reduce utility allowances, or make major capital additions.

Properties converted to PBRA are no longer required to meet PHA Plan requirements. In addition, PBRA residents can no longer be on the RAB, be a PHA commissioner, or be on a jurisdiction-wide resident council unless the PHA voluntarily agrees.

HUD has a [slide deck](#) about resident organization after RAD conversion.

### **One-for-One Replacement**

Although the RAD Notice does not use the term "one-for-one replacement," HUD's informal material says there will be one-for-one replacement. However, there are exceptions. PHAs can reduce the number of assisted units by up to 5% or five units, whichever is greater, without seeking HUD approval. HUD calls this the *de minimus* exception. Furthermore, RAD does not count against the 5% or five unit *de minimus*: any unit that has been vacant for two or more years; any reconfigured units, such as efficiency units made into one-bedroom units; or any units converted to use for social services. Consequently, the loss of units can be greater than 5%.

A PHA must demonstrate that any reduction of units better serves residents, will not result in involuntary permanent displacement, and will not discriminate. If a PHA proposes changes that will result in, for example, fewer three-

bedroom units, the PHA must demonstrate that it will not result in involuntary displacement or discrimination.

### **Choice Mobility**

HUD states that one of the major objectives of RAD is to test the extent to which residents have greater housing choice after conversion. PHAs must provide all residents of converted units with the option to move with a regular Housing Choice Voucher (HCV). For PBV conversions, after one year of residency, a tenant can request a HCV and one must be provided if available; if a voucher is not available, the resident gets priority on the waiting list. If because of RAD, a PHA's total number of PBV units (regular PBVs and RAD PBVs) is greater than 20% of the PHA's authorized number of HCVs, the PHA would not be required to provide more than 75% of its turnover HCVs in any single year to residents of RAD projects.

For PBRA conversions, a resident has the right to move with a HCV after two years if one is available. A PHA could limit Choice-Mobility moves in a PBRA property to one-third of the PHA's turnover vouchers, or to 15% of the assisted units in a property.

### **Relocations and Civil Rights Review Guidance**

HUD issued [Notice H 2016-17/PIH 2016-17](#) on November 10, 2016, providing guidance regarding fair housing and civil rights as well as resident relocation statutory and regulatory requirements under RAD.

### **RELOCATION PROVISIONS**

Regarding relocation provisions, this Notice added several new features, some in response to advocates. The Notice requires PHAs or project owners to prepare a written relocation plan for all transactions that involve permanent relocation or that involve temporary relocation expected to be more than 12 months.

#### Notices

For any temporary or permanent relocation, residents must receive a RAD Information Notice (RIN) before the first required resident meetings to tell residents that the PHA intends to convert through RAD, and to describe project plans

(such as new construction or rehabilitation) and residents' rights under RAD (see discussion earlier in this article). In addition, residents must receive a General Information Notice (GIN) within 30 days after a CHAP is issued. The GIN must inform residents that they might be displaced, and if so that they will receive relocation assistance and 90 days' advance notice before having to move. Owners must provide a Notification of Return to the Covered Project indicating: a date or estimated date of return, whether the PHA or some other entity will be responsible for managing the return, that out-of-pocket expenses will be covered, that the PHA or another entity will give residents 90 days' advance notice of return, and options available to residents who decide not to return.

#### Temporary Relocation

For moves within the same building or complex, or for moves elsewhere for *one year or less*, a PHA must give residents 30 days' notice and reimburse residents for out-of-pocket expenses.

If temporary relocation is expected to be for *more than one year*, a PHA must give residents 90 days' notice and offer residents the choice of temporary housing and reimbursement for out-of-pocket expenses related to the temporary relocation, or permanent relocation assistance and payments at "Uniform Relocation Act" levels. Residents must have at least 30 days to decide between permanent and temporary relocation assistance. A PHA cannot use any tactics to pressure residents to give up their right to return or to accept permanent relocation assistance and payments.

PHAs must maintain a "Resident Log" that tracks resident status through to completion of rehabilitation or new construction, including re-occupancy after relocation. The Resident Log must have detailed data regarding each household that will be relocated, including the address of temporary housing and key dates of notices and moves. Unfortunately, HUD will not make a redacted or aggregate summary of the Resident Log available to advocates wishing to monitor the relocation process.

### Permanent Relocation

If proposed plans for a project would prevent a resident from returning to the RAD project, the resident must be given an opportunity to comment and/or object to such plans. If the resident objects to such plans, the PHA must alter the project plans to accommodate the resident in the converted project (Advocates are not aware that any RAD project has been altered as a result of resident objections).

If a resident voluntarily agrees to permanent relocation, a PHA must obtain informed written consent from the resident that also confirms that the resident agrees to end the right to return and that confirms that the resident understands permanent relocation assistance and payments will be provided consistent with the “Uniform Relocation Act.” Replacement housing options for residents who voluntarily relocate permanently include providing other public housing, a project-based voucher, a regular tenant-based voucher, and homeownership housing.

### **FAIR HOUSING AND CIVIL RIGHTS PROVISIONS**

Notice H 2016-17/PIH 2016-17 provides:

- An outline of conditions under which HUD will conduct a front-end review to determine whether a site is in an area of minority concentration relative to the site’s housing market area;
- Guidance on the concepts of “area of minority concentration” and “housing market area” that are reviewed when determining whether a site is in an area of minority concentration; and
- Information about what HUD will consider and what PHAs should provide evidence of in order for a proposed site to meet exceptions that permit new construction in an area of minority concentration. This includes:
  - An explanation of the presumptions necessary for meeting the “sufficient comparable opportunities” exception; and
  - A description of the factors that HUD may consider in evaluating the “overriding housing needs” exception.

### **Who Will Own the Converted Properties?**

Many residents worry about their developments becoming “privatized.” Theoretically, this potential problem is covered by the RAD statute requiring ownership or control by a public or nonprofit entity. However, legal services attorneys worry that there could be loopholes. Legal services attorneys recommend that if a PHA does not directly keep ownership that it at least has a long-term ground lease ensuring direct control.

The June 15, 2015, revision of the RAD Notice (PIH-2012-32 REV-2) refined the meaning of “ownership and control” of post-conversion projects.

For conversions that do not involve the Low-Income Housing Tax Credit (LIHTC), a public or nonprofit entity must meet one of the following:

- Hold fee simple interest in the real property (holding title to the land and any improvements, such as buildings).
- Have direct or indirect legal authority to direct the financial and legal interests of the project owner (through a contract, partnership share or agreement of an equity partnership, voting rights, or other means).
- Own 51% or more of the general partner interests in a limited partnership, or own 51% or more of the managing member interests in an LLC.

As of January 19, 2017, due to the REV 3 RAD Notice the following options were added:

- Lease the ground to a project owner.
- Own a lesser percentage of the general partner or managing member interests and hold certain control rights approved by HUD.
- Own 51% or more of all ownership interests in a limited partnership or LLC and hold certain control rights approved by HUD.

HUD may allow ownership of a project to be transferred to a LIHTC entity controlled by a for-profit entity to enable the use of LIHTC assistance, but only if HUD determines that the PHA preserves sufficient interest in the property. Preservation of a PHA’s sufficient interest in a

project using LIHTCs could include:

- The PHA, or an affiliate under its sole control, is the sole general partner or managing member.
- The PHA retains fee ownership, leasing the real estate to the LIHTC entity as part of a long-term ground lease.
- The PHA retains control over project leasing, such as exclusively maintaining and administering the wait list for the project, including performing eligibility determinations that comply with the PHA Plan.
- The PHA enters into a Control Agreement by which the PHA retains consent rights over certain acts of the owner (for example, disposition of the project, leasing, selecting the management agent, setting the operating budget, and making withdrawals from the reserves), and retaining certain rights over the project, such as administering the waiting list.

Whether or not the property is owned by a LIHTC entity, the National Housing Law Project asserts that only two options will preserve the long-term affordability of a property:

- The PHA or an affiliate under its sole control is the general partner or managing member.
- The PHA retains fee ownership and leases the real estate through a long-term ground lease.

If there is a foreclosure, then ownership or control of the property will go first to a public entity, and if there is not a public entity willing to own the property, then to a private entity that could be a for-profit.

### **Limits on PBVs per Development**

For projects that closed after January 19, 2017, there is no limit on the number of PBVs that can be attached to a property.

For projects that closed before changes were made on January 19, 2017, RAD limited to 50% the number of units in a public housing development that could be converted to PBVs. However, the 50% cap could be exceeded if the other units were “exception units,” those

occupied by an elderly head of household or spouse, a disabled head of household or spouse, or a household with at least one member participating in a supportive service program.

For those pre-2017 RAD projects, a public housing household whose development was converted could not be involuntarily displaced as a result of this 50% cap. In other words, any household living in a development at the time of RAD conversion (pre-2017) that did not meet one of the exception criteria (e.g., elderly, disabled, supportive service) and did not want to move, could not be terminated from PBV and could not be required to move, even if they caused the development to exceed the 50% PBV + exception unit cap. However, once one of those original households (non-elderly, non-disabled, non-supportive services) left, causing the property to exceed the 50% PBV + exception unit cap, that unit could only be assisted with PBV if it was rented to a household that met one of the three exception categories (elderly, disabled, or supportive services). What this means is that some PHAs might have urged half of the households to move to other developments, if available, but a resident’s decision to relocate must be voluntary.

### **Mixing RAD and “Section 18” Disposition**

A new provision was added on July 3, 2018 through [Notice PIH 2018-04](#) and added to the RAD Notice REV-4 (September 5, 2019). Up to 25% of the public housing units at a RAD project may be “disposed” (sold or transferred) under Option (c) of the “Section 18” Disposition regulations option that requires the disposition to be in the “best interest of residents and the PHA.” This is termed the “RAD/Section 18 Blend.” (For more about Section 18 disposition, see the “Repositioning of Public Housing” entry in this chapter of the *Advocates’ Guide*.)

Yet another provision was added through [Notice PIH 2021-07](#) on January 19, 2021 without public input. The percentage of units eligible for disposition within a RAD project as a result of Notice PIH 2021-07 can now be based on the “hard construction costs” of a proposed



rehabilitation or new construction. Hard construction costs include overhead and profit, payment and performance bonds, and “general requirements.”

- For high-cost areas, defined as those where Hard Construction Costs exceed 120% of the national average, a PHA may convert up to 80% of the units in a RAD project to PBVs under Section 18.
- If hard construction costs are equal to or greater than 90% of Housing Construction Costs published by HUD for the given market area, a PHA may convert up to 60% of the units in a RAD project to PBVs under Section 18.
- If hard construction costs are equal to or greater than 60% but less than 90% of Housing Construction Costs published by HUD for the given market area, a PHA may convert up to 40% of the units in a RAD project to PBVs under Section 18.
- If hard construction costs are equal to or greater than 30% but less than 60% of Housing Construction Costs published by HUD for the given market area, a PHA may convert up to 20% of the units in a RAD project to PBVs under Section 18.

Notice PIH 2021-07 also provides that Small PHAs, those with 250 or fewer public housing units, may convert up to 80% of the units in a RAD project to PBVs under Section 18. However, to be eligible for the Small PHA blend, a PHA must submit a feasible repositioning plan that removes all of a PHA’s public housing Annual Contributions Contract (ACC) units, reflecting that the PHA will not develop additional public housing units under otherwise available Faircloth authority, and will not transfer that Faircloth authority to another PHA.

The Faircloth Amendment to the “Housing Act of 1937” states that HUD cannot fund the construction or operation of new public housing units with Capital or Operating Funds if the construction of those units would result in a net increase in the number of units a PHA owned, assisted, or operated as of October 1, 1999.

Units in a RAD/Section 18 property must be substantially rehabbed or be newly constructed. The PHA must show that disposition is necessary to so that all the units in a development can use PBVs. HUD will provide Tenant Protection Vouchers that will convert to PBVs for these units.

A PHA may not provide different relocation rights and benefits to residents of a project on the basis of whether they live in a RAD unit or a Section 18 unit. All RAD resident protection provisions must apply to residents of Section 18 units, including: resident notice and meeting requirements, right to return, no rescreening, no denial based on income eligibility or income targeting, relocation assistance, grievance and lease provisions, right to establish and operate a resident organization, and \$25 per unit to be used for resident participation activities. These protections are most clearly laid out in “[RAD-Section 18 \(75/25\) Blend FAQs](#),” see FAQs #7, #8, and #9 on page 9.

HUD will not approve a RAD conversion that would include disposition under Section 18 regulations option (b) or (c) if the Section 18 units would not be replaced one-for-one. Option (b) is disposition that will allow a PHA to buy, rehab, or build other properties that will be “more efficient or effective”.

The PBV HAP contract may be renewed as many times as necessary in order to keep the PBV units in the RAD project affordable.

HUD reports that as of September 12, 2022, 62 PHAs used RAD-Section 18 blends at 142 projects with 30,647 units.

### **Section 3 Applies**

Section 3 preferences for resident training, employment, and contracting opportunities have always been required until a public housing development had completed RAD conversion.

The September 2019 RAD Notice (REV-4) elaborated on the earlier notices by stating that pre-development conversion costs remain subject to regular Section 3 public housing provisions. After RAD Closing (which takes place before final conversion), any housing rehabilitation or new construction that is



funded by a HUD program (such as HUD's HOME or CDBG programs) is subject to the Section 3 provisions for housing and community development activities (meaning priority to low-income residents in the project's neighborhood) except that first priority for employment and other economic opportunities must be given to residents of public housing or Section 8-assisted housing.

RAD continues to avoid extending RAD employment opportunities after conversion for PHA staff who had performed various tasks at the public housing development, such a central office employee, painters, grounds crews, etc.

## OTHER KEY FEATURES IN REV 4

### Projects Needing Significant Renovations No Longer Prioritized

RAD Notice REV4 deleted the priority categories for approving RAD applications. Instead, HUD will accept applications on a first-come, first-served basis. This formalizes actual HUD practice in which HUD approved RAD applications that entailed little or no rehabilitation for 27% of completed RAD conversions and 36% of projects undergoing rehabilitation, according to the [Government Accountability Office](#). The original intent of RAD was to address Congress' underfunding of public housing capital needs that resulted in accelerated deterioration of properties. The appropriations act establishing RAD stated that the purpose is to "preserve and improve" public housing. The initial RAD Notice and each subsequent revision reiterated this intent and added that the goal is to "address immediate and long-term capital needs."

### RAD Projects in Opportunity Zones

HUD will provide extra rent revenue of up to \$100 per unit per month to a public housing project located in an Opportunity Zone that converts to Section 8 project-based rental assistance (PBRA) – not Project-Based Vouchers (PBV) – provided the project needs extra revenue to be financially viable. The RAD conversion must entail either new construction or substantial rehabilitation. HUD will approve requests on a first-come-first-

served basis. A HUD [FAQ](#) defines "substantial rehabilitation" and describes how HUD will determine whether an infusion of additional rent revenue is necessary.

## TWO NEW ITEMS ADDED IN 2021

### RAD Complaint Process for Residents

Recap posted a one-page [RAD Complaint Process](#) for residents of public housing properties undergoing conversion or that have converted under RAD to either the PBV or PBRA programs. The RAD Complain Process document lists suggested contents of a complaint, such as a description of the resident's issues and their desired remedy.

The document also lists steps that Recap staff will take when they receive a complaint, including:

- Communicating with residents to obtain additional information.
- Gathering information from the PHA, property manager, and RAD Transition Manager (the process does not explicitly include talking with legal services or other resident-oriented third parties).
- Determining whether Recap or another HUD office could facilitate communication between residents and the other party.
- Providing residents with a written response that includes actions taken and recommended next steps.

The document states that residents should direct follow-up questions to the [Recap office](#). The complaint process does not include an appeal process if residents are unhappy with Recap's written response, nor does it indicate that Recap will undertake ongoing monitoring to ensure that suggested actions are carried out.

### Faircloth-to-RAD

Recap formally announced in April, 2021, a new "Faircloth-to-RAD" option for PHAs to create deeply affordable homes. Faircloth refers to a limit on the number of public housing units a PHA can own, assist, or operate. Recap indicated

that many PHAs operate fewer public housing units than their Faircloth limit, meaning that in April 2021, 227,000 units of public housing could be developed. The new Faircloth-to RAD option is designed to establish a long-term, reliable rental subsidy contract to help PHAs and their development partners more readily finance the construction of new deeply affordable units. The latest list of PHAs with available Faircloth units (as of December 31, 2021) is [here](#).

Congress established a limit on the number of public housing units the federal government would support in 1998. The Faircloth Amendment to the “Housing Act of 1937” prohibits HUD from funding the construction or operation of new public housing units with Capital or Operating funds if construction would result in a net increase in the number of public housing units a PHA owned, assisted, or operated as of October 1, 1999. This is referred to as the “Faircloth Limit,” named after Lauch Faircloth, a North Carolina senator who championed the limit.

One reason PHAs with available Faircloth units have been unable to construct new public housing units is because there is no new federal funding for their initial construction. The new option is intended to enable PHAs with Faircloth unit availability to develop public housing units on a temporary basis using HUD’s public housing mixed-finance program with pre-approval to convert the property under RAD to a long-term Section 8 contract once construction is complete. By providing early-stage RAD conversion approvals, specifically the revenue certainty and the market-familiarity of a Section 8 contract that these RAD approvals represent, HUD gives lenders and investors the information they need to underwrite the construction of new public housing.

Recap produced a [Faircloth-to-RAD Fact Sheet](#) that listed available Faircloth units by state, and more importantly, PHAs that have more than 1,000 available Faircloth units (as of May 7, 2021). Recap also has June 2020 [Faircloth FAQs](#) and a detailed [Faircloth-to-RAD guide](#).

## FUNDING

To date, RAD has not had any appropriated funds. HUD’s proposed budget for FY23 seeks \$50 million from the Housing Choice Voucher contract renewal line item to support conversion of public housing properties to PBVs that are unable to convert using only the funds RAD conversion provides through a transfer from their public housing Capital Fund and Operating Fund. HUD estimates this \$50 million would enable 30,000 additional units to convert. Similarly, HUD’s proposed FY23 budget seeks another \$50 million from the Multifamily Project-Based Rental Assistance line item to enable an additional 30,000 units of public housing to convert to PBRA under RAD that would otherwise not be financially feasible. The HUD FY23 budget proposal also seeks an additional \$10 million in RAD conversion subsidy to enable 3,000 Section 202 PRACs to convert that could not otherwise financially succeed. Neither the Senate nor the House appropriations bills propose providing this funding for RAD.

## FORECAST FOR 2023

Recap staff have stated that a short, supplemental Notice will be issued to address a number of issues, such as improving resident meetings, addressing energy and climate issues, improving RAD/Section 18 blends, and facilitating RAD to Faircloth projects.

HUD’s budget request proposes removing the current cap of 455,000 public housing units that can convert through RAD, eliminating the cap. The Senate appropriations bill also proposes removing the cap. Both would also remove the former “sunset” date (September 30, 2024) for making conversions. NLIHC strongly opposes increasing or eliminating the cap.

HUD’s budget request and the Senate appropriations bill would allow Section 18 units in a RAD/Section 18 blend project to not only convert to PBVs but to PBRAs if a PHA chooses to do so.

HUD’s budget request proposes allowing RAD-converted properties to be eligible for the

Jobs Plus program, which is currently only available to public housing residents. HUD also proposes allowing public housing properties with an existing Resident Opportunities for Self-Sufficiency (ROSS) grant prior to RAD conversion complete the grant term and also apply to renew the grant. HUD also seeks approval to allow grantees receiving renewal Congregate Housing Services Program (CHSP) grants for properties that housed elderly people prior to RAD conversion to remain eligible for renewals post conversion.

Both the HUD budget request and the Senate appropriations bill would allow properties assisted with Section 811 Housing for Persons with Disabilities to convert under RAD, potentially impacting 30,000 units.

## TIPS FOR LOCAL SUCCESS

For residents of developments given preliminary or final RAD approval, make sure that the PHA or private, HUD-assisted housing owner is complying with all resident participation and protection provisions. Once HUD issues a formal RCC, a PHA must notify each household that the conversion has been approved, inform households of the specific rehabilitation or construction plan, and describe any impact conversion will have on them.

Be on the lookout for any substantial change in a conversion plan. A substantial change includes: a change in the number of assisted units, a major change in the scope of work, a transfer of assistance to a different property or owner, or a change in the eligibility or preferences for people applying to live at the property. If there is a substantial change in the conversion plan, the PHA must have additional meetings with the residents of the converting property and carry out the PHA Plan Significant Amendment process with the RAB, all PHA residents, and hold a public hearing.

For public housing residents at PHAs with RAD projects that are still in process or for those with projects on the Applications Under Review list, seek commitments from the PHA and any developers working with the PHA to keep

residents fully informed throughout the process. Reports from residents at PHAs indicate that their PHAs, developers, and local HUD offices do not provide residents with sufficient information. Make sure to fully understand the differences between PBVs and PBRAs so that you can influence the best option for residents.

Use the relatively new [RAD Complaint Process](#) and be persistent if you are not happy with initial responses.

Contact HUD's Office of Recapitalization with problems; see <https://www.hud.gov/program/offices/housing/mfh/hsgmfbus/aboutahp>.

## WHAT TO SAY TO LEGISLATORS

Tell Members of Congress not to lift the cap on the number of public housing units that may convert until this “demonstration” has convincingly shown that HUD will rigorously monitor PHA and owner compliance with all tenant protections written into the RAD statute and RAD Notice. Ask Members of Congress to ensure that HUD, as required by statute, prepares, conducts, and publishes a detailed assessment of the impact of conversion on public housing residents to ensure that further conversions do not adversely impact residents. Such an assessment should ask whether residents had a genuine role during and after conversion, were evicted just prior to conversion, were able to remain after conversion if that is what they wanted or were inappropriately re-screened. An assessment should also determine whether Section 6 resident protections, such as grievance procedures, were fully honored and whether residents of converted properties were able to participate on resident councils and RABs. Was there compliance with the one-for-one replacement requirement? Are PHAs truly owning or controlling converted properties? Are conversions to PBRA consuming too many scarce tenant protection vouchers at the expense of other tenant protection voucher needs?

## FOR MORE INFORMATION

National Low Income Housing Coalition, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

National Housing Law Project's RAD resource webpage, <http://nhlp.org/RAD>.

NLIHC's RAD: *Key Features for Public Housing Residents*, <https://nlihc.org/sites/default/files/RAD-Outline-Updated-November-2021.pdf>, is on NLIHC's Public Housing webpage, <https://nlihc.org/explore-issues/housing-programs/public-housing>.

RAD Notice H-2019-09 PIH-2019-23 (REV4), [https://www.hud.gov/sites/dfiles/Housing/documents/H-2019-09-PIH-2019-23\\_RAD\\_Notice%20Rev4\\_20190905.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/H-2019-09-PIH-2019-23_RAD_Notice%20Rev4_20190905.pdf).

RAD Fair Housing, Civil Rights, and Relocation Notice H 2016-17/PIH 2016-17 [https://www.hud.gov/sites/documents/16-17hsgn\\_16-17pihn.pdf](https://www.hud.gov/sites/documents/16-17hsgn_16-17pihn.pdf).

HUD's RAD website, <http://portal.hud.gov/hudportal/HUD?src=/RAD>.

New RAD Complaint Process, [https://www.hud.gov/sites/dfiles/Housing/documents/RAD\\_Resident\\_Complaint\\_Process.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/RAD_Resident_Complaint_Process.pdf).

HUD's 15 RAD Fact Sheets for residents, <https://www.hud.gov/RAD/residents/PublicHousingResidents>.

HUD's "RAD Residents' Rights in Public Housing" brochure, [https://www.hud.gov/sites/dfiles/Housing/documents/RAD\\_Resident\\_Rights\\_in\\_Public\\_Housing\\_Printable.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/RAD_Resident_Rights_in_Public_Housing_Printable.pdf).

HUD's slide deck about resident organizations after conversion, <https://www.hud.gov/sites/documents/TENANTORGANIZINGAFTERRAD.PD.F>.

"RAD-Section 18 (75/25) Blend FAQs," [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/repositioning/rad\\_section18](https://www.hud.gov/program_offices/public_indian_housing/repositioning/rad_section18).

Notice PIH 2018-04 about RAD/Section 18 Blended Projects, <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2018-04-Demo-Dispo-Notice-12-14-18.pdf>.

Notice PIH 2021-07 on Demolition and Disposition of Public Housing under Section 18, <https://www.hud.gov/sites/dfiles/PIH/documents/PIH2021-07.pdf>.

The latest list of available Faircloth units is on the PIH "Office of Capital Improvements" webpage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/capfund](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/capfund).

The Faircloth-to-RAD Fact Sheet is at: [https://www.hud.gov/sites/dfiles/Housing/documents/Faircloth-to-RAD\\_Fact\\_Sheet.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/Faircloth-to-RAD_Fact_Sheet.pdf).

Faircloth FAQs (June 2020) are at: <https://www.hud.gov/sites/dfiles/PIH/documents/Faircloth%20FAQ%20.pdf>.

A detailed Faircloth-to-RAD guidance document for PHAs is at: [https://www.hud.gov/sites/dfiles/Housing/documents/Faircloth\\_Resource\\_Package.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/Faircloth_Resource_Package.pdf).



# Repositioning of Public Housing

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Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** HUD's Office of Public and Indian Housing (PIH)

**Year Started:** The term “repositioning” was introduced November 13, 2018, although components have been available for many years.

**See Also:** For related information, refer to the *Public Housing*, *Rental Assistance Demonstration*, and *PHA Plan* sections of this *Guide*.

HUD's Office of Public and Indian Housing (PIH) sent a [letter](#) to public housing agency (PHA) executive directors dated November 13, 2018. The term “repositioning” was used to describe HUD's intent to remove itself from public housing program administration. HUD's immediate goal was to “reposition” 105,000 public housing units before September 30, 2019.

Because Congress has failed to provide adequate appropriations for the public housing Capital Fund for many years, there is at least a \$70 billion backlog in capital needs. HUD points to that backlog as the reason to provide PHAs with “additional flexibilities” so that PHAs can “reposition” public housing. PIH's [Repositioning website](#) contains a number of papers supporting repositioning, including “[Repositioning for Residents](#).”

Public housing can be “repositioned” via:

1. The Rental Assistance Demonstration (RAD).
2. Demolishing or disposing of (selling) public housing (Section 18).
3. Voluntary conversion of public housing to vouchers (Section 22).

While these are already available to PHAs, repositioning is meant to make things easier. Each strategy is discussed below.

## RENTAL ASSISTANCE DEMONSTRATION (RAD)

### Beginnings

Throughout 2010 and 2011, HUD consulted with public housing resident leaders through the Resident Engagement Group (REG). HUD sought to create a demonstration program that would bring in non-federal resources to address insufficient congressional funding for the public housing Capital Fund. HUD also wanted to avoid the many harmful effects the HOPE VI program had on residents. Over time, HUD presented three proposals to the REG, and each time the REG would point out a resident-oriented problem. In response, HUD went back to the drawing board to present a modified proposal. The final proposal, the Rental Assistance Demonstration (RAD), addressed some of the REG's concerns.

Congress authorized RAD through the “FY12 HUD Appropriations Act” to help preserve and improve low-income housing. RAD does not provide any new federal funds for public housing and there are no RAD regulations, but RAD conversions must comply with formal RAD Notices, PIH Notice 2012-32 – updated currently by [H-2019-09/PIH 2019-23 \(REV4\)](#) and the relocation Notice, [Notice H 2016-17/PIH-2016-17](#).

### What is RAD?

RAD allows PHAs to convert public housing units to either Project-Based Vouchers (PBVs) or to Project-Based Rental Assistance (PBRA). Both are forms of project-based Section 8 rental contracts. At first only 60,000 units would be converted under the “demonstration,” but without demonstrating that RAD was realizing the resident protections won by the Resident Engagement Group, Congress approved increases to the cap three times. Currently, 455,000 public housing units are being converted to PBVs or PBRAs. The Obama, Trump, and Biden Administrations have all sought to remove the cap and allow all public housing units to convert to RAD. In addition, the Senate's appropriations



bill for FY23 proposed eliminating the cap. As of the date this Advocates' Guide was drafted, the cap remains at 455,000 units.

Once converted under RAD, the amount of public housing Capital Fund and Operating Fund formerly received by a specific development is used instead as PBV or PBRA. PBVs are Housing Choice Vouchers tied to specific buildings; they do not move with tenants like regular "tenant-based" vouchers. If public housing units are converted to PBV, the initial contract must be for 15 years (20 years for projects pre-approved in 2017 and thereafter) and must always be renewed. PIH continues to oversee the units and most of the current PBV rules (24 CFR 983) apply. If units are converted to PBRA, the initial contract must be for 20 years, must always be renewed, and HUD's Office of Multifamily Programs takes over monitoring. Most of the current PBRA rules (24 CFR 880 to 886) apply.

More details are in the *Rental Assistance Demonstration* section of this Guide.

### **Might Converting Some Public Housing to Section 8 Be Desirable?**

Converting some public housing to Section 8 might be helpful since Congress continues to underfund public housing, resulting in deteriorating buildings and the loss of units through demolition. Congress is more likely to provide adequate funding for existing Section 8 contracts than for public housing, and if a long-term rental assistance contract is tied to a property, private institutions may be more willing to lend money for critical building repairs. Therefore, some units that were public housing before conversion are more likely to remain available and affordable to people with extremely low- and very low-incomes because of the long-term Section 8 contract.

### **What Are the Resident Protections in RAD?**

Both the language in the appropriations act and HUD's formal rules for RAD include all the protections sought by the REG. However, it is up to residents to try to get HUD, PHAs, developers, and owners to comply.

**Displacement.** Permanent involuntary displacement of current residents cannot take place. If a household does not want to transition to PBV or PBRA, they may move to other public housing if an appropriate unit is available.

**Right to Return.** Residents temporarily relocated while rehabilitation is conducted have a right to return.

**Rescreening.** Current residents cannot be rescreened.

**Tenant Rent.** Existing PBV and PBRA rules limit resident rent payment to 30% of income, or minimum rent, whichever is higher. Any rent increase of 10% or \$25 (whichever is greater) due to conversion is phased in over three to five years.

**Good Cause Eviction.** An owner must renew a resident's lease unless there is "good cause" not to.

**Grievance Process.** The RAD statute requires tenants to have the grievance and lease termination rights described under Section 6 of the "Housing Act of 1937." For instance, PHAs must notify a resident of the reason for a proposed adverse action and of their right to an informal hearing assisted by a resident representative. Advocates think that HUD has not adequately implemented this statutory requirement.

### **Other Resident-Oriented Provisions in RAD**

**The \$25 per Unit for Tenant Participation Remains.** Whether a property is converted to PBV or PBRA, the owner must provide \$25 per unit annually for resident participation. Of this amount, at least \$15 per unit must be provided to any "legitimate resident organization" to be used for resident education, organizing around tenancy issues, or training activities. The PHA may use the remaining \$10 per unit for resident participation activities.

**Resident Participation Rights.** Residents have the right to establish and operate a resident organization. If a property is converted to PBRA, then the current Section 8 Multifamily program's "Section 245" resident participation provisions

apply.

If a property is converted to PBV, instead of using public housing’s “Section 964” provisions, the RAD Notice requires resident participation provisions similar to those of Section 245 used by the Section 8 Multifamily program. For example, PHAs must recognize legitimate resident organizations and allow residents to establish and operate resident organizations. Resident organizers must be allowed to distribute leaflets and post information on bulletin boards, contact residents, help residents participate in the organization’s activities, hold regular meetings, and respond to an owner’s request to increase rent, reduce utility allowances, or make major capital additions.

**One-for-One Replacement.** Although the RAD Notice does not use the term “one-for-one replacement,” HUD’s informal material describes one-for-one replacement. However, there are exceptions. PHAs can reduce the number of assisted units by up to 5% or by five units, whichever is greater, without seeking HUD approval. HUD calls this the “*de minimus*” exception. However, RAD does not count against the 5%/five unit *de minimus*: units that have been vacant for two or more years; any reconfigured units, such as combining two efficiency units into a one-bedroom unit; or any units converted for use by social services. Consequently, the loss of units can be greater than 5%.

## Two Additional Key Features of RAD

**Resident Participation Features.** The RAD Notice requires PHAs to provide residents with various information notices and at least four meetings with residents at different stages of the RAD process. Details are presented in the *Rental Assistance Demonstration* section of this guide.

**Temporary or Permanent Relocation.** Relocation requirements are described in separate HUD guidance, [Notice H 2016-17/PIH-2016-17](#). Details are presented in the *Rental Assistance Demonstration* section of this guide.

More RAD information is also on NLIHC’s public housing webpage, <https://nlihc.org/explore-issues/housing-programs/public-housing>,

particularly [RAD: Key Features for Public Housing Residents \(Modified March 2021\) \(.PDF\)](#).

HUD’s RAD website is at: <https://www.hud.gov/RAD>.

## DEMOLITION/DISPOSITION

### Background

Since 1983, PIH has authorized PHAs to apply for permission to demolish or dispose of (sell) public housing units under [Section 18 of the “Housing Act.”](#) In 1995, Congress ended the requirement that PHAs replace, on a one-for-one basis, public housing lost through demolition or disposition. In 2016, PIH reported a net loss of more than 139,000 public housing units due to demolition or disposition since 2000, not including all of the public housing units lost as a result of HOPE VI.

A PHA must apply to PIH’s [Special Applications Center \(SAC\)](#) to demolish or dispose of public housing. The application must certify that the PHA has described the demolition or disposition in its Annual PHA Plan and that the description in the application is identical. Advocates should challenge an application that is significantly different. PHAs should not re-rent units when they turn over while PIH is considering an application. The information in this article is primarily from the regulations [24 CFR 970](#).

In 2018, the Trump Administration eliminated [Notice PIH 2012-07](#) from 2012 that included modest improvements suggested by advocates. The 2012 Notice served as a reminder to residents, the public, and PHAs of PHAs’ obligations regarding resident involvement and the role of the PHA Plan regarding demolition/disposition. The replacement, [Notice PIH 2018-04](#), downplays the role of resident consultation to make it easier to demolish public housing.

On the last day of the Trump Administration, PIH posted [Notice PIH 2021-07](#), updating Notice PIH 2018-04. The primary change is to the so-called “RAD/Section 18 Construction Blend,” allowing a PHA to apply to HUD for approval to dispose of public housing “because it is not in the best interests of the residents and the PHA.” In short, the drastically changed provision would allow a

PHA to convert anywhere from 40% to 80% of the units in a RAD project to PBVs under Section 18. PIH began allowing 25% of the units in a RAD project to convert to PBVs under Section 18 in [Notice PIH 2018-11](#) on July 2, 2018. The new Notice seems to further accelerate PIH's public housing "repositioning" policy. (See the *Rental Assistance Demonstration* entry in this *Advocates' Guide* for more about RAD/Section 18 Construction Blends.)

In addition, the Trump Administration withdrew proposed regulation changes drafted in 2014 that would have reinforced the modest improvements in the 2012 Notice and required PHAs to submit more detailed justifications for demolition or disposition. All of this was a part of the Trump Administration's goal of "repositioning" 105,000 public housing units before September 2019.

### Resident Participation

A PHA must prepare a demo/dispo application "in consultation" with tenants and any tenant organization at a project, as well as with any PHA-wide tenant organization and the Resident Advisory Board (RAB). The application ([form HUD-52860](#)) must include any written comments made by residents, resident organizations, or the RAB and indicate in writing how the PHA responded to comments. A September 2022 "[Section 18 Demo/Dispo Checklist](#)" instructs PHAs to attach documents demonstrating that affected residents have been consulted, documents such as meeting notices, agendas, sign-in sheets, minutes, etc. PIH can deny an application if tenants, resident councils, or RABs were not consulted, so residents should challenge an application if they were not consulted or if the "consultation" was grossly inadequate.

### Resident Relocation Provisions

The demolition or disposition application must have a relocation plan stating:

- Demolition or disposition cannot start until all residents are relocated.
- Residents will receive 90 days' advance notice before being relocated.
- Each household must be offered comparable

housing that meets housing quality standards (HQS) and that is in an area that is not less desirable. Comparable units might be other public housing, project-based vouchers (PBVs), or tenant-based Housing Choice Vouchers. PHAs are responsible for applying for replacement Tenant Protection Vouchers (TPVs) for units that were occupied within the previous 24 months of SAC approval. The TPVs convert to PBVs or HCVs. Read more about TPVs in the *Tenant Protection Vouchers* section of this *Advocates' Guide*.

- Residents' actual relocation expenses will be reimbursed (but the "Uniform Relocation Act," URA, does not apply).

PIH has more information about demo/disp resident relocation is [here](#).

### Demolition Applications

**Is Public Housing Obsolete?** PHAs must certify that a development is "obsolete," either physically or in terms of location, and therefore no longer suitable as housing.

**Physically obsolete** means that there are structural deficiencies that cannot be corrected at a reasonable cost. Structural deficiencies include settlement of floors, severe erosion, and deficiencies in major systems such as the plumbing, electrical, heating and cooling, roofs, doors, and windows. "Reasonable" cost is defined as less than 62.5% of total development costs (TDC) for buildings with elevators and 57.14% for other buildings. Each year PIH updates TDC limits; the 2022 TDC are [here](#). To show that a development is physically obsolete, a PHA must submit a detailed scope of work that should describe the major systems needing repair or replacement, the need to remove lead-based paint or asbestos hazards, or the need to make accessibility improvements (the last sentence is based on [Notice PIH 2018-04](#)).

**An obsolete location** means that the surrounding neighborhood is too deteriorated or has shifted from residential to commercial or industrial use. It can also mean environmental conditions make it unsuitable for residents.

**“Other factors”** can also be considered, such as things that “seriously affect the marketability or usefulness” of a development.

**“De Minimus” Demolition.** PHAs do not have to apply to PIH to demolish fewer than five units or 5% of all units over a five-year period. The units being demolished must either be beyond repair or make room for services such as a childcare facility, laundry, or community center. More information from PIH about *de minimus* demolition is [here](#).

### Disposition Applications

A PHA must certify that keeping the development is not in the best interest of residents or the PHA for one of three reasons:

1. Conditions in the surrounding area, such as commercial or industrial activity, have a negative impact on the health and safety of residents or have a negative impact on a PHA’s operation of the project. A negative impact on the PHA’s operation of a project could mean a lack of demand for the units. If so, the PHA would have to show high long-term vacancy rates due to factors such as declining population in the area or due to the property being located in an isolated area cut off from transportation and access to community amenities such as stores and schools. This example of a negative impact is from [Notice PIH 2018-04](#)
2. Sale or transfer of the property will allow the PHA to buy, develop, or rehab other properties that can be more efficiently operated as low-income housing. For example, the replacement units should be: energy efficient; in better locations for transportation, jobs, or schools; or reduce racial or ethnic concentrations of poverty.
3. Sale of the property is “appropriate” for reasons consistent with the PHA’s goals, the PHA Plan, and the purpose of the “Public Housing Act” (a vague option). [Notice PIH 2018-04](#) provides five examples: units are obsolete (echoing the Demolition rule); the PHA has 50 or fewer public housing units; the public housing is scattered across multiple

locations; the replacement units are on site and have improved efficiency because they are newly constructed or modernized; and a RAD conversion has 75% of the units converted under RAD and up to 25% of the units converted to vouchers via Section 18 (see the *Rental Assistance Demonstration* section of this guide).

More demo/dispo information is also on NLIHC’s public housing webpage, <https://nlihc.org/explore-issues/housing-programs/public-housing>, particularly “Demolition and Disposition,” <https://nlihc.org/sites/default/files/inline-files/REV4%20Demolition-Dispostition%20Handout.pdf>

PIH’s demo/disp webpage is at: [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/centers/sac/demo\\_dispo](https://www.hud.gov/program_offices/public_indian_housing/centers/sac/demo_dispo)

PIH demo/dispo webinar slides are at: <https://bit.ly/3TMS84j>

## VOLUNTARY CONVERSION TO VOUCHERS

A PHA may convert any public housing development to vouchers under Section 22 of the “Housing Act of 1937.” Voluntary conversion is a two-step process. First a PHA must send HUD a “conversion *assessment*” and then it must send a “conversion *plan*.” A special PIH office is in charge, the [Special Applications Center \(SAC\)](#) The regulations for voluntary conversions are [24 CFR 972](#)

(Section 33 is about “required” conversions of public housing that has high vacancy rates and would be too expensive to repair over the long run. *Advocates’ Guide* does not discuss Section 33 required conversions because it is not a part of repositioning.)

### Conversion Assessment

The first step a PHA must take to voluntarily convert public housing to vouchers is to conduct an assessment that is sent to PIH as part of a PHA’s next Annual PHA Plan, except for two categories of PHAs:

- So-called “[Qualified PHAs](#)” do not have to



submit a conversion assessment with their PHA Plan but they do eventually have to submit one to HUD. Qualified PHAs have 550 or fewer public housing units and/or vouchers combined. PIH now lists Qualified PHAs based on the calendar quarter their program begins. There are nearly 2,700 Qualified PHAs, out of a total of approximately 3,700 PHAs.

- As of April 1, 2019, so-called “small PHAs” – those with fewer than 250 public units that want to convert all their units – do not have to conduct an assessment. See Notice PIH 2019-05

For the remaining PHAs, their conversion assessment must address five factors:

- 1. Cost.** What is the cost of providing vouchers compared to the cost of keeping units as public housing for the remainder of a property’s useful life?
- 2. Market Value.** What is the market value *before rehabilitation* if kept as public housing compared to conversion to vouchers, and what is the market value *after rehabilitation* if kept as public housing compared to conversion to vouchers?
- 3. Rental Market Conditions.** Will residents be able to use a voucher? A PHA must consider:
  - a. The availability of decent, safe, and sanitary homes renting at or less than the PHA’s voucher payment standard.
  - b. The recent rate of households’ ability to rent a home with a voucher. Many landlords will not accept a voucher.
  - c. Residents’ characteristics that might affect their ability to find a home and use a voucher; for example, homes accessible to people with a disability, or availability of homes large enough for families.
- 4. Neighborhood Impact.** How would conversion impact the availability of affordable housing in the neighborhood and what effect would conversion have on the concentration of poverty in the neighborhood?
- 5. Future Use of the Property.** How will the

property be used after conversion?

### THREE CONDITIONS FOR PIH APPROVAL OF CONVERSION ASSESSMENT

The assessment must show that converting to vouchers:

1. Will not cost more than continuing to use the development as public housing.
2. Will principally benefit the residents, the PHA, and the community. The PHA must consider the availability of landlords willing to accept vouchers, as well as access to schools, jobs, and transportation. The PHA must hold at least one public meeting with residents and the resident council, at which the PHA explains the regulations and provides draft copies of the conversion assessment. Residents must be given time to submit comments. The assessment sent to PIH must summarize residents’ comments and the PHA’s responses.
3. Will not have a harmful impact on the availability of affordable housing.

### Conversion Plan

The second step is for the PHA to prepare a conversion plan that has six parts:

1. Description of the conversion and future use of the property.
2. Analysis of the impact on the community.
3. Explanation showing how the conversion plan is consistent with the assessment.
4. Summary of resident comments during plan development and the PHA’s response.
5. Explanation of how the conversion assessment met the three conditions needed for PIH approval (as listed above).
6. Relocation plan that:
  - a. Indicates the number of households to be relocated by bedroom size and by the number of accessible units.
  - b. Lists relocation resources needed, including:



- i. The number of vouchers the PHA will request from PIH. PIH will give the PHA priority for “tenant protection vouchers” (see the *Tenant Protection Vouchers* section of this *Advocates’ Guide*).
- ii. Public housing units available elsewhere.
- iii. The amount of money needed to pay residents’ relocation costs.
- c. Includes a relocation schedule.
- d. Provides for a written notice to residents at least 90 days before displacement. The notice must inform residents that:
  - i. The development will no longer be used as public housing and that they might be displaced.
  - ii. They will be offered comparable housing that could be a tenant-based voucher (Housing Choice Voucher) or a project-based voucher (PBV), or other housing assisted by the PHA.
  - iii. The replacement housing offered will be affordable, decent, safe, and sanitary, and chosen by the household to the extent possible.
  - iv. If residents will be assisted with vouchers, the vouchers will be available at least 90 days before displacement.
  - v. Relocation and/or mobility counselling might be provided.
  - vi. Residents may choose to remain at the property with a voucher if the property is used for housing after the conversion.

## Resident Participation

The conversion plan must be sent to PIH as part of a PHA’s next Annual PHA Plan within one year after sending the conversion assessment. The conversion plan can be sent as a Significant Amendment to an Annual PHA Plan. A PHA can

send the plan and assessment with the same Annual PHA Plan.

In addition to the public participation requirements for the Annual PHA Plan, a PHA must hold at least one meeting about the conversion plan with residents and resident council of the affected development. At the meeting the PHA must explain the regulations and provide draft copies of the conversion plan. In addition, residents must have time to submit comments, and the PHA must summarize resident comments and the PHA’s responses.

## Conditions Needed for PIH Approval of Conversion Plan

A PHA cannot start converting until PIH approves a conversion plan. Conversion plan approval is separate from HUD approval of an Annual PHA Plan. PIH will provide a PHA with a preliminary response within 90 days. PIH will not approve a conversion plan if the plan is “plainly inconsistent” with the conversion assessment, there is information or data that contradicts the conversion assessment, or the conversion plan is incomplete or fails to meet the requirements of the regulation. Residents should let PIH know if they think that the plan is “plainly inconsistent” with the conversion assessment or if there is information that contradicts the assessment.

More voluntary conversion information is also on NLIHC’s public housing webpage, <https://nlihc.org/explore-issues/housing-programs/public-housing>, particularly “Voluntary Conversion of Public Housing to Vouchers,” <https://nlihc.org/sites/default/files/REV2%20Voluntary%20Conversion%20Handout.pdf>

PIH’s voluntary conversion webpage is at: [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/centers/sac/vc](https://www.hud.gov/program_offices/public_indian_housing/centers/sac/vc)

## FUNDING

RAD, demolition or disposition, and voluntary conversion to vouchers to not have specific funding. However, HUD must estimate how much it should request from Congress for Tenant Protection Vouchers for demolition, disposition, or conversion.

## FORECAST FOR 2023

PIH continues to actively promote public housing repositioning as demonstrated by its [Repositioning website](#) containing a number of papers supporting repositioning.

## WHAT TO SAY TO LEGISLATORS

Do not eliminate or raise the number of public housing units that can convert under RAD beyond the current cap of 455,000 units because RAD has yet to demonstrate HUD's ability to monitor and enforce resident protections. Work to reverse the features of Notice PIH 2018-04 and Notice PIH 2021-07 that made it far too easy to gain demolition/disposition approval from SAC, especially without more resident involvement. Monitor HUD's repositioning activity to ensure that demolition, disposition, and voluntary conversion of public housing to vouchers is only conducted in ways that truly benefit residents.

## FOR MORE INFORMATION

NLIHC, 202-662-1530, <https://nlihc.org>.

NLIHC's public housing webpage, <https://bit.ly/2S0Z3Kn>.

The November 13, 2018 HUD Repositioning Letter, <https://bit.ly/2OMTrOY>.

HUD's Repositioning webpage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/repositioning\\_including\\_a\\_number\\_of\\_handouts\\_and\\_faqs\\_such\\_as](https://www.hud.gov/program_offices/public_indian_housing/repositioning_including_a_number_of_handouts_and_faqs_such_as):

- [Repositioning for Residents](#).
- [Repositioning Options: Summary of Key Characteristics](#).

PIH's Special Applications Center (SAC) website is at: [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/centers/sac](https://www.hud.gov/program_offices/public_indian_housing/centers/sac).

HUD's RAD website is at: <https://www.hud.gov/rad>.

PIH's Demolition/Disposition webpage is at: [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/centers/sac/demo\\_dispo](https://www.hud.gov/program_offices/public_indian_housing/centers/sac/demo_dispo).

PIH's Voluntary Conversion webpage is at: <https://>

[www.hud.gov/program\\_offices/public\\_indian\\_housing/centers/sac/vc](https://www.hud.gov/program_offices/public_indian_housing/centers/sac/vc).

HUD's RAD Notice H 2019-09/PIH 2019-23 (REV 4) is at: [https://www.hud.gov/sites/dfiles/Housing/documents/H-2019-09-PIH-2019-23\\_RAD\\_Notice%20Rev4\\_20190905.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/H-2019-09-PIH-2019-23_RAD_Notice%20Rev4_20190905.pdf).

HUD's RAD Relocation Notice H 2016-17/PIH-2016-17 is at: [https://www.hud.gov/sites/documents/16-17HSGN\\_16-17PIHN.PDF](https://www.hud.gov/sites/documents/16-17HSGN_16-17PIHN.PDF).

# Moving to Work (MTW) Demonstration and Expansion

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** HUD’s Office of Public and Indian Housing (PIH)

**Year Started:** 1996 for original 39 public housing agencies (PHAs), 2021 for initial Expansion PHAs.

**Population Targeted:** Public Housing and Housing Choice Voucher (HCV) residents

**Funding:** No new funding. The funding involved is a Moving to Work (MTW) PHA’s existing public housing Capital Fund, Operating Fund, and HCV funds.

**See Also:** For related information, refer to the *Public Housing* and *Housing Choice Vouchers* sections of this *Guide*.

The Moving to Work Demonstration (MTW) is a voluntary HUD public housing agency (PHA) program that provides selected PHAs with enormous flexibility because the enabling statute allows HUD to waive nearly all provisions of the “United States Housing Act of 1937” and accompanying regulations. The waivers can include most of the main rules and standards governing Housing Choice Vouchers (HCV) and public housing, although civil rights, labor, and environmental laws cannot be waived. MTW PHAs are also allowed to shift public housing Capital and Operating Funds and HCV assistance, including HCV Administrative Fees and Housing Assistance Payment (HAP) funds, to purposes other than those for which these funds were originally appropriated – referred to as “fungibility.” No matter how funds are mixed, they are called “MTW Funds.” MTW flexibilities can significantly affect residents by increasing their rent, imposing work requirements, or limiting how long they can remain in public housing or receive HCV assistance. In addition, fungibility has the potential of shifting HCV funds out of the voucher program, resulting in fewer households receiving housing assistance. There are 39 “original” MTW PHAs and currently 88

“Expansion” MTW PHAs (out of a potential 100 Expansion MTW PHAs).

## HISTORY

The MTW “demonstration” was initially created by the 1996 appropriations act, which allowed 30 PHAs to apply for MTW flexibilities. Between 1996 and 2013, various appropriations acts authorized additional PHAs to participate in MTW, while some MTW PHAs ran their course and ended their MTW participation. As of the close of 2013, 39 PHAs had MTW status, including four designated in December 2012. These “original” 39 MTW PHAs operated 12% of all public housing and HCV units, yet the impact of their MTW flexibilities were never subject to meaningful evaluation, rendering the term “demonstration program” meaningless.

The “Consolidated Appropriations Act of 2016” authorized HUD to expand the MTW demonstration to an additional 100 high-performing PHAs over a seven-year period ending in 2022. PHAs were to be added to the MTW demonstration in groups (called “cohorts”), each of which was to be overseen by a research advisory committee to ensure the demonstration of each cohort was evaluated with rigorous research protocols, quantitative analysis, and comparisons with control groups. Each year’s cohort of MTW sites would be directed by PIH to test one specific policy change. MTW PHAs could use additional “MTW Waivers” beyond the specific policy change of their cohort, as long as those waivers did not conflict with or interfere with their cohort study.

## PROGRAM SUMMARY

As stated in Section 204 of the “Omnibus Consolidated Rescissions and Appropriations Act of 1996,” the purpose of MTW is to give PHAs and HUD the flexibility to design and test various approaches to providing and administering

housing assistance that:

1. Reduces costs and achieves greater cost-effectiveness in federal expenditures.
2. Provides incentives to households with children in which the household head is working, seeking work, or is preparing for work by participating in job training, educational programs, or programs that help people to obtain employment and become economically self-sufficient.
3. Increases housing choices for low-income households.

In addition, that statute requires PHAs granted MTW status (“MTW PHAs”) to meet five statutory requirements:

1. A PHA must have at least 75% of the households it assists be very low-income households, those with income less than 50% of the area median income (AMI).
2. A PHA must establish a reasonable rent policy, which must be designed to encourage employment and self-sufficiency – rent policies such as excluding some or all of a household’s earned income for purposes of determining rent.
3. A PHA must continue to assist substantially the same total number of eligible low-income households as would have been served had the amounts (public housing Capital and Operating fund and HCV funds) not been combined. Low-income is defined as income equal to or less than 80% of AMI.
4. A PHA must maintain a comparable mix of households (by household size) as would have been provided had the amounts not been used under MTW.
5. A PHA must ensure that housing assisted under MTW meets PIH housing quality standards.

These statutory requirements apply to the MTW Extension PHAs as well as to the original 39 MTW PHAs.

In practice, PIH’s enforcement of these requirements for the original 39 MTW PHAs has

been highly permissive. For example, the Center on Budget and Policy Priorities (CBPP) notes that some of the original MTW PHAs have been allowed to implement policies that serve many thousands fewer households than they could have served if the MTW PHAs used public housing or HCV funds for their original purposes. MTW PHAs have also been permitted to charge extremely low-income households rent well above amounts they could reasonably be expected to afford.

PHAs selected to participate in MTW can seek waivers from most statutes and regulations governing public housing and HCVs. For example, they can seek PIH approval to merge public housing Capital Funds, public housing Operating Funds, and HCV funds (Administrative Fees and HAP funds) into a block grant – referred to as “fungibility.” Waivers can harm residents if MTW PHAs are allowed to charge rents greater than 30% of a household’s income, impose work requirements, or limit how long a household can receive housing assistance.

## CRITIQUE OF ORIGINAL MTW PROGRAM

### Waivers of Key Tenant Protections

In previous *Advocates’ Guide* articles, the Center on Budget and Policy Priorities (CBPP) wrote that one set of concerns about MTW affecting the original 39 MTW PHAs is that MTW allowed waivers of policies that protect low-income households and make rental assistance effective. For example, MTW PHAs are permitted to raise rents above those permitted under the Brooke Rule (which generally caps rent and utility payments at 30% of a household’s adjusted income). All MTW PHAs admitted before 2021 modified rent rules in some manner and the majority raised “minimum rents” or instituted other policy changes that charge households who have little or no income more than they would pay under the regular rules – sometimes hundreds of dollars a month more.

MTW PHAs also implemented numerous other policies that risk exposing households to hardship or limiting their access to opportunity. CBPP wrote that a 2018 analysis found that nine

MTW PHAs instituted work requirements and a 2014 study found that eight placed time limits on assistance. A significant number of MTW PHAs also imposed restrictions on the right of HCV households to move to a community of their choice.

Such policies are particularly problematic because (with very limited exceptions) PIH has not required that they be rigorously evaluated, or even that the impact on affected families be monitored. For example, a 2018 [report](#) by the Urban Institute concluded that “although some MTW agencies have been implementing work requirement policies for more than a decade, no systematic evaluation or attempt has been made to analyze what the impact has been on residents’ work engagement, incomes, or housing instability or on agency administrative costs.” A 2018 [report](#) by the Government Accountability Office (GAO) similarly found that due to limitations in PIH’s monitoring and evaluation process, it cannot assess how MTW’s rent, work requirement, and time limit policies affect low-income tenants.

### **Diversion of Voucher Funds and Reduction in Number of Families Assisted**

Another major adverse effect of MTW noted by CBPP is that MTW has caused many fewer families to receive rental assistance than could be assisted with available funds. MTW allows a PHA to divert money out of its HCV program and provide voucher funds through block grant formulas that, unlike the regular formula used at non-MTW PHAs, provides no incentive for PHAs to put HCV funds to use assisting extremely low-income households. From 2014 to 2018, MTW PHAs shifted about \$530 million a year in voucher funds (19% of their total) to other purposes or left the HCV funds unspent, as a result providing vouchers to 55,000 fewer households annually. MTW PHAs used diverted HCV funds to provide housing assistance to about 10,000 families through so-called “local programs” (for example, shallow rental subsidies), but that still left a large net cut in the number of households assisted.

MTW PHAs have used funds shifted out of the voucher program for a variety of purposes, including supplementing their administrative budgets, maintaining or renovating public housing, and developing “affordable” housing. Federal policymakers should provide more adequate funding for these purposes directly; allowing MTW PHAs to divert voucher funds is the wrong way to address the need for more funds for public housing maintenance. Vouchers reduce overcrowding and housing instability and are an effective way to cut homelessness among families with children. Vouchers can also allow households to move to neighborhoods with lower poverty rates, which raises children’s educational and earnings achievement later in life.

MTW PHAs have generally sought to allocate transferred funds to potentially beneficial purposes, but the funds often do less to help low-income people than they would if used for vouchers. A 2017 [report](#) commissioned by PHAs was able to show only modest evidence of benefits in areas where diverted funds were used, and none that came close to offsetting the sharp reduction in the number of households with rental assistance. Moreover, some MTW PHAs used funds in ways that had little or no benefit for low-income people, such as paying unusually high staff salaries, accumulating large amounts of unspent voucher funds, and otherwise wasting or misusing funds.

### **Earlier Studies Showing MTW Problems**

Previous NLIHC *Advocates’ Guide* articles summarized studies that concluded that the original MTW program was not designed to enable a meaningful demonstration and lacked a data system that could lead to an assessment of MTW’s impact – especially on residents.

An Urban Institute [June 2004 report](#) concluded that MTW was not designed as a rigorous research demonstration, and due to PIH systems, critical data on the characteristics of public housing and HCV residents had not been collected from the MTW PHA sites in a consistent and uniform fashion. That left much of what is known about MTW’s impacts to anecdotes and



piecemeal information gathering. The report also found that there was no way to determine with certainty whether individual MTW programs achieved the goal of increased work and self-sufficiency for residents.

HUD's Office of the Inspector General (OIG) issued an [April 12, 2005 report](#) finding that PIH did not design the MTW demonstration to collect data. Consequently, PIH could not cite statistics showing MTW activities could be used in the future at other PHAs as models for reducing costs and achieving greater cost-effectiveness, promoting resident employment and self-sufficiency, or increasing choice for low-income households. In addition, GAO concluded that PIH could not provide comparative analyses showing the impact of MTW activities or the importance of individual policy changes.

A Government Accountability Office (GAO) [report from April 2012](#) found PIH did not identify quantifiable, outcome-oriented MTW performance data that would be needed to assess the results of similar MTW activities or MTW as a whole. The shortage of such data and analyses hindered comprehensive evaluation efforts, although such evaluations are key to determining the success of any demonstration program. Further, while PIH identified some lessons learned, it had no systematic process for identifying them and thus relied primarily on ad hoc information. The absence of a systematic process for identifying lessons learned limited PIH's ability to promote useful practices that could be more broadly implemented to address the purposes of the MTW program.

GAO also found that PIH had not taken key monitoring steps to ensure MTW PHAs were complying with the MTW statute. Nor did PIH carry out annual assessments of MTW program risks despite its own requirement to do so. PIH did not have policies or procedures in place to verify the accuracy of key information that MTW PHAs self-reported, consequently PIH could not be sure that self-reported information was accurate.

The Congressional Research Service (CRS) published a [report on June 7, 2012](#) and [updated](#) it on January 3, 2014, repeating observations by the Urban Institute, OIG, and GAO that there had been no systematic evaluation of the outcomes of the policies adopted by MTW PHAs in achieving MTW goals. In addition, the report noted that as a result of both data collection issues and the program's design, PIH was not able to measure and compare the results of different PHAs' MTW policies, limiting PIH's ability to evaluate specific policies implemented by MTW PHAs.

CRS also noted that PIH suggested that MTW PHAs provided a greater number of assisted housing units than they would have been able to provide under the traditional assistance programs. CRS states, however, that the ability of MTW PHAs to assist a greater number of households may be a result of MTW PHAs reducing the assistance provided to current recipients, rather than due to savings from administrative streamlining. For example, some MTW PHAs implemented policies that reduced the amount of rental assistance that a household received, requiring tenants to pay rent above the affordability standard of 30% of their income. Fifty-two percent of MTW PHAs adopted higher minimum rents, 27% used flat rents (which do not vary with changes in tenant income), and 21% used stepped rents (which increase rent over time and not in relation to income). CRS writes that there was no systematic data to evaluate the assertions by MTW PHAs that the alternative rent structures they adopted led to increased tenant earnings.

In addition, the CRS report showed that 30% of the MTW PHAs implemented work requirements and 15% had time limits for residents ranging from three to seven years, yet there was no means to evaluate the impact of these policies on residents. For HCV, 39% of the MTW PHAs conducted housing quality standard (HQS) inspections less frequently than annually, while 21% allowed private landlords to self-certify that they were meeting HQS. CRS noted that a full evaluation was not conducted to assess whether the alternative HQS inspection procedures were

either more or less effective than the traditional annual inspection procedures in ensuring the quality of HCV-assisted rental units.

Another [OIG report from September 27, 2013](#) concluded that PIH's oversight of MTW was inadequate because it had not: (1) implemented program wide performance indicators, (2) evaluated MTW PHAs' programs according to each MTW PHA's Standard MTW Agreement policies, (3) evaluated MTW PHAs' compliance with key statutory program requirements, (4) verified MTW PHAs' self-reported performance data, and (5) performed required annual program risk assessments.

## MTW EXPANSION

The "Consolidated Appropriations Act of 2016" authorized HUD to expand the MTW demonstration to an additional 100 high-performing PHAs over a seven-year period ending in 2022. PHAs were to be added to the MTW demonstration in groups (called "cohorts"), each of which was to be overseen by a research advisory committee to ensure the demonstration of each cohort was evaluated with rigorous research protocols, quantitative analysis, and comparisons to control groups. Each year's cohort of MTW sites would be directed by HUD to test one specific policy change. MTW PHAs could use additional "MTW Waivers" beyond the specific policy change of their cohort, as long as those waivers did not conflict with or interfere with their cohort study. For each cohort, separate PIH Notices were issued.

### Cohort #1, "MTW Flexibilities on Small PHAs"

[Notice PIH-2018-17](#) on October 11, 2018 invited PHAs to apply for a slot in Cohort #1, "MTW Flexibilities on Small PHAs." Cohort #1 was limited to PHAs with a combination of 1,000 or fewer public housing units and vouchers. PIH selected [31 Cohort #1 PHAs](#) on January 7, 2021. This cohort is evaluating the overall effects of MTW flexibility on the small PHAs and their residents. PIH will compare outcomes related to the three MTW statutory objectives between the MTW PHAs and PHAs assigned to a control

group. PIH's MTW Flexibilities for Small PHAs webpage is [here](#).

### Cohort #2, "Rent Reform"

[Notice PIH-2019-04](#) on March 14, 2019 invited PHAs to apply for a slot in Cohort #2, "Rent Reform," designed to test "rent reform" ideas to "increase resident self-sufficiency and reduce PHA administrative burdens." Cohort #2 was limited to PHAs with a combination of at least 1,000 non-elderly and non-disabled public housing residents and voucher households. PIH published [Notice PIH-2020-21](#) on August 28, 2020, with alternate rent policies different from those [Notice PIH-2019-04](#). PIH announced on May 7, 2021 that [10 PHAs were selected](#) to participate in Cohort #2. Each Cohort #2 PHA will implement one alternative rent policy:

1. Four PHAs will test "tiered rents" (also known as "income bands"). PIH set 13 tiers at \$2,500 increments. Within each tier a household's rent is fixed, based on 30% of income at the midpoint of the tier. All households in a tier will pay the same rent. Household income will be recertified every three years. A household's rent will not change in between the triennial recertification even if their income decreased to a point that would place them in the tier below. Similarly, if a household's income increased, their rent would not increase to a point that would place them in the next tier. In either situation, a household's rent would not decrease or increase until after their triennial income recertification. The minimum rent will be \$50.
2. Five PHAs will test "stepped rents," a form of time limit with a household's rent payment starting at 30% of its gross income (not adjusted income as in the regular programs) or the minimum rent of \$50, increasing each year by an annual fixed, stepped increase, regardless of a household's income. The MTW PHA will choose the size of the annual stepped rent increase, but it may not be less than 2% of the Fair Market Rent (FMR) or greater than 4% of the FMR (adjusted for

unit size). Each year, a PHA may review and adjust the annual stepped rent increase. Note that by using gross income instead of adjusted income, households will already be in danger of paying more rent.

3. One PHA could propose a tiered or stepped rent that is different from the two PIH rent policies above. The PHA proposing an alternative policy must be able to ensure a sample size of at least 4,000 existing non-elderly, non-disabled households.

Cohort #2 MTW PHAs can also use other MTW waivers, as outlined in the [Final MTW Operations Notice](#) (summarized below), except for six waivers described in Notice PIH-20-21. NLIHC has a detailed [Summary of MTW Cohort #2, Rent Reform](#). PIH's MTW Rent Reform webpage is [here](#).

### **Original Cohort #3, "Work Requirements" - Cancelled**

[Notice PIH 2021-02](#) invited PHAs to apply for a slot in Cohort #3, "Work Requirements." NLIHC and other advocates vehemently opposed the Work Requirements waivers. [Notice PIH-2021-18](#) rescinded the Work Requirements Cohort to be "responsive to the economic realities and current needs of low-income families." NLIHC had a detailed [Summary of MTW Cohort #3, Work Requirements](#).

### **Cohort #4, "Landlord Incentives"**

[Notice PIH 2021-03](#) on January 7, 2021 invited PHAs to apply for a slot in Cohort #4, "Landlord Incentives," which will evaluate activities to encourage landlords to participate in the HCV program. PIH identified seven MTW activities in the [MTW Operations Notice](#) (see description below) that have the potential to act as landlord incentives and that any MTW PHA can use. In addition, PHAs selected for this cohort must use one of two "Cohort Specific MTW Waivers." Together, the seven MTW Operations Notice landlord incentive waivers and two Cohort Specific MTW Waivers are referred to as the "Cohort #4 MTW Activities List." PHAs in the Cohort #4 must implement at least two activities from the Cohort #4 MTW Activities List. [Twenty-](#)

[nine PHAs](#) were selected on January 27, 2022 for the Landlord Incentives Cohort.

The two Cohort #4-Specific MTW Waivers are:

- Waiver of the requirement for a PHA to conduct a Housing Quality Standards (HQS) inspection of a potential unit to rent with a voucher before a household moves into a unit. However, one of the following "Safe Harbors" must be met: a) the unit is less than five years old; b) the unit passed an HQS inspection (or equivalent inspection) within the previous three years; or c) the unit is located in a census tract with a poverty rate less than 10%. A tenant must be able to request an interim inspection.
- Waiver allowing a front-end vacancy loss payment if a previous tenant was not an HCV household.

The seven Landlord Incentive MTW activities available to all MTW PHAs as well as Cohort #4 MTW PHAs are:

1. Vacancy Loss payments – paying a landlord up to one-month contract rent as reimbursement for time a unit is vacant in between voucher households. This applies only when an HCV household leaves a unit and the next tenant is also an HCV household.
2. Damage Claims – paying a landlord reimbursement for tenant-cause damages after accounting for any security deposit.
3. Other Landlord Incentives – providing a landlord an incentive payment (such as a bonus for agreeing to participate in the HCV program) up to one month of contract rent.
4. Pre-Qualifying Unit Inspections – Allowing units to be pre-inspected for HQS approval to accelerate the lease-up process and minimize a landlord's lost revenue during a period of vacancy.
5. Alternative Inspections Schedule – Allowing units to be inspected less frequently than annually, but at least once every three years.

6. Using a payment standard between 80% and 150% of the Small Area Fair Market Rent (SAFMR).
7. Using a payment standard between 80% and 120% of the FMR.

The usual payment standard is between 90% and 110% of either the SAFMR or FMR. For both the SAFMR and FMR options, PIH strongly encourages an MTW PHA to adopt a hold harmless policy (or a gradual phase-in), to limit the impact of *reductions* in payment standards, because reduced payment standards would likely discourage some landlords from participating and can cause households that already have a voucher to pay more for rent.

NLIHC has a detailed [Summary of MTW Cohort #4, Landlord Incentives](#). PIH's MTW Landlord Incentives webpage is [here](#).

### **Cohort #5, "Asset Building"**

PIH posted [Notice PIH 2022-11](#) on April 26, 2022 inviting PHAs to apply to participate in the MTW Asset Building Cohort that will experiment with policies and practices that help residents build financial assets and/or build credit. For the purpose of this cohort, asset building is defined as activities that encourage the growth of assisted residents' savings accounts and/or that aim to build credit for assisted households. [Eighteen PHAs were selected](#) on September 27, 2022 to participate in the Asset Building Cohort. PIH's MTW Asset Building webpage is [here](#).

PIH offered three asset building options for PHAs that want to participate in the Asset Building Cohort:

- **Opt-Out Savings Account Option.** A PHA must deposit at least \$10 per month for at least one year into an escrow account for the benefit of assisted households (either public housing or HCV households) with the goal of increasing the number of households that have bank accounts, thereby strengthening household stability.
- **Credit Building Option.** For residents who have given their formal consent, a PHA must report public housing rent payments for at

least one year to credit bureaus. The goal is to increase the credit scores of public housing households. A household may withdraw at any time (this option is not available for HCV households because of the difficulty of having individual landlords report to credit bureaus).

- **PHA-Designed Asset Building Option.** This option allows a PHA to design its own local asset building program that encourages the growth of savings accounts and/or aims to build credit for assisted households.

Before implementation of the Asset Building Cohort, NLIHC and consumer advocates conveyed to PIH concern that the credit building option would require PHAs to report public housing residents' rent payment using "full file reporting," meaning that not only will on-time rent payments be reported, but late and missed payments would also be reported. NLIHC and others urged PIH to only require PHAs to report on-time rent payments, which the three major credit reporting entities can accommodate. Full file reporting can harm residents if they encounter only one or two slightly late or small missed payments that are episodic due to unforeseen circumstances and otherwise not indicative of serious rent payment problems. NLIHC also urged PIH to define "small" unpaid balances so that participating PHAs do not report minor unpaid rent balances, resulting in damage to a household's credit. As one potential definition of "small," NLIHC informed PIH that starting in 2023, the major credit reporting agencies will not include medical collection debt under \$500. PIH did not accept NLIHC's recommendations.

NLIHC has a detailed [Summary of MTW Cohort #5, Asset Building](#).

### **MTW Operations Notice**

PIH posted the final "[Operations Notice for the Expansion of the Moving to Work \(MTW\) Demonstration Program](#)" in the *Federal Register* on August 28, 2020. The Operations Notice is a lengthy and detailed document that establishes requirements for implementing the MTW demonstration for PHAs applying for and carrying out the MTW Expansion slots. NLIHC



has a 37-page [Summary of Key Provisions of the MTW Operations Notice](#), including a summary of NLIHC’s primary concerns about MTW waivers allowing work requirements, term-limited assistance, and lowering HCV payment standards to 80% of FMRs or Small Area FMRs. NLIHC is also concerned about allowing an MTW PHA to spend up to 10% of its HCV Housing Assistance Payment (HAP) for so-called “Local, Non-Traditional Activities,” such as shallow rent subsidies, services to low-income people who are not public housing or voucher tenants, and gap financing to develop Low Income Housing Tax Credit (LIHTC) properties. An MTW PHA may spend even more than 10% by seeking PIH approval.

Appendix I of the Operations Notice, “MTW Waivers,” is a chart of “MTW activities” that MTW agencies may implement without HUD approval, as long as they are implemented with the “safe harbors” tied to the specific, allowed MTW activity.

Appendix II has instructions for any required written impact analyses and hardship policies. Impact analyses are required for certain activities, such as Work Requirements, Term-Limited Assistance, Stepped Rent (effectively time limits), and rent increase policies. Written financial and other hardship policies must be developed for most MTW activities.

Appendix III explains the method for calculating the requirement that MTW agencies house substantially the same number of families as they would have without MTW.

MTW PHAs must submit an “[MTW Supplement](#)” to the Annual PHA Plan. The MTW Supplement must go through a public process along with the Annual PHA Plan, following all of the Annual PHA Plan public participation requirements. So-called “Qualified PHAs,” those with fewer than 550 public housing units and vouchers combined, are required to submit an MTW Supplement each year. See the *PHA Plan* section of this *Advocates’ Guide*.

An MTW PHA must implement at least one “reasonable rent policy” listed in Appendix I

during the term of its MTW designation. Several the so-called rent polices can harm residents. For example:

- Stepped rent is a form of time limit, and a household’s rent payment can start at 35% of adjusted income, growing each year.
- A minimum rent of \$130 per month can place a significant rent burden on households.
- Tenant rent as a modified percentage of income causing households pay 35% of income imposes a cost burden. It shifts limited resources away from food, medicine, transportation to jobs, childcare, and other basics. Imposing cost burden does not address the statutory goals of the MTW demonstration and fails the statutory requirement of having a “reasonable” rent policy.
- Allowing a PHA to make households (including elderly and disabled households) who are initially renting a home with a voucher to pay more than 60% of their income for rent causes households to be severely cost burdened, and shifting limited household resources away from food, medicine, transportation to jobs, childcare, and other basics. Imposing cost burden does not address the statutory goals of the MTW demonstration and fails the statutory requirement of having a “reasonable” rent policy.

While the 2016 appropriations act creating the MTW Expansion required all MTW PHAs to be subject to “evaluation through rigorous research,” the Operations Notice only requires the cohort-specific waivers to be rigorously evaluated. The evaluation terms are much shorter than the 20-year period an MTW PHA will have MTW waivers: five years for the MTW Flexibilities for Small PHAs, six years for Rent Reform, four years for Landlord Incentives, and five years for Asset Building.

In addition to their cohort-specific MTW waiver, each MTW PHA can apply other MTW Waiver Activities that will merely be subject to so-called “program-wide evaluations.” The Operations



Notice states, “HUD intends to develop a method for program-wide evaluation that is based, to the extent possible, on information already collected through existing HUD administrative data systems, although additional reporting may be necessary to effectively evaluate MTW.” In addition, PIH “would seek to assess whether or not, and to what extent, MTW agencies achieve the statutory objectives of the MTW demonstration by using federal dollars more efficiently, helping residents find employment and become self-sufficient, and/or increasing housing choices for low-income families.” Program-wide evaluation would also seek to determine any effects, positive or negative, of MTW waivers and funding flexibilities on residents. NLIHC notes that limiting the program-wide evaluation to the three statutory objectives will not adequately address negative effects on residents. In addition, HUD’s existing administrative data systems are not able to assess the impacts on the three statutory objectives let alone other adverse consequences for residents.

## FOR MORE INFORMATION

NLIHC’s Public Housing webpage has materials about the Moving to Work Demonstration (MTW), <https://bit.ly/3WqWq2C>.

NLIHC’s Summary of Key Provisions of Moving to Work (MTW) Demonstration Operations Notice, <https://bit.ly/3VfDyCA>.

PIH’s Moving to Work website, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/mtw](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw).

PIH’s MTW Expansion webpage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/mtw/expansion](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw/expansion).

Center on Budget and Policy Priorities, <https://www.cbpp.org/research/topics/housing>.

# Project-Based Rental Assistance

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By National Preservation Working Group, sponsored by National Housing Trust

**Administering Agency:** HUD's Office of Multifamily Housing Programs

**Years Started:** 1961 – Section 221(d)(3) Below Market Interest Rate (BMIR); 1963 – USDA Section 515; 1965 – Section 101 Rent Supplement; 1968 – Section 236; 1974 – Project-Based Section 8, and Rental Assistance Payments Program; 1978 – Section 8 Moderate Rehabilitation Program.

**Number of Persons/Households Served:** Approximately 1.2 million households with over 2 million people. [HUD's Picture of Subsidized Housing query tool](#) includes 1.2 million units of project-based Section 8 “reported” and 1.3 million units “available.”

**Population Targeted:** Extremely low- to moderate-income households

**Funding:** \$14.91 billion in FY23, up from \$13.94 billion in FY22 (of this, \$969 million is provided in a disaster supplemental for project-based rental assistance in a separate section of the bill)

**See Also:** For related information, refer to the *USDA Rural Rental Housing Programs*, *Tenant Protection Vouchers*, and *Project-Based Vouchers* sections of this *Guide*.

Project-based housing refers to federally assisted housing for low-income households produced through a public-private partnership. Project-based assistance is fixed to a property, in contrast to portable tenant-based Section 8 Housing Choice Vouchers. Historically, HUD has provided private owners of multifamily housing either a long-term project-based rental assistance contract, a subsidized mortgage, or in some cases both, in order to make units affordable. This article focuses on the project-based rental assistance (PBRA) portfolio, after a historical summary of “legacy” HUD-subsidized mortgages that are maturing or being refinanced for which

there is no replacement subsidized mortgage program.

This stock of PBRA-supported affordable housing is in danger of being permanently lost as a result of owners opting out of Section 8 contracts renewal or physical deterioration of properties. When owners choose not to renew a project-based Section 8 contract (referred to as “opting out”), they may convert their properties to market-rate rental buildings, condominiums, or non-housing uses.

## BASIC DESCRIPTION OF THE SECTION 8 PROJECT-BASED RENTAL ASSISTANCE (PBRA) PROGRAM

In 1974, Section 8 of the “United States Housing Act” was enacted, providing a comprehensive tool for both project-based and tenant-based rental assistance. The project-based Section 8 program replaced a previous program, Section 236 described in the History section, below, as the primary affordable multifamily housing production tool through the New Construction, Substantial Rehabilitation and State Agency Programs. Instead of subsidizing a mortgage, as Section 236 did, HUD provided a 20- to 40-year fully appropriated rent subsidy. This virtually guaranteed rent stream gave lenders confidence in the soundness of project financing (whether provided through conventional, Federal Housing Administration, or state housing finance agency debt).

More than 800,000 PBRA units were developed from 1974 to 1983, when authorization for new construction was repealed. In addition, from 1977 to 1991, project-based Section 8 was provided to subsidize rent of tenants living at properties that also had mortgages from the Section 202 program (see *Section 202 Housing for Elderly*).

Project-based Section 8 is also an affordable housing preservation tool. The Section 8 Loan

Management Set-Aside (LMSA) program was used to replace some Rent Supplement contracts, and to support the feasibility of some struggling properties that were financed with the Section 221(d)(3) BMIR or 236 programs. The Section 8 Property Disposition Program was established to enable HUD-foreclosed multifamily properties to continue to house extremely low-income tenants after being sold back to private ownership. Finally, when the prepayment of subsidized mortgages and subsequent deregulation of BMIR and Section 236 properties became a national issue, the “Emergency Low Income Housing Preservation Act” of 1987 (ELIHPA) and the “Low Income Housing Preservation and Resident Homeownership Act” of 1990 (LIHPRA) were enacted to provide a comprehensive preservation solution, including the provision of incremental Section 8 PBRA (BMIRs, 236s, ELIHPA and LIHPRA are explained below).

Inherent in every project-based Section 8 property is a Housing Assistance Payments (HAP) contract, which provides funding for the subsidy and sets out program requirements. A HAP contract is between a property owner and HUD (except for Moderate Rehab contracts, discussed below), although a Section 8 contract administrator may be delegated by HUD. Every HAP contract has a fixed term, and when it expires, the owner has a choice whether to renew. The HAP renewal process is codified in the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), discussed below. These contracts can be renewed, typically in one-, five-, or 20-year increments, with congressional funding for the contracts provided 12 months at a time.

Under project-based Section 8, residents are responsible for paying 30% of their adjusted income towards rent and utilities, while HUD provides a monthly subsidy payment to the owner that pays for the remaining cost of maintaining and operating the unit. The average monthly subsidy per household in 2021 was \$904. New residents in project-based Section 8 units can have incomes of no more than 80% of the area median income (AMI), with 40% of new

admissions required to have incomes below 30% of AMI.

The Project-Based Rental Assistance program (PBRA), in all its variations, provides rental assistance for about 2 million people in 1.2 million low-income, very low-income, and extremely low-income households allowing them to afford modest housing. Two-thirds of PBRA heads of households are seniors and disabled adults and the average household income is \$13,768.

Since no new net units are being constructed using Section 8 PBRA, the challenge today is ensuring that federally assisted affordable housing is not permanently lost, either through physical deterioration or as a result of properties being converted to non-affordable uses, such as high-rent units or condominiums, when a PBRA contract is not renewed (“opt-out”) or is terminated for any reason (see the Current Program Issues section below).

It is important to note that a property may have use restrictions or affordability covenants from a subsidized mortgage or other programs, as well as Section 8 PBRA pursuant to a HAP contract. Even if the affordability covenants expire or are terminated, the Section 8 rental assistance is independent of the mortgage financing, and so it survives any subsidized mortgage maturity or prepayment or other termination of covenants.

Another form of Section 8 rental assistance is the Moderate Rehabilitation (Mod Rehab) program, designed in 1978 to stimulate moderate levels of rehabilitation to preserve affordable housing. Mod Rehab provides project-based rental assistance for low- and very low-income residents; however, unlike other project-based Section 8 programs, the agreement is between the owner and a local public housing agency (PHA). Like project-based Section 8, residents pay 30% of adjusted income for rent, while rental assistance pays the balance. The program was repealed in 1991 and no new projects are authorized for development. There are approximately 14,436 Mod Rehab units and 10,402 Mod Rehab SRO (single-room occupancy)

units remaining. Because of rent restrictions and limitations on the term of contract renewal, Mod Rehab properties are eligible to convert to conventional project-based Section 8 under the RAD program.

HUD Project Based Section 8 programs are codified in 24 CFR Parts 880-891:

- New construction, 24 CFR Part 880.
- Substantial rehabilitation, 24 CFR Part 881.
- Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals, 24 CFR Part 882.
- State agency financed projects w/Section 8 assistance, 24 CFR Part 883.
- Loan management/property disposition set-aside, 24 CFR Parts 886 and 247 Supportive housing for elderly and persons with disabilities, 24 CFR Parts 891 and 247.

## A BRIEF HISTORY

From 1965 to the mid-1980s, HUD played an essential role in creating affordable rental homes by providing financial incentives such as below-market interest rate loans, interest rate subsidies, and project-based Section 8 contracts. Currently, no additional units are being produced through these programs.

Initially, project-based assistance was provided through the Federal Housing Administration (FHA) in the form of a mortgage subsidy. Mortgage subsidies (also referred to as “shallow subsidies”) reduced the cost of developing rental housing, and in return, owners agreed to restrictions that limited property rents, and occupancy to households meeting program income limits. Even though these programs provided a below-market rent that was affordable to low- and moderate-income tenants, they could not serve extremely low- or very low-income households, who could not afford even the subsidized rent.

Despite the limitation on the range of incomes served, the mortgage subsidy programs were an effective production tool. Two successive HUD programs created more than 600,000 units: the

Section 221(d)(3) Below Market Interest Rate (BMIR) mortgage insurance program, created by the “National Housing Act of 1961,” and Section 236, created in 1968. Some, but not all, subsidized mortgage properties also used precursors to project-based Section 8 to enable them to provide deeper affordability. Those early project-based rental assistance programs were the Rent Supplement program (Rent Supp, authorized by Section 101 of the “Housing and Urban Development Act of 1965”) and the Section 236 Rental Assistance Program (RAP). They each provided an early example of a “deep subsidy,” in which HUD sets the rent level, the tenant pays a percentage of their adjusted income and the subsidy program pays the balance. The last Rent Supp contracts converted to long-term project-based rental assistance contracts under the Rental Assistance Demonstration (RAD) in 2018. The last remaining RAP contracts converted to Section 8 under RAD in late 2019.

Another 136,000 households live in homes with one of the other forms of project-based assistance, but without rental assistance.

## CURRENT PROGRAM ISSUES

### Subsidized Mortgage Prepayment

Although Section 236 and Section 221(d)(3) BMIR mortgages originally had 40-year terms, program regulations allowed most for-profit owners to prepay their mortgages after 20 years. By prepaying, in most cases owners may terminate income and rent restrictions, although any project-based Section 8 rent subsidy will continue for the remaining term of the contract. Owners must give tenants at least 150 days’ advance notice of an intention to prepay. Upon prepayment, tenants are eligible for Tenant Protection Vouchers (TPVs), or in some cases an Enhanced Voucher (EVs), that allows a tenant to either remain in the property or find new affordable rental housing with the voucher assistance (see the *Tenant Protection Vouchers* section of this *Advocates’ Guide*).

### Maturing Subsidized Mortgages

Tens of thousands of low-income families face

escalating rents if affordability protections are not extended for properties with maturing Section 236 and Section 221(d)(3) BMIR mortgages. Residents living in apartments with affordability protections but without project-based Section 8 contracts do not categorically qualify for enhanced vouchers or other rental assistance when the HUD-subsidized mortgage or a federal use agreement expires. However, in recent years, including FY 2022, Congress has appropriated \$5 million annually for Enhanced Vouchers or Project-Based Vouchers for tenants in low-vacancy areas who are at risk of becoming rent-burdened as a result of a subsidized mortgage maturity or expiration of a use agreement. The National Housing Preservation Database identifies more than 6,892 unassisted units in 34 properties in 13 states at risk of subsidized mortgage maturity or the expiration of use restrictions or assistance between FY22 and FY27 (tenants remain eligible despite the expiration of restrictions prior to FY15, subject to owner application).

### **Expiring Project-Based Section 8 Assistance Contracts**

When project-based Section 8 contracts expire, owners may renew the contract, but also may choose to opt out of their contracts, enabling them to increase rents to market levels or to convert units to market-rate condominiums, thereby rendering apartments unaffordable to lower-income tenants. Owners must give tenants one-year advance notice of intent to opt out. Most tenants will receive enhanced vouchers to enable them to remain in their homes. According to the Joint Center for Housing Studies at Harvard University, of the approximately 1.2 million active Project-Based Rental Assistance (PBRA) units, more than 266,000 units (22%) are at risk of losing their affordability status according to calculations from the [National Housing Preservation Database](#).

### **Enhanced Vouchers**

Special voucher assistance is provided to tenants who would otherwise be displaced due to rising rents or market conversion if an owner prepays a

Section 221(d)(3) BMIR or Section 236 mortgage, if an owner opts out of a project-based Section 8 contract, or if the Section 8 contract is terminated by HUD for cause. HUD is required by statute to provide Enhanced Vouchers (EVs) to tenants in such properties to enable them to afford to remain in their homes. Enhanced vouchers pay the difference between 30% of the tenant's income and the new rent, even if that rent is higher than the PHA's payment standard. Tenants have a right to remain in their apartments after conversion to market rents and owners must accept enhanced vouchers. If a tenant with an enhanced voucher moves to another property, the enhanced voucher converts to a regular voucher and the unit they occupied is unfortunately no longer affordable to any lower-income household (see the *Tenant Protection Vouchers* section of this *Advocates' Guide*).

### **Section 8 PBRA Contract Renewal: Mark-to-Market and Mark-Up-to-Market**

Every Section 8 Housing Assistance Payment (HAP) contract was issued with a finite term, typically for 1, 5, 20, or 40 years. These contracts were fully funded at inception for the estimated cost over the entire term. When HAP contracts began to expire in large numbers in the mid-1990s, it became clear that comprehensive legislation, along with funding, was needed to prevent a massive upheaval due to loss of affordability.

The resulting statutory provisions governing renewal of Section 8 PBRA contracts (as well as Mod Rehab contracts) were defined in the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). HUD's operational guidance on MAHRA renewals is contained in the [Section 8 Renewal Guide](#), which is organized around five Options, some of which have sub-options. A detailed description of the MAHRA renewal options is beyond the scope of this article, but the basic principles of MAHRA can be summarized as follows:

- HUD must renew all project-based Section 8 contracts if the owner elects, *subject to annual appropriations*.



- Multi-year contracts are permitted; a minimum five-year term is required for Mark-Up-to-Market contract renewals.
- Since any contract that is renewed for more than one year is subject to annual appropriations, HUD must provide a new funding increment each year, out of current appropriations made by Congress. Since the enactment of MAHRA, Congress has ultimately provided this funding, notwithstanding some occasional timing delays.

Certain properties with below-market contract rents may increase rents to market level at renewal (Mark-Up-to-Market or (Mark-Up-to-Budget).

- If contract rents are above market at the time of renewal, then:
  - If the property has an FHA-insured loan, rents must be reduced to market, and the debt is restructured (Mark-to-Market); and
  - If the property has non-FHA financing or is a Section 202 property, over-market rents may continue after renewal (Exception Properties).
- Future annual rent adjustments vary according to the renewal scenario selected by the owner.

Regarding Mark-to-Market: As noted, some FHA-insured properties with expiring project-based Section 8 contracts have rents that exceed market rents. This may be due to current market conditions and is also often a programmatic consequence of the early use of Section 8 as a production tool. Upon contract renewal, HUD is required to reduce rents in properties with FHA-insured mortgages to market level, creating a cash crunch for those properties and potentially putting their FHA-insured mortgages at risk of default. To address this problem, Congress enacted the Mark-to-Market Program in 1997. Owners of eligible properties must either go through the Mark-to-Market Program, renew at lower market rents, or opt out. In the Mark-to-Market Program, an owner has two options:

- Choose to have the mortgage restructured to be able to afford to operate and maintain the property with lower market rents. In exchange for this mortgage restructuring, an owner agrees to accept Section 8 rent subsidies for an additional 30 years, or
- Choose to renew the Section 8 contract for one year with Section 8 rents reduced to market without undergoing a mortgage restructuring.

HUD is also able to raise contract rents to market levels upon contract renewal for properties in high-cost areas through the Mark-Up-to-Market Program. Contract renewals of at least five years are required in Mark-Up-to-Market, which provides a needed incentive for owners to renew their participation in the Section 8 program when private-sector rents are high. These contract renewals also provide a source of revenue for capital improvements.

Beginning in May of 1999, HUD began the process of transferring the administration of Section 8 contracts to third party Contract Administrators (CA). The CA's responsibilities were identified in HUD Notice H 99-36 and initially applied to some 16,000 contracts under 24 CFR parts 880-886. Specific tasks the CAs perform include:

1. Conduct management and occupancy reviews;
2. Adjust contract rents;
3. Process HAP contract terminations or expirations;
4. Pay monthly vouchers from Section 8 owners;
5. Respond to health and safety issues;
6. Submit Section 8 budgets, requisitions, revisions, and year-end statements;
7. Submit audits of the CA's financial condition;
8. Renew HAP Contracts;
9. Report on CA operating plans and progress; and
10. Follow-up and monitor results of physical inspections of Section 8 properties.

There currently are 53 third-party CAs operating across the country who are HUD's primary providers for overseeing compliance, renewing rental contracts, and managing tenant interactions.

### **Troubled Properties**

HUD multifamily properties may be at risk when a property is in poor financial or physical condition. An owner in default on a HUD-assisted mortgage could result in termination of the Section 8 subsidy through HUD's foreclosure and property disposition process. Since 2005, however, Congress has used appropriations acts to renew the "Schumer Amendment," which requires HUD to maintain a project-based Section 8 contract at foreclosure or disposition sale if the property is in viable condition. If not viable, HUD can, after consulting tenants, transfer the Section 8 subsidy to another property.

Another risk is that HUD may terminate a Section 8 contract mid-term or refuse to renew the Section 8 contract if there is a serious violation of the terms of the Section 8 Housing Assistance Payment contract. Appropriations act provisions since FY06 have allowed HUD to transfer project-based assistance, debt, and use restrictions from properties that are physically obsolete or not financially viable to another project. Residents must be notified and consulted.

### **Resident Participation in Project-Based Section 8 Rental Assistance**

Congress and HUD have acknowledged that active resident participation in the operation of HUD-subsidized properties is essential to the success of assisted properties. Tenants are closest to the harm perpetuated by poor housing policies and often have institutional knowledge that other stakeholders lack. Residents and resident organizations have played a vital role in highlighting systematic conditions and administrative issues at assisted properties and proposing solutions. Resident organizations also play an important role in informing and educating their neighbors about the federal housing programs and for building collective power. Resident engagement and participation

can ensure that tenants play an integral role in preserving the property, promoting services benefiting all residents, and furthering the goal of creating a more just housing system.

### **Overview**

HUD tenants' right to organize is based on law at 12 U.S.C. § 1715z-1b and spelled out in regulations at 24 CFR Part 245, Subpart B, which require owners of privately owned, HUD-assisted multifamily housing to recognize tenant organizations. A legitimate tenant organization is one established by tenants that represents all tenants, operates democratically, meets regularly, and is completely independent of owners and management. The regulations recognize the rights of tenants to distribute leaflets, canvass, post notices, and convene meetings without management present and without prior notice or permission from management. Residents can invite outside organizers to assist them. HUD-funded organizers have the right to go into a building without a tenant invitation to help residents organize.

Unlike the Section 964 regulations for Public Housing, the Section 245 regulations do not require a specific structure, written bylaws, or even elections for a tenant association to be "legitimate," as long as the "organic" tests are met: the group meets regularly, operates democratically, represents all tenants, and is completely independent of owners. This allows "early stage" tenant organizing committees to demand recognition as legitimate tenant groups and to claim their right to organize in the face of common resistance or hostility from private owners and managers.

Over the years, Congress and HUD have expanded the formal process for tenant participation in decisions affecting HUD-assisted housing. For example, HUD must notify tenants about a pending auction or sale of their building if it is owned by HUD or is under HUD foreclosure so that tenants can either submit a purchase offer as a nonprofit or limited-equity cooperative or support purchase by others. Additionally, when owners choose to go into HUD's Mark-

to-Market program, HUD is required to notify tenants prior to a first and second tenant meeting so that tenants can comment on the owner's plans to rehabilitate the building and change the financing.

### Enforcement

The civil money penalties regulation (24 CFR Part 30) allows HUD to assess fines on owners or management agents for major violations of tenants' right to organize. On June 18, 2010, HUD sent a letter to all owners and management agents highlighting key features of Part 245, emphasizing the right of tenants to organize and repeating the list of protected tenant organizing activities. HUD Notice H 2011-29 and Notice H 2012-21 repeated and elaborated on the content of the June 2010 letter, adding civil money penalties that HUD could impose on an owner or manager failing to comply with Part 245. Notice H 2014-12 revised Notice H 2011-29 and Notice H 2012-21 by adding a tenant appeals process when a decision by the local HUD office concludes that an owner did not violate the tenant participation regulations or other program obligations.

HUD Notice H 2016-05 updated the previous notice regarding filing complaints, added to the list of property types that may be assessed a civil money penalty, and clarified that civil money penalties may be assessed on Project-based Section 8 developments, not just buildings with HUD mortgages. HUD Notice H 2016-05 also elaborated on the responsibility of owners to give priority to meeting spaces that provide physical access to people with disabilities. Additionally, when residents have complaints, the Notice allows tenants to reject "mediation" with owners as an option for resolving complaints because many tenants found mediation unproductive; instead, tenants may seek a ruling by HUD regarding owner infractions.

Other HUD guidance on tenants' right to organize includes HUD's Model Lease, which is applicable to all HUD tenants, and explicitly refers to the regulations' about the right to organize. HUD's Management Agent Handbook 4381.5 Revision

2 requires owners to recognize tenant unions and specifies management practices that would violate tenants' rights and therefore potentially result in HUD-imposed sanctions.

Resident Rights and Responsibilities is a resident-oriented HUD brochure explaining that tenants have the right to organize free from management harassment or retaliation. This brochure must be made available in appropriate languages and distributed annually to all HUD tenants at lease signing or recertification.

## HUD Preservation Action

As discussed earlier in this article, properties may lose their subsidy for a variety of reasons. As rental markets become more stressed, preserving the subsidy will be essential to maintaining communities' ability to provide affordable, decent, safe, and sanitary housing.

HUD and communities have several options to consider when working to preserve subsidy contracts. Preservation can be done by utilizing various intervention strategies that can be crafted into a preservation plan. A preservation plan is a coordinated effort to preserve the long-term affordability, quality, and supply of units available to house low-income families. In order to create an effective preservation plan, advocates must understand what is putting the subsidy at risk, the reasons for the owner exiting the program, and the rules governing the program. Below are some intervention strategies for consideration.

- **Increased Unit Rents:** A 2018 HUD report found that properties most at risk of owner opt-out are properties in higher opportunity and/or gentrifying communities with increasing rents and higher home values, as well as properties where the rent is below the surrounding fair market rent (FMR) and ownership is for-profit. If an owner cites low rents or high operating costs as reasons for exiting the program, HUD has several ways to renew the subsidy contract at higher rents. The Multifamily Assisted Housing Reform and Affordability Act of 1997, which includes the Mark-to-Market (M2M) program, provides the general framework for renewing expiring

subsidy contracts. As discussed above, M2M allows owners to renew their contracts at its expiration and provides additional incentives for remaining in the program. To learn more about the various contract renewal options, see [HUD Section 8 Renewal Guidebook](#).

- **Early Intervention due to Poor Habitability**

**Conditions:** HUD must ensure assisted housing is decent, safe, and sanitary. And while a good portion of HUD’s portfolio is in good condition, the conditions at non-compliant properties have a detrimental impact on assisted families’ health and place the subsidy at risk. [HUD Notice H 2018-08](#) describes the various tools HUD can use to bring a property back into compliance after failing a HUD inspection. Often, tenants and advocates have had to push HUD to take one of these additional actions when a property has had a long period of non-compliance. Along with alerting HUD about the poor conditions, advocates have had success getting local jurisdictions to use their authority to have condition defects fixed.

- **Transferring of the Budget Authority:**

Where the property cannot be preserved, or the owner chooses to end their participation in the program, HUD can transfer the budget authority from that property to assist another property. There are two vehicles HUD can use to do this-- a Section 8(bb) transfer (codified at [42 U.S.C. § 1437f\(bb\)](#)) and a general provision of the annual appropriation act (the “Schumer Amendment,” [section 209 in FY 22](#)). As discussed above, HUD lacks the authority and the funding to expand the size of the project-based Section 8 program. Thus, the ability to transfer the budget authority keeps the budget authority alive and available for continued use. HUD can use section 8(bb) transfers in response to an owner choosing to exit the program or in conjunction with an enforcement action. You can learn more about Section 8(bb) transfers by reviewing [HUD Notice H 2015-03](#).

- **Project-basing Tenant-based Assistance:**

When a property’s affordability cannot be

preserved, Tenant Protection Vouchers (TPV) and Enhanced Vouchers (EV) are provided to eligible assisted families living at the building at the time of the triggering event. Tenants who receive TPVs or EVs can volunteer to participate in the process to “project-base” those vouchers, resulting in a subsidy that mirrors the Project-Based Voucher program. For more information on project-basing TPVs and EVs, see [HUD Notice PIH 2013–27](#) and the *Tenant Protection Vouchers* and *Project-Based Voucher* articles in this *Advocates’ Guide*.

- **Local Preservation Working Groups:** Local preservation working groups are a collective of stakeholders working collaboratively to preserve affordable housing within a jurisdiction. Stakeholders can include tenant organizations, legal aid programs, local housing authorities, state and local government agencies, nonprofits, and other community groups. These local preservation working groups allow stakeholders to proactively plan for changes in the affordable housing stock, share knowledge, and quickly mobilize resources to at-risk properties.

### **Provisions of the “Consolidated Appropriations Act of 2022”**

The “FY22 Consolidated Appropriations Act” has four key provisions affecting project-based programs. These provisions are in the HUD appropriations act’s General Provisions section and are not codified in permanent law. Therefore, they must be renewed each year.

1. **Section 8 Savings:** The savings provided to State housing finance agencies from refunding bonds can be used for social services, professional services essential to carrying out McKinney Act homeless assistance-funded activities, project facilities or mechanical systems, and office systems.
2. **Transfers of Assistance, Debt, and Use Restrictions:** Authorizes the HUD Secretary to transfer some or all project-based assistance, debt held or insured by HUD, and statutorily required to serve low-income and very low-income use from one or more obsolete



multifamily housing project(s) to a viable multifamily housing project.

3. Management and Disposition of Certain Multifamily Housing Projects: Authorizes HUD to provide direction on HUD's management and disposition of certain multifamily housing projects owned by HUD and requires HUD to maintain a project-based Section 8 contract at foreclosure or disposition sale, unless "infeasible" (this is known as "the Schumer Amendment").
4. Physical Conditions Requirements: Describes HUD's oversight obligations within the PBRA program, and permits HUD to mandate corrective action, contract transfers, or change in management due to failure to meet physical condition standards.

## TIPS FOR LOCAL SUCCESS

Subsidized multifamily rental housing can be at risk of leaving the affordable housing stock for any number of reasons, such as an owner's intent to prepay a subsidized mortgage or not renew a project-based rental subsidy contract, or uninhabitable living conditions prompting a HUD foreclosure. Preservation is when action is taken to ensure the federal housing subsidy and affordability restrictions remain in place, preserving long-term housing affordability. Preservation is usually combined with repairs to the property. Often the property is purchased by a new owner who is committed to the long-term affordability of the property and is then renovated and managed along with those values.

Preservation of affordable rental housing is usually undertaken by mission-driven developers, often regional or national nonprofits. The most successful local efforts include early identification of properties at risk of conversion, as well as active partnerships with tenants, local HUD officials, state and local housing officials, and lenders and investors with a shared commitment to preserving affordable rental housing.

Preservation inventories are lists of specific affordable multifamily rental properties in a

jurisdiction that can be used to identify and prevent the loss of at-risk properties. These inventories typically focus on dedicated subsidized properties, including those with project-based rental assistance, although affordable unsubsidized units may be covered as well. Preservation inventories may include information on each property's location, age, number of units (affordable and market rate), physical condition, and the year when rent restrictions expire, among other data points. Through proactive monitoring of this information, local jurisdictions can act in a timely manner to try to preserve at-risk properties as part of the affordable stock, allowing time to assemble financing or an incentive package to facilitate the transfer of the property to a mission-oriented owner or encourage the current owner to maintain affordability. Local Housing Solutions provides [resources and examples](#) for local governments which wish to create a preservation inventory.

NLIHC and the Public and Affordable Housing Research Corporation created the National Housing Preservation Database, a tool for preserving the nation's affordable rental housing. It provides integrated information on all housing subsidies for each federally subsidized project. It also enables advocates and researchers to easily quantify the supply of federally assisted affordable housing in any geographic area, while at the same time establishing a baseline of subsidized affordable units against which future levels can be measured. The database is available at: <http://www.preservationdatabase.org>.

## WHAT TO SAY TO LEGISLATORS

Advocates should urge legislators to provide sufficient funding to renew all project-based rental assistance contracts for a full 12 months. If Congress moves forward with another long-term Continuing Resolution, explain that an anomaly will be needed to fully fund all project-based rental assistance contracts for the entire year, given necessary adjustments to rental contracts.

Members of Congress also should be asked to support preservation features of the RAD



program and improvements to the project-based voucher program to allow housing authorities, developers, and owners to preserve the existing housing stock. In addition, advocates should urge reintroduction of broad legislation to preserve assisted housing that would:

- Provide grants and loans to for-profit and nonprofit housing sponsors to help ensure that properties can be recapitalized and kept affordable.
- Allow owners to request project-based assistance in lieu of enhanced vouchers.
- Protect the rights of states to enact preservation and tenant protection laws that will not be preempted by federal law.
- Ensure that data needed to preserve housing are publicly available and regularly updated and allow for the creation of a single database for all federally assisted properties based on a unique identifier for each property.
- Streamline the process of transferring Project-Based Section 8 contracts under Section 8(bb) (1) of the United States Housing Act of 1937 to ensure no Section 8 budget authority is ever lost.
- Authorize rural housing preservation programs for Rural Development Section 515 properties.

HUD's Multifamily Preservation webpage, [https://www.hud.gov/program\\_offices/housing/mfh/presrv/presmfh](https://www.hud.gov/program_offices/housing/mfh/presrv/presmfh).

HUD's Picture of Subsidized Housing, <https://www.huduser.gov/portal/datasets/assthsg.html>.

## FOR MORE INFORMATION

National Low Income Housing Coalition, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

National Housing Trust, 202-333-8931, [www.nhtinc.org](http://www.nhtinc.org).

National Housing Law Project, 415-546-7000, [www.nhlp.org](http://www.nhlp.org).

National Alliance of HUD Tenants, 617-267-9564, [www.saveourhomes.org](http://www.saveourhomes.org).

HUD's Multifamily webpage, [https://www.hud.gov/program\\_offices/housing/mfh](https://www.hud.gov/program_offices/housing/mfh).

HUD's Section 8 Renewal Policy Guide, [https://www.hud.gov/sites/documents/508FIN\\_CONSOL\\_GUIDE6\\_8\\_17.PDF](https://www.hud.gov/sites/documents/508FIN_CONSOL_GUIDE6_8_17.PDF).

# Section 202: Supportive Housing for the Elderly

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By Linda Couch, Vice President, Housing Policy, LeadingAge

**Administering Agency:** HUD's Office of Housing's Office of Housing Assistance and Grant Administration

**Year Started:** 1959

**Number of Persons/Households Served:** 400,000 households

**Population Targeted:** People over the age of 62 with very low incomes (below 50% of area median income). Some pre-1990 Section 202 properties are eligible for occupancy by non-elderly, very low-income persons with disabilities.

**Funding:** \$1.033 billion in FY22, including:

- Full renewal funding for Section 202 communities' Project Rental Assistance Contracts.
- \$199 million for new Section 202 homes.
- \$125 million for Service Coordinators, including some funding for grant-funded Service Coordinators in several years (the amount to be determined after all Service Coordinator grants are renewed).
- \$10 million for intergenerational housing as authorized by the "Living Equitably—Grandparents Aiding Children and Youth (LEGACY) Act" of 2003.
- \$6 million to increase Project Rental Assistance Contract rents before conversion to the Section 8 platform via HUD's Rental Assistance Demonstration Program.

The Section 202 Supportive Housing for the Elderly Program provides funding to nonprofit organizations that develop and operate housing for older adults with very low incomes. In its FY22 HUD appropriations bill, Congress included \$199 million in the Section 202 account for

the construction and operation of new Section 202 homes. Between FY12 and FY16, Congress did not provide any funding for new Section 202 homes. Funds provided by Congress for the Section 202 account are used primarily to renew underlying rental assistance contracts and existing contracts for on-site service coordinators. In the FY18 HUD funding bill, Congress provided new authority for Section 202 communities with Project Rental Assistance Contracts ("202/PRACs") to participate in HUD's Rental Assistance Demonstration to facilitate the preservation of these homes. HUD issued guidelines for this "RAD for PRAC" authority in September 2019 and Congress provided the first funding (\$6 million) to help ensure the success of these RAD for PRAC conversions in its FY22 HUD funding bill.

## Key Issues:

- **Expansion.** Expanding the supply of Section 202 homes is critical to meet the severe nationwide shortage of affordable senior housing. After no funding for new Section 202 homes for several years, revived congressional funding for new Section 202 homes remains drastically below historic annual funding levels. The waiting lists for Section 202 communities are often two to five or more years long. Nationally, more than 2.24 million very low income older adult renter households have worst case housing needs, spending more than half of their incomes for rent, a 68% increase between 2009 and 2019, according to HUD's [Worst Case Housing Needs: 2021 Report to Congress](#). Meanwhile, homelessness among older adults is rising faster than the nation is aging.
- **Preservation.** Preserving the existing supply of Section 202 homes must remain at the forefront of our efforts. Annual appropriations must ensure full funding to meet ever-rising renewal needs of Section 202 rental

assistance, which is provided by the Project-Rental Assistance Contract (PRAC) and Section 8 Project-Based Rental Assistance (PBRA) Programs. Smart preservation includes full funding realistic operating subsidies for owners to operate the high-quality housing connected to services and supports that all expect from the Section 202 program. Congress' recent improvements to HUD's Rental Assistance Demonstration Program to ensure Section 202 communities with Project Rental Assistance Contracts can successfully convert their operating subsidies without losing resident services or financial soundness should continue.

- **Accessibility.** Housing accessibility barriers are highest for older households, for renter households, for low-income households, and for households of color than for other households. While single-floor living and zero-step entry are common in HUD multifamily housing, retrofitting existing buildings with age-friendly features will ensure aging older adults can continue to live in the community. Between now and 2038, the number of households age 80+ will double.
- **Service Coordinators.** Only approximately 45% of HUD multifamily senior communities have a Service Coordinator. Every affordable senior housing community should have at least one Service Coordinator. Research has found Service Coordinators lower hospital use, increase higher value health care use (e.g., primary care), have success reaching high-risk populations, and result fewer nursing home transfers
- **Internet.** Resources to install building-wide internet in Section 202 communities are needed. The broadband funds in the "Infrastructure Investment and Jobs Act" and resources within the "Inflation Reduction Act"'s Green and Resilient Retrofit Program could help bring internet installation, and service, to Section 202 communities but HUD must continue to intentionally pursue avenues to wire all of its affordable

communities.

- **Green and Resilient Retrofit Program.** HUD's new Green and Resilient Retrofit Program, which will provide \$1 billion for HUD multifamily housing, will greatly benefit Section 202 communities. Section 202 stakeholders hope to emphasize energy and water efficiencies throughout the senior housing portfolio to improve climate outcomes and better leverage HUD funding, and to increase equity in climate resilience while improving the federal approach to disaster preparedness and response.
- **Homelessness.** Homelessness among older adults is on the steep rise. Congress and HUD must improve the data on homelessness among older adults as well as the resources and efforts to prevent and end all homelessness, including addressing the unique needs of older adults experiencing homelessness. Continuums of Care, Area Agencies on Aging, and housing partners like Section 202 providers must work more closely with each other to identify and carry out solutions.
- **Addressing COVID.** Section 202 housing providers continue to assess what a "new normal" of COVID-era affordable senior housing means for residents and funding needs. Resident services, including the critical need for Service Coordinators in every community, for building-wide internet (in common areas and in resident apartments), and for services and programs to address mental health challenges, continue to be of great concern.

## HISTORY AND PURPOSE

The Section 202 program was established under the "Housing Act of 1959." Enacted to allow seniors to age in their community by aiding housing and supportive services, the program has gone through various programmatic iterations during its lifetime. Before 1974, Section 202 funds were 3% loans that may or may not have had either Section 8 Project-Based Rental Assistance or rent supplement assistance for all

or some of the units. Between 1974 and 1990, Section 202 funds were provided as loans and subsidized by project-based Section 8 contracts. Until the creation of the Section 811 program in 1990, the Section 202 program funded housing for both seniors and people with disabilities. In 1991, the Section 202 program was converted to a capital advance grant with a Project Rental Assistance Contract for operational expenses, known as Section 202 PRAC. There are more than 400,000 Section 202 units built since the Housing Act of 1959.

The 202 program allows seniors to age in place and avoid unnecessary, unwanted, and costly institutionalization. Around 75% of Section 202 residents are dually enrolled in Medicare and Medicaid. In one forthcoming study, 88% of residents have two or more chronic or potentially disabling conditions, 60% have five or more, and 21% have 10 or more. With Service Coordinators and other staff connecting residents to voluntary health and wellness supports, Section 202 residents have access to community-based services to live independently and age in community.

According to HUD's *Worst Case Housing Needs: 2021 Report to Congress*, the number of worst case needs among older adults increased by more than 16% between 2017 and 2019. Between 2009 and 2019, worst case housing needs among older adults increased 68%. Meanwhile, across all household types, including older adult households, worst case needs increased between 2009 and 2019 by 9%.

A 2021 report from the Urban Institute, *The Future of Headship and Homeownership*, looks at the rise in older adult renter households with low incomes. Over the next 20 years, almost all future net household growth will be among older adult households. There will be a 16.1 million net increase in households formed between 2020 and 2040, and 13.8 million of these households will be headed by someone older than 65, reflecting the nation's aging population. Of the 13.8 million new older adult households, 40% (5.5 million) will be renter households. Of these, the Urban Institute projects, 1.3 million will be

new Black older adult renter households. This will double the number of the nation's Black older adult renter households, from 1.3 million in 2020 to 2.6 million in 2040.

The need for affordable housing is also demonstrated by the rise in homelessness among older adults. According to HUD's *2017 Annual Homeless Assessment Report (AHAR): Part 2*, the share of people experiencing homelessness who are older adults almost doubled, from 4.1% to 8%, between 2007 and 2017. The Joint Center for Housing Studies of Harvard University's *Housing America's Older Adults 2019* reports that 5 million older adult households aged 65 and over are severely cost burdened, spending more than half of their incomes on housing.

## PROGRAM SUMMARY

The Section 202 Supportive Housing for the Elderly Program provides funds to nonprofit organizations, known as sponsors, to develop and operate senior housing.

Section 202 residents generally must be at least 62 years old and have incomes less than 50% of the area median income (AMI) qualifying them as very low-income. Many pre-1990 Section 202 communities have a percentage of units designed to be accessible to non-elderly persons with mobility impairments or may serve other targeted disabilities. In 2021, the average annual household income of a Section 202 household was \$14,272.

Today, 16% of Section 202 residents are 85+ and, 49% of Section 202 households are non-white, two characteristics that make Section 202 residents at greater risk from COVID-19. Further, HUD said several years ago that 38% of Section 202 residents are frail or near-frail, a figure that has likely only increased as people age in their homes longer.

In the Section 202 program, the capital advance covers expenses related to housing construction and Project Rental Assistance Contract provides the ongoing operating assistance to bridge the gap between what residents can afford to pay for rent (about 30% of their adjusted household



incomes) and what it costs to operate high quality housing. Both the capital and operating funding streams are allocated to nonprofits on a competitive basis, through a HUD Notice of Funding Opportunity (NOFO).

As noted in the program's name, HUD's Section 202 program is "supportive" housing in that it aims to help residents age in community (it is not a kind of "permanent supportive housing," which is its own very specific housing model). Service Coordinators play a key role in this. The Centers for Disease Control included HUD's Section 202 Supportive Housing for the Elderly program in its Pharmacy Partnership for Long Term Care COVID-19 vaccination clinics roll-out in December 2020 and the White House and HUD set up a free online ordering portal for test kits to Section 202 communities in the winter of 2022 - 2023. During the very first COVID vaccine clinic roll-out, along with nursing homes and assisted living, the CDC understood that Section 202 residents must also be included in the Pharmacy Partnership for Long Term Care's first line of COVID-19 vaccination clinics. In doing so, they understood that most HUD Section 202 residents would be in assisted living if they could afford it and, because of the lack of affordable assisted living, some Section 202 residents would be in a nursing home but for the Section 202 program. More than 3,500 Section 202 communities had at least two vaccine clinics in very early 2021 as a result. In short, the Section 202 program meets national and state goals of allowing people to live in the least restrictive setting possible.

### **Capital Funding**

The first component of the Section 202 program provides capital advance funds to nonprofits for the construction, rehabilitation, or acquisition of affordable housing for older adults with very low incomes. These funds are often augmented by the HOME Program, national Housing Trust Fund, FHLB Affordable Housing Program, and/or Low-Income Housing Tax Credit debt and equity to either build additional units or supplement the capital advance as gap financing in so-called mixed-finance transactions.

After several years of no new NOFO, HUD issued a \$51 million NOFA for new Section 202 homes in 2019, which resulted in 18 awards to nonprofits in 2020 for the construction of 575 Section 202/PRAC homes. A NOFA was issued in January 2021 for an additional \$151 million for new Section 202 homes; by January 2022, HUD had awarded \$158 million in this round of funding for new Section 202 homes developed in 34 communities. The third award in recent years, issued in September 2022, will provide up to \$174.6 million for new Section 202 homes to another round of awardees.

Given the current and growing need for affordable senior housing, Congress must greatly expand its commitment to senior housing.

### **Operating Funding**

The second component of a Section 202 provides rental assistance in the form of PRACs to subsidize the operating expenses of these developments. The operating subsidy can also pay for supportive services and for a Service Coordinator. Residents pay rent equal to 30% of their adjusted income, and the operating subsidy (PRAC) makes up the difference between this tenant rental income and operating expenses. Prior to 1990, most Section 202s received their operating subsidy from the Section 8 Project-Based Rental Assistance (PBRA) program. Since 1990, Section 202 operating subsidy is in the form of PRACs. Of the country's 6,957 Section 202 communities, 4,074 receive their operating subsidy from PBRA and 2,993 receive their operating subsidy from PRAC.

In addition to the core components of the Section 202 program, HUD administers complementary programs that have been established by Congress to help meet the needs of seniors aging in place:

1. A Service Coordinators grant program to fund staff in Section 202 buildings to help residents to age in place. According to the Government Accountability Office, about half of Section 202 properties have a Service Coordinator funded as part of their Section 202 annual operating budgets ("budget-based Service Coordinators") or through HUD



grants (“grant-funded Service Coordinators”). Service Coordinators assess residents’ needs, identify and link residents to services, and monitor the delivery of services.

2. An ongoing supportive services demonstration, the “Integrated Wellness in Supportive Housing” demonstration in HUD-assisted multifamily housing. In the IWISH demonstration, in place from 2018 – 2021 and then extended for 2022 - 2023, 40 Section 202 communities can hire a part-time wellness nurse, in addition to an enhanced service coordinator, to help residents age in their own homes and delay or avoid the need for nursing home care.

## FUNDING

In FY22, Congress appropriated \$1.033 billion million for the Section 202 program, providing \$199 million for new construction. This amount also funds the renewal of grant-funded Service Coordinators and provided \$10 million for intergenerational housing program. This intergenerational housing program, authorized in 2003, resulted in awards for two properties in 2008. The Section 202 NOFO issued by HUD in September 2022 includes \$15 million for intergenerational housing.

## FORECAST FOR 2023

Absent significant expansion of affordable housing, housing cost burdens and homelessness among older adults will continue to increase. In addition to affordable homes, many older adults need accessible homes, without which many older adults are “stuck in place” rather than “aging in place.”

In 2023, there should be a greater emphasis on using affordable housing as a platform to offer voluntary health and wellness supports to older adults. Expected pressure to invest in cost-saving programs could see the Section 202 program’s ability to help older adults with very low incomes avoid or delay much more costly nursing home care could result in greater Section 202 investments.

Internet. Connecting historic broadband resources from the “Infrastructure Investment and Jobs Act of 2021” to affordable senior housing communities will also be a key issue for 2023, as will ensuring residents take advantage of the act’s Affordable Connectivity Program.

## New Section 202 Units

Advocates are asking Congress for at least \$600 million in new Section 202 capital advance and operating funds, and urging Congress authorize HUD to provide PBRA or PRAC as the operating subsidy for new Section 202 awards. In addition, in 2023, advocates will seek expanded ongoing budget adjustment opportunities for Section 202/PRAC properties.

## RAD for PRAC

In 2023, advocates will seek expanded support for RAD for PRAC conversions. To help preserve 202/PRACs, Congress expanded HUD’s Rental Assistance Demonstration to include for Section 202 communities with Project Rental Assistance Contracts (dubbed “RAD for PRAC”) in 2018; HUD officially issued implementing guidance in September 2019 and the first RAD for PRAC deal closed in August 2020. There are 125,000 apartment homes within HUD’s 202/PRAC portfolio. Section 202/PRAC owners continue to assess their capital needs and whether RAD for PRAC makes sense for them as a preservation tool. Getting the right rent levels upon conversion, ensuring service coordination is robust, and retaining nonprofit ownership over the long haul are critical components of RAD for PRAC. To help ensure that RAD rents are high enough upon conversion, Congress provided \$6 million in FY22 for PRAC rents prior to conversion. In FY23, HUD says the need will be \$10 million.

## WHAT TO SAY TO LEGISLATORS

Advocates concerned with HUD’s flagship senior housing program, the Section 202 Supportive Housing for the Elderly Program, should encourage their Members of Congress to take the following actions:

## **EXPAND ACCESS TO AFFORDABLE SENIOR HOUSING.**

- Provide \$600 million for new capital advances and operating assistance, including service coordination, for approximately 6,200 new Section 202 Supportive Housing for the Elderly homes nationwide, including in rural areas.
- Allow capital advances for new Section 202 properties to be paired with project-based Section 8 operating subsidy.
- Provide \$50 million for about 5,000 new Older Adult Special Purpose Vouchers, at least 50% of which could be project-based. Preserve and improve HUD-assisted housing.
- Provide full funding for Section 8 Project-Based Rental Assistance (PBRA) and Project Rental Assistance Contract (PRAC) renewals, including funding that reflects increased costs for insurance, staffing, utilities, service coordination, and internet connectivity.
- Expand ongoing budget adjustment options for Section 202/PRAC properties, including by implementing market-driven adjustments option such as Operating Cost Adjustment Factors (OCAFs).

## **ENSURE RAD FOR PRAC SUCCESS.**

- Allow converted RAD for PRACs to access a Rent Comparability Study (RCS) every five years, in addition to annual OCAFs, and adjust initial rent-setting to improve financial viability of the converted property.
- Provide \$10 million for RAD for PRAC conversion subsidy to ensure the successful and long-term preservation of 202/PRAC homes.

## **CONNECT HUD-ASSISTED RESIDENTS TO THE SERVICES AND SUPPORTS THEY NEED TO AGE IN THE COMMUNITY.**

- Provide \$125 million for the renewal of existing service coordinator grants.
- Provide \$100 million for 400 new, three-year service coordinator grants and expand eligibility to 202/PRAC communities.

- Provide a \$31 million increase for new, budget-based service coordinators.
- Further improve the FCC's Affordable Connectivity Program to allow for whole-building eligibility and enrollment for HUD-assisted communities.
- Expand resources to install building-wide internet in HUD-assisted communities.

## **FOR MORE INFORMATION**

Linda Couch, Vice President, Housing Policy, LeadingAge, [lcouch@leadingage.org](mailto:lcouch@leadingage.org), [www.leadingage.org](http://www.leadingage.org).

# Section 811: Supportive Housing for Persons with Disabilities Program

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By Ayana Gonzalez, Senior Consultant, and Lisa Sloane, Director, Technical Assistance Collaborative

**Administering Agency:** HUD's Office of Asset Management and Portfolio Oversight

**Year Started:** 1992 (before this, Section 811 was part of the Section 202 program)

**Numbers of Persons/Households Served:**

The 811 Capital Advance Program serves an estimated 28,000 households over 2,390 properties. Funding to date for the 811 Project Rental Assistance (PRA) program is expected to produce over 9,000 units.

**Population Targeted:** Persons ages 18–61 who are extremely or very low-income and have significant and long-term disabilities.

**Funding:** At this time, the FY23 budget is not finalized. There is a big gap between the amounts proposed by the House and the Senate. In addition, as discussed below, HUD has funds remaining from previous Appropriations for development of new Section 811 units.

**See Also:** For related information, reference the *Olmstead Implementation* section of this *Guide*.

The Section 811 Supportive Housing for Persons with Disabilities is a federal program that assists the lowest-income people with significant and long-term disabilities in living independently in the community by providing affordable housing linked with voluntary services and supports. Congress passed significant reforms to the Section 811 program in 2010 including the creation of the PRA Program. The PRA Program is intended to identify, stimulate, and support innovative state-level partnerships and strategies to substantially increase integrated permanent supportive housing opportunities.

## HISTORY

Historically, the Section 811 program created new supportive housing units primarily through the development of group homes and independent living projects under regulations and guidelines developed in the early 1990s. Since that time, judicial decisions have affirmed important community integration mandates in the “Americans with Disabilities Act” (ADA), and national disability housing and services policies have evolved significantly to emphasize consumer choice, Medicaid-financed community-based services, and integrated housing opportunities. For many years, the Section 811 program did not keep pace with these improvements in disability policy. Demand for the program steadily declined, while the cost per unit from Section 811’s capital-intensive model increased. In 2007, with less than 1,000 new units of Section 811 housing produced annually, national disability advocates began a successful three-year legislative campaign to reform and reinvigorate this important program. The “Frank Melville Supportive Housing Investment Act of 2010,” the Section 811 reform legislation signed into law by President Barack Obama in early 2011, honors the memory of Frank Melville, who was the first chair of the Melville Charitable Trust and a national leader in the supportive housing movement.

## PROGRAM SUMMARY

The Section 811 program includes several components, two of which currently receive HUD funding: Capital Advance/Project Rental Assistance Contract (PRAC), which includes a new multi-family integrated housing option, and the Project Rental Assistance (PRA) Program.

**Section 811 Capital Advance/PRAC:** Only 501(c)(3) nonprofits are eligible to apply for the S. 811 Capital Advance/PRAC program. HUD provides funding for capital costs as well as PRAC to cover

annual operating costs. HUD estimates there are currently 31,600 S. 811 Capital Advance/PRAC units. In November 2019, HUD issued a NOFA for the Section 811 Capital Advance/PRAC projects with funds from HUD FY18 and FY19 Appropriations. This was the first Capital Advance/PRAC NOFA since 2010. On November 30, 2020, HUD announced \$54.7 million in awards to 15 nonprofit organizations. Highlights of this NOFA include:

- **Leveraging:** Applicants were highly encouraged to leverage other sources of funds to support the development of the Section 811 units.
- **Partnership:** Heightened focus on sustained partnerships between the applicant and key stakeholders that provide a foundation for implementing housing-related services and supports.
- **Site Control:** All proposals must provide evidence of site control.
- **Types of housing:** Eligible housing types are limited to integrated housing (units within a multifamily property), group homes, and condominiums. The number of units set aside for persons with disabilities within a condominium or multifamily property including supportive housing for persons with disabilities or to which any occupancy preference for persons with disabilities applies may not exceed 25% of the total number of dwelling units.
- **Delegated processing.** Delegated processing will be made available for multifamily projects that consist of a combination of capital advance and other sources. This option is not available for any project that is a group home.

#### **Section 811 Project Rental Assistance (PRA):**

Only state housing agencies are eligible to apply for the PRA program. The PRA program provides funds for project-based rental assistance where the capital is provided through other local, state or federal programs; PRA funds cannot be used for capital.

Since May 2012, HUD has published three Section 811 PRA NOFAs. These NOFAs resulted in Cooperative Agreements for \$364 million with 30 states. Approximately 9,500 units are expected to be produced through these programs. States have demonstrated a high degree of interest in the PRA Program; 43 of the states plus the District of Columbia submitted applications in response to the NOFAs.

In addition to new integrated, affordable housing, projected outcomes of the most recent NOFA include:

- Facilitating and sustaining effective and successful partnerships between state housing and state health and human service/Medicaid agencies to provide permanent housing with the availability of supportive services for extremely low-income persons with disabilities;
- Discovering replicable approaches to providing housing with access to appropriate services for persons with disabilities;
- Identifying innovative ways of using and leveraging Section 811 PRA funds;
- Substantially increasing integrated affordable rental housing units for persons with disabilities within existing, new, or rehabilitated multifamily properties with a mix of incomes and disability status; and
- Creating more efficient and effective uses of housing and health care resources.

Additional information about the program is available at <https://www.hudexchange.info/programs/811-pra/>.

## **FUNDING**

In November 2019, HUD published NOFAs for both the PRA Program and the Capital Advance Program. In 2020, awards were made under both programs.

## **FORECAST FOR 2023**

From fiscal years 2018–2021, the Committee provided a total of \$206,755,000 for capital advances and project rental assistance contracts.

The “FY22 Appropriations Act” provided an additional \$160,000,000 for new capital advances and project rental assistance contracts to increase the availability of affordable housing for persons with disabilities. This funding will provide for approximately 1,800 new affordable housing units for persons with disabilities. Thus far, the Department has issued Notices of Funding Availability (NOFA) or Notices of Funding Opportunity (NOFO) for only \$112,000,000. The House language directs the Department to expeditiously make all remaining funding provided in fiscal years 2018, 2019, 2020, and 2021 available within 60 days of enactment of this act and to award that funding within 180 days of enactment of this act.

In the “FY22 Appropriations Act,” Congress expanded the Rental Assistance Demonstration (RAD) program (see RAD program elsewhere in this *Guide*) in order to support preservation of existing Section 811 PRAC projects. In fall 2022, HUD requested comments on a Notice implementing this expansion of RAD but a final Notice had not been issued as of yet.

## TIPS FOR LOCAL SUCCESS

Advocates in states that have not yet received Section 811 PRA funds should work with state officials to support the implementation of this innovative model. Advocates in states that did not apply for or receive funds through the recent NOFAs should educate state leaders, local agencies, and organizations on the new PRA option to encourage a successful application for funds in future rounds. At the state level, activities should focus on state housing agencies, state Medicaid, and state health and human service agencies. Nonprofit and for-profit developers that frequently use federal LIHTC and HOME funds should also be made aware of this new opportunity to provide affordable and supportive housing for people with disabilities. The program website is available at <https://www.hudexchange.info/programs/811-pra/success-stories/> and provides videos and stories from tenants in Louisiana, Maryland, Washington State, and Massachusetts that can be used to

educate stakeholders, including developers and property managers, about the program.

## WHAT TO SAY TO LEGISLATORS

Advocates are encouraged to contact their Members of Congress with the message that people with disabilities continue to be the poorest people in the nation. The Technical Assistance Collaborative (TAC)’s publication *Priced Out* describes how over 4 million non-elderly adults with significant and long-term disabilities have Supplemental Security Income levels equal to only 20% of AMI and cannot afford housing in the community without federal housing assistance. Because of this housing crisis, many of the most vulnerable people with disabilities live unnecessarily in costly nursing homes, in seriously substandard facilities that may violate the ADA, or are homeless. The Section 811 PRA Program can help the government reach its goals of ending homelessness and minimizing the number of persons living in costly institutions.

Affordable housing advocates are encouraged to support this request. These funds will provide states with the flexibility to create new and more cost-effective permanent supportive housing options to help highly vulnerable people with disabilities live successfully in the community with supports, while also reducing reliance on expensive and unnecessarily restrictive settings.

## FOR MORE INFORMATION

Technical Assistance Collaborative, 617-266-5657, [www.tacinc.org](http://www.tacinc.org).



# USDA Rural Rental Housing Programs

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By Leslie R. Strauss, Senior Policy Analyst, Housing Assistance Council

**Administering Agency:** U.S. Department of Agriculture (USDA)

**Year Started:** Section 515 – 1963; Section 514 – 1962; Section 516 – 1966; Section 521 – 1978; Multifamily Housing Preservation and Revitalization (MPR) – 2006; Section 542 – 2006; Section 538 – 1996

**Number of Households Served:** Section 515 – currently 382,000; Section 514/516 – currently 17,000; Section 521 – currently 291,000; Section 542 – currently 7,260; Section 538 – 45,000

**Population Targeted:** Section 515 – very low-, low-, and moderate-income households; Section 514/516 – farm workers; Section 538 – households with incomes below 115% of area median

**Funding For FY23:** Section 515 – \$70 million (up from \$50 million in FY22); Section 514 – \$20 million (significant cut from \$28 million in FY22); Section 516 – \$10 million, the same as FY22; Section 521 – \$1.488 billion (up from \$1.45 billion in FY22); MPR – \$36 million (up from \$34 million in FY22); Section 542 – \$48 million (up from \$45 million in FY22); Section 538 – \$400 million (a major increase from \$250 million FY22)

The U.S. Department of Agriculture's (USDA's) Rural Development (RD) arm runs several rental housing programs (and homeownership programs) through its Rural Housing Service. USDA makes loans to developers of rental housing for elderly persons and families through the Section 515 program and for farm workers through the Section 514 program (usually used in combination with Section 516 grants). USDA RD provides project-based rental assistance to some of the properties it finances through the Section 521 Rental Assistance (RA) program. The Section 538 program guarantees loans made by banks to develop rental housing for tenants with incomes

up to 115% of area median income; almost all Section 538 properties also use Low-Income Housing Tax Credit financing. USDA RD also offers several tools to preserve the affordability of USDA-financed rentals.

The programs face serious problems, however. Production of new units for the lowest income tenants has greatly decreased, and many existing units are deteriorating physically or are in danger of leaving the affordable housing stock.

## HISTORY AND PURPOSE

In operation since the 1960s, the Section 515 Rural Rental Housing and the Section 514/516 Farm Labor Housing Programs have provided essential, accessible, and decent housing for the lowest income rural residents. Section 521 Rental Assistance is available for some units in Section 515 and 514/516 housing, to keep rents at or under 30% of tenant incomes.

Although dramatic improvements have been made in rural housing quality over the last few decades, problems persist. Many of rural America's 65 million residents experience acute housing problems that are often overlooked while public attention is focused on big-city housing issues. Farm workers, especially those who move from place to place to find work, suffer some of the worst, yet least visible, housing conditions in the country.

Nearly 30% of rural households experience at least one major housing problem, such as high cost, physical deficiencies, or overcrowding. These problems are found throughout rural America but are particularly pervasive among several geographic areas and populations, such as the Lower Mississippi Delta, the southern Black Belt, the colonias along the U.S.-Mexico border, Central Appalachia, and among Native Americans and farm workers.

Forty-seven percent of rural renters are cost burdened, paying more than 30% of their income for their housing and nearly half of them pay

more than 50% of their income for housing. More than half of the rural households living with multiple problems, such as affordability, physical inadequacies, or overcrowding, are renters.

## PROGRAM SUMMARY

Under the Section 515 program, USDA RD makes direct loans to developers to finance affordable multifamily rental housing for very low-income, low-income, and moderate-income families, for elderly people, and for persons with disabilities. Section 515 loans have an interest rate of 1%, amortized over 50 years, to finance modest rental or cooperatively owned housing.

The Section 514 farm worker housing program also makes direct loans; they have a 1% interest rate for 33-year terms. Some Section 514 borrowers, such as nonprofits, are also eligible for Section 516 grants.

Sections 515 and 514/516 funds and Section 538 loan guarantees can be used for new construction as well as for the rehabilitation of existing properties. Funds may also be used to buy and improve land, and to provide necessary facilities such as water and waste disposal systems. However, no new rental properties have been developed under Section 515 since 2011; every year since, the program's entire appropriation has been used to preserve existing units.

Very low-, low-, and moderate-income households are eligible to live in Section 515-financed housing. Section 514/516 tenants must receive a substantial portion of their incomes from farm labor. Section 515 resident incomes average about \$14,148 per year. The vast majority (92%) of Section 515 tenants have incomes less than 50% of area median income. More than half of the Section 515 assisted households are headed by elderly people or people with disabilities. Section 538 units are available for tenants with incomes up to 115% of area median. USDA does not compile data on the incomes of Section 538 residents.

Section 514/516 loans and grants are made available on a competitive basis each year, using a national Notice of Funding Availability (NOFA).

After FY11 USDA has not issued NOFAs for Section 515 loans; instead, it has used all of its Section 515 funds for preservation purposes. Applications for Section 538 guarantees are accepted year-round.

### Preservation

To avoid losing affordable housing, preservation of existing affordable units is essential. Three factors pose challenges for preserving units in developments with owners who are still making payments on Section 515 or 514 mortgages.

First, many Section 515 and 514 mortgages are nearing the end of their terms and the pace of mortgage maturities will increase starting in 2028. Since USDA Section 521 Rental Assistance (RA) is available only while USDA financing is in place, when a USDA mortgage is fully paid off the property also loses its RA. The USDA can offer Section 542 vouchers for tenants when a mortgage is prepaid, but not when a mortgage matures. Advocates are exploring ways to protect tenants when USDA mortgages mature. Possibilities include offering new or amortized USDA mortgages so that RA can continue; providing vouchers; or “decoupling” RA from USDA mortgages so RA can continue even when a mortgage has been paid in full.

Second, many Section 515 properties are aging and must be preserved against physical deterioration. In 2016, USDA released a Comprehensive Property Assessment (CPA) reviewing Section 515 rental properties, off-farm Section 514/516 farmworker housing properties, properties with loans guaranteed under the Section 538 program, and properties that have used the MPR preservation program. The study concluded that over the course of the next 20 years, \$5.6 billion will be needed in addition to existing capital reserves simply to cover capital costs.

Third, every year some property owners request permission to prepay their mortgages by paying them off before their terms end and thus remove government affordability requirements. Owners seek to prepay for varying reasons, including: the expiration of tax benefits; the burden of increased

servicing requirements; the desire of some small project owners to retire; and, in some rural areas, an increase in vacancies due to out-migration. As is the case for owners of HUD multifamily projects, Section 515 owners' ability to prepay is restricted by federal law. The details vary depending on when a loan was approved but, in all cases, USDA is either permitted or required to offer owners incentives not to prepay and in exchange the property continues to be restricted to low-income occupancy for 20 years. Incentives offered to owners include equity loans, increases in the rate of return on investment, reduced interest rates, and additional Section 521 Rental Assistance. In some cases, an owner who rejects the offered incentives must offer the project for sale to a nonprofit or public agency. If an owner does prepay, tenants become eligible for Section 542 vouchers.

Most of USDA RD's preservation efforts use its Multifamily Housing Preservation and Revitalization (MPR) demonstration program. MPR offers several possible types of assistance to owners or purchasers of Section 515 and Section 514/516 properties. The most common assistance is debt deferral, although other possibilities include grants, loans, and soft-second loans.

Other preservation tools include Section 542 tenant vouchers, which can be provided to tenants who face higher rents when their buildings leave the Section 515 program because of mortgage prepayments. For several years, ending in FY11, Congress also funded a Preservation Revolving Loan Fund program, which used intermediaries to make loans to owners or purchasers who sought to preserve rural rental properties.

## FUNDING

The Section 515 program, which received about \$115 million in annual appropriations in the early 2000s and has been cut repeatedly, was funded at \$40 million in both FY20 and FY21, then at \$50 million in FY22. The president's budget would significantly increase program funding to \$200 million. The House appropriations bill would

raise it to \$150 million and the Senate would raise it to \$100 million. Ultimately, Congress appropriated \$70 million for FY23.

Section 514 received \$28 million in both FY21 and FY22, and Section 516 was funded at \$10 million in each of those years. For FY23, the president's budget and the House and Senate appropriations bills all propose enlarging both programs, though the amounts vary. Ultimately, Congress cut funding for Section 514, reducing its FY23 appropriation to \$20 million. The Section 516 FY23 appropriation remained at \$10 million.

The MPR preservation program received \$28 million in FY21 and \$34 million in FY22. Recognizing that demand far exceeds the available funds, the president's budget requested \$75 million for FY23. The House bill would provide \$40 million and the Senate \$45 million. Congress appropriated \$36 million for FY23.

The Preservation Revolving Loan Fund has not been funded since FY11.

The Section 521 RA program was funded at \$1.410 billion in FY21 and \$1.450 billion in FY22. The Administration, House, and Senate all propose to increase it in FY23 by varying amounts. Congress ultimately appropriated \$1.488 billion for FY23.

The cost of the Section 542 voucher program has generally risen every year as increasing numbers of tenants are eligible for vouchers. Several times the program has used slightly more than its appropriation, with the additional dollars being drawn from the already inadequate MPR funding pool. The program's appropriation was \$40 million in FY21 and \$45 million in FY22. For FY23, the Administration and House would reduce it to \$38 million, while the Senate would increase it to \$50 million. The final FY23 Section 542 appropriation is \$48 million.

Changes to reduce RA costs and to improve USDA's rental housing preservation process can be made by USDA without legislative changes by Congress. Making vouchers available for tenants in properties with expiring mortgages, or decoupling RA from USDA mortgages, requires

congressional action. Over the next five years and beyond, RA costs may fall as USDA mortgages expire, but there will be corresponding increases in costs for alternatives such as USDA vouchers, HUD vouchers, or assistance to people who become homeless.

For Section 538, Congress' final FY23 appropriation substantially increases Section 538 rental housing loan guarantees from \$230 million in FY22 to \$400 million. Section 538 rental housing loan guarantees are used for preservation as well as new construction. This program has been fully utilized in the past two years – an indication of strong demand.

## FORECAST FOR 2023

In 2021, the “American Rescue Plan Act” provided an additional \$100 million for Section 521 Rental Assistance, which enabled USDA to aid 27,000 tenants who were previously paying over 30% – in some cases, far more – for their homes. Those contracts will need to be renewed in FY24, so the program's funding will need to increase. That will be an important focus for rural housing interests in Congress during FY23.

## TIPS FOR LOCAL SUCCESS

Activity related to USDA's Section 515 program now focuses on the preservation of existing units. Preservation means either renovating a property or keeping it affordable for low-income tenants, or both. Local rural housing organizations can help with preservation in both senses by helping owners who want to leave the program (including those whose mortgages are expiring) find ways to do so without changing the nature of their properties. Often, this means purchasing the property and refinancing to obtain sufficient proceeds to update and rehabilitate it. As more Section 515 mortgages mature every year, nonprofit purchases of these properties are increasingly recognized as the best way to save them.

## WHAT TO SAY TO LEGISLATORS

Advocates should speak with their Members of Congress and urge them to:

- Support reintroduction and passage in the 118<sup>th</sup> Congress of the “Strategy and Investment in Rural Housing Preservation Act”. The bill, numbered H.R. 3620, passed the House on September 10, 2019 and was reintroduced as H.R. 1728 on March 10, 2021. In the Senate, it was introduced as S. 4872 on September 15, 2022.
- Maintain funding for all USDA rural housing programs (do not reduce funding for other programs, especially MPR, in order to shift funds to Section 542 vouchers).
- Continue to provide enough funding to renew all Section 521 RA contracts and all Section 542 vouchers.
- Work with USDA RD to find positive ways to reduce Section 521 costs through energy efficiency measures, refinancing USDA mortgages, and reducing administrative costs.
- Expand eligibility for USDA Section 542 vouchers so tenants can use them when USDA mortgages expire, and Section 521 RA becomes unavailable.
- Reject any proposals to move the rural housing programs from USDA to HUD.

## FOR MORE INFORMATION

Housing Assistance Council, 202-842-8600, [www.ruralhome.org](http://www.ruralhome.org).

National Housing Law Project, 510-251-9400, <https://www.nhlp.org/resources/saving-rural-rental-homes/>.

U.S. Department of Agriculture Rural Development, <https://www.rd.usda.gov/programs-services/multi-family-housing-programs>.



# Housing Opportunities for Persons with AIDS (HOPWA)

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By Russell L. Bennett and Bianca Hannon, Collaborative Solutions, Inc.

**Administering Agency:** Office of HIV/AIDS Housing (OHH) in HUD's Office of Community Planning and Development (CPD)

**Year Started:** 1990

**Number of Persons/Households Served:** Over 100,000 households receive HOPWA housing assistance and/or supportive services annually

**Population Targeted:** Low-income people with HIV/AIDS and their families

**Funding:** \$450 Million FY22; \$455 Million FY23 (Requested)

The Housing Opportunities for Persons with AIDS (HOPWA) Program provides funding to eligible jurisdictions to address the housing needs of persons living with HIV/AIDS and their families.

## HISTORY AND PURPOSE

HOPWA was created by the "AIDS Housing Opportunities Act," a part of the "Cranston-Gonzales National Affordable Housing Act" of 1990, to provide housing assistance and related supportive services for low-income people living with HIV/AIDS and their families.

There is a perception in America that the HIV/AIDS epidemic is under control, but HIV/AIDS remains an active crisis. According to the Centers for Disease Control and Prevention (CDC), there are around 35,000 new HIV infections each year. At the same time, there are more than 1.2 million people living with HIV/AIDS in the United States, and 13 percent are unaware of their HIV status ([Centers for Disease Control and Prevention \(CDC\), 2022](#)). It is estimated between 400,000 – 500,000 individuals living with HIV/AIDS experience housing instability.

For people living with HIV/AIDS, housing is healthcare. For low-income people struggling

to manage their HIV/AIDS care, housing is an essential cornerstone of health and stability. The CDC reports stable housing supports improved access to care and treatment. Further, stable housing promotes HIV prevention ([U.S. Center for Disease Control and Prevention, 2022](#)). The CDC reports through the Medical Monitoring Project, 4 in 10 households with HIV live at or below the poverty level and 1 in 10 households experienced homelessness ([Centers for Disease Control and Prevention \(CDC\), 2020](#)). As many as half of all people living with HIV/AIDS are estimated to need housing assistance at some point during their illness. Stable housing, like the housing provided by HOPWA, leads to better health outcomes, including viral suppression, for those living with HIV/AIDS. An individual who is virally suppressed cannot transmit the HIV virus to another person, thereby ensuring the health of their entire community. For many low-income individuals and families, short-term assistance with rent, mortgage, or utility costs will provide the support necessary to remain in stable housing and thus support health improvement, while other households may need more intensive housing supportive services to support health improvement.

The HOPWA Program is designed to provide housing assistance and related supportive services for low-income people living with HIV/AIDS and their families. The program also facilitates community efforts to develop comprehensive strategies to address HIV/AIDS housing needs and assists communities with creating housing strategies to prevent individuals from becoming homeless or unstably housed.

## PROGRAM SUMMARY

As a supportive housing program, HOPWA helps ensure that people living with HIV/AIDS can access and maintain adherence to necessary medical care and other services by assisting them



with obtaining and maintaining stable housing and related support services.

Eligibility for HOPWA assistance is limited to low-income individuals with HIV/AIDS and their families. As reported in the 2019-2020 National HOPWA Performance Profile (HUD, 2020) most individuals receiving HOPWA housing assistance (77%) are extremely low-income, earning 30% of the area median income (AMI) or less. Of the 4,676 homeless individuals newly receiving HOPWA during FY20, 10% were veterans and 41% were chronically homeless. Ninety-three percent of HOPWA households have a housing plan, and 93% have had contact with a primary care provider during the past year. Of the households served by HOPWA supportive housing programs, 98% maintained housing stability during the year.

HOPWA consists of two grant-making programs a formula and competitive grant program. Under the formula program, 90 percent of HOPWA funds are distributed to states and localities to serve the metropolitan area in which they are located. The formula for this distribution is based on population size and the number of people living with HIV/AIDS in the metropolitan area as confirmed by the CDC, as well as poverty rates and housing costs.

During the 2022 program year, HOPWA formula grants totaling \$405 million were awarded to grantees within 143 eligible areas (HUD, Community Planning and Development Formula Program Allocations for FY 2022, 2022). These grantees represent 40 states, Washington D.C., and Puerto Rico. These formula funds can be used for a wide range of housing, social services, program planning, and development costs including but not limited to the acquisition, rehabilitation, or new construction of housing units, costs for facility operations, rental assistance, and short-term payments to prevent homelessness.

The other 10% of HOPWA funds are eligible for distribution through a competitive process to states and localities that do not qualify for a formula allocation or to states, localities, or

nonprofit organizations that propose projects of national significance. During FY22, HUD renewed almost \$9 million for 8 local programs in 6 states to fund permanent housing strategies (HUD Awards Nearly \$9 Million to Local HIV/AIDS Housing Programs, 2022). Over recent years, HUD has also released one time funding through the Special Projects of National Significance Program. As an example, HUD funded the Fight AIDS Initiative awarding \$41 million to 20 local governments and non-profit organizations.

## FUNDING

HOPWA remains sorely underfunded relative to the immense need for safe housing for persons with HIV/AIDS. The National HIV & AIDS Housing Coalition (NAHC) estimates that at current funding levels, the HOPWA Program can only meet a fraction of the housing needs of persons living with HIV/AIDS. Since 2016, through the advocacy efforts of NLIHC, NAHC, and other advocates, HOPWA Program appropriation has been increased to aid communities in addressing unmet housing need. Since FY17, HOPWA has seen consistent funding increases with \$356 million in FY17 to \$450 million in FY22.

The White House's FY23 budget request includes a \$5 million increase to the program (\$455 million), which is estimated to support 45 thousand low-income households living with HIV (HUD, 2020). Advocates have noted, if funded at this level, HOPWA Programs would serve nearly 10,000 fewer families. To ensure families are adequately served and unmet need is addressed, the NAHC is requesting a \$600 million appropriation for the program. If approved by Congress, the increase would help to address unmet housing needs of nearly half a million individuals and families living with HIV/AIDS.

## FORECAST FOR 2023 AND BEYOND

Without sustained increases in HOPWA funding, many jurisdictions will lose funding and potentially housing units as they address rising housing costs and on-going unmet housing needs. Without regular increases, the potential

for housing displacement or even homelessness among persons living with HIV/AIDS is real. Even with the success of advocates to ensure increases to the program over the last few years, each year poses new and significant challenges. National advocates, including the NAHC, continue to advocate for increased funding for the HOPWA Program to ensure that new dollars are available to preserve existing housing units and to expand housing efforts to improve access to care and improvements in health outcomes among persons living with HIV/AIDS.

Upcoming fiscal years are critically important to stabilizing local housing programs, and HIV housing providers should join advocacy efforts to continue to ensure the availability of housing resources and continued increases in HOPWA funding. Additionally, local advocates and providers should work with their local jurisdictions to plan comprehensive housing strategies and maximize the use of the HOPWA resources to end the epidemic. Decreases in program funding can result in shifts to the local allocations determined by the formula, thus on-going advocacy is critically important to ensuring housing continuums remain stable and connected to necessary health and support services to support households in achieving optimal health. Housing is a critical intervention to end the HIV epidemic, and the HOPWA Program continues to be the foundation for a system of care that links healthcare and an array of other affordable housing and services.

## FOR MORE INFORMATION

National HIV & AIDS Housing Technical Assistance and Capacity Building, Collaborative Solutions 205-939-0411, [www.collaborative-solutions.net](http://www.collaborative-solutions.net).

National HIV & AIDS Housing Advocacy, National AIDS Housing Coalition (NAHC), 202-377-0333, [www.nationalaidshousing.org](http://www.nationalaidshousing.org).

Information: Housing Opportunities for Persons with AIDS (HOPWA), HUD Exchange, <https://www.hudexchange.info/programs/hopwa/>.

# McKinney-Vento Homeless Assistance Programs

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By Steve Berg, Vice President for Programs and Policy, National Alliance to End Homelessness

**Administering Agency:** HUD's Office of Special Needs Assistance Programs within the Office of Community Planning and Development (CPD).

**Year Started:** 1987

**Number of Persons/Households Served:** Total year-round capacity to provide beds for approximately 400,000 people experiencing homelessness, plus over 500,000 formerly homeless people now in permanent housing.

**Population Targeted:** People experiencing or at risk of homelessness.

**Funding:** Approximately \$3.0 billion in FY22

**See Also:** For additional information, refer to the *Continuum of Care Planning* and *Federal Surplus Property to Address Homelessness* sections of this *Guide*.

The McKinney-Vento homeless assistance programs are a set of federal programs created by the "McKinney-Vento Homeless Assistance Act." This article refers to two programs administered by HUD: Emergency Solutions Grants (ESG) and the Continuum of Care (CoC) Program. In 2009, Congress passed the "Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act," which significantly improves HUD's McKinney-Vento homeless assistance programs.

## HISTORY AND PURPOSE

Congress enacted the "Stewart B. McKinney Homeless Assistance Act in 1987" in response to the homelessness crisis that had emerged in the 1980s. In 2000, the act was renamed as the "McKinney-Vento Homeless Assistance Act." For many years the programs did not undergo any comprehensive overhaul despite improved understanding of homelessness, its causes, and

its solutions. In May 2009, Congress passed the "HEARTH Act," which was intended to consolidate separate homelessness programs at HUD and to make the system of homeless assistance more performance based. Since then, HUD has issued a series of regulations.

## PROGRAM SUMMARY

HUD's McKinney-Vento programs provide outreach, shelter, transitional housing, supportive services, short- and medium-term rent subsidies, and permanent housing for people experiencing homelessness and in some cases for people at risk of homelessness. Funding is distributed by formula to jurisdictions for the ESG Program and competitively for the Continuum of Care (CoC) Program.

### ESG Program

The Emergency Solutions Grant (ESG) Program is a formula grant to states and to larger cities and counties to fund rapid re-housing, homelessness prevention programs, and emergency shelters for people experiencing homelessness. People are eligible for prevention or re-housing assistance if they are homeless or at risk of homelessness. Being at risk of homelessness means an individual or family has a total income below 30% of area median income and are losing their housing, doubled up, living in motels, or living in other precarious housing situations. In recent years, the total amount for ESG is specified by Congress in the appropriations act.

### CoC Program

Prior to the "HEARTH Act," there were three competitive CoC programs, and grants under these legacy programs still exist:

- The Supportive Housing Program, which funded transitional housing, permanent supportive housing, and supportive services.

- The Shelter Plus Care Program, which funded rental assistance in permanent supportive housing for people experiencing homelessness with disabilities.
- The Moderate Rehabilitation/Single Room Occupancy (SRO) Program, which funded operating assistance in SRO buildings.

A unique feature of HUD's CoC program is the application process. Applicants in a community, including local governments, nonprofit providers, advocates, people experiencing homelessness, and other stakeholders organize into a CoC and submit a joint application to HUD for their project requests. The entire application is scored, and specific projects are funded in the order that they are prioritized by the community in the application. The "HEARTH Act" combines the three legacy programs into a single CoC program that includes the same eligible activities as the previous programs.

The entity that submits the application for funding is known as a Collaborative Applicant.

Changes made by the "HEARTH Act" and implementing regulations to the competitive CoC program include the following:

- The selection criteria include performance measures for reducing the duration of homelessness, reducing the number of people who become homeless, and reducing the number of people who re-experience homelessness after they exit the program.
- Incentives include creating new rapid re-housing projects for families and individuals experiencing homelessness and new permanent supportive housing for those experiencing chronic homelessness.
- The match is simplified to 25% for all activities. Leasing projects will continue to have no match requirement.
- A new rural program is created that would provide rural areas with more flexibility and increase funding to rural areas (this program has not yet been funded by appropriations).

- More funding is available for administrative costs. For CoC projects, up to 10% is allowed and 3% is allowed for the Collaborative Applicant.

In addition to HUD's homeless assistance grants, several other programs are authorized by the "McKinney-Vento Act":

- The Education for Homeless Children and Youth (EHCY) Program, administered by the U.S. Department of Education, provides grants to schools to aid in the identification of children experiencing homelessness and provide services to help them succeed in school. EHCY also requires schools to make accommodations to improve the stability of homeless children's education.
- Title V Surplus Properties, which requires that federal surplus property be offered to nonprofit organizations for the purpose of assisting people experiencing homelessness.
- The Interagency Council on Homelessness, an independent agency within the federal executive branch, coordinates the federal response to homelessness and is charged with creating a federal plan to end homelessness.

## FUNDING

The McKinney-Vento homeless assistance programs received \$1.901 billion for both FY11 and FY12, \$1.933 billion (after sequestration) for FY13, \$2.105 billion for FY14, \$2.135 billion for FY15, \$2.25 billion for FY 16, \$2.383 billion for FY17, \$2.513 billion for FY18, \$2.636 billion for FY19, \$2.777 billion for FY 20, \$3.0 billion for FY21, and \$3.213 billion for FY22. As of this writing there is no final bill for FY23 funding, but the president and both House and Senate have proposed substantial increases.

## FORECAST FOR 2023

Since 2007, HUD's homeless assistance programs have helped communities reduce homelessness. However, given skyrocketing rents across the country and a recent rise in unsheltered homelessness in some communities, strong funding for the HUD homelessness programs is

necessary to avoid increases in homelessness and to get more people off the streets and into permanent housing.

HUD's implementation of the "HEARTH Act" will continue to increasingly reward communities that do the best job of using their funding efficiently to re-house as many people experiencing homelessness as possible and to effectively support them in avoiding a return to homelessness. This will in turn help build even further support in Congress.

The COVID-19 pandemic, along with rising rents in much of the country, has made homelessness worse. The Alliance has recommended that Congress increase appropriations for Homeless Assistance, as well as for other housing and health care programs, to help communities address this.

## TIPS FOR LOCAL SUCCESS

The best way to maximize the impact of McKinney-Vento funding in a community is to participate in the local CoC process and to work to use resources for the most effective programs.

## WHAT TO SAY TO LEGISLATORS

Advocates should ask their Members of Congress to support increases in HUD's homeless assistance programs to allow more progress toward reducing the number of people experiencing homelessness. Specifically, advocates should communicate the following points:

- HUD's McKinney-Vento Homeless Assistance Grants are successful and have helped drive reductions in homelessness across the country. These grants support critical housing and service supports to thousands of the most vulnerable, hard-working Americans. Without these grants and the support of Congress to date, much of our country's progress on homelessness would not have been possible.
- Continued federal funding is critical to community efforts to end homelessness, and the FY22 funding amount is simply not enough to keep up with the rising need

around the country driven by increasing rents and the COVID-19 pandemic.

- Congress should help their communities' efforts to end homelessness by supporting an increase in funding to reach \$3.6 billion in funding for HUD's McKinney-Vento programs in the FY23 appropriations.

## FOR MORE INFORMATION

National Alliance to End Homelessness, 202-638-1526, [www.endhomelessness.org](http://www.endhomelessness.org).

Corporation for Supportive Housing, 212-986-2966, [www.csh.org](http://www.csh.org).



# Homeless Assistance: Federal Surplus Property to Address Homelessness

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By Tristia Bauman, Senior Attorney,  
National Homelessness Law Center

**Administering Agencies:** HUD, Health and Human Services (HHS), General Services Administration (GSA)

**Year Program Started:** 1987

**Number of Persons/Households Served:** More than 2 million each year

**Populations Targeted:** Unhoused people

**Funding:** The Title V program does not receive an appropriation.

**See Also:** For further information, reference [Public Property/Public Need: A toolkit for using vacant federal property to end homelessness](#).

Title V of the “McKinney-Vento Homeless Assistance Act of 1987” (Title V) makes HUD responsible for leading a cross-agency effort to identify unneeded federal properties suitable for use by non-profit agencies and local governments to house and serve homeless people. Once suitable and available properties are identified, homeless service providers have a right of first refusal to acquire the federal property through an application process administered by HHS. Approved applicants can obtain title to the property - or long-term lease of the property at the applicant’s option – **for free**.

Title V has enabled service providers and local government agencies to acquire highly valuable real property to provide housing, emergency shelter, food, job training, medical care, and other critical services to over 2 million homeless people each year. Moreover, Title V saves taxpayer dollars by reducing operations and maintenance costs associated with unused and unneeded federal properties.

To date, over 500 buildings in at least 30 states and the District of Columbia have been transferred to nonprofit organizations and

local governments under Title V. Despite this impressive number, Title V is a significantly underutilized program.

## HISTORY AND PURPOSE

The “McKinney-Vento Act” was first passed in 1987. Title V was included in the law in recognition of the fact that homeless service providers working to end homelessness often cannot afford real property to provide needed homeless programming. Meanwhile, the federal government has property that it no longer needs. Title V originally included properties on newly closed military bases, but the law was amended in 1994 to provide a separate process for ensuring that a portion of closed bases are used to provide affordable housing and prevent homelessness. In 2016, Title V was amended by the “Federal Assets Sale and Transfer Act of 2016” (H.R. 4465), which made several improvements to the law, including making explicit that the provision of permanent housing is an eligible use for properties transferred under the Title V program.

## PROGRAM SUMMARY

### Screening

Landholding agencies report the status of their real estate holdings to HUD on a quarterly basis. HUD screens unutilized, underutilized, excess, and surplus properties to determine whether they are suitable for homeless services organizations. All such suitable properties are published online at <https://www.hudexchange.info/programs/title-v/suitability-listing> on a weekly basis. Properties that are listed as suitable and available may be conveyed via deed or lease at no charge to nonprofit groups, state agencies, and local governments following successful application to the U.S. Department of Health and Human Services (HHS).

## Expression of Interest

When a homeless service provider identifies a property of interest, it has 30 days to submit a written expression of interest to HHS. This is simply a brief letter identifying the group, the property of interest, and a brief description of the proposed use. Once HHS receives this letter, it provides the nonprofit or public agency with a full application.

## Application

Groups have 75 days to complete an initial application. Unlike the short expression of interest letter, the application is detailed and requires information about the services that will be offered, the need for such services, and the ability of the applicant to offer such services. Once HHS receives the completed initial application, the agency has 10 days to make an approval or disapproval determination. If an initial application is approved by HHS, the applicant has an additional 45 days to submit a reasonable plan to finance the conditionally approved program. HHS has 15 days after receipt of the full application to make a final determination.

## FUNDING

The Title V program does not receive an appropriation.

## FORECAST FOR 2023

There is no pending legislation that would affect the Title V program. However, regulatory changes to the program are forthcoming following advocacy by the National Homelessness Law Center to align Title V with affordable housing finance requirements, among other improvements.

## TIPS FOR LOCAL SUCCESS

To successfully apply for Title V property, an applicant must be financially stable and have a firm and workable plan to use the property that is to be acquired. The application timeline is short, so applicants must be prepared to act quickly when a suitable property becomes available.

The National Homelessness Law Center published a toolkit to assist homeless service providers with: 1) finding available properties, 2) submitting expressions of interest, and 3) completing successful applications for property under Title V. The toolkit, *Public Property/Public Need: A Toolkit for Using Vacant Federal Property to End Homelessness*, is available at <https://homelesslaw.org/wp-content/uploads/2018/10/Public-Property-Public-Need-1.pdf>.

## WHAT TO SAY TO LEGISLATORS

Advocates should meet with their Members of Congress with the message that surplus federal property is an available and needed resource to advance the national goal of ending homelessness. Advocates should ask their Members of Congress to urge HHS, HUD, and GSA to install policies that maximize use of surplus property for housing and services, and to eliminate any regulatory or functional barriers to that end. You can also urge HUD to expand outreach efforts to make local governments and nonprofit agencies aware of the program.

## FOR MORE INFORMATION

For information about how to search and successfully apply for surplus federal properties, contact the National Homelessness Law Center, 202-638-2535, [www.homelesslaw.org](http://www.homelesslaw.org).

# Rental Housing Programs for the Lowest-Income Households: Renters' Tax Credit

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By Peggy Bailey, Vice President for Housing and Income Security, Center on Budget and Policy Priorities

**T**he federal government provided about \$80 billion in housing tax benefits in fiscal year 2021, according to the Joint Committee on Taxation (JCT). However, more than three-fourths of that amount went toward tax subsidies for homeowners (these JCT figures do not count substantial added federal tax benefits for homeowners from the deduction of state and local property taxes). Moreover, these subsidies mainly benefit higher-income homeowners, even though low-income renters are much more likely to struggle to afford housing. Policymakers could help rebalance housing tax policy and address pressing needs for affordable housing by establishing a tax credit to help low-income renters afford housing.

Federal rental assistance programs like Housing Choice Vouchers and public housing are highly effective at making rent affordable to the lowest-income families, but only reach about one in four eligible households due to inadequate funding. The renters' credit offers an important opportunity to help more of the nation's most vulnerable families and individuals keep a roof over their heads.

A renters' credit would also complement the existing Low-Income Housing Tax Credit (LIHTC), which effectively supports affordable housing development but rarely reduces rents to levels that extremely low-income families can afford unless they also have a voucher or other rental assistance.

## RENTERS' CREDIT DESIGN OPTIONS

A renters' credit could be designed in several different ways. A credit could be claimed directly by an eligible tenant on his or her tax return or

by the owner of a rental unit in exchange for reducing the tenant's rent. A tenant-claimed credit would be simpler in some respects, but it would also pose significant challenges. For example, a renters' credit would be far more effective if it reduced a family's rent as soon as it occupied a unit, but a tenant-claimed credit would likely require the tenant to pay rent for a certain period and then file a tax return before claiming the credit. By contrast, under an owner-claimed credit the owner could be required to reduce the family's rent immediately and the credit could be delivered by lowering the owner's required quarterly estimated tax payments.

In addition, a renters' credit could be an entitlement for all eligible renters or a capped credit that would be allocated by states (just as states allocate LIHTC to selected developments). An uncapped entitlement renters' credit would have the advantage of reducing housing costs for all or nearly all low-income renters. However, it could be difficult to obtain the tens of billions of dollars needed to fund an entitlement credit with per-household benefits large enough to make housing affordable to even the lowest-income families. On the other hand, if an entitlement credit were kept small because of budget constraints, it would not be sufficient to enable extremely low-income households to afford decent housing and consequently would be much less effective in reducing homelessness, evictions, and other housing-related hardship. A state-administered credit allocated to a limited number of extremely low-income families could provide sufficient help to enable those families to afford housing at a more modest overall cost.

A state-administered capped credit would have other advantages as well. It would give states rental assistance resources that they could coordinate with other state-administered low-

income programs in a way that would be difficult under existing rental assistance programs (which are mainly locally administered). For example, states could use the renters' credit to make LIHTC developments affordable to poor households, help families participating in state Temporary Assistance for Needy Families programs for whom lack of stable housing is a barrier to work, provide supportive housing to families at risk of having their children placed in foster care, and enable Medicaid-eligible elderly people or people with disabilities to live in service-enriched developments rather than nursing homes or other institutions. States would also be well positioned to use renters' credits to help poor families access low-poverty neighborhoods with good schools or help them remain in neighborhoods where higher-income households are moving in and low-income residents are at risk of displacement.

## RENTERS' CREDIT PROPOSALS

The Center on Budget and Policy Priorities (CBPP) has proposed the establishment of a capped state-administered renters' credit. Under the CBPP proposal, states would receive an amount of credits each year set by a federal formula. States would allocate the credits to developments to make housing affordable to extremely low-income families. Families in units assisted by the renters' credit would pay 30% of their income for rent and utilities and the owner would receive a federal tax credit based on the rent reductions it provides. A credit with a cost of \$8 billion a year could enable close to 800,000 extremely low-income families to live in decent, stable, affordable homes once fully phased in.

In 2016, the University of California at Berkeley's Terner Center for Housing Innovation issued a report presenting three renters' tax credit options. One of these would provide a tenant-claimed entitlement credit sufficient to reduce all renters' housing costs by up to 30% of their incomes, at an estimated cost of \$76 billion per year. The second would provide a shallower tenant-claimed entitlement credit at an annual cost of \$41 billion. The third is a "composite

option" that would include a \$5 billion capped, owner-claimed credit for extremely low-income families similar to that proposed by CBPP, and a smaller tenant-claimed credit for other renters costing \$38 billion.

The idea of a federal renters' credit has received growing attention in recent years. The Bipartisan Policy Center, Center for American Progress, Urban Institute, Enterprise Community Partners, Center for Global Policy Solutions, Prosperity Now, Mortgage Bankers Association, and others have highlighted a renters' credit as a promising strategy to address poverty, homelessness, and high rent burdens. Legislation to establish a renters' credit has been introduced in the last five sessions of Congress. For example, in 2021 Senate Banking Committee Chair Sherrod Brown (D-OH) introduced the "Renter's Tax Credit Act" proposing a capped, state-administered renters' credit, and a similar credit was included in the "Decent, Affordable, Safe Housing for All (DASH) Act" introduced by Finance Committee Chair Ron Wyden (D-OR). During 2019 Senators Cory Booker (D-NJ) and Kamala Harris (D-CA) and Representatives Danny Davis (D-IL) and James Clyburn (D-SC) each introduced bills to establish a tenant-claimed credit for all income-eligible renters with high cost burdens.

## STATE RENTERS' CREDITS

Renters' tax credits can be instituted at the state as well as the federal levels. More than 20 states provide tax credits to help renters afford housing. Most of these credits are provided as part of a "circuit breaker" tax credit designed to provide relief from property tax burdens (circuit breakers often include benefits for renters in addition to homeowners, since renters pay for property taxes indirectly through higher rent). State renters' and circuit breaker credits are usually shallow, rarely providing more than a few hundred dollars per year.

Advocates should work at the state level to establish credits to help renters afford housing. In states where credits already exist, advocates should seek to improve them by increasing the amount, making credits refundable (if they

are not already), and providing credits through periodic payments rather than in a single lump sum.

## FOR MORE INFORMATION

Center on Budget and Policy Priorities renters' credit webpage, <http://www.cbpp.org/topics/renters-credit>.

Carol Galante, Carolina Reid, and Nathaniel Decker, *The FAIR Tax Credit: A Proposal for a Federal Assistance in Rental Credit to Support Low-Income Renters*, Turner Center for Housing Innovation, University of California, Berkeley, October 7, 2016, <http://turnercenter.berkeley.edu/fair-tax-credit>.

Aidan Davis, *State Tax Codes as Poverty Fighting Tools: 2019 Update on Four Key Policies in All 50 States*, Institute on Taxation and Economic Policy, September 2019, <https://itep.org/state-tax-codes-as-poverty-fighting-tools/>.





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# **Chapter 5:**

## ADDITIONAL HOUSING PROGRAMS

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# HOME Investment Partnerships Program

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** The Office of Affordable Housing Programs (OAHP) in HUD's Office of Community Planning and Development (CPD)

**Year Started:** 1990

**Population Targeted:** Households with income less than 80% of area median income (AMI); when used to assist renters, 90% of a jurisdiction's HOME-assisted rental units must be occupied by households with income less than 60% AMI.

**Funding:** Congress appropriated \$1.5 billion for FY23. This is the same as FY22, which was a \$150 million increase over FY21 and FY20 funding of \$1.35 billion, an increase from FY19 funding of \$1.25 billion.

The HOME Investment Partnerships (HOME) Program is a federal block grant intended to expand the supply of decent, affordable housing for lower-income people.

## PROGRAM SUMMARY

The HOME Program was authorized in 1990 as part of the "Cranston-Gonzalez National Affordable Housing Act." HOME is a federal block grant to about 640 participating jurisdictions (PJs), which are states and certain localities that use the funds to provide affordable housing to low- and moderate-income households. States and localities use the funds for a variety of homeownership and rental activities. In general, all HOME money must benefit people with low or moderate incomes, tenant rents must generally be capped at a fixed percentage of the area median income (AMI), and units must be occupied by income-eligible households for a set period. The HOME Program regulations are at [24 CFR Part 92](#). Numerous changes to the HOME regulations were finalized on July 24, 2013. NLIHC has a [summary of key changes](#).

## Eligible Activities

HOME dollars can be used as a grant or a loan to meet a variety of development costs such as: buying existing housing or vacant land for affordable housing; building new housing; rehabilitating existing housing; demolishing structures to make way for affordable housing; relocation; making site improvements; and paying soft costs, such as engineering plans, attorneys' fees, title search, and fair housing services. HOME can also be used to help people purchase or rehabilitate a home by offering loans, loan guarantees, or down payment assistance. Tenants can be given grants for security deposits and rental assistance so that they pay no more than 30% of their income for rent and utilities. Although tenant-based rental assistance (TBRA) agreements are limited to two-year terms, they can be renewed without limit.

PJs may spend no more than 10% of their HOME allocation for overall program planning and administration, but there is no limit on the use of HOME funds for project-specific administrative costs. Among other limitations, PJs cannot spend HOME dollars on public housing modernization, operation, or preservation, because public housing has its own separate funding accounts.

## Community Housing Development Organizations

At least 15% of a participating jurisdiction's HOME funds are set aside exclusively to be spent on housing that is developed, sponsored, or owned by Community Housing Development Organizations (CHDOs). Up to 10% of this CHDO set-aside can be used to provide loans for project-specific technical assistance and site control, such as feasibility studies and consultants, as well as for seed money to cover pre-construction costs, such as architectural plans and zoning approval. Until recently, if a PJ failed to commit any portion of the minimum 15% CHDO set-aside within two years, the PJ and its low-income residents would lose that amount of money. However, the FY19, FY20, FY21,

FY22 appropriations acts suspended the two-year deadline to commit CHDO set-aside funds. Consequently, a PJ can choose to not use some or all of the 15% CHDO set-aside and after two years use those untapped CHDO funds for other HOME-eligible uses. This temporary suspension of the two-year commitment rule could make it easier for other nonprofits to access more HOME dollars; or, it could simply enable a PJ to avoid funding of such community-based nonprofits for other developers. Both the House and Senate FY23 proposed appropriations bills retain this suspension.

The FY19, FY20, FY21, FY22 appropriations acts also suspended the two-year commitment rule for non-CHDO funds, as do the proposed FY23 bills.

Up to 5% of a PJ's HOME funds can be given to CHDOs for operating expenses; this amount is separate and apart from the minimum 15% CHDO set-aside and does not count against a PJ's 10% cap on administrative uses.

Any nonprofit can receive a HOME grant or loan to carry out any eligible activity, but not every nonprofit is a CHDO. As of the 2013 regulation changes, in order to be considered a CHDO, a nonprofit that is a developer or sponsor must have paid employees on staff who have housing development experience. However, nonprofits seeking to keep or obtain CHDO status can do so while allowing those that own rental housing to operate it even if the nonprofit does not have development expertise. The 2013 HOME regulation amendments introduced other changes that might make it more difficult for existing small and rural CHDOs to continue (see *Forecast for 2023* below for more).

The HOME statute requires a CHDO to be accountable to low-income community residents through significant representation on the organization's governing board. However, the regulations merely require that one-third of a CHDO's board members be elected representatives of low-income neighborhood organizations, residents of low-income neighborhoods, or other low-income community

residents. Since a low-income neighborhood can be one where only 51% of the residents have income less than 80% of AMI, it is possible that more affluent people with very different priorities could be on a CHDO board. Also, because the regulations allow community to be defined as broadly as an entire city, county, or metropolitan area, it is possible to construct a CHDO that is not accountable to low-income residents in a HOME project's neighborhood.

### **Formula Allocation**

A formula based on six factors reflecting measures of poverty and the condition and supply of the rental housing stock determines which local jurisdictions are PJs. Jurisdictions that do not meet the formula's threshold can get together with neighboring jurisdictions to form a consortium in order to get HOME funding.

Each year, the formula distributes 60% of the HOME dollars appropriated by Congress to local governments and consortia; the remaining 40% is allocated to states. The state share is intended for small cities, towns, and rural areas not receiving HOME money directly from HUD. Local PJs are eligible for an allocation of at least \$500,000 (in years when Congress appropriates less than \$1.5 billion, such as FY20 and FY21, PJs are to receive a minimum of \$335,000. However, the FY20 and FY 21 appropriations bills suspended this provision). Each state receives the greater of its formula allocation or \$3 million. Every HOME dollar must be matched by 25 cents of state, local, or private contributions, which can be cash (but not Community Development Block Grant funding), bond financing proceeds, donated materials, labor, property, or other noncash contributions.

### **Beneficiaries**

When HOME is used to assist renters, at least 90% of a PJ's HOME-assisted rental units must be occupied by households with income less than 60% of AMI; the remaining 10% of the rental units can benefit those with income up to 80% of AMI, known as low-income households. If a rental project has five or more HOME-assisted units, then at least 20% of the HOME-assisted



units must be occupied by households with income less than 50% of AMI, known as very low-income households. When HOME is used to assist people who are homeowners or who will become homeowners, all that money must be used for housing occupied by households with income less than 80% of AMI. These are minimum standards required by law. Advocates should work to convince their PJ or state to improve HOME's targeting to people with extremely low income, those with income less than 30% of AMI.

### **Affordability**

Maximum rents that may be charged to assisted households are not based on a household's actual income. Instead, maximum rents are, with one exception, based on a fixed amount. To qualify as affordable rental housing, rent may be no greater than the lower of the fair market rent (FMR) or 30% of the adjusted income of a hypothetical household with an annual income of 65% of AMI. In projects with five or more HOME-assisted units in which at least 20% of the HOME-assisted units must be occupied by households with very low incomes, rent is considered affordable if it is less than 30% of the income of a hypothetical household with an annual income at 50% of AMI, or less than 30% of their adjusted income. Actual rent limit figures are posted on the HUD Exchange HOME program webpage.

Newly constructed rental projects must remain affordable for 20 years. Existing rental housing that is either purchased or rehabilitated must remain affordable for 15 years if more than \$40,000 is spent per unit, 10 years if between \$15,000 and \$40,000 is spent per unit, and five years if less than \$15,000 is spent per unit.

Homeowner-assisted units are considered affordable if, in general, the value of the home after assistance is less than 95% of the median area purchase price. Homeowner units must remain affordable for the same periods mentioned above. PJs must have resale or recapture provisions. A resale provision is intended to ensure continued benefit to low-income households during the affordability period by requiring purchase by an income-

eligible household if an original homeowner sells before the end of the affordability period. A recapture provision must ensure that all or a portion of HOME assistance is recouped if an owner sells or is foreclosed upon during the affordability period.

As of the close of FY22 on September 30, 2022, HOME delivered 1,356,919 completed physical units and provided another 370,108 tenant-based rental assistance contracts since 1992. Out of the 1,356,919 physical units, 40% (542,728) were rental units, 19% (259,639) were homeowner rehabilitation and/or new construction units, and 41% (554,552) were homebuyer units.

At the time of initial occupancy, households with incomes less than 30% of AMI occupied 44% of the physical rental units. Households with incomes less than 30% of the AMI occupied 30% of the homeowner units, and 6% of the homebuyer units. Twenty-seven percent of the rental units had households assisted with Housing Choice Vouchers. In addition, 79% of the tenant-based rental assistance units were occupied by extremely low-income people.

### **FORECAST FOR 2023**

Congress appropriated \$1.5 billion for FY23. This is the same as FY22, which was a \$150 million increase over FY21 and FY20 funding of \$1.35 billion, an increase from FY19 funding of \$1.25 billion.

OAHF intended to have listening sessions with stakeholders toward the end of FY22 to consider improvements to the HOME regulations. However, listening sessions did not transpire but could take place in 2023.

Senator Catherine Cortez Masto (D-NV) was preparing a bill in 2022 to modify the HOME statute. Although the bill was not introduced before the end of the 117<sup>th</sup> Congress, NLIHC anticipates a bill will be introduced in 2023 in the new 118<sup>th</sup> Congress. NLIHC provided several recommendations for the Senator to consider. The four most important recommendations were

## 1. CHDO Definition

- a. To continue to emphasize accountability to low-income people and neighborhoods, NLIHC urged the bill to not eliminate the word “significant” in the phrase “maintains significant representation.”
- b. NLIHC learned from small, nonprofit community development organizations that the regulation’s requirement that at least one-third of a CHDO’s board of directors be low-income residents was too difficult for many such organizations to achieve. A draft of the Cortez Masto bill responded to this concern by explicitly instructing HUD to modify the regulatory definition of CHDO by removing the one-third low-income board member requirement, replacing it with “maintaining meaningful representation...on its governing board or an advisory committee to its governing board.”
- c. The 2013 HOME regulation changes required a CHDO to have a full-time developer on staff, something that most small, neighborhood-based organizations do not have the financial capacity to do. In response to NLIHC’s urging, the draft bill would instruct HUD to further modify the regulatory definition of CHDO regarding an entity’s “demonstrated capacity” by allowing a community development organization to engage housing development consultants or volunteers on an as-needed basis.

**2. Improve income targeting.** NLIHC urged the bill to cap affordable rental units at 60% AMI, not 80% AMI and require 30% of units to be affordable to households at or below 30% of AMI. Targeting eligible rental uses exclusively for people at 60% AMI would be an improvement over current targeting and put the program more in line with other housing programs. The deeper targeting to serve ELI households will ensure that these funds are

more effectively deployed to address those with the greatest needs and to address the underlying causes of the housing crisis.

The HOME Coalition, a broad group of organizations, submitted a [letter](#) to HUD with many recommended changes to the HOME program regulations. While NLIHC accepted many of the proposed changes, NLIHC did not sign on to the letter due to differences regarding several CHDO provisions.

## TIPS FOR LOCAL SUCCESS

At the local level advocates will want to continue to be actively involved in the Consolidated Plan’s Annual Action Plan public participation process in order to influence the type of housing, location, and beneficiaries of HOME dollars.

Advocates can best influence how HOME dollars are allocated if they know how a jurisdiction has spent its previous allocations. To monitor their local PJ’s accomplishments, advocates can access several useful reports on the [Grantee Reports and Plans webpage](#) on the HOME program [homepage](#) of HUD’s Exchange website.

- [Open Activities Report](#) is a monthly list of each HOME project in a PJ that is still “open,” indicating tenure type (renter or homeowner), type of activity (such as rehabilitation, acquisition, or new construction), ZIP code, number of units, commitment date, and amount budgeted and spent.
- [Vacant Unit Report](#) identifies units marked vacant in HUD’s reporting system, showing whether the project is completed and its street address.
- [National Production Report](#) offers cumulative information since 1992.
- [HOME Units Completed within LIHTC Projects by State](#) provides the number of HOME units completed within Low-Income Housing Tax Credit projects by state since 2010. The report also provides a breakdown of overall HOME funds disbursed for LIHTC projects and the average amount of HOME funds disbursed per LIHTC project.

- HOME Units Completed by State provides the number of HOME units completed since 1992 by state. The report also provides a breakdown of completed HOME units by tenure type and the amount of HOME funds committed and disbursed.
- HOME Units Completed by Congressional District provides the number of HOME units completed since 1992 by congressional district. The report also provides a breakdown of completed HOME units by tenure type and the amount of HOME funds committed and disbursed.

## WHAT TO SAY TO LEGISLATORS

The major responsibility of advocates is to continue pushing for increased federal appropriations. Advocates should ask Members of Congress to fully fund the HOME program at \$2.5 billion.

## FOR MORE INFORMATION

National Low Income Housing Coalition, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

HOME program on HUD Exchange, <https://www.hudexchange.info/programs/home>.

HOME regulations, 24 CFR part 92 are at: <https://bit.ly/3VFW2xF>.

# Low-Income Housing Tax Credits

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** Internal Revenue Service (IRS) of the Department of the Treasury

**Year Started:** 1986

**Number of Households Served:** HUD's Office of Policy Development and Research reports that 50,567 projects and 3.44 million housing units were placed in service between 1987 and 2020.

**Population Targeted:** Households with income either less than 60% of area median income (AMI) or 50% AMI.

**Funding:** A November 5, 2020 report from the Joint Committee on Taxation (the latest available) estimated \$11.4 billion in foregone tax revenues ("tax expenditures") for 2023, growing to \$11.6 billion for 2024. For the period 2020 through 2024 the total foregone tax revenue was estimated to be \$54.6 billion.

The Low-Income Housing Tax Credit program (LIHTC) finances the construction, rehabilitation, and preservation of housing affordable to lower-income households. The LIHTC program encourages private investment by providing a tax credit: a dollar-for-dollar reduction in federal taxes owed on other income. Although the LIHTC program is federal, each state (and some localities) has an independent agency, generally called a housing finance agency (HFA) that decides how to allocate the state's share of federal housing tax credits within a framework formed by the Internal Revenue Code.

## HISTORY

The LIHTC program was created by the "Tax Reform Act of 1986" and is codified at Section 42 of the Internal Revenue Code, 26 U.S.C. 42, so tax credit projects are sometimes referred to as "Section 42" projects. The IRS provides additional guidance through regulations (Title 26 - Chapter I - Subchapter A - Part 1 – Subgroup §1.42), revenue rulings,

revenue procedures, notices, technical advice memorandums, private letter rulings, and other means.

## PROGRAM SUMMARY

The LIHTC program finances the construction, rehabilitation, and preservation of housing affordable to lower-income households. LIHTC can be used to support a variety of projects: multifamily or single-family housing, new construction or rehabilitation, special needs housing for elderly people or people with disabilities, and permanent supportive housing for homeless families and individuals. Although the LIHTC program is federal, each state (and some localities) has an independent housing finance agency (HFA) that decides how to allocate the state's share of LIHTC, which is based on each state's population.

LIHTC is designed to encourage corporations and private individuals to invest cash in housing affordable to lower-income people; those with income less than 60% of the area median income (AMI) or 50% AMI. LIHTC provides this encouragement by providing a tax credit to the investor over the course of a 10-year "credit period," a dollar-for-dollar reduction in federal taxes owed on other income. The cash that investors put up, called "equity," is used along with other resources such as the HOME Investment Partnerships program (HOME) or the national Housing Trust Fund (HTF), to build new affordable housing or to make substantial repairs to existing affordable housing. LIHTC is not meant to provide 100% financing. The infusion of equity reduces the amount of money a developer must borrow and pay interest on, thereby reducing the rent level that needs to be charged.

## LIHTC UNITS

Until 2018, when applying to an HFA for tax credits, a developer had two lower-income unit set-aside options and had to stick with

the chosen option during a required lower-income occupancy period. Income averaging was introduced in 2018 by the “Consolidated Appropriations Act of 2018.”

The traditional two lower-income unit set-aside choices are:

- Ensuring that at least 40% of the units are rent-restricted and occupied by households with income less than 60% of AMI.
- Ensuring that at least 20% of the units are rent-restricted and occupied by households with income less than 50% of AMI.

For projects using one of the two traditional set-aside choices, tax credits are available only for rental units that meet one of the above rent-restricted minimums (40/60 or 20/50). With these minimums it is possible for LIHTC projects to have a mix of units occupied by people of lower, moderate, and middle incomes. These are minimums; projects can have higher percentages of rent-restricted units occupied by lower-income people. In fact, the more rent-restricted lower-income units in a project, the greater the amount of tax credits provided. New developments should balance considerations of the need for more units with the value of mixed-income developments and with concerns about undue concentrations of lower-income households in certain neighborhoods.

The FY18 appropriations act added a third option – income averaging (now frequently referred to as the “average income test” (AIT)). This allows developers who choose the income averaging option to commit at least 40% of the units in a property to have an average designated income limit of no more than 60% AMI, with rents set at a fixed amount of 30% of a unit’s designated income limit. The developer decides the mix of designated income limits. The designated income limits may be in 10% increments from 10%, 20%, 30%, 40%, 50%, 60%, 70%, up to 80% of AMI. A unit can only be occupied by a household with income equal to or less than the unit’s designated income with the rent for that unit fixed at 30% of the designated income limit (except any units designated 10%

AMI units will be counted as 20% AMI units for income averaging). For example, if a unit is designated at 20% AMI, the household’s income must be equal to or less than 20% AMI and the maximum rent is capped at 30% of 20% AMI. If a unit is designated at 80% AMI, the household’s income must be equal to or less than 80% AMI and the maximum rent is capped at 30% of 80% AMI.

The purpose of the new income averaging option is to enable developers to offset lower rents for extremely low-income households by charging higher rents to households with income greater than the more traditional 60% AMI level. Advocates had some initial concerns about this new option, as discussed in the “Issues and Concerns” section of this article. IRS published a [Notice of Proposed Rulemaking](#) about income averaging on October 30, 2020 with comments due December 29, 2020. On October 12, 2022, IRS published [final regulations](#) for AIT.

A report by researchers from the Furman Center for Real Estate and Urban Policy at New York University was published in *Housing Policy Debate* in May 2013. The researchers used tenant-level data from 18 states representing 40% of all LIHTC units. The report found that LIHTC recipients tend to have higher incomes than households assisted by other federal rental assistance programs. Although 45% of the households had income less than 30% AMI and were “extremely low income” (ELI), approximately 70% of those ELI households also had other forms of rental assistance, such as Housing Choice Vouchers. For the 30% of ELI LIHTC households who did not have rental assistance, 86% paid more than 30% of their income for rent and utilities and therefore suffered a “cost burden,” 58% endured “severe cost burden,” paying more than 50% of their income for rent and utilities.

HUD’s latest [LIHTC tenant report](#) (December 31, 2019) indicates that 52.6% of LIHTC tenants have income at or less than 30% AMI and 40.2% receive some amount of rental assistance. Rent cost burden (spending more than 30% of income for rent and utilities) is experienced by 37.6% of



LIHTC tenants and severe cost burden (spending more than 50% of income for rent and utilities) is experienced by 9.4% of LIHTC tenants.

## LIHTC RENTS

Rent-restricted units have fixed maximum gross rents, including allowance for utilities, that are equal to or less than the rent charged to a hypothetical tenant paying 30% of 60% of AMI or 50% of AMI, or one of the designated increments in an income averaging project – whichever option a developer has chosen. Tenants may have to pay rent up to that fixed maximum tax credit rent even if it is greater than 30% of their income. In other words, the maximum rent a tenant pays is not based on 30% of the tenant's income; rather it is based on 30% of the fixed AMI level (for example, 60% or 50% for the two traditional options).

Consequently, lower-income residents of tax credit projects might be rent-burdened, meaning paying more than 30% of their income for rent and utilities. Or, LIHTC projects might simply not be financially available to extremely low-income households (those with income less than 30% of AMI) or very low-income households (those with income less than 50% of AMI) because rents charged are not affordable to them. HUD's tenant-based or project-based vouchers or U.S. Department of Agriculture Rural Development Section 521 Rental Assistance is often needed to fill the gap between 30% of a resident's actual income and the tax credit rent.

## LOWER-INCOME OCCUPANCY PERIOD

The law requires units to be “rent-restricted” and occupied by income-eligible households for at least 15 years, called the “compliance period,” with an “extended use period” of at least another 15 years for a total of 30 years. Some states require low-income housing commitments “restricted-use periods) greater than 30 years or provide incentives for projects that voluntarily agree to longer commitments. An NLIHC report, *Balancing Priorities: Preservation and Neighborhood*

*Opportunity in the Low-Income Housing Tax Credit Program Beyond Year 30*, found that 8,420 LIHTC properties accounting for 486,799 LIHTC units will reach Year 30 between 2020 and 2029. This is nearly 25% of all current LIHTC units.

Where states do not mandate longer restricted-use periods, an owner may submit a request to an HFA to sell a project or convert it to market rate during year 14 of the 15-year compliance period. The HFA then has one year to find a buyer willing to maintain the rent restrictions for the balance of the 30-year period. If the property cannot be sold to such a “preservation purchaser,” then the owner's obligation to maintain rent-restricted units is removed and lower-income tenants receive “enhanced vouchers” (See the *Tenant Protection Vouchers* section in Chapter 4 of this guide.) enabling them to remain in their units for three years. This Year 15 option is called the “Qualified Contract” (QC) and is discussed in the “Issues and Concerns section of this article.”

HFAs must monitor projects for compliance with the income and rent restriction requirements. The IRS can recapture tax credits if a project fails to comply, or if there are housing code or fair housing violations. However, the extent to which HFAs monitor compliance after the 10-year credit period and following 5-year “recapture period” is not clear (see the “Issues and Concerns” section of this article).

## PROGRAM STRUCTURE

Although LIHTC is a federal program, each state has a housing finance agency (HFA) that decides how to award tax credits to projects. Tax credits have two levels: 9% and 4% (discussed further below). The 9% tax credits are allocated to states by the U.S. Treasury Department based on a state's per-capita population along with an inflation factor. In 2023, each state will receive \$2.75 per capita (up from \$2.60 in 2022, but down from \$2.81 per capita in 2021 and 2020), with small states receiving a minimum of \$3,185,000 million (up from \$2.975 million in 2022, but down from \$3.25 million in 2021, which was a slight increase from

2020). Developers apply to an HFA and compete for 9% LIHTC allocations. Because there is a fixed amount of 9% tax credits, they are very competitive.

However, there is no direct limit on the amount of 4% tax credits an HFA can award. Instead, the 4% tax credit amount a state can award is indirectly limited by the amount of a state's Private Activity Bond (PAB) volume cap. The 4% tax credit can only be used in conjunction with a tax-exempt private activity bond. For a multifamily bond-financed development to receive the full amount of a 4% tax credit, at least 50% of the development's aggregate basis (land and building) must be initially financed with tax-exempt multifamily bond authority from the state's PAB volume cap.

Each HFA must have a "Qualified Allocation Plan" (QAP) that sets out the state's priorities and eligibility criteria for awarding LIHTC, as well as tax-exempt bonds and any state-level tax credits. More about QAPs is presented later in this article. The law requires that a minimum of 10% of an HFA's total LIHTC be set aside for nonprofits.

### **Limited Partnerships**

Once awarded tax credits, a developer then sells them to investors, usually to a group of investors (around 96% of the tax expenditures go to corporations) pulled together by someone called a syndicator. Syndicators sometimes pool several tax credit projects together and sell investors shares in the pool. The equity that the investors provide, along with other resources such as conventional mortgages, state loans, and funds from the HOME and HTF programs, is used by the developer to construct or substantially rehabilitate affordable housing.

The developer and investors form a "limited partnership" in which the developer is the "general partner," and the investors are "limited partners." The general partner owns very little of the project (maybe as little as 1%) yet has a very active role in construction or rehabilitation and day-to-day operation of the completed project. The limited partners own most of the project

(maybe up to 99%) but play a passive role; they are involved only to take advantage of the reduction in their annual federal tax obligations.

### **9% and 4% Tax Credits**

Two levels of tax credit are available, 9% and 4%, formally known as the "applicable percentages." Projects can combine 9% and 4% tax credits. For example, buildings can be bought with 4% tax credits and then substantially rehabilitated with 9% tax credits. Instead of "9%" and "4%," tax credits are sometimes referred to by the net present value they are intended to yield, either 70% or 30%. That is, in the case of a 9% tax credit, the stream of tax credits over the 10-year credit period has a value today equal to 70% of the eligible LIHTC development costs (the "Qualified Basis" explained below).

The 9% tax credit is available for new construction and substantial rehabilitation projects that do not have other federal funds. Federal funds include loans and bonds with below market-rate interest. Rehabilitation is "substantial" if a minimum amount is spent on each rent-restricted lower-income unit or 10% is spent on the "eligible basis" (described below) during a 24-month period, whichever is greater. Each year IRS issues a revised minimum substantial rehab amount; for 2023 the amount increased from \$7,400 to \$7,900.

The 4% tax credit is available for three types of activities:

- Acquisition of existing buildings for substantial rehabilitation.
- New construction or substantial rehabilitation subsidized with other federal funds.
- Projects financed with tax-exempt Private Activity Bonds (PABs). Every year, states are allowed to issue a set amount, known as the "volume cap," of tax-exempt bonds for a variety of economic development purposes. In 2023 the PAB volume cap is \$120 per capita (up from \$110), with a small state minimum of \$3.59 million (up from \$3.35 million).

The “Protecting Americans from Tax Hikes Act of 2015” permanently fixed the applicable percentage at 9% for new or substantially rehabbed buildings placed in service after July 30, 2008. For many years before, 9% was only an approximate rate that varied monthly, the “appropriate percentage” (which if still floating would be 7.91% in November 2022).

However, the statute did not establish a fixed 4% applicable percentage rate. The 4% tax credit continued to float, until it was fixed at 4% by the FY21 appropriations act (if it had continued to float, the 4% tax credit would have had an applicable percentage rate of 3.39% for November 2022).

For any given project, the real tax credit rate is set the month a binding commitment is made between an HFA and developer, or the month a finished project was first occupied (referred to as “placed in service.”) This applicable percentage is applied to the “qualified basis” (described below) to determine the investors’ tax credit each year for 10 years (the “credit period”).

### **Determining the Amount of Tax Credits for a Project**

The amount of tax credit a project can receive, and therefore how much equity it can attract, depends on several factors. First, the “eligible basis” must be determined by considering costs such as building acquisition, construction, soil tests, engineering costs, and utility hookups. Land acquisition and permanent financing costs are not counted toward the eligible basis. The eligible basis is usually reduced by the amount of any federal funds helping to finance a project.

The eligible basis of a project can get a 30% increase, a “basis boost,” if the project is located in a census tract designated by HUD as a low-income tract (a Qualified Census Tract, or QCT) or a high-cost area (a Difficult to Develop Area, or DDA). QCTs are census tracts with a poverty rate of 25% or in which 50% of the households have income less than 60% of AMI. LIHTC projects in QCTs must contribute to a “concerted community revitalization” plan

(discussed below in the Qualified Allocation Plan section). The aggregate population in census tracts designated as QCTs in a metropolitan area cannot exceed 20% of the metropolitan area’s population. DDAs are areas in which construction, land, and utility costs are high relative to incomes. All DDAs in metropolitan areas taken together may not contain more than 20% of the aggregate population of all metropolitan areas. The “Housing and Economic Recovery Act” (HERA) expanded the use of the 30% basis boost to projects not located in QCTs or DDAs if an HFA determines that an increase in the credit amount is necessary for a project to be financially feasible. Each year, HUD updates a list of QCTs and DDAs.

Next, the “applicable fraction” must be determined. This is a measure of rent-restricted lower-income units in a project. Two percentages are possible: the ratio of LIHTC-financed lower-income units to all units (the “unit fraction”), or the ratio of square feet in the LIHTC-financed lower-income units to the project’s total square feet (the “floor space fraction”). The lowest percentage is the applicable fraction. The applicable fraction agreed to by the developer and IRS at the time a building is first occupied (“placed in service”) is the minimum that must be maintained during the entire affordability period (“compliance period”).

The “qualified basis” is the eligible basis multiplied by the applicable fraction. The amount of annual tax credits a project can get is the qualified basis multiplied by the tax credit rate (9% or 4%). The amount of tax credits available to a project is divided among the limited partners based on each limited partner’s share of the equity investment. Investors receive their share of the tax credit each year over the 10-year “credit period.”

### **A Simple Example**

HUD’s HOME Program website gave a simple example (no longer available on HOME website):

Project will construct 70 units, 40% of them are income and rent restricted.

There are no other federal funds.

Total development costs	\$5,000,000	
	Land Acquisition	\$1,000,000
	Construction	\$3,400,000
	Site Improvements	\$ 535,000
	Engineering	\$ 40,000
	Eligible Soft Costs	\$ 25,000
Eligible Basis: Total Development Cost - Land Acquisition = \$4,000,000		
Qualified Basis: Eligible Basis x Applicable Fraction (\$4,000,000 x .40) = \$1,600,000		
Annual Tax Credit: Qualified Basis x Tax Credit Rate (\$1,600,000 x .09) = \$144,000		
Total Amount of Tax Credits: \$144,000 x 10 years = \$1,440,000		

The example continues, noting that a limited partnership will buy the tax credits at \$0.75 for every dollar of future tax benefit (the tax credit “price”). Thus, the limited partnership will invest \$1,080,000 (\$1,440,000 x .75) in the project today for a 10-year stream of future tax benefits amounting to \$1,440,000.

## QUALIFIED ALLOCATION PLAN

The statute authorizing the LIHTC program requires each agency that allocates federal LIHTCs, (usually HFAs), to have a Qualified Allocation Plan (QAP). Each state has an HFA and there are also a few local HFAs. The QAP sets out a state’s eligibility criteria and priorities for awarding federal LIHTCs to housing properties. In some states, the QAP also sets out threshold criteria for non-competitive 4% tax credits, any state LIHTC, and other state-funded housing programs. HFAs are listed by the [National Council of State Housing Agencies](#) (NCSHA) and the [Novogradac Corporation](#).

The QAP is a tool advocates can use to influence how their state’s share of annual federal LIHTCs

is allocated to affordable housing properties. Advocates can use the public hearing and comment requirements to convince their housing finance agency to better target tax credits to properties with extremely low-income households, locate projects in priority areas (particularly to affirmatively further fair housing), and preserve the existing stock of affordable housing.

Each QAP must specify an HFA’s minimal criteria and priorities that it will use to select projects competing for tax credits. The priorities must be appropriate to local conditions. The statute requires a QAP to give preference to projects:

- Serving residents with the lowest incomes.
- Serving income-eligible residents for the longest period.
- Located in HUD-designated QCTs, as long as the project contributes to a “concerted community revitalization plan” (QCTs are census tracts with a poverty rate of 25% or in which 50% of the households have income less than 60% of AMI).

In December 2016, IRS issued [Notice 2016-77](#) stating that QAPs may only give preference to projects in QCTs if there is a “concerted community revitalization plan” and only if that plan contains more components than just the LIHTC project. That Notice observed that in some cases HFAs have given preference to projects located QCTs without regard to whether the projects would contribute to a concerted community revitalization plan. In other cases, because development of new multifamily housing benefits a neighborhood, a LIHTC project without other types of community improvements has been treated as if it alone constituted a concerted community revitalization plan. IRS declared that simply placing a LIHTC project in a QCT risks increasing concentrations of poverty. Therefore, a QCT preference should only occur when there is an added benefit to the neighborhood in the form of the project’s contribution to a concerted community revitalization plan. The Notice requested public input to define “concerted community revitalization plan” because the IRS



Code does not have a definition. To date, the IRS has not proposed definitions of “concerted community revitalization plan.”

The QAP selection criteria must address 10 items: (1) location, (2) housing needs, (3) public housing waiting lists, (4) individuals with children, (5) special needs populations, (6) whether a project includes the use of existing housing as part of a community revitalization plan, (7) project sponsor characteristics, (8) projects intended for eventual tenant ownership, (9) energy efficiency, and (10) historic nature. These requirements are minimums; states may adopt more rigorous criteria that target advocates’ priority populations and locations. Most states establish detailed QAP selection criteria and set-asides based on the characteristics of their state’s needs.

HFAs may target tax credits in several ways:

- The QAP selection process may give preferences, in the form of extra points, to encourage developers to submit projects more likely to serve particular populations or locations; for example, by awarding 10 points to projects that set aside 10% of the units for special needs populations.
- The QAP may establish a set-aside, reserving a specific percentage or dollar amount of any given year’s tax credit allocation for projects more likely to serve specific populations or locations. For example, there may be a \$20 million set-aside for rural projects.
- The QAP may establish thresholds or minimum requirements that projects must meet simply to get in the game, thus improving targeting to specific populations or locations. For example, they may require a 50-year income-eligible compliance period.

## ISSUES AND CONCERNS

Advocates have growing concerns about the relatively new “income averaging” option, as well as with five practices that can affect LIHTC properties keeping income and rent restrictions: Properties reaching Year 30 and the potential loss of rent-restricted units, Qualified Contracts (QCs), “aggregators,” “planned foreclosures,” and the

extent that HFAs monitor projects for compliance with income and rent restrictions for the full 30-year (or longer) extended use period.

### Income Averaging

The “FY18 Appropriations Act” introduced a third option for meeting a LIHTC lower-income unit set-aside: income averaging (frequently referred to as the “average income test” (AIT). This allows a developer to commit at least 40% of the units in a property to having an average designated income limit of no more than 60% AMI, with rents set at a fixed amount of 30% of a unit’s designated income limit. IRS finally published a [Notice of Proposed Rulemaking](#) about income averaging on October 30, 2020 with comments due December 29, 2020. On October 12, 2022, IRS published [final regulations](#) for AIT. The final rule does not address advocates’ concerns.

The primary concern is that there is potential for fewer LIHTC units being available to extremely low-income households with Housing Choice Vouchers. As previously noted, researchers have found that 45% of all LIHTC households have extremely low income and that 70% of these ELI households have rental assistance in order to be able to afford their LIHTC unit (HUD data from the end of 2019 also showed that nearly 53% of LIHTC households had extremely low income). The researchers could not discern whether the rental assistance was from a Housing Choice Voucher or project-based Section 8. A public housing agency’s (PHA’s) voucher “payment standard” might not be enough to meet the contract rent, the actual rent charged by the owner of the LIHTC unit (the payment standard is the amount of the voucher that makes up the difference between the contract rent charged by the owner and the tenant’s share of the rent at 30% of the tenant’s adjusted income). The payment standard is very likely to be inadequate for units designated at 70% AMI or 80% AMI in areas that have high overall AMIs.

The National Housing Law Project (NHLP) provides an example of a 50-unit building with five units at 80% AMI, 15 units at 70% AMI, five units at 60% AMI, 15 units at 50% AMI, and



10 units at 40% AMI. The average AMI in this example is 58%, but 20 out of the 50 units may be out of reach for voucher households. NHLP suggests that advocates convince their state to draft a QAP that has incentives or requirements that the highest LIHTC rents be set at or below the local voucher payment standard.

On the other hand, as noted by NHLP, in housing markets where the voucher payment standard exceeds the applicable tax credit rent limitations, owners of AIT properties can lease their units designated at 20%-40% AMI to voucher holders, allowing the owners to receive much more rental income than ordinarily allowed under LIHTC. Although a rental income premium from a portion of voucher payments is already available with non-AIT tax credit units, the amount of the premium grows as the AIT restricted rent levels drop. Thus, owners in this situation receive a rental income windfall (on top of the public benefit already conferred through the tax credits they received), serving as an incentive to lease a disproportionate number of the 20%-40% AMI units to voucher households, rendering the 20%-40% AMI units unavailable to extremely low-income households who do not have a voucher. Higher income voucher households with income at 50%-80% AMI could afford to rent the higher-cost 50%-60% AMI units without being rent-burdened because the voucher enables them to limit their rent payments to 30% of their income. This undermines the basic purpose of the AIT to “cross subsidize” the 20%-40% units from the rents received from those in the 50%-80% rent range, tenants who face even higher rent burdens because they lack any subsidy.

Another potential problem is that income averaging might lead to fewer larger units for ELI households even though the community might need more larger units for ELI households. The income averaging calculation does not take unit size into consideration. A property could designate most of the smaller units at the lowest AMI and most of the larger units at the highest AMI and still come in at an average AMI less than 60% of AMI.

## **Beyond Year 30**

An NLIHC report, *Balancing Priorities: Preservation and Neighborhood Opportunity in the Low-Income Housing Tax Credit Program Beyond Year 30*, found that 8,420 LIHTC properties accounting for 486,799 LIHTC units will reach Year 30 between 2020 and 2029. This is nearly 25% of all current LIHTC units. For-profit owners have 336,089 (69%) of these units, placing the units at risk after Year 30. At least 81,513 (17%) of these units have nonprofit owners so they will likely continue to operate as “affordable” housing if there is adequate support to make needed repairs for aging units.

Between 2020 and 2029, 42% of the LIHTC units losing their affordability restrictions are in neighborhoods with very low desirability and 26% are in low desirability neighborhoods. It is these units that likely face the most significant challenges meeting capital needs for rehabilitation because they can only rely on lower rental income.

On the other hand, 10% of the LIHTC units with expiring affordability restrictions are in high desirability neighborhoods and another 5% are in very high desirability neighborhoods. For-profit developers own 36,282 units in high desirability neighborhoods and another 16,641 units in very-high desirability neighborhoods. These units owned by for-profit entities are likely at the greatest risk for being repositioned as market-rate housing.

## **Qualified Contracts**

As explained earlier, an owner may submit a request to an HFA to sell a project or convert it to market rate during year 14 of the 15-year compliance period. This is called a “Qualified Contract” (QC). The HFA then has one year to find a buyer willing to maintain the income and rent restrictions for the balance of the 30-year period. If the property cannot be sold to such a “preservation purchaser,” then the owner’s obligation to maintain income- and rent-restricted units is removed, and the lower-income tenants receive enhanced vouchers enabling them to remain in their units for three years (for

more about enhanced vouchers, see “Vouchers: Tenant Protection Vouchers” in Chapter 4 of this *Advocates’ Guide*). The IRS code specifies the price that a preservation purchaser must pay in a QC situation, and in most cases the price is far greater than market price. Consequently, preservation purchasers are unable to acquire a LIHTC property at year 15, the property converts to market-rate, and income and rent restrictions are removed.

In *2021 Picture of Preservation*, NLIHC estimates that approximately 143,456 homes awarded a LIHTC subsidy since 1990 lost their affordability restrictions early. Eighty percent of these homes lost their affordability restrictions after 15 years of affordability, suggesting they may have exited through the QC process

To prevent the loss of affordable housing, some HFA’s QAPs require LIHTC applicants to waive their right to a QC or give extra competitive points to proposals agreeing to waive the right to a QC. Some HFAs inform LIHTC applicants that if they eventually seek a QC, they will not be allowed to apply for LIHTCs in the future.

The National Council of State Housing Agencies updated its “Recommended Practices in Housing Credit Administration” in December 2017. It recommended that all states should require LIHTC applicants to waive their right to a QC for both 9% and 4% LIHTCs. In addition, it recommended that QAPs include disincentives for owners of existing LIHTC properties to seek a QC by awarding negative points in the event an owner applies for future LIHTCs.

The “Affordable Housing Credit Improvement Act,” (AHCIA) proposes eliminating the QC loophole, as does the “Decent, Affordable, Safe Housing Act for All (DASH) Act,” introduced by Senator Ron Wyden, D-OR (see “Forecast for 2023” below).

### **Aggregators**

Another feature related to year 15 is becoming a serious problem. The LIHTC law has afforded mission-driven nonprofits a special privilege to secure at the outset of preparing a LIHTC application with investors, a right to obtain

eventual ownership of the project at a minimum purchase price after 15 years (called a transfer right). In recent years, some private firms have begun to systematically challenge nonprofits’ project transfer rights with the intent to eventually sell the property at market value. So-called “aggregators” acquire the initial investors’ interest in the property after the investors have obtained their 10-year tax savings benefits but before the rent restrictions expire at year 15. Aggregators are very large financial entities that take advantage of a legal ambiguity regarding the nonprofit’s “right of first refusal” (ROFR) to purchase the property by employing batteries of attorneys and other expensive maneuvers to overwhelm the mission-driven nonprofit. The Washington State Housing Finance Commission and others have been resisting the growing threat of aggregators in court (see *An Emerging Threat to Affordable Housing: Nonprofit Transfer Disputes in the Low-Income Housing Tax Credit Program*).

The “Decent, Affordable, Safe Housing for All (DASH) Act,” introduced by Senator Ron Wyden (D-OR) proposes clarifying and strengthening the right of first refusal (ROFR) for nonprofit owners.

### **Planned Foreclosures**

Another concern is with entities that appear to engage in strategic acquisition of LIHTC-funded properties after the LIHTC is allocated (and, in many instances, already claimed) with the hope of avoiding the LIHTC use restrictions. Advocates have identified “planned foreclosures,” actions by partners in LIHTC developments designed to result in a foreclosure and thus wipe out the affordable use restrictions. In such cases, the entity planning the foreclosure was not involved in the LIHTC application process and is not an entity that applies for LIHTCs. Instead, the entity buys into the development, loans itself money through distinct but related companies, and then essentially forecloses on itself after claiming that property is unsuccessful. Unlike HFA-trusted partners that are sensitive to their standing with the HFA because they hope to secure LIHTCs in the future, planned foreclosure entities do not seek future LIHTC allocations. Because such firms operate outside of the QAP process,

eligibility for future LIHTCs does not work as a disincentive to avoiding use restrictions.

Congress specifically gave the Treasury Secretary the authority to determine that such intentional transactions do not qualify as foreclosures that terminate the LIHTC affordable use requirements. Although the LIHTC program has been in existence for more than 30 years, the IRS has provided no guidance to HFAs regarding how to deal with these situations. If ever passed, the “Affordable Housing Credit Improvement Act,” (AHCIA) would address planned foreclosures (see “Forecast for 2023” below).

### **Complying with Use Restrictions after Year 15**

Although HFAs are tasked with monitoring compliance, additional guidance is needed to ensure that properties comply with regulations through the extended use period, the period after year 15 to at least year 30 (and for some states longer). During the initial 10-year credit period and the five-year recapture period, developments are less likely to have compliance issues because they are subject to losing tax credits. However, during the following extended use period, it is difficult to encourage compliance because there are few penalties for failing to do so. HFAs focus compliance monitoring and enforcement during the initial 15-year term. This is problematic given that a property is more likely to have compliance issues as it ages. IRS needs to develop guidance or new regulations to require an HFA to plan for how they will ensure compliance throughout the entire restricted use period.

## **TIPS FOR LOCAL SUCCESS**

Because each state receives a new allocation of LIHTCs each year, QAPs are usually drafted annually. This gives advocates regularly scheduled opportunities to influence QAP priorities. LIHTCs are often in high demand among developers; therefore, developers propose projects that address the priorities set forth in the QAP to give themselves an advantage in the selection process.

Advocates should assess the QAP. If it only has a general statement of goals, advocates can work

to get very specific set-asides or preference points for their priorities. If the QAP has too many priorities, this will render individual priorities less meaningful. Advocates should work to narrow the number of priorities or work to establish relative priorities so their priorities can compete more effectively.

If there are types of assisted housing that should be at the top of the priority list, advocates should work to ensure that they are positioned to better compete. For example, if there is a great need for units with more than two bedrooms, advocates might promote a QAP policy offering bonus points for projects providing units with two or more bedrooms for at least 10% of all low-income units. To facilitate rural projects, advocates might try to secure QAP policies that give points to projects with fewer than 50 units in rural areas.

Advocates can also argue for features that protect tenants, for example a QAP policy precluding tax credit assistance for projects that do not provide one-for-one replacement of units lost through redevelopment. Advocates should review the QAP to find out how long targeted units must serve lower-income people. If the QAP only requires the basic 15 years, plus the extended use period of another 15 years, advocates should try to get the compliance period lengthened as a threshold issue or try to get point preferences or set-asides for projects that voluntarily agree to a longer compliance period.

All states are required to have a public hearing about their proposed QAP before it is approved by the unit of government overseeing the HFA, but there are no specific requirements for the public hearing. Although not required, most states also provide for a public review and comment period for a proposed QAP.

Advocates should contact the HFA early to learn about its annual QAP process and build this into their work plan for the year. In addition, advocates should be sure to get on any notification list the HFA might have about the QAP and public hearings. Advocates should also develop relationships with the HFA’s governing board and communicate the advocate’s priorities

throughout the year. Not all communication has to take place in the context of the formal QAP process. Informal contacts can be used effectively to advance an advocate's priorities. In fact, the most effective means of advocating for any particular priority is to be in contact with the HFA long before a draft QAP is publicly released.

Once an HFA decides to award tax credits to a building, it must notify the chief executive officer of the local jurisdiction (such as the mayor or county executive) where the building is located. That official must have a reasonable opportunity to comment on the project. Advocates should ask the executive's office and any relevant housing department at the locality to notify them as soon as the HFA contacts the executive about a proposed project. Even better, advocates should seek a local policy requiring public notice and comment, along with public hearings, about a proposed project.

In December 2016, the IRS issued [Revenue Ruling 2016-29](#) holding that the IRS Code does not require or encourage state agencies allocating LIHTCs to reject proposals that do not obtain the approval of the locality where a project is proposed to be developed. IRS added that QAP policies requiring local officials to approve a proposed project could have a discriminatory effect based on race and therefore be contrary to the "Fair Housing Act of 1968."

Before tax credits are allocated, there must be a comprehensive market study of the housing needs of low-income people in the area a project is to serve. The project developer must hire a third party approved by the HFA to conduct the market study.

If a building that does not fit the QAP's priorities is to receive tax credits, the HFA must provide a written explanation and make it available to the public.

Most states post a list of properties that have won tax credits after each round of competition. These lists can often be found on an HFA's website.

## FUNDING

The LIHTC is a tax expenditure that does not require an appropriation. In 2020 (the latest available) the Joint Committee on Taxation estimated \$11.4 billion in foregone tax revenues ("tax expenditures") for 2023, growing to \$11.6 billion for 2024. For the period 2020 through 2024 the total foregone tax revenue was estimated to be \$54.6 billion.

## FORECAST FOR 2023

Given the need for affordable rental homes for people with the lowest incomes, Congress should pair any expansion of the LIHTC with reforms to ensure that this resource can better serve families with the greatest needs. Expansion of LIHTC and reforms are contained the "[Affordable Housing Credit Improvement Act](#)," (AHCIA) introduced by Senators Maria Cantwell (D-WA), Todd Young (R-IN), Ron Wyden (D-OR), and Rob Portman (R-OH), and Representatives Suzan DelBene (D-WA), Jackie Walorski (R-IN), Don Beyer (D-VA), and Brad Wenstrup (R-OH). AHCIA has some key reforms promoted by NLIHC, but those reforms are often overshadowed by others' desire to merely expand the LIHTC by 50% over two years without reforms.

Expansion without [key reforms sought by NLIHC, the National Housing Law Project, and the National Alliance to End Homelessness](#) will not ensure that LIHTC better serves extremely low-income households, including those experiencing or at risk of homelessness. Key reforms promoted by NLIHC include:

- A 50% basis boost for projects with at least 20% of the units set aside for households who have extremely low incomes or for those experiencing homelessness, as included in the House-passed "Build Back Better Act" and AHCIA. By expanding the current basis boost from 30% to 50%, Congress can allow LIHTC to better target extremely low-income tenants at rents that are less likely to be burdensome. This reform would also facilitate the development of more affordable housing for populations with special needs, such as



formerly homeless individuals and people with disabilities.

- An 8% set-aside of tax credits to help offset the costs to build the homes getting the 50% basis boost (explained above), as included in the House-passed “Build Back Better Act” (as well as a 10% set-aside proposed by the “Decent, Affordable, Safe Housing for All (DASH) Act,” introduced by Senator Ron Wyden (D-OR).
- Designate tribal areas as Difficult to Develop Areas (DDAs), as proposed in AHCA, to make development automatically eligible for a 30% basis boost and therefore more financially feasible. Also, as proposed in AHCA, require states to consider the needs of Native Americans when determining which developments will receive LIHTC each year.
- Designate rural areas as DDAs, as proposed in AHCA, making them automatically eligible for a 30% basis boost and therefore more financially feasible. The bill also would base the income limits in rural projects to the greater of area median income or the national nonmetropolitan median income, in recognition of the much lower incomes in rural areas.
- Eliminate the Qualified Contract (QC) loophole, as proposed by AHCA, so that developers cannot avoid the minimum 30-year affordability period (or even longer periods imposed by some states).
- Clarify and strengthen the “right of first refusal” (ROFR) for nonprofit owners, as proposed by the DASH Act.
- Provide HUD with access to IRS data on LIHTC properties as part of an effort to help preserve LIHTC investments. See report from NLIHC and the Public and Affordable Housing Research Corporation (PAHRC), *Improving Low-Income Housing Tax Credit Data for Preservation*. The quality of property-level data and public access to this data is necessary to support identification of specific properties at which preservation efforts are needed to protect residents.

In addition to expanding LIHTC by 50% over two years and lowering the 4%/Private Activity Bond threshold to 25% (from 4%), other provisions of the AHCA include:

- Prohibiting measures that local officials have used to resist locating projects in areas of opportunity. The bill would remove the provision requiring HFAs to notify the chief executive officer of the local jurisdiction in which a proposed building would be located. The bill would also specify that QAP selection criteria cannot include consideration of any support for or opposition to a project from local elected officials, or of local government contributions to a development.
- Better aligning the LIHTC program with the “Violence Against Women Act” (VAWA) by requiring all long-term use agreements to include VAWA protections. The bill would also clarify that an owner should treat a tenant who has their lease bifurcated due to violence covered by VAWA as an existing tenant who should not have to recertify their income eligibility as if they were a new tenant.
- Ensuring that affordability restrictions endure in the case of illegitimate foreclosures (“planned foreclosures”) by providing HFAs, rather than the Treasury Department, the authority to determine whether the foreclosure was an arrangement simply to revoke the affordability restrictions. The bill would also require owners to provide HFAs with at least 60 days’ written notice of intent to terminate the affordability period, giving the HFA more time to assess the legitimacy of the foreclosure.
- Allowing existing tenants to be considered low income if their income increases, up to 120% AMI.
- Replacing the current LIHTC student rule to better align with HUD’s student rule, by ensuring that households composed entirely of adult students under the age of 24 who are enrolled full-time at institutions of higher learning are ineligible to live in a LIHTC apartment. Exceptions exist for single



parents, formerly homeless youth, those aging out of foster care, victims of domestic violence and human trafficking, and veterans.

- Allowing tenant relocation costs incurred in connection with rehabilitation to be capitalized as part of the cost of rehab.
- Allowing HFAs to determine what constitutes a “concerted community revitalization plan.”
- Limiting the rent charged to the maximum LIHTC rent instead of the Fair Market Rent (FMR) for units leased to households with a voucher if the unit is also benefiting from income averaging or the extremely low-income basis boost. The voucher payment standard based on the FMR can be much higher than the LIHTC maximum rent. Using the FMR in such instances subsidizes the property, providing excess rental assistance that could otherwise be used by public housing agencies (PHAs) to provide vouchers to other families.
- Allowing income averaging for 4% projects with Private Activity Bonds.
- Clarifying that LIHTC can be used to develop properties specifically for veterans and other special populations.
- Removing the QCT population cap.
- Increasing the DDA population cap to 30% to enable properties in more areas to benefit from the 30% basis boost.
- Requiring HFAs to consider cost reasonableness as part of the QAP selection criteria.
- Allowing HFAs to provide a basis boost of 30% for Housing Bond-financed properties.

## FOR MORE INFORMATION

NLIHC, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

A NLIHC’s report has three reports:

- *Picture of Preservation 2021*, [https://preservationdatabase.org/wp-content/uploads/2021/10/NHPD\\_2021Report.pdf](https://preservationdatabase.org/wp-content/uploads/2021/10/NHPD_2021Report.pdf).

- *Balancing Priorities: Preservation and Neighborhood Opportunity in the Low-Income Housing Tax Credit Program Beyond Year 30*, <https://nlihc.org/research/balancing-priorities>.
- Improving Low-Income Housing Tax Credit Data for Preservation, <https://nlihc.org/resource/improving-low-income-housing-tax-credit-data-preservation-new-report-nlihc-and-pahrc>.

National Housing Law Project, <https://www.nhlp.org/resource-center/low-income-housing-tax-credits>, including a new publication, *An Advocate’s Guide to Tenants’ Rights in the Low-Income Housing Tax Credit Program*, <https://www.nhlp.org/wp-content/uploads/LIHTC-2021.pdf>.

Affordable Rental Housing A.C.T.I.O.N. Campaign, <http://rentalhousingaction.org>, including its “Detailed Bill Summary: *The Affordable Housing Credit Improvement Act*.”

HUD PD&R’s database of LIHTC projects, updated through 2019, <https://www.huduser.gov/portal/datasets/lihtc.html>.

HUD PD&R’S list of QCTs and DDAs, <https://www.huduser.gov/portal/datasets/qct.html>.

HUD PD&R’s Tenant Data, <https://www.huduser.gov/portal/datasets/lihtc/tenant.html>.

HUD’s lists of HFAs, [https://lihtc.huduser.gov/agency\\_list.htm](https://lihtc.huduser.gov/agency_list.htm).

Novogradac, a consulting firm has on its *Affordable Housing Resource Center*, a wealth of LIHTC information, including:

- A list of HFAs in all states, <http://bit.ly/XoOL2b>.
- A list of state income averaging policies, <https://bit.ly/2PBf3jH>.
- Links to state QAPs, <https://bit.ly/2ry4xS8>.
- The IRS Code, regulations, IRS Revenue Rulings, IRS Revenue Procedures, and IRS Notices, <https://www.novoco.com/lihtc-irs-guidance>.

The National Council of State Housing Agencies (NCSHA) has:

- Recommended practices for administering the LIHTC program, <https://www.ncsha.org/resource-center/housing-credit-recommended-practices>.
- A list of state HFAs, <https://www.ncsha.org/membership/hfa-members>.
- A list of state income averaging policies, <https://www.ncsha.org/resource/state-income-averaging-policies>.
- LIHTC Reference Guide webpage <https://www.ncsha.org/resource/housing-credit-reference-guide> has a wealth of information, including the IRS Code, regulations, IRS Revenue Rulings, IRS Revenue Procedures, and IRS Notices.

Washington State Housing Finance Commission,  
*An Emerging Threat to Affordable Housing: Nonprofit  
Transfer Disputes in the Low-Income Housing Tax  
Credit Program*, <https://bit.ly/34eRWAM>.

# Housing Bonds

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Provided by the National Council of State Housing Agencies

**Administering Agency:** U.S. Department of the Treasury

**Year Started:** 1954

**Number of Households Served:** In 2021, state HFAs financed 49,801 mortgages for low- and moderate-income borrowers through Mortgage Revenue Bonds (MRBs), provided tax relief to 18,280 homebuyers through Mortgage Credit Certificates (MCCs), and built or rehabilitated 63,069 affordable rental units through multifamily bonds.

**Population Targeted:** Low- and moderate-income homebuyers and low-income renters

**See Also:** For related information, refer to the *Low-Income Housing Tax Credits* and *HOME Investment Partnerships Program* sections of this Guide.

Housing bonds are used to finance lower interest mortgages for low- and moderate-income homebuyers, as well as for the acquisition, construction, and rehabilitation of multifamily housing for low-income renters. Investors are willing to purchase tax-exempt housing bonds and receive a lower interest rate than they would for other investments because the income from these bonds is tax free. The interest savings made possible by the tax exemption is passed on to homebuyers and renters in reduced housing costs.

This past Summer, Senator Catherine Cortez Masto (D-NV) and Representative Gwen Moore (D-WI) introduced the “Affordable Housing Bond Enhancement Act” (S.4445/H.R.8184). The bill would implement several simple but impactful changes to MRBs and MCCs that will expand the supply of affordable homes and improve access to homeownership for low and moderate-income home buyers. NCSHA intends to work next year to increase congressional support for this legislation and to identify potential paths for its passage.

## HISTORY

Congress initially defined Private Activity Bonds (PABs) in the “Revenue and Expenditure Control Act of 1968.” While the list of qualified private activities has expanded over the years, both Exempt Facilities Bonds—a category that includes multifamily housing bonds—and single-family MRBs were original qualified private activities under the 1968 act.

Though issuance of some PABs is unlimited, both multifamily housing bonds and MRBs are limited by the PAB volume cap, which was first instituted under the “Deficit Reduction Act of 1984” and modified in 1986 (along with the list of qualified activities) with the “Tax Reform Act of 1986.”

## PROGRAM SUMMARY

PABs are distinct from other tax-exempt bonds because they are issued for activities that involve private entities, as opposed to governmental bonds, which support wholly governmental activities. The private activities financed with PABs must fulfill public purposes, and each PAB issuer must hold public hearings to solicit feedback from public stakeholders in the proposed uses of PAB authority. In addition to housing, PABs are issued for student loans, infrastructure, and redevelopment activities.

State and local HFAs have authority under the Internal Revenue Code to issue housing bonds to support affordable housing activities in their states. Issuing bonds is a way for HFAs to access private capital markets to help support affordable housing activities. HFAs sell the tax-exempt bonds to individual and corporate investors who are willing to purchase bonds paying lower than market interest rates because of the bonds’ tax-exempt status. This interest savings is passed on through private lenders to support affordable housing purchase and rental development.

There are two main types of housing bonds: MRBs, which finance single-family home purchases for qualified low- and moderate-

income homebuyers, and multifamily housing bonds, which finance the acquisition, construction, and rehabilitation of multifamily developments for low-income renters.

In recent years, due to the critical need for more affordable housing options for working families, Housing Bonds have comprised a substantially large share of PAB issuance each year. According to a report from the Council for Development Finance Agencies (CDFA), housing bonds accounted for 84 percent of total PAB issuance in 2019 and 88 percent of total issuance in 2020. Housing Bonds have made up at least 80 percent of all PABs issued for seven consecutive years.

### **Mortgage Revenue Bonds**

Proceeds from MRBs finance below-market rate mortgages to support the purchase of single-family homes. By lowering mortgage interest rates, MRBs make homeownership affordable for families who would not be able to qualify for market rate mortgage loans. HFAs often combine MRBs with down payment assistance that allows home purchases by families and individuals for whom a down payment would otherwise be a barrier to homeownership. In 2020, 84% of homebuyers who purchased a home financed by a stated HFA-issued MRB received down payment assistance.

Congress limits MRB mortgage loans to first-time homebuyers who earn no more than the greater of area or statewide median income in most areas and up to 140% of the applicable median income in targeted areas. Families of three or more in non-targeted areas can earn up to 115% of the greater of area or statewide median income. Congress also limits the price of homes purchased with MRB-financed mortgage loans to 90% of the average area purchase price in most areas and up to 110% of the average area purchase price in targeted areas.

HFAs also use their MRB authority to issue MCCs, which provide a non-refundable federal income tax credit of up to \$2,000 for part of the mortgage interest qualified homebuyers pay each year. The MCC program is a flexible subsidy source that can be adjusted depending on the incomes

of different homebuyers. It provides a relatively constant level of benefit to first-time homebuyers regardless of the difference between market and MRB rates.

Interested borrowers should contact their state or local HFA for information on obtaining an MRB mortgage loan or an MCC.

### **Multifamily Bonds**

Multifamily housing bonds provide financing for the acquisition, construction, or rehabilitation of rental housing that is affordable to low-income households by providing developers with low-cost capital as an alternative to higher interest market-rate loans. Multifamily housing developments with bond financing must set aside at least 40% of their apartments for families with incomes of 60% of area median income (AMI) or less, or 20% for families with incomes of 50% of AMI or less. The income-restricted apartments financed by those bonds must remain affordable for at least 15 years.

Rental developments that use tax-exempt bond financing to pay more than 50% of their total development costs are eligible to receive 4% Low-Income Housing Tax Credit (LIHTC) equity from outside the state-allocated LIHTC cap. In 2020, Congress set a 4% minimum rate for properties financed with multifamily housing bonds, whereas previously the credit rate floated based on federal borrowing rates. The minimum 4% rate will allow for the production of approximately 130,000 more affordable rental homes over the next decade.

In addition, many multifamily bonds finance special needs housing, such as housing for people formerly experiencing homelessness, veterans housing, transitional housing, senior housing, assisted living housing, housing for persons with disabilities, workforce housing, housing for persons with AIDS, migrant worker housing, and rural housing.

## **ISSUE SUMMARY**

In 2021, the most recent year for which data is available, state HFAs issued more than \$10.6 billion in MRBs and supported the purchase of

nearly 50,000 homes nationwide. Some bond issuance was used to raise proceeds that were saved for use in future years and to refund prior-year bonds. States issued just over \$12.5 billion in multifamily housing bonds in 2021 to finance more than 63,000 affordable rental homes. Local HFAs also issued bonds to finance affordable mortgage loans and the construction or rehabilitation of multifamily rental housing, which helped even more lower income homeowners and renters.

Housing bonds have been an unqualified success in providing lower-income Americans an opportunity they might not otherwise have to own a decent, affordable home and to access quality rental opportunities. Using MRBs, HFAs have made homeownership possible for more than 3.4 million low- and moderate-income families. In 2021, 85% of MRB borrowers earned less than AMI. In that year, the median MRB borrower income was \$50,774, 64 percent of the national median income.

HFAs have also provided nearly 387,000 lower- and moderate-income homeowners critical tax relief through the MCC program. Eighty-eight percent of all MCC borrowers in 2020 earned less than AMI.

An additional key point is that over 50% of all annual LIHTC rental home production utilizes housing bond financing. HFAs have used the LIHTC to produce nearly 3.5 million rental homes generally for families earning 60% of AMI or less. They add another 120,000 LIHTC apartments every year.

## FUNDING

By law, the annual state issuance of PABs, including MRBs and multifamily housing bonds, is capped by each state's population and indexed to inflation. The 2023 state cap is \$120 per capita with a per-state minimum of \$358,845,000.

## FORECAST FOR 2023

On June 22, 2022, Senator Catherine Cortez Masto (D-NV) and Representative Gwen Moore (D-WI) introduced the "[Affordable Housing Bond](#)

[Enhancement Act](#)." The bill would implement several simple but impactful changes to MRBs and MCCs that will expand the supply of affordable homes and improve access to homeownership for low and moderate-income home buyers.

Some of the changes in the bill include:

- Increasing the MRB home improvement loan limit;
- Allowing MRBs to be used for refinancing loans;
- Providing HFAs additional flexibility in how they utilize housing bond authority;
- Simplifying how a borrower's MCC benefit is calculated;
- Reducing the time period for the MRB and MCC recapture tax from nine years to five;
- Extending the amount of time HFAs can use converted MCC authority from two years to four; and
- Allowing HFAs to reconvert MCC authority back into MRBs two years after the conversion, rather than one.

NCSHA intends to work with Cortez Masto and Moore to reintroduce these bills next Congress, attract cosponsors, and seek out opportunities to advance this legislation.

## WHAT TO SAY TO LEGISLATORS

Advocates should ask legislators, particularly those on the House Ways and Means Committee and Senate Finance Committee, to cosponsor the "Affordable Housing Bond Enhancement Act."

More generally, advocates should continue to educate legislators about the importance of housing bonds and ask them to preserve the tax exemption for private activity housing bonds and other municipal bonds. Advocates should ask legislators to express their support for the tax exemption for all municipal tax-exempt bonds and PABs, including housing bonds, directly to the leaders of the Senate Finance Committee or House Ways and Means Committee. Remind legislators that housing bonds and other



PABs are necessary to promote much needed infrastructure improvements and address unmet housing needs.

## **FOR MORE INFORMATION**

National Council of State Housing Agencies, 202-624-7710, [www.ncsha.org](http://www.ncsha.org).

# The Affordable Housing Program and Community Investment Program of the Federal Home Loan Banks

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By Sheila Owens, Council of Federal Home Loan Banks

**T**he Federal Home Loan Banks (FHLBanks) are one of the nation's largest sources of private sector grants for housing and community development. They are behind-the-scenes players that perform a vital role in the nation's financial system. These 11 regional cooperatives provide reliable liquidity for their member institutions to turn into lendable funds. Local lending institutions borrow from the FHLBanks to finance housing, community development, infrastructure, and small businesses in their communities. The FHLBanks were created by Congress in 1932 and are regulated by the Federal Housing Finance Agency (FHFA). FHFA was created by the "Housing and Economic Recovery Act of 2008" and also regulates Fannie Mae and Freddie Mac.

## PROGRAM SUMMARIES

FHLBanks administer two housing and economic development programs.

**Affordable Housing Program (AHP).** The AHP is designed to help member financial institutions and their community partners develop affordable owner-occupied and rental housing for very low-to moderate-income families and individuals. Projects serve a wide range of needs. Many are designed for seniors, persons with disabilities, homeless families and individuals, first-time homeowners, and others with limited resources.

FHLBanks must contribute 10% of their net income from the previous year to affordable housing through the AHP. The minimum annual combined contribution by the 11 FHLBanks must total \$100 million. Member banks partner with developers and community organizations seeking to build and renovate housing for low-

to moderate-income households. To ensure that AHP-funded projects reflect local housing needs, each FHLBank is advised by an Affordable Housing Advisory Council for guidance on regional housing and community development issues.

On November 28, 2018, FHFA issued a final rule amending the AHP regulation. Among other changes, the final rule provides the FHLBanks additional authority to allocate their AHP funds, authorizes the FHLBanks to establish separate competitive funds that target specific affordable housing needs in their districts, and provides the FHLBanks additional flexibility in designing their project selection scoring systems to address affordable housing needs in their districts. The FHLBanks were required to comply with the provisions of the final rule by January 1, 2021.

AHP consists of two programs: a competitive application program and a homeowner set-aside program. Under the competitive application program, now known as the AHP General Fund, an FHLBank member submits an application on behalf of a project sponsor. Each FHLBank establishes a point system to score applications based on criteria established by regulation. AHP General Fund awards are made during scheduled funding rounds each year, starting with the highest scoring application until the available money is distributed.

Project sponsors partner with financial institutions to seek the competitive grants or low-cost loans. Applicants are encouraged to leverage their awards with other funding sources, including conventional loans, government subsidized financing, Low-Income Housing Tax Credit equity, bond financing, national Housing Trust Fund loans or grants, Community Development Block Grants, and foundation grants. Each FHLBank provides training and

application assistance. Refer to individual FHLBank websites for details.

If rental housing is developed with AHP funds, at least 20% of the units must be reserved for and affordable to households with very low income, less than 50% of the area median income (AMI). Owner-occupied housing must be occupied by a household with income less than 80% of AMI. AHP is a shallow-subsidy program; for the competitive program the average urban area subsidy per unit in 2021 was \$13,073 per unit, while the average rural subsidy per unit was \$14,956.

Under the homeowner set-aside program, an FHLBank member applies for grant funds and disburses the funds directly to the homeowner. An FHLBank may set aside up to \$4.5 million, or 35% of its annual AHP contribution, to assist low- or moderate-income households purchase or rehabilitate homes. At least one-third of an FHLBank's aggregate annual set-aside contribution must be allocated to first-time homebuyers. The maximum grant amount per household is \$22,000.

From 1990 through 2021, the FHLBanks awarded approximately \$7 billion in AHP funds. In 2021, the FHLBanks awarded nearly \$352.4 million to assist over 32,000 households. Of those AHP awards in 2021, \$291 million was through the competitive program. Also in 2021, 89% of the competitive program units were rental units, down slightly from 90% in 2020. Those served by the AHP include extremely low-income, very-low income and low- to moderate-income households.

The homeowner set-aside program was authorized in 1995. In 2021, the average set-aside subsidy per household was \$6,915; 895 set-aside grants funded the rehabilitation of owner-occupied homes, an increase from 777 set-aside grants for owner-occupied rehabilitation in 2020.

**The Community Investment Program and the Community Investment Cash Advance Program.** The FHLBanks' support of low-income housing and community development activities also includes the CIP and CICA programs.

FHLBank members can finance eligible targeted housing through the CIP, and eligible targeted mixed-use projects and economic development projects through both the CIP and CICA programs. Unlike the AHP, however, CIP and CICA funding is not subject to specific statutory funding allocation requirements.

**Community Investment Program (CIP).** Each FHLBank operates a CIP that offers below-market rate loans to members for long-term financing of housing and economic development that benefits low- and moderate-income families and neighborhoods. CIP finances housing for households with incomes less than 115% of AMI, including rental projects, owner-occupied housing, and manufactured housing communities. Economic development projects must be in low- and moderate-income neighborhoods or benefit low- and moderate-income households. In 2021, the FHLBanks issued approximately \$1.7 billion in CIP advances for housing projects and approximately \$32.2 million for economic development projects.

**How the FHLBanks Work.** The FHLBanks are member-owned cooperatives that provide funding for housing through all market cycles. Approximately 6,500 lenders are members of the FHLBanks, representing more than 80% of the insured lending institutions in the country. Community banks, thrifts, commercial banks, credit unions, community development financial institutions, insurance companies, and state housing finance agencies are all eligible for membership in the system. The 11 FHLBanks are in Atlanta, Boston, Chicago, Cincinnati, Dallas, Des Moines, Indianapolis, New York, Pittsburgh, San Francisco, and Topeka.

Each FHLBank has its own board of directors, comprised of members of that FHLBank and independent (non-member) directors. The boards of directors represent many areas of expertise, including banking, accounting, housing, and community development.

The primary purpose of the FHLBanks is to provide members with liquidity. In fact, the FHLBanks are the only source of credit market

access for most their members. Most community institutions do not have the ability to access the credit markets on their own.

FHLBank loans to members, called “advances,” are a nearly instantaneous way for members to secure liquidity. The FHLBanks go to the debt markets several times a day to provide their members with funding. The size of the entire system allows for these advances to be structured in any number of ways, allowing each member to find a funding strategy that is tailored to its needs.

In order to qualify for advances, a member must pledge high-quality collateral, in the form of mortgages, government securities, or loans on small business, agriculture, or community development. The member must also purchase additional stock in proportion to its borrowing. Once the member’s FHLBank approves the loan request, it advances those funds to the member institution, which then lends the funds out in the community for housing and economic development.

Each of the 11 regional FHLBanks is self-capitalizing. One of the benefits of the FHLBanks’ regional, self-capitalizing, cooperative business model is the ability to safely expand and contract to meet member lending needs throughout various business cycles. During times of high advance activity, capital automatically increases. As advances roll off the books of the FHLBanks, capital is reduced accordingly.

During the financial crisis, the FHLBanks continued to provide liquidity nationwide to members for housing and community credit needs through an extremely challenging period of economic stress. As other sources of liquidity disappeared, and before the coordinated response of the federal government, the FHLBanks increased lending to members in every part of the country by 58% between the second quarter of 2007 and the third quarter of 2008. Advances exceeded \$1 trillion in the third quarter of 2008.

FHLBanks are jointly and severally liable for their combined obligations. That means that if

any individual FHLBank would not be able to pay a creditor, the other 11 FHLBanks would be required to step in and cover that debt. This provides another level of safety and leads to prudent borrowing.

## FUNDING

No taxpayer funds are involved in the operation of the privately owned FHLBanks. The FHLBanks’ Office of Finance, the clearinghouse for FHLBank debt transactions, accesses the global capital markets daily. FHLBank debt is sold through a broad, international network of about 100 underwriters.

## WHAT TO SAY TO LEGISLATORS

The FHLBanks are an indispensable resource in the work done by housing organizations to address the housing needs of low-income households. They have several programs and products that help create strong communities. Their community lending programs can be utilized to help drive job growth at the local level. The AHP grants have remained a reliable and stable source of much-needed affordable housing funding, even as other sources of affordable housing funding have dried up.

The role the FHLBanks play in the financial system is vitally important. In any restructured housing finance system, the FHLBanks must continue to function as steady and reliable sources of funds for housing and community development through local institutions.

## FOR MORE INFORMATION

Council of FHLBanks, [www.FHLBanks.com](http://www.FHLBanks.com).

Federal Housing Finance Agency,  
<https://www.fhfa.gov/>.

# Native American, Alaska Native, and Native Hawaiian Housing Programs

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By Anthony Walters, Executive Director,  
National American Indian Housing  
Council

Several federal housing programs are designed to provide housing services and housing developing in native communities throughout the United States. The “Native American Housing Assistance and Self-Determination Act of 1996” (NAHASDA) is the primary federal statute designed to address Native American housing issues in tribal communities. NAHASDA has two major components: the formula-funded Indian Housing Block Grant (IHBG) Program and the Title VI Tribal Housing Activities Loan Guarantee Program.

Enacted in 1996, NAHASDA provides annual formula funding to Indian tribes so they can provide affordable housing-related opportunities for low-income families residing on reservations and in other tribal areas. The act, which became effective in October 1997, provides tribes with a consistent, dedicated annual funding stream without requiring them to navigate the myriad of general housing programs administered by HUD. The act recognizes tribal sovereignty and self-determination by providing block grant funds directly to tribes, which are operated pursuant to tribally-created Indian Housing Plans. NAHASDA’s most recent reauthorization expired in 2013, though Congress has continued to fund its programs every year. Amendments made to NAHASDA in 2000 added Title VIII - Housing Assistance for Native Hawaiians, which includes the Native Hawaiian Housing Block Grant (NHHBG) Program and the Section 184A Native Hawaiian Housing Loan Guarantee Program.

All Native Americans are also eligible for the Native American Housing Loan Guarantee Program, better known as the Section 184 Program, which began in 1992 and is intended to provide greater access to mortgage lending in tribal communities. The Section 184 program

was created before NAHASDA but is often associated with NAHASDA programs and legislation. Congress has annually funded the competitive Indian Community Development Block Grant (ICDBG) Program for tribes and tribal housing programs and since 2018, a competitive IHBG has focused on new housing constructions.

## HISTORY AND PURPOSE

The United States has a unique legal and political relationship with Indian tribes that stems from treaties, federal statutes, court decisions, and executive agreements dating back to the ratification of the U.S. Constitution. With respect to tribal lands, the federal government often serves as a trustee, holding certain lands in trust for tribes and individual Native Americans acting as beneficiaries. Today, federal Indian law and policy largely extends the trust responsibility to include the provision of health care, education, natural resources protection and development, and housing.

In 1961, indigenous tribes became eligible for assistance under programs operated by HUD. Regional HUD offices administered programs to tribes in their areas. By the mid-1970s, HUD had created Offices of Indian Programs in Denver and in San Francisco to exclusively administer Indian housing programs. Finally, in 1992, legislation created the current administering entity at HUD headquarters, the Office of Native American Programs.

The enactment of NAHASDA in 1996 provided permanent dedicated funding to tribal housing programs, but it also restricted tribes from accessing many other HUD programs. Tribes were restricted from most other public housing grants and voucher programs. Examples include restricting access to the tenant-based voucher programs, homeless assistance grants and homebuyer counseling grants, among others. Originally, tribes were also excluded from the



HUD-VA Supportive Housing Program (HUD-VASH), but Congress created a Tribal HUD-VASH demonstration program in October 2015, allowing nearly 30 tribes to provide rental vouchers and supportive services to Native American veterans their communities. There have since been bills introduced in Congress to make Tribal HUD-VASH permanent and available to all tribes. The bills have enjoyed bipartisan support and the bills passed the Senate in both the 116<sup>th</sup> and 117<sup>th</sup> Congresses but failed to get through the House of Representatives before the end of each Congress.

The housing needs faced by Native American communities are as diverse as the communities served, which are in approximately 35 states. Overcrowding, poverty, unemployment, low household incomes, a rapidly increasing population, and lack of infrastructure are some of the challenges facing Native American, Alaska Native, and Native Hawaiian communities. According to an extensive [study](#) of American Indian and Alaska Native (AIAN) housing conditions released by HUD in early 2017, 6% of AIAN homes located in tribal areas had inadequate plumbing, 12% had heating deficiencies, and 16% were overcrowded, while nationwide only 1–2% of homes suffered each of these conditions. At the same time, 38% of AIAN households were cost burdened (paying more than 30% of income for housing), compared to 36% nationally. The study also confirmed that homelessness in tribal areas generally manifests as overcrowding: researchers estimated that 42,000–85,000 people in Native American communities were staying with friends or relatives because they had no place of their own. To address the issues of overcrowded and substandard homes, the HUD study estimated that 68,000 new units were needed, yet annual funding levels have limited tribes to building only between 1,000–1,500 new units a year.

HUD's study also found that NAHASDA's block grant program works well, and tribes are able to use the funds effectively. It noted, however, that funding levels have not been adjusted for inflation over time, so while funding has

remained steady from year to year, tribes' purchasing power with IHBG funding has been reduced by about a third since the enactment of NAHASDA. Additionally, when NAHASDA programs were first established, they comprised over 2% of the entire HUD budget but now are barely 1% of the HUD budget, despite the entire Department's growing 2.5 times over these past two decades.

## PROGRAM SUMMARY

NAHASDA enhances tribal capacity to address the substandard housing and infrastructure conditions in tribal communities by encouraging greater self-management of housing programs and by encouraging private sector financing to complement limited IHBG dollars. The amounts of annual IHBGs are based on a formula that considers need and the amount of existing housing stock. The grants are awarded to eligible tribes or their Tribally-Designated Housing Entities (TDHEs) for a range of affordable housing activities on reservations or in other areas.

Activities eligible to be funded with NAHASDA assistance include new construction, rehabilitation, acquisition, infrastructure, and various support services. Housing assisted with these funds may be either rental or homeowner units. NAHASDA funds can also be used for certain types of community facilities if the facilities serve eligible low-income indigenous families who reside in affordable housing. Generally, only families whose income does not exceed 80% of the area median income are eligible for assistance.

NAHASDA's Title VI loan guarantee program can provide tribes and TDHEs better access to capital to develop larger housing projects. The Title VI program provides lenders a guarantee for amounts up to five-years' worth of a tribe's annual funding levels. For individual home purchases or construction, Section 184 loan guarantees can help secure mortgages for individual homebuyers or tribes, TDHEs, and Indian Housing Authorities.

## NATIVE HAWAIIANS

In 2000, NAHASDA was amended to create a separate title addressing the housing and related community development needs of native Hawaiians. Title VIII Housing Assistance for Native Hawaiians includes the NHHBG program and the Section 184A Native Hawaiian Housing Loan Guarantee Program. The NHHBG program provides eligible affordable housing assistance to low-income Native Hawaiians eligible to reside on Hawaiian homelands. Since 2005, Title VIII has not been reauthorized, but the NHHBG has nevertheless been funded most years and housing services continue to be provided.

The Department of Hawaiian Home Lands (DHHL), the sole recipient of NHHBG funding, uses the funds for new construction, rehabilitation, acquisition, infrastructure, and various support services. Housing can be either rental or homeownership. The NHHBG can also be used for certain types of community facilities if the facilities serve eligible residents of affordable housing. DHHL also uses the funds to provide housing services, including homeownership counseling and technical assistance, to prepare families for home purchase and ownership.

The “Hawaiian Homelands Homeownership Act of 2000” created a new Section 184A Native Hawaiian Housing Loan Guarantee Program, equivalent to the Section 184 program for American Indians and Alaska Natives.

## FUNDING

The IHBG program was funded at approximately \$650 million each year from FY12 through FY21. While not technically a cut to the program, level funding of NAHASDA programs for nearly 20 years has kept tribal programs from keeping pace with need. Congress in recent years also appropriated an additional \$100 million for a competitive IHBG which has focused on new construction in tribal communities. In addition to the gains through the new competitive grants, tribes have received additional funds through the Indian Country Development Block Grant,

which grew to \$70 million in FY 2020. For the first time in nearly a decade, Congress included substantial increases to NAHASDA, increasing the formula IHBG program 19% from \$650 million to \$772 million, and increasing the competitive IHBG program from \$100 million to \$150 million. While these increases are a positive trend, they have not yet made up for the relative stagnant funding since NAHASDA was established.

The Tribal HUD-VASH demonstration program for Native American veterans received \$7 million in funding in the FY15 appropriations bill and the program began operations in FY16. The tribes participating in the demonstration program have had varied levels of success, with some struggling to find available housing stock in their communities, while other tribes were unable to receive consistent supportive services from the VA. Those issues led Congress to reduce appropriations to only \$1 million for the program in FY20, however that funding has been restored to \$5 million annually. The Program has also expanded administratively, with HUD allowing a small number of new tribes to enter the program over the past two years.

In addition to these regularly funded tribal housing programs, Congress has provided supplemental funds to tribal housing programs throughout the COVID-19 pandemic. Congress included \$300 million for tribal housing programs through the “CARES Act” in 2020, which tribes received as supplemental formula grants and through the Indian Community Development Block Grant. Congress provided \$750 million in additional funding to tribal housing programs through the American Rescue Plan, with \$450 million being added through the existing formula grants, and another \$280 million being processed through ICDBG applications.

Finally, as part of COVID relief packages, Congress included tribal set-asides under the Emergency Rental Assistance (ERA) (\$898 million) and Homeowner Assistance Fund (HAF) (\$498 million) programs operated through the Treasury Department. These funds were allocated to tribes by the NAHASDA formulas, and

provided more funds for just rental, mortgage and utility assistance than tribes receive annually for their entire housing programs. Tribes have been distributing these funds in a similar manner as state and local ERA and HAF grantees, but unfortunately these funds are not able to help tribes address the direct issues of overall housing shortages found in tribal communities. Tribal ERA programs are currently facing the prospect of returning nearly \$300 million in ERA funds due to statutory deadlines. Tribes and housing advocates have been asking Congress to provide an extension for Tribal ERA programs, since state and local ERA programs have additional time to carry out rental assistance activities due to other ERA provisions.

## **FORECAST FOR 2023 AND WHAT TO SAY TO LEGISLATORS**

### **NAHASDA Reauthorization**

NAHASDA programs are currently expired, though they continue to receive funding. Reauthorization bills have continued to make progress during each of the last few Congresses. Bills have been introduced in both chambers of Congress and are largely in line with prior reauthorization efforts. Current Senate versions of NAHASDA reauthorization bills would make small changes to improve the overall implementation of NAHASDA programs, while also make tribes eligible for the homebuyer counseling grant program at HUD, make Tribal HUD-VASH program permanent and available to all tribes, and other smaller improvements. Current House versions of the bill would also create set-asides for tribes in certain USDA Rural Housing programs, address Flood Insurance disparities and bolster tribal court jurisdiction in mortgage proceedings. During the 117<sup>th</sup> Congress, the full Senate passed a NAHASDA reauthorization as part of a larger package before it was dropped out during final negotiations with the House. This was the first time a reauthorization bill had passed one chamber since the program was last reauthorized in 2008.

### **Resources for Tribal Housing Programs**

Funding for tribal housing is the lifeblood of community development in Native American communities. For many years, funding has leveled off, failing to keep pace with inflation and the ever-increasing costs of energy, materials, and construction. Advocates should ask Congress to fully fund tribal housing and tribal housing-related programs, including the IHBG program; the ICDBG program; the NHHBG program; and the Section 184, 184A, and Title VI Loan Guarantee Programs. If the IHBG program included funding growth with inflation since NAHASDA's enactment, the IHBG would be funded at over \$1.1 billion for FY23. Congress approved some increases in FY22, providing \$772 million to the IHBG program, yet that is still below original, adjusted NAHASDA funding levels. Other federal housing programs, such as the USDA Rural Housing programs, the Department of the Interior Housing Improvement Program, the Department of Treasury Native American CDFI Assistance (NACA) program, and others could all be enhanced to deliver greater housing opportunities to tribal communities as well.

### **HUD-Veterans Affairs Supportive Housing**

The nation's largest supported permanent housing initiative combines HUD Housing Choice Vouchers with U.S. Department of Veterans Affairs case management services that promote and maintain recovery and housing stability. The FY15 HUD appropriations bill directed the HUD secretary to set aside a portion of HUD-VASH funds for a rental assistance and supportive housing demonstration for Native American veterans who are at risk of homelessness living on or near reservations or in other Native American communities. As a demonstration project, only 26 tribes (out of 574) were invited to participate in the program starting in 2015, though a few more have been added in recent years. Congress has been close to passing a permanent authorization of the Tribal HUD-VASH program in both the 116<sup>th</sup> and 117<sup>th</sup> Congresses and advocates should encourage Congress to

pass the Tribal HUD-VASH Act as part of a full NAHASDA reauthorization.

## **FOR MORE INFORMATION**

Housing Assistance Council, [www.ruralhome.org](http://www.ruralhome.org).

National American Indian Housing Council, [www.naihc.net](http://www.naihc.net).

HUD Office of Native American Programs, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/ih](https://www.hud.gov/program_offices/public_indian_housing/ih).

DHHL, <http://hawaii.gov/dhhl>.

# Self-Help Homeownership Opportunity Program

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By Leslie R. Strauss, Senior Policy Analyst, Housing Assistance Council

**Administering Agency:** HUD's Office of Rural Housing and Economic Development

**Year Started:** 1996

**Number of Persons/Households Served:** 35,000

**Population Targeted:** Households with incomes below 80% of the area median income

**Funding:** \$12.5 million in FY22

The Self-Help Homeownership Opportunity Program (SHOP) is a competitive grant program that provides funds to national and regional nonprofits that assist low-income families in building their own homes using a “sweat-equity” or self-help model. The homes are sold to the homebuyers at below-market rates.

## HISTORY AND PURPOSE

Congress first authorized SHOP in 1996. SHOP was created for the purpose of alleviating one of the largest obstacles faced by self-help housing developers in the production of affordable housing, which is the high cost of acquiring land and developing infrastructure before home construction begins.

## PROGRAM SUMMARY

SHOP is a competitive grant program run by HUD that provides funds to national and regional nonprofits that assist low-income families in building their own homes using a sweat equity or self-help model. Funds are restricted to paying for land and infrastructure costs associated with building the homes, including sewer connections, streets, utilities, and environmental remediation. These funds must result in one home for each \$15,000 awarded. Each low-income family receiving assistance through SHOP is required to invest at least 100 hours of work in building

a home and homes for others, although many families work far more than the required hours; the requirement for each one-person household is 50 hours. The homes are sold to the homebuyers at below-market rates.

National or regional nonprofit organizations or consortia can apply to HUD annually for SHOP funds. There are currently two SHOP recipients that operate nationwide: Habitat for Humanity and the Housing Assistance Council. HUD awards grants competitively based upon an organization's experience in managing a sweat-equity program, community needs, its capacity to generate other sources of funding, and the soundness of its program design. The HUD-funded organizations may develop self-help housing themselves or act as intermediaries; that is, make SHOP loans to local organizations that work with self-help home buyers.

All families receiving SHOP funds must earn less than 80% of the area median income, although many of the organizations that facilitate the distribution of those funds work with families who have income well below that threshold. SHOP funds have been used to support the work of self-help housing organizations in every state, resulting in the development of thousands of affordable homes for ownership.

## FUNDING

SHOP was appropriated \$10 million each year from FY14 to FY21 and \$12.5 million in FY22.

## FORECAST FOR 2023

SHOP has enjoyed bipartisan support since its creation in 1996 and that seems likely to continue. The Biden Administration's budget for FY23 proposed to drop back to the program's \$10 million funding level, but the House appropriations bill would hold it at \$12.5 million, while the Senate's would raise it to \$17 million. SHOP is one of the few federal housing programs



to receive an effective rating, the highest rating possible, on the Program Assessment Rating Tool developed by the Office of Management and Budget.

## **TIPS FOR LOCAL SUCCESS**

Local organizations can access SHOP funding by partnering with one of the national or regional funding recipients. The strongest applicants have self-help experience.

## **WHAT TO SAY TO LEGISLATORS**

Members of the House and Senate should be asked to support continued SHOP funding at a minimum of \$12.5 million per year. The program has many positive aspects:

- Self-help housing provides families a hand up. The families that ultimately use the program's funds will put at least 100 hours, and often more, into building their own homes. For example, through the Housing Assistance Council's first 10 years of SHOP funding, participating homebuyers averaged more than 1,000 hours of labor.
- Because owners' sweat equity reduces mortgage amounts, the self-help process makes homeownership affordable to people with low and very low incomes.

## **FOR MORE INFORMATION**

Habitat for Humanity International, 404-962-3433, [www.habitat.org](http://www.habitat.org).

Housing Assistance Council, 202-842-8600, [www.ruralhome.org](http://www.ruralhome.org).

HUD, 877-787-2526 or 202-708-2290, <https://www.hudexchange.info/programs/shop/>.

# The Low-Income Home Energy Assistance Program (LIHEAP)

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By Olivia Wein, Staff Attorney, National Consumer Law Center

**Administering Agency:** U.S. Department of Health and Human Services (HHS), Office of Community Services within the Administration for Children and Families

**Year Program Started:** 1981

**Number of Persons/Households Served:** An estimated 5.9 million families receive Low-Income Home Energy Assistance Program (LIHEAP) assistance in FY 2021 through the regular LIHEAP program, which includes heating grants, cooling grants, and crisis assistance. However, the total number of households served is substantially greater due to the COVID-19 pandemic relief funds for LIHEAP added in the “CARES Act” (\$900 million for LIHEAP) and the “American Rescue Plan Act” (\$4.5 billion for LIHEAP) and the Bi-Partisan Infrastructure Law (\$500 million in supplemental funding LIHEAP).

**Population Targeted:** Low-income households (at or below 150% of the poverty threshold or 60% of the state median income) who cannot afford to keep their homes at safe temperatures; particularly households with frail elderly, members with disabilities, or very young children.

LIHEAP is a targeted block grant program aimed at helping struggling families pay their heating and cooling bills. States have flexibility in setting eligibility criteria, benefit amounts, how much to direct to energy crisis situations where the health of the household is in jeopardy, as well as other program components. The typical main challenge for LIHEAP is securing adequate annual appropriations. The need for full FY 2024 LIHEAP program funding (\$5.1 billion) remains and is necessary to help struggling families with unaffordable energy bills.

The “Consolidated Appropriations Act, 2023” (P.L. 117-328) was signed into law on December 29, 2022 and contains a total of \$5.0 billion for LIHEAP for FY 2023. LIHEAP was funded in three parts in this omnibus spending package. Congress appropriated \$1.5 billion for the regular LIHEAP program, and then \$1 billion and \$2.5 billion in the “Disaster Relief Supplemental Appropriations Act, 2023” portion of this omnibus spending package. This is in addition to the supplemental \$1 billion for LIHEAP in H.R. 6833, the “FY2023 Continuing Appropriations and Ukraine Supplemental Appropriations Act” (P.L. 117-180) and \$100 million from the “Infrastructure Investment and Jobs Act” (P.L. 117-58) (also called the Bipartisan Infrastructure Law). Thus the total appropriated for LIHEAP in FY 2023 is \$6.1 billion.

## HISTORY

LIHEAP was created in response to rising energy prices in the 1970s and the decreasing purchasing power of low-income households. In 1980, low-income energy assistance was part of the “Crude Oil Windfall Profit Act,” Public Law 96-223, and LIHEAP was authorized in the “Omnibus Budget Reconciliation Act of 1981,” Public Law 97-35. Since then, LIHEAP has been reauthorized several times, targeting the assistance within the pool of eligible households, adding new program components, and expanding authorization levels for funding.

## PROGRAM SUMMARY

The regular LIHEAP program is a federal block grant program to the states that helps low-income families meet the costs of heating and cooling their homes. LIHEAP is intended to “assist low-income households, particularly those with the lowest incomes, that pay a high proportion of household income for home energy, primarily in meeting their home energy needs” (42 U.S.C. § 8621(a)). States are to target assistance

to households with the lowest incomes and highest energy needs (i.e., those who pay a large percentage of their income on home energy), and to households with populations vulnerable to extreme heat or cold. These are households with very young children, individuals with disabilities, and the frail elderly. The LIHEAP program focuses on home energy, which is defined as a source of heating or cooling in residential dwellings.

In order to receive LIHEAP funds, states must submit an annual application (state plan) to the Secretary of HHS. All 50 states, the District of Columbia, numerous tribes, and territories participate in the LIHEAP program. In the majority of states, LIHEAP is administered by the state social services agency. In many states, the state agency contracts with local providers, such as community action agencies, to handle intake.

Although states have a great deal of flexibility in designing their programs each year, the vast majority of states' LIHEAP grants are used to provide bill payment assistance to eligible low-income households to help with heating and cooling costs. LIHEAP benefits cover all forms of residential heating or cooling fuels. This includes a range of fuels from natural gas and electricity for heating or cooling to home heating oil, propane, kerosene, and wood. Assistance is often in the form of a vendor payment or two-party check (the customer and the utility).

States also have the flexibility to set their program's eligibility criteria in the annual state LIHEAP plan based on income eligibility. The maximum eligibility for LIHEAP is 150% of poverty or 60% of state median income. States are prohibited from setting income eligibility below 110% of the poverty level. States can also rely on participation in another means-tested program to determine eligibility. Low-income households are eligible for LIHEAP through participation in Temporary Assistance for Needy Families, Supplemental Security Income, the Supplemental Nutrition Assistance Program (also known as food stamps) and certain needs-tested veterans' benefits.

There are several additional components to LIHEAP:

- Crisis grants: Each fiscal year, states must reserve a reasonable amount of their regular LIHEAP block grant until March 15 for individual crisis intervention grants. States have the discretion to define what constitutes a crisis for this component. Common definitions include an imminent shut-off, empty heating fuel tank, or broken furnace. The state crisis intervention funds must be made available to a household within 18 hours if the household is in a life-threatening situation, and within 48 hours under other circumstances. The state crisis intervention component is different from the LIHEAP emergency contingency funds that are at the discretion of the president to release.
- Low-cost weatherization or other home energy-related repairs: States may use up to 15% of their annual LIHEAP block grant (or 25% with a waiver) for low-cost residential weatherization or other home energy-related repair. In about 30 states, the same agency administers LIHEAP and the Department of Energy's low-income weatherization program.
- Self-sufficiency: States can use up to 5% of their block grant to provide services to encourage and enable households to reduce their home energy needs through activities such as needs assessments, counseling, and assistance with energy vendors (this is also referred to as Assurance 16).
- LIHEAP emergency contingency fund: The LIHEAP emergency contingency fund is subsidized separately from the regular LIHEAP block grant. The president can release LIHEAP emergency contingency funds to help meet low-income home energy needs arising from a natural disaster, a significant increase in the cost of home energy, or other emergency. Unfortunately, Congress has not appropriated funds for the LIHEAP emergency contingency fund since FY11.

According to HHS data for FY17, LIHEAP provided essential energy assistance to 5.4

million households, including heating and cooling bill payment assistance and crisis assistance. According to the National Energy Assistance Directors' Association, in 2021, the regular LIHEAP program helped about 5.9 million households.

## FUNDING

The total funding for FY 2023 LIHEAP is \$6.1 billion from three spending bills. The “Consolidated Appropriations Act, 2023” ([P.L. 117-328](#)) was signed into law on December 29, 2022 and contains a total of \$5.0 billion for LIHEAP for FY 2023. LIHEAP was funded in three parts in this omnibus spending package. Congress appropriated \$1.5 billion for the regular LIHEAP program, and then \$1 billion and \$2.5 billion in the “Disaster Relief Supplemental Appropriations Act, 2023” portion of this omnibus spending package. On September 30, 2022, Congress provided a supplemental \$1 billion for LIHEAP in H.R. 6833, the FY2023 Continuing Appropriations and “Ukraine Supplemental Appropriations Act” ([P.L. 117-180](#)) and Congress also included \$100 million from the “Infrastructure Investment and Jobs Act for FY 2023” LIHEAP ([P.L. 117-58](#)) (also called the Bipartisan Infrastructure Law).

The authorized funding level for LIHEAP is \$5.1 billion for the regular block grant program and \$600 million in LIHEAP emergency contingency funds. Note that, as opposed to prior years, the FY 2023 regular LIHEAP program is only appropriated at \$1.5 billion.

## FORECAST FOR 2023

The U.S. Energy Information Administration's Winter Fuels Outlook (October 2022) is predicting retail price of home energy fuels to be at multiyear highs this winter due to colder weather and rising commodity prices. This is on top of last year's high prices. EIA predicts that the average household heating with natural gas will spend \$931 this winter (28% more than last winter), households heating with electricity will spend \$1,359 (10% more than last winter) and households heating with deliverable fuels will

see dramatic increases, again on top of last year's double-digit increase in expenditures. Average expenditures this winter for households heating with propane are estimated to be \$1,668 (5% more than last winter) and \$2,354 for heating oil (27% more than last winter). We expect strong demand for LIHEAP assistance. As we near the next budget cycle, the immediate concern for LIHEAP advocates is to secure full funding for LIHEAP at \$5.1 billion for FY 2024 appropriations and additional supplemental appropriations.

## TIPS FOR LOCAL SUCCESS

This February 1, 2023 will be the second LIHEAP Energy Assistance Day. Please check the National Energy Assistance Directors webpage for an updated [Toolkit](#) to help promote the event. This campaign is to increase awareness about LIHEAP and to encourage households to apply for assistance. The National Energy and Utility Affordability Coalition (NEUAC) is planning its annual [LIHEAP Action Day](#) on February 15 and 16, 2023. All are welcome to join. The LIHEAP Clearinghouse has an energy assistance [referral service](#) (phone line and website). The LIHEAP Clearinghouse should soon have a tool to connect households to the nearest LIHEAP intake site by applicant zip code.

Advocates should become involved in the development of their state's annual LIHEAP program. [LIHEAP state plans](#) are required to be made available to the public in a manner that facilitates meaningful review and comment, and states are required to hold public hearings on the LIHEAP plan. The plans will set out eligibility criteria and benefit amounts, as well as other aspects of the program, such as the percentage of the state's LIHEAP grant requested in each quarter.

Please note that some tribes receive LIHEAP grants directly through the federal agency (as opposed to the state). HHS has provided a [map](#) to find each state's LIHEAP office.

Advocates should also become familiar with the other energy assistance programs and utility consumer protections. In addition to LIHEAP, some states and some utilities have separate

low-income energy assistance programs. For additional help with utility issues, consider contacting the consumer protection division of a state's utility commission.

Advocates should also become familiar with certain utility rules. For utilities regulated by the state utility commission (generally private investor-owned utilities), the state utility commission website should have a link to rules regarding: customer shut-offs (for example, a winter shut-off rule, an extreme temperature rule, or a severe illness shut-off protection rule); payment plans; special protections for low-income or LIHEAP customers; and deposits and reconnection fees. Staff in the consumer protection division of the utility commission may be able to help find the relevant rules. For municipal utilities or cooperatives, the rules will reside with the municipality or the co-op.

## WHAT TO SAY TO LEGISLATORS

Advocates should meet with their Members of Congress to share the following messages:

- LIHEAP is a critical safety net program aimed at helping vulnerable households afford residential energy.
- There is significant need in the member's district (provide, for example, the number of clients seeking help with their utility bills, newspaper clips, or data regarding the number of households being disconnected).
- The current funding level will not be sufficient to meet the record high levels of applications.
- Supporters of LIHEAP should visit the LIHEAP Action Day website of the National Energy and Utility Affordability Coalition ([www.NEUAC.org](http://www.NEUAC.org)) and sign on to letters to Congress regarding LIHEAP funding. The NEUAC website also contains state-by-state, one-page fact sheets with helpful statistics tailored to each state.
- One-page snapshots of state LIHEAP programs are available on the HHS LIHEAP Data Warehouse website: <https://liheappm.acf.hhs.gov/datawarehouse/>.

## FOR MORE INFORMATION

For advocates seeking more information about LIHEAP program design, the LIHEAP Clearinghouse is a wealth of information regarding the various ways states have designed their LIHEAP programs.

The LIHEAP Clearinghouse tracks states' supplemental energy assistance activities (listed as "State Leveraging under State Programs in the menu on the homepage).

For information about advocacy regarding LIHEAP funding:

The National Energy Assistance Directors' Association's website provides information on LIHEAP funding needs and current funding levels. View at: [www.neada.org](http://www.neada.org).

The National Energy and Utility Affordability Coalition is an organization of utility, nonprofit, and anti-poverty organizations focused on the energy needs of low-income consumers. View at: <http://www.neuac.org/>



# Federal Housing Administration

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By Mike Calhoun, President, and  
Mitria Spotser, Consultant, Center for  
Responsible Lending

## PROGRAM SUMMARY

The Federal Housing Administration (FHA) insures mortgages made by lenders and, in doing so, helps provide single-family housing and multifamily housing for low- and moderate-income families. The FHA was established in 1934 under the “National Housing Act” to expand homeownership for working-class Americans (however, as described below, only white Americans benefited in the first decades of the program), broaden the availability of mortgages, protect lending institutions, and stimulate home construction. In 1965, the FHA was consolidated into HUD’s Office of Housing. FHA is now the largest part of HUD. The FHA Commissioner reports directly to the HUD Secretary.

The FHA provides mortgage insurance to lenders on both single-family dwellings (one to four units) and multifamily dwellings (five units or more). HUD’s single-family programs include mortgage insurance on loans to purchase new or existing homes, condominiums, manufactured housing, houses needing rehabilitation, and for reverse equity mortgages to elderly homeowners. HUD’s multifamily programs provide mortgage insurance to HUD-approved lenders to facilitate the construction, substantial rehabilitation, purchase, and refinancing of multifamily housing projects.

FHA programs do not lend money directly, but instead insure private loans made by FHA-approved lenders. When a loan defaults, lenders make a claim to the FHA, triggering an FHA payment to the lender for the claim amount. The FHA consists of two insurance funds supported by premium, fee, and interest income, congressional appropriations if necessary, and other miscellaneous sources.

## HISTORY

The FHA was created as an essential component of New Deal legislation in order to rescue the home building and finance industries that crashed during the Great Depression. Upon its founding, FHA played a critical role in alleviating the homeownership crisis in the United

States. It also played a major role in institutionalizing and perpetuating segregation in the housing market through its practice of denying mortgages based on race and ethnicity.

From its inception in 1934, FHA explicitly practiced a policy of redlining by refusing to insure mortgages in or near African American neighborhoods. FHA relied upon color-coded metropolitan maps to indicate where it was considered safe to insure mortgages. These maps denoted risky areas in red; areas that typically included African Americans or where African Americans lived nearby. In FHA’s 1936 Underwriting Manual, numerous provisions indicated that “inharmonious” racial groups should not live in the same communities. Moreover, FHA subsidized the mass-production of subdivisions where builders included a requirement that no homes be sold to African Americans. In the first 35 years of the FHA program, only 2% of FHA-insured mortgage loans went to borrowers of color. Housing discrimination became unlawful in 1968 with passage of the “Fair Housing Act,” but much of the damage had been done. The FHA subsidized the cost of homeownership for whites and enabled whites to build wealth through home equity, while denying African Americans the same opportunity. FHA’s investment in homeownership opportunity for white families is the foundation of today’s racial wealth gap where white families have ten times the wealth of African Americans and eight times the wealth of Latinos.

## ROLE OF FHA

The FHA plays a key countercyclical role in the mortgage market and FHA's market share varies with economic conditions and other factors. For instance, in the aftermath of the financial crisis and the contraction in available mortgage credit, FHA insured a much higher share of single-family mortgages by loan count, increasing from approximately 3% in 2005 to a peak of 21% in 2009. FHA's market share has decreased since that time, but it remains higher than it was in the early 2000s, at 12.28 % of single- family mortgages by loan count, when averaging 2022's first three quarters' results. FHA also has 13.91% market share of single-family purchase mortgages by loan count, when averaging 2022's first three quarters' results.

FHA insurance allows borrowers to purchase a home with a lower down payment than is

often available in the conventional market. FHA borrowers are required to make a minimum down payment of 3.5%.

FHA-insured mortgages also play an important role in providing access to homeownership for first-time homebuyers, low- to moderate-income homebuyers, and homebuyers of modest wealth. Furthermore, FHA is a key source of affordable home loans for families of color, providing nearly half of all home purchase loans for these borrowers, including upper income families of color. Borrowers of color, including upper income families, are disproportionately served by government-insured housing programs, including FHA and the U.S. Department of Veterans Affairs (VA). Recent HMDA data indicates low levels of conventional loans to borrowers of color, which is a key policy issue. It is critical to support FHA, while also advocating for the conventional mortgage market, particularly government sponsored enterprises (GSEs), to do more to serve communities of color and lower- wealth borrowers.

## MUTUAL MORTGAGE INSURANCE FUND

The Mutual Mortgage Insurance (MMI) Fund is a federal insurance fund that pays claims on losses from FHA-insured home mortgages. This includes forward as well as reverse mortgages, also known as Home Equity Conversion Mortgages (HECM). The MMI Fund has a statutory capital ratio requirement of 2%. The fund receives upfront and annual premiums collected from borrowers, as well as net proceeds from the sale of foreclosed homes. Each year, the MMI Fund pays out claims to lenders and covers administrative costs without federal subsidies. Under FHA's authorizing statute, all of FHA's revenue must go to the MMI Fund and cannot be used to support operations.

Borrowers pay a premium for FHA insurance. For single-family loans, this premium consists of an upfront amount collected at the time the mortgage is closed and an annual premium that varies with the loan-to-value ratio and length of the mortgage. The annual premium is collected with the monthly mortgage payments. Currently, a borrower must pay the annual premium for the life of the loan. The premium does not end once the outstanding principal balance reaches 78% of the original principal balance. This contrasts with private mortgage insurance coverage in the conventional market.

Furthermore, FHA insures loans in amounts under set loan limits. The "National Housing Act," as amended by the "Housing and Economic Recovery Act of 2008," sets single-family forward loan limits at 115% of median house prices, subject to a floor and a ceiling on the limits. FHA calculates the limits by metropolitan statistical area (MSA) and county. These limits are updated each year and are influenced by the conventional loan limits set by Fannie Mae and Freddie Mac. FHA loan limits in 2023 range from \$472,030 to \$1,089,300, depending on geographic location. The mortgage amount also cannot exceed 100% of the property's appraised value.

Additionally, a unique characteristic of FHA loans is that they are assumable. In other words,

the outstanding mortgage and its terms can be transferred to a new buyer. This feature may become more important if interest rates rise in the future. For FHA loans after December 14, 1989, the original lender must review and approve the creditworthiness of the buyer.

## **SPECIAL RISK INSURANCE AND GENERAL INSURANCE FUNDS**

In addition to the MMI Fund, FHA operates a Special Risk Insurance and General Insurance Fund, which insure loans used for the development, construction, rehabilitation, purchase, and refinancing of multifamily rental housing, nursing home facilities, and hospitals. Unlike the MMI Fund, this insurance requires subsidies from the federal budget.

## **MORTGAGEE REVIEW BOARD**

The Mortgagee Review Board is authorized to take administrative action against FHA-approved lenders that are not in compliance with FHA lending requirements. The Board can impose civil money penalties, probation, suspension, and issue letters of reprimand. For serious violations, the Board can withdraw a lender's FHA approval so the lender cannot participate

in FHA programs. The Board can also enter into settlement agreements with lenders to bring them into compliance.

## **MANUFACTURED HOUSING**

FHA provides insurance for the purchase or refinancing of a manufactured home, a loan on a developed lot on which a manufactured home will be placed, or a manufactured home and lot in combination. The home must be used as the principal residence of the borrower.

## **GINNIE MAE**

The Government National Mortgage Association (Ginnie Mae) is a self-financing, wholly owned government corporation within HUD. Ginnie Mae guarantees the timely payment of principal and interest on privately issued securities backed by FHA, the HUD Office of Public and Indian Housing, VA, and the U.S. Department of

Agriculture's Rural Housing Service mortgages, thereby enabling a constant flow of capital for mortgage loans. Ginnie Mae securities carry the full faith and credit guaranty of the United States government. Ginnie Mae does not insure lenders against borrower credit risk; it also does not buy or sell loans or issue mortgage-backed securities (MBS). Rather, lending institutions originate eligible loans, pool them into securities, and issue Ginnie Mae MBS.

## **COVID-19 AND LOSS MITIGATION**

In the wake of the COVID-19 pandemic and economic crisis, Congress passed the

"Coronavirus Aid, Relief, and Economic Security Act (CARES Act)." Among other things, the CARES Act provided mortgage forbearance for federally backed, residential single-family loans, including loans insured by FHA.

As of 2022, more than 1.6 million FHA borrowers whose ability to pay their mortgage was affected by the pandemic have avoided foreclosure, and more than 1.8 million borrowers took advantage of FHA's loss mitigation options to help them stay in their homes.

An FHA borrower experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request forbearance regardless of delinquency status. The borrower

must submit a request to the borrower's servicer and affirm that the borrower is experiencing a financial hardship during the emergency. No documentation is required. The forbearance must be granted for up to 180 days and must be extended for an additional 180 days upon the borrower's request. During forbearance, no fees, penalties or additional interest is permitted to accrue on the borrower's account.

FHA's extended moratorium on foreclosures expired September 30, 2021. Currently, FHA is providing up to six months of COVID-19 Forbearance for borrowers requesting an initial COVID-19 Forbearance from their mortgage servicer between October 1, 2021, and the end of the COVID-19 National Emergency

and an additional six months if the COVID-19 Forbearance is exhausted or expires before the end of the COVID-19 National Emergency.

FHA has several loss mitigation options for owner-occupant borrowers, including:

- COVID-19 Standalone Partial Claim.
- COVID-19 Owner-Occupant Loan Modification.
- Combination Partial Claim and Loan Modification.
- COVID-19 FHA Home Affordable Modification Program Combination Loan Modification and Partial Claim with Reduced Documentation.

A Partial Claim is a no interest junior loan secured by the property which is used to pay the balance owed on the suspended mortgage payments. No payments are due on the COVID-19 Standalone Partial Claim until the payoff, maturity, or acceleration of the FHA-insured mortgage, including the sale of the property, a refinance, or the termination of FHA insurance on the mortgage.

In 2022, FHA added a 40-year loan modification to be used in conjunction with a partial claim to assist homeowners in reaching the targeted 25 percent reduction on their mortgage payments.

## FORECAST FOR 2023

According to HUD's FY 2022 annual report to Congress on the financial status of the MMI Fund, the capital ratio for FY 2022 was 11.11%, increasing by 3.08 percentage points over FY 2021.

### Continued Impact of the COVID-19 Crisis on FHA Borrowers

The economic crisis has hit FHA borrowers particularly hard, as low- to moderate-income borrowers and borrowers of color are more likely to have a government-insured loan. These groups generally have less wealth and disproportionately work in sectors that have borne the brunt of job losses. Furthermore, many of these borrowers were hardest hit by the Great Recession and never fully recovered, including Black and Latino

communities that lost over \$1 trillion in wealth, despite many in those communities qualifying for safer and less expensive credit.

Additionally, forbearance rates have been considerably higher for FHA borrowers than GSE borrowers. Toward the end of 2020, forbearance rates for Ginnie Mae loans were 7.83%, although that has since reduced. FHA has not released as much detailed forbearance data as the GSEs, so it has been difficult to determine the extent of the impact on communities of color and other demographic groups. Recent reports have, however, indicated that FHA's serious delinquency rate reduced by nearly half, or approximately 4.77 percent as of September 30, 2022; 357,000 FHA borrowers remain seriously delinquent. Increased data transparency is key to better understanding who is being impacted, what loss mitigation options various borrowers utilize, and how policymakers, industry, and advocates can help create beneficial solutions for borrowers.

Advocates continue to be deeply concerned about the millions of borrowers who have suffered job loss, reduced wages, and other economic impacts that will persist beyond the period of eligible forbearance per the "CARES Act." Many are calling for extended forbearance options.

Moreover, several lenders reduced or eliminated their FHA lending even before the current health and economic crisis hit, and more lenders followed the trend with the onset of COVID-19. Higher cost housing, combined with higher interest rates has also made it increasingly difficult for first-time buyers to enter the homeownership market.

### Important Issues to Monitor

While FHA's loss mitigation policies and efforts to stave off a foreclosure crisis will continue into 2023, advocates should also monitor other critical issues, including:

- The lack of rate refinance options for low-wealth borrowers despite robust refinancing opportunities for wealthier families with conventional mortgages driven by ongoing support to the mortgage market from the



Federal Reserve's bond purchase program;

- Maintaining level pricing for single family borrowers;
- Changes to underwriting standards and the FHA TOTAL Scorecard, including recent efforts to restrict higher debt-to-income loans;
- Continuing efforts to commit federal appropriations to help FHA upgrade its antiquated technology (FHA is in the last year of its five-year massive overhaul of its systems);
- Changes to upfront or annual premiums to ensure greater affordability for FHA borrowers;
- Ensuring down payment assistance program remain available and fairly priced for potential homebuyers. A large percentage of FHA loans utilize down payment assistance programs, some of which operate as grants and others require or offer an increase in the interest rate. It is key for borrowers to shop around to ensure they do not overpay for down payment assistance;
- Efforts to allow Property Assessed Clean Energy (PACE) loans, which permit a homeowner to finance the upfront cost of energy efficiency improvements on the property and pay back the costs through property tax assessments (such arrangements raise numerous consumer protection concerns);
- Changes to the Distressed Asset Stabilization Program (DASP), which sells severely delinquent FHA loans to investors;
- Monitoring Second Chance Claims Without Conveyance of Title (CWCOT) sales, where servicers can sell their FHA-insured foreclosed properties to third parties, without conveying them to HUD, and still have their claim paid by FHA. The concern with this program, and more broadly with FHA loans, is that taxpayer funds may benefit large investors flipping or renting out properties for profit, instead of providing affordable housing to owner-occupants directly or via

non-profits;

- Upgrading FHA servicing and loss mitigation to mirror the GSEs as appropriate; and
- Monitoring the impact of FHA's underwriting modification that allows a borrower's positive rental payment history to be considered as part of the evaluation of their creditworthiness.

### **"False Claims Act" Reform**

In 2019, FHA reformed its lender and loan-level certifications and created a Defect Taxonomy, which categorizes loan defects of various severities with remedies. These changes were intended to clarify lender liability for loan defects in the origination process and assuage lender concerns about "False Claims Act" liability for minor errors. In addition, on October 28, 2019, HUD and the Department of Justice entered into a memorandum of understanding regarding the use of the "False Claims Act" against participants in FHA single-family mortgage insurance programs. Advocates should monitor potential changes to FHA's quality control processes (including to the Defect Taxonomy), Mortgagee Review Board administrative actions, and any potential "False Claims Act" cases. Moreover, advocates should monitor if banks that previously exited the FHA program begin to offer FHA loans again.

In October 2021, FHA posted a proposed new section to the Defect Taxonomy on servicing loan reviews. The amendments aim to provide loan servicers more certainty about penalties related to servicing missteps and help servicers understand how FHA intends to hold them accountable for loan-level compliance. The proposal garnered extensive feedback and, to date, has not been added.



# State and Local Housing Trust Funds

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By Michael Anderson, Director, Housing Justice Team, Community Change

**S**tate and local housing trust funds advance the way this country supports affordable housing by guaranteeing that revenues are available each year to provide housing to the most economically vulnerable community members. Established by legislation, ordinance, or popular vote, housing trust funds direct public revenue to meet specifically identified local housing needs. Cities, counties, and states have developed proven models that support innovative approaches to all aspects of addressing affordable housing and homelessness. The impact of housing trust funds demonstrate that state and local government can provide decent affordable homes for everyone if communities are willing to commit the resources to do so. Establishing a state or local housing trust fund is a proactive step that housing organizers and advocates can take to make systemic change in their community.

## HISTORY AND PURPOSE

Since the 1980s, state and local housing trust funds have employed the model of committing public funds to address communities' most critical affordable housing needs. With more than 828 housing trust funds in cities, counties, and states, those funds have become core elements in housing policy throughout the United States. In 2022, state and local housing trust funds generated more than \$3 billion for affordable homes. The popularity and proliferation of housing trust funds is due to their flexibility, sustainability, and success in addressing critical housing needs. Housing trust funds are distinct funds that ideally receive ongoing, dedicated sources of public funding to support the preservation and production of affordable housing and increase access decent affordable homes. Housing trust funds systemically shift affordable housing funding from annual budget allocations to the commitment of dedicated public revenue. While housing trust funds can

also be a repository for private donations, they are not public/private partnerships, nor are they endowed funds operating from interest and other earnings.

Forty-seven states, the District of Columbia, and the territories of Guam and Puerto Rico have created sixty housing trust funds. Eight states, Connecticut, Illinois, Massachusetts, Nebraska, Nevada, New Jersey, Oregon and Washington, have created more than one state housing trust fund, reflecting a recognized value in committing public revenues to accomplish precise objectives, such as addressing homelessness or providing rental assistance. There are 608 city housing trust funds, which include 122 city housing trust funds in thirty-six states, bolstered by another 189 jurisdictions participating in Massachusetts' "Community Preservation Act," and 296 communities certified in New Jersey by the Council on Affordable Housing. There are 160 county housing trust funds, which include 72 county housing trust funds in seventeen states, with one County creating two housing trust funds. Additionally, the state of Pennsylvania has 49 county housing trust funds and the state of Washington has 39 county housing trust funds which have been created under state enabling legislation.

## ISSUE SUMMARY

Three key elements to any state or local housing trust fund are:

1. Administration and oversight: Most housing trust funds are administered by a public or quasi-public agency. Housing advocates are not always comfortable with the performance of local agencies or departments and may not find this an easy condition to accept. Although there are alternatives, such as a nonprofit or Community Development Financial Institution administering the fund, there are very few examples of such models. In the long-run, it is desirable for elected officials to accept ownership and responsibility

for addressing critical housing needs and designate the housing trust fund as one way in which they intend to do this. A best practice administrative characteristic of housing trust funds is the creation of an appointed oversight or advisory board. Most housing trust funds have such boards. They are typically broadly representative of the housing community, including banks, realtors, developers, nonprofit development organizations, housing advocates, labor, service providers, and low-income residents. These boards can be advisory, but it is preferable to delegate some authority to them, including at least advising, if not determining, which projects receive funding from the trust fund; overseeing policies; and evaluating and reporting on the performance of the fund. An oversight board provides considerable expertise to the operation of the trust fund, and maintains a connection and avenue for accountability to the community.

2. **Programs:** The basic programmatic issues for housing trust funds should be defined in the ordinance or legislation that establishes the fund. Definition ensures that the key operating components of the trust fund are not subject to the whims of changing Administrations. Staff and board members will need to develop an application cycle, program requirements, and administrative rules.
3. **Funding:** What defines a housing trust fund is securing a dedicated revenue source. This means that the source of funding is committed by law to generate funds for the housing trust fund. Thus, by resolution, ordinance or legislation, a certain percentage or amount of public funds are automatically deposited in the housing trust fund each year. Securing a dedicated revenue source for a housing trust fund is a significant advance over the way low-income housing has historically been funded. With a dedicated revenue source, advocates no longer have to argue for scarce resources with city council members, county commissioners, or state

legislators during the annual budget process. They will no longer have to compete with other worthy causes in a budget process that is generally neither fair nor generous towards low-income housing. The dedicated revenue source guarantees a regular, but possibly fluctuating, source of funds.

## Key Decisions

In order to ensure that a trust fund succeeds, several decisions must be made about its implementation, including identifying eligible applicants, eligible activities, and requirements that must be met to receive funding. Eligible applicants typically include nonprofit developers, for-profit developers, government entities, Native American tribes, and public housing agencies. Eligible activities are usually broadly defined, including new construction, rehabilitation, acquisition, emergency repairs, accessibility, first time homeownership, operating and maintenance costs, and many others. Most housing trust funds provide loans and grants through a competitive application process, although some establish distinct programs and make awards through these initiatives. Grants are important to ensure that housing can be provided to meet the needs of those with the lowest incomes. Some housing trust funds provide rental assistance. A few state and local housing trust funds specifically serve the needs of people experiencing homelessness and define their activities accordingly.

Among the most important decisions to be made regarding implementation of the trust fund are defining the specific requirements proposals must meet to be eligible for funding. Chief among these is the income level of those who benefit from the housing provided. Most housing trust funds serve populations earning no more than 80% of the area median income (AMI), but many serve lower-income households either entirely or in part by setting aside a portion of the funds to serve those populations in particular. Without setting aside funds to serve very low-income (50% of AMI) and extremely low-income households (30% of AMI), these most critical needs are unlikely to be met, given that it is

easier and less expensive to create a development proposal serving higher incomes. It is important to give serious consideration to set-asides and other programmatic issues that enable funding for those with the most critical housing needs.

Another key decision are requirements for long-term affordability. Many state and local housing trust funds require that the homes and apartments supported through the trust fund remain affordable to the targeted population for a defined amount of time, or in perpetuity. Housing advocates may identify other requirements to incorporate, including accessibility for people with disabilities, mixed income, green housing and energy-efficiency principles, transit-oriented housing, rural housing, and housing-related services requirements.

### **Revenue Sources**

Identifying public revenue sources for a housing trust fund is always a significant challenge. Different revenue sources are available to different types of jurisdictions, because each jurisdiction controls specific taxes and fees. Research must be done to identify appropriate funding sources.

The most common revenue source for a city housing trust fund is a developer impact fee, sometimes implemented in conjunction with a zoning ordinance. These impact fees are most often placed on non-residential developers to offset the impact that the development's employees may have on the housing supply. Along with linkage fees, many jurisdictions also use inclusionary zoning *in-lieu* fees. The second most common revenue source for city housing trust funds is a voter approved property tax. Other cities have committed various fees, such as condominium conversion fees or demolition fees, along with taxes, including property taxes, real estate excise taxes, and hotel and motel taxes (including AirBnB). Revenues from tax increment districts are an increasingly popular revenue source for housing trust funds.

The most common revenue source for a county housing trust fund is a document recording fee, a fee paid upon filing various types of official

documents with a state or local government. Other sources used by counties include sales taxes, developer fees, real estate transfer taxes, and real estate excise taxes.

State housing trust funds are most commonly funded by real estate transfer taxes, followed by document recording fees. However, states have committed nearly two dozen different revenue sources to housing trust funds. Other options include revenue from state-held funds (such as unclaimed property funds), interest from real estate escrow or mortgage escrow accounts, and general obligation bonds.

Often, housing advocates study alternative revenue sources themselves and propose the best options. These are not difficult studies, but do take time and some diligence to obtain the necessary information. Relying on elected officials to identify a potential revenue source is not typically a productive strategy. Suggesting alternatives for their consideration is a strategy with a much greater track-record of success. Some housing trust funds were created through specially designated task forces with responsibility for doing the background research and making recommendations on how best to fund and implement the proposed housing trust fund.

Each state is unique in its treatment of taxes and fees. Research into what the state constitution and statutes permit regarding dedicating public revenues to a specific purpose must be conducted. Research should determine what, if any, limitations are placed on specific revenue options, including any caps imposed on tax or fee rates, any limitations on the uses to which the revenue may be applied, and any commitments already imposed on the revenues collected, among other questions. It pays to be creative in searching for potential public revenue sources. Although an increase in a tax or fee is the most common way to create a housing trust fund, it is also possible to dedicate the growth in revenue from a tax or fee or dedicate a portion of the existing revenue without imposing an increase.

It is extremely important to identify a dollar goal for revenue sought each year for the housing trust fund. This can be based on actual need, a realistic assessment of what can be secured, or an evaluation of the capacity to use new funds. This goal will be the measure by which each potential revenue source will be judged as sufficient. A combination of revenue sources may be necessary to reach the goal.

It is critical to keep the focus on dedicated sources of public funding that will provide an ongoing stream of revenue for the housing trust fund. Other alternatives will be proposed, such as a one-time appropriation, bond revenues, or private sources, but advocates must keep their sights on establishing an ordinance or legislation that will dedicate public funds over time. Several trust funds have been created with one-time initial funding, which can be used to demonstrate the impact of the trust fund to build support for on-going dedicated public revenues.

### **Reporting**

Once a housing trust fund is established and becomes operational, it is critically important and beneficial for the administering agency, the oversight board, and/or housing and homeless advocates to report annually on the accomplishments of the fund. This helps ensure sustained, if not increased, funding, and improves the understanding and support for effective affordable housing programs. These reports typically not only show how the trust fund made advances in specific affordable housing or homeless objectives, but also highlight the impact these expenditures have in creating jobs, adding to the tax base, and extending economic benefits. Many such reports have included stories sharing the impact of a safe affordable home on individual families.

### **Relationship between State and Local Housing Trust Funds**

One of the most innovative advances in the housing trust fund field is state legislation that enables local jurisdictions to create housing trust funds. Several models are in place. States can enact legislation that opens a door for local

housing trust funds by providing matching funds to encourage and support local housing trust fund efforts, enabling cities or counties to utilize a specific revenue source for local housing trust funds, sharing a new public revenue source with local jurisdictions, or establishing a process whereby local jurisdictions can decide to commit specific funds to a local housing trust fund. Close to 70% of the funds that exist in the United States are in states where enabling legislation has encouraged cities and/or counties to advance local housing trust funds. These include communities in Massachusetts responding to the “Community Preservation Act” and localities in New Jersey complying with the “Fair Housing Act.” Washington and Pennsylvania have legislation enabling counties to use document recording fee revenues for local funds. Iowa’s state housing trust fund providing matching funds locally has generated funds in 27 locations throughout the state. Fourteen states have passed legislation to encourage local housing trust funds.

## **WINS IN 2022**

The following are among the state and local housing trust fund victories celebrated by housing and homeless advocates in 2022 (in alphabetical order by state):

- In Arizona, the legislature allocated \$60 million to the Housing Trust Fund, the highest allocation in more than a decade.
- In Fort Myers, Florida, the City Council committed \$500,000 annually in general fund revenue to the Affordable Housing Trust Fund.
- In Evansville, Indiana, City Council allocated \$10 million to the Housing Trust Fund.
- In Michigan, the legislature allocated \$100 million in American Rescue Plan funds to the Housing and Community Development Fund, the largest investment in the state housing trust fund since its establishment in 2004.
- In Detroit, Michigan, the City Council doubled the percentage of proceeds that the Affordable Housing Development and Preservation Fund from the sale of city owned commercial



property. In 2017, with the creation of the AHDPF, the City Council committed 20% of the revenue from city owned property sales. The new amount is 40%, which will generate several million annually for the fund.

- In Kansas City, Missouri, 80% of voters passed a \$50 million bond for the Affordabel Housing Trust Fund with the resources directed towards households with Extremely Low Incomes.
- In Oregon, the legislature allocated \$215 million to the Oregon Housing Fund.
- In South Dakota, the legislature allocated \$200 million in American Rescue Plan funds to the Housing Opportunity Fund, the largest investment in the state housing trust fund since its establishment in 2013.
- In Washington, the legislature allocated \$350 million to the Housing Trust Fund.

## TIPS FOR LOCAL SUCCESS

Although it is relatively easy for the public at large, and elected officials in particular, to nod toward the need to provide more affordable homes, committing precious resources to make it happen requires an active campaign. Advocates face the challenge of making affordable housing enough of a priority that elected officials can make the right decision. Housing trust fund campaigns have made important contributions in reframing affordable housing as a policy priority that is integral to the success of every community. Not only is there an obvious connection between jobs and housing, but building housing also fuels the economy in several direct and indirect ways. Housing has a direct relationship to education, health, the environment, and neighborhood quality. Personal stories and connections to real family experiences have given the issue a face that is far more powerful than statistics reflect. Campaigns have created effective communication strategies based on the value frame that everyone deserves a place to call home.

Housing trust fund campaigns have found numerous ways to boast about what housing programs can accomplish, pointing to thousands

of remarkable and outstanding examples of good, well-managed, integrated affordable housing. There is no reason to be bashful about this. Housing advocates have an obligation to educate the public and elected officials about the new face of affordable housing. Rarely have housing trust funds been created without public pressure applied by a campaign. Housing advocates have succeeded in making the point that providing decent, safe, affordable homes is no longer an arbitrary decision to which we can simply choose to devote resources or not. Rather, it is an ongoing, essential part of every community that is no less important than streets, sewers, health centers, police and fire protection, schools, and other basic components of a viable community.

Although housing trust funds are numerous, securing adequate resources to build and maintain affordable homes can be a challenge. Fortunately, there are many creative and successful examples of effective campaign strategies, ranging from coalition building to cultivating allies in sectors related to housing such as education, health, and economic development; to organizing people impacted by the lack of affordable homes.

## FOR MORE INFORMATION

Housing Trust Fund Project of Community Change, <https://housingtrustfundproject.org/>.





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# **Chapter 6:**

## SPECIAL HOUSING ISSUES

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# Lead Hazard Control and Healthy Homes

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By Sarah Goodwin, Policy Analyst,  
National Center for Healthy Housing,  
and David Jacobs, Chief Scientist,  
National Center for Healthy Housing

**Administering Agency:** HUD's Office of Lead Hazard Control and Healthy Homes (OLHCHH)

**Year Started:** Lead Hazard Control, 1992;  
Healthy Homes Initiative, 1999

**Population Targeted:** Low-income and very low-income families who reside in worst-quality private housing where children under six years of age reside or are likely to reside. The most recent CDC data show that 590,000 children have elevated blood lead levels.

**FY22 Funding:** \$415 Million, including \$90 million for healthy homes programs (which includes funding specifically for home repairs for low-income older adults).

**Estimated FY23 Funding:** The House bill includes \$415 million (including \$85 million for healthy homes), and the Senate bill includes \$390 million (including \$90 million for healthy homes). Both bills also include new funding specifically to address radon.

Children spend as much as 90% of their time indoors, and toxic substances can reach more concentrated levels indoors than they do outside. Older, dilapidated housing with lead-based paint, and the settled interior dust and exterior bare soil it generates, are the biggest sources of lead exposure for children (lead in drinking water and other sources can also be a problem). Often these units have a combination of health dangers that include dust mites, mold (fungi), and pests that can trigger asthma; carcinogens, such as asbestos, radon, and pesticides; and other deadly toxins such as carbon monoxide.

## RECENT DEVELOPMENTS

The Bipartisan Infrastructure Bill as signed into law included \$15 billion for removal of lead drinking water service lines. The Environmental

Protection Agency has started allocating these funds, distributing \$3 billion in funds in early 2022, with \$3 billion to come each year for the subsequent four years.

On October 28, 2021, the Centers for Disease Control and Prevention updated its blood lead reference value (BLRV) from 5 µg/dL to 3.5 µg/dL, which will increase the number of children deemed to have an elevated blood lead level. The BLRV is used by public health agencies and healthcare providers and others to help guide interventions for children following blood lead tests and prioritize primary prevention efforts in communities. Read more here: [https://www.cdc.gov/mmwr/volumes/70/wr/mm7043a4.htm?cid=mm7043a4\\_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7043a4.htm?cid=mm7043a4_w). Some states have adjusted their programs and protocols to follow the new reference value.

The Department of the Treasury specifically mentioned lead hazard remediation and replacement of lead service lines as eligible uses of “American Rescue Plan Act” dollars. Some states and communities have already taken advantage of this opportunity; for example, [Pittsburgh](#) allocated \$17.5 million for replacement of lead service lines and \$2 million to support implementation of the city's new lead safety law, [Utica](#) allocated \$970,000 to supplement their HUD-funded lead hazard control program, and [North Carolina](#) allocated \$32 million to identify and fix lead in water in schools, and another \$112 million to identify and fix lead paint and asbestos in schools and child care facilities. You can read more about these and other examples [here](#).

The Biden Administration is considering an executive order: “Ensuring Healthy Homes: Eliminating Lead and Other Housing Hazards.” The urgent need for homes that support good health has never been clearer: the COVID-19 pandemic has meant more time in our residences, bringing healthy housing to the fore as a national priority. This Executive Order establishes a cabinet-level Presidential Task

Force on Lead Poisoning Prevention and Healthy Housing to coordinate the nation's response to lead paint and other housing-related diseases and injuries under the Biden Administration. Led by the Secretary of Housing and Urban Development, this Task Force will recommend new strategies, regulations, incentives and other actions that promise to conquer these avoidable problems. With strategic leadership and concerted action, the Task Force can eliminate childhood lead poisoning as a major public health problem and ensure that all American families have healthy homes.

The draft executive order was written by the National Center for Healthy Housing and is available here: <https://twitter.com/Day1Project/status/1338593971069734913?s=20>.

The National Safe and Healthy Housing Coalition tracks appropriations for these two programs and regularly circulates sign-on letters. See: [www.nchh.org](http://www.nchh.org) and: <http://www.nchh.org/Policy/National-Policy/Federal-Appropriations.aspx>. In addition, healthy housing fact sheets are now available for all 50 states and five major territories (<https://nchh.org/who-we-are/nchh-publications/fact-sheets/state-hh-fact-sheets/>) and agency fact sheets summarizing the activities, funding, and impact of key federal programs related to healthy housing (<https://nchh.org/who-we-are/nchh-publications/fact-sheets/agency-fact-sheets/>).

## HISTORY AND PURPOSE

### Lead Hazard Control

The history of lead paint poisoning prevention and healthy homes over the past 50 years has been described in a new book. It shows that there have been 3 phases: a largely failed medical approach from 1971-1992; a housing-focused prevention (but small-scale) approach from 1992-2016; and in recent years an approach that takes proven solutions to the necessary scale (see: <https://www.elsevier.com/books/fifty-years-of-peeling-away-the-lead-paint-problem/jacobs/978-0-443-18736-0>).

The “Residential Lead-Based Paint Hazard

Reduction Act,” or Title X of the “Housing and Community Development Act of 1992,” was enacted to focus the nation on making housing safe for children by preventing exposure to lead-based paint hazards (the statute defines this as deteriorated lead-based paint, lead contaminated settled house dust, and lead contaminated bare soil). The law authorized the HUD Lead Hazard Control Grant Program and related programs at the Environmental Protection Agency (EPA) and CDC to provide grants to local jurisdictions to identify and control lead-based paint hazards in privately owned, low-income, owner-occupied, and rental housing and conduct training and public health surveillance and other duties.

Because Title X is now more than 30 years old, certain reforms are required, which are detailed [here](#).

### Healthy Homes Initiative

The Healthy Homes Initiative was established by Congress in 1999 to protect children and their families from residential health and safety hazards. The goal of this program is a comprehensive, integrated approach to housing hazards through grants that create and demonstrate effective, low-cost methods of addressing mold, lead, allergens, asthma, carbon monoxide, home safety, pesticides, radon and other housing-related health and safety hazards. These grant programs are housed in HUD's OLHCHH.

The beneficiaries of both the lead and healthy homes programs are low-income households and the broader public. Assisted rental units served must be affirmatively marketed for at least three years for families with children under age six. Ninety percent of owner-occupied units served must house or be regularly visited by a child under age six. Because the funds do not cover all housing eligible under federal policy, each grantee develops its local plan and is permitted to target investment of grant funds based on factors such as the presence of a lead-poisoned child and location in a high-risk neighborhood. The programs' funds are awarded via competitive Notices of Fund Availability. Some have suggested



the eligibility criteria for this program are too narrow and should be expanded.

### Issue Summary

Recent research confirms that housing policy has a profound impact on public health, education, economic and other domains. For any public health agenda to be effective, it must include housing improvement, preservation and affordability components. The statistics and key findings regarding the long-term effects of housing-related health hazards are alarming. At least 590,000 children aged one to five in the U.S. have elevated blood lead levels above the current CDC reference value of 3.5 micrograms per deciliter. Childhood exposure to lead can have lifelong consequences including decreased cognitive function, developmental delays, behavior problems, and, at very high levels can cause seizures, coma, and even death. Asthma is one of the most common chronic conditions among children in the U.S.; over 25 million people in the U.S. have asthma, including 7% of children under 18 and housing plays a key role in asthma exacerbation.

The burden of housing-related health hazards falls disproportionately on the most vulnerable children and communities, contributing greatly to U.S. health disparities. African American children are twice as likely to have asthma and are six times more likely to die from it than white children. Households with annual incomes less than \$30,000 and children of low-income families are much more likely to be lead-poisoned than those of higher-income families. Children poisoned by lead are seven times more likely to drop out of school, and six times more likely to end up in the juvenile justice system.

The number of homes with deteriorated lead paint *increased* by 4.6 million homes from 1999 to 2019 as the housing stock continued to age. The percentage of homes in poverty (annual income less than \$30,000 - \$35,000) with lead paint declined from 40% to 33% between 2012 and 2019, but lower income households still were significantly more likely to have lead paint. In short, lead paint deterioration is worsening, and

disparities remain pronounced. In the 1999 HUD American Healthy Housing Survey, 41% ( $\pm 11\%$ ) of homes occupied by African American families had lead paint, compared to 40% ( $\pm 4\%$ ) of homes occupied by white families (the 1990 survey did not report its findings by race). The 2006 survey found a larger disparity in homes with lead paint (45%  $\pm 4\%$  of African American homes and 32%  $\pm 3\%$  of homes with whites), but the 2019 survey found 25% ( $\pm 7\%$ ) and 45% ( $\pm 10\%$ ) of homes had lead paint for African American and white households, respectively.

In 2019, the housing surveys showed the arithmetic mean dust lead loading on floors nationwide improved by 73% (3.68  $\mu\text{g}/\text{ft}^2$  compared to 13.6  $\mu\text{g}/\text{ft}^2$  in 1999). On windowsills, mean dust lead levels improved by 72% (54  $\mu\text{g}/\text{ft}^2$  compared to 195  $\mu\text{g}/\text{ft}^2$  in 1999). The 2021 EPA and HUD lead dust standards for floors and windowsills were 10 and 100  $\mu\text{g}/\text{ft}^2$  respectively.

There are even bigger consequences when dealing with the cumulative effects of multiple hazards. Inadequate ventilation increases the concentration of indoor air pollutants, such as radon and carbon monoxide, and exacerbates moisture and humidity problems. Moisture causes paint deterioration, which puts children at risk of exposure to lead dust and paint chips. Moisture also encourages the growth of mold, mildew, dust mites, and microbes that contribute to asthma and other respiratory diseases and structural rot, which is related to injuries. Asthma is exacerbated by allergic reaction to certain triggers such as dust, mold, pests (such as cockroaches, rats, and mice), cold air, and dry heat. Use of common pesticides to control infestations can contaminate homes. Thus, a ‘whole-house’ approach is critical, including thorough inspections, air tests, and remediation activities.

Additionally, solutions and opportunities may arise through existing weatherization, rehabilitation, maintenance, and home repair work. Because improperly disturbing lead-based paint may cause lead poisoning, it is necessary to use lead-safe work practices and comply with the EPA’s renovation, repair, and painting

rule (and for federally assisted housing, HUD's Lead Safe Housing rule). Many weatherization treatments have healthy homes benefits. For example, window replacement can help with lead poisoning prevention, and roof repair and insulation may help reduce moisture intrusion and prevent mold. Improving ventilation to ameliorate the ill effects of tightening a building can help ensure no harm from energy-efficiency measures. Healthy Homes and weatherization/building performance are described in a report from the Department of Energy and the National Center for Healthy Housing: [https://www.energystar.gov/campaign/improvements/professionals/resources\\_library/health\\_and\\_home\\_performance](https://www.energystar.gov/campaign/improvements/professionals/resources_library/health_and_home_performance).

## PROGRAM SUMMARY

### Healthy Homes Initiative

The Healthy Homes Production Grant Program develops, demonstrates, and promotes cost-effective, preventive measures for identifying and correcting residential health and safety hazards. HUD awards Healthy Homes Production grants to nonprofits, for-profit firms located in the U.S., state and local governments, federally recognized Indian Tribes, and colleges and universities.

HUD also often awards Healthy Homes Supplemental funding to grantees when distributing lead hazard control and lead hazard reduction demonstration grants to allow grantees to address other healthy homes issues when conducting their lead programs.

In 2022 (as of November), HUD awarded Healthy Homes Production Grants to 60 entities across 29 states. In 2021, HUD awarded grants for home repairs for low-income older adults to 32 entities in 20 states, including 16 substantially rural areas.

### Lead-Based Paint Hazard Control Grants

The typical award addresses hazards in several hundred homes and provides needed outreach and capacity-building services. Grants are awarded to states, counties, and cities for lead hazard control in privately-owned, low-income housing. At least 65% of the grant must be used

for direct activities such as abatement, interim control, clearance, and risk assessment (and to a limited extent other healthy housing issues). Grantees are required to partner with community groups, typically by awarding sub-grants, and to provide a match of 10% from local or Community Development Block Grant (CDBG) funds. More than \$1 billion has been awarded since the program started in 1992.

In 2022, HUD awarded these grants to 13 entities across 11 states.

### Lead Hazard Reduction Demonstration Grants

This program targets funds for lead hazard control to the nation's highest-risk cities as defined by the prevalence of lead poisoning and the number of pre-1940 rental housing units. HUD requires a 10% local match from local or CDBG funds. High-risk cities can receive demonstration grants in addition to basic lead hazard control grants. HUD now allows a portion of the lead grants to be used for other healthy homes issues.

In 2022, HUD awarded these grants to 13 entities across 9 states.

### Healthy Homes and Lead Technical Studies Grants

These grants develop and improve cost-effective methods for evaluating and controlling residential health and safety hazards through a separate competition open to academic and nonprofit institutions, state and local governments, tribes, and for-profit and non-profit research organizations.

In 2022, HUD awarded seven such grants.

## OTHER FEDERAL AGENCIES

Programs at CDC's National Center for Environmental Health and EPA provide complementary programs to HUD's OLHCHH. The EPA provides training and licensing programs and laboratory quality control programs; CDC-funded programs provide surveillance data, education, laboratory quality control for blood lead testing, and outreach on housing related diseases and injuries; and HUD-

funded programs remediate homes to remove the health hazards.

For more information on healthy homes work at these and other federal agencies, see <https://nchh.org/who-we-are/nchh-publications/fact-sheets/agency-fact-sheets/>.

### **CDC Childhood Lead Poisoning Prevention Program**

CDC's Childhood Lead Poisoning Prevention Program provides funding to state and local health departments to determine the extent of childhood lead poisoning by screening children for elevated blood lead levels, helping to ensure that lead-poisoned infants and children receive medical and environmental follow-up, and developing neighborhood-based efforts to prevent childhood lead poisoning. Due to consistently increased funds, this program was able to issue grants to 48 states and 10 cities in 2021. This program also funds the Flint Lead Exposure Registry.

### **CDC National Asthma Control Program**

CDC's National Asthma Control Program funds states, localities, and others to improve asthma surveillance, build coalitions that implement interventions, translate asthma guidelines into public health practice, collect and analyze data not available elsewhere, and increase asthma awareness. This program typically funds about 30 states.

### **CDC Environmental Public Health Tracking Program**

CDC's Environmental Public Health Tracking Program hosts an online database and visualization tool (the Environmental Public Health Tracking Network) that provides 23 datasets, 124 indicators, and 449 health measures on public health topics like air quality, water, asthma, carbon monoxide, and birth defects. The program also funds 25 states and one city to run their own tracking programs.

### **EPA Lead Programs**

EPA's Lead Risk Reduction Program updates and supports implementation of lead hazard

standards, requires lead-safe work practices, ensures treatment of residential drinking water, and ensures disclosure of known lead during rent or sale of a home and other activities. EPA's Lead Categorical Grants fund states that have adopted EPA regulations around lead paint hazard abatement and renovation.

### **EPA Indoor Air Quality Programs**

EPA's Reduce Risk from Indoor Air program educates and equips individuals and organizations to reduce health risks from poor indoor air quality, including radon, secondhand smoke, carbon monoxide exposure, and asthma triggers like mold, pests, and dust. EPA's Indoor Air: Radon program and Radon Categorical Grants promote actions to reduce health risks from radon, including radon-reducing features in new buildings and testing and fixing radon in existing homes, and administer the National Radon Action Plan.

### **EPA Children and Other Sensitive Populations**

EPA's Children and Other Sensitive Populations: Agency Coordination program ensures that EPA programs protect children's environmental health by developing regulations, improving policy, implementing community-level programs, and collecting and interpreting data.

## **FUNDING**

FY23 proposed budgets:

- HUD Office of Lead Hazard Control and Healthy Homes: \$390-415 million, including \$85-90 million for the Healthy Homes Initiative, from the Senate and House respectively.
- CDC Childhood Lead Poisoning Prevention Program: \$66 million (House), \$83 million (Senate).
- CDC National Asthma Control Program: \$33.5 million (House), \$33.5 million (Senate).
- CDC National Environmental Public Health Tracking Network: \$34 million.
- EPA Lead Categorical Grants: \$24 million (House), \$15.6 million (Senate).

- EPA Radon Categorical Grants: \$18 million (House), \$9.2 million (Senate).

## FORECAST FOR 2023

The FY23 appropriation proposals include between \$390-415 million for HUD's Lead and Healthy Homes Program. Either of these funding levels would fall below the National Safe and Healthy Housing Coalition's proposal of \$606 million but would at least keep the program level or slightly below the high water mark of FY22 funding. Please see this [link](#) for updates.

The Covid-19 pandemic, wildfires and disaster recovery have made the need for healthy homes clearer than ever. CDC's eviction moratorium is an example of the link between pandemics and healthy housing. New efforts to decarbonize housing, e.g., replacement of gas stoves and other fossil-fuel combustion in housing have become more pronounced. HUD and other agencies will be launching new efforts to expand and preserve affordable, energy efficient, green healthy housing in coming years.

## TIPS FOR LOCAL SUCCESS

Many communities have improved the quality of their housing stock through the development of better codes, such as the National Healthy Housing Standard, and proactive code enforcement programs, instead of a complaint-driven process. For example, many housing codes prohibit peeling paint, standing water, chronic moisture, roof and plumbing leaks, and pest infestation. The International Residential Code requires carbon monoxide detectors in new homes with fuel-burning appliances or attached garages. Efforts are underway to require carbon monoxide detectors in existing housing and radon-resistant new construction and to prohibit lead hazards and excessive moisture that leads to mold. Increasing public awareness and concern about other housing-related hazards is fueling new attention to state and local regulation of healthy homes issues. Many communities have also urged strong collaboration between departments of housing, health, and environment; effective utilization of

CDC surveillance data to guide HUD programs to families and areas of greatest need; enforcement of EPA requirements; and state Medicaid reimbursement for environmental health services in the homes of lead-exposed children and people with asthma.

Resources:

- Technical Assistance tools on local codes, RRP certification, and lead-safe demolition: <https://nchh.org/who-we-are/nchh-publications/nchh-tools-for-technical-assistance/lead-legal-strategies-partnership-technical-assistance-tool-series/>
- How to make proactive rental inspection effective: <https://nchh.org/resource-library/how-to-make-proactive-rental-inspection-effective.pdf>
- Creating effective and efficient primary prevention programs: <https://nchh.org/who-we-are/nchh-publications/nchh-tools-for-technical-assistance/creating-effective-and-efficient-primary-prevention-programs/>
- Healthcare financing of healthy homes: <https://nchh.org/tools-and-data/financing-and-funding/healthcare-financing/>

## WHAT TO SAY TO LEGISLATORS

Advocates should contact their Members of Congress, ask to speak to the person who deals with housing, health or environmental policy, and deliver the message that more funding is needed to correct health and safety hazards and lead hazards in homes before they cause needless harm, suffering and increased expense. The costs of remediation are far less than the financial benefits. Healthy homes interventions prevent injury, neurological and respiratory diseases, cancer, and even death from toxins such as carbon monoxide and radon. And addressing these hazards provides economic benefits, too; for example:

- Removing leaded drinking water service lines from the homes of children born in 2018 alone would protect more than 350,000 children and yield \$2.7 billion in future

benefits, or about \$1.33 per dollar invested.

- Eradicating lead paint hazards from older homes of children from low-income families would provide at least \$3.5 billion in future benefits, or approximately \$1.39 per dollar invested, and protect more than 311,000 children born in 2018 alone.
- For every \$1 spent on home-based asthma control, there is a return on investment of \$2.03.

Advocates should use the Healthy Housing Fact Sheets for each state and five major territories at: <https://nchh.org/who-we-are/nchh-publications/fact-sheets/state-hh-fact-sheets/> and the Healthy Housing Agency Fact Sheets at <https://nchh.org/who-we-are/nchh-publications/fact-sheets/agency-fact-sheets/>.

Advocates should also inform legislators of the following ways through which they can lend support for reducing housing-related health problems:

- Fully fund HUD's Lead Hazard Control and Healthy Homes Program through which communities can fix homes with health hazards, including lead-based paint problems. This also requires full funding for allied HUD programs, such as the Community Development Block Grants, Public and Indian Housing, Section 8 Housing Choice Vouchers, and others.
- Include lead paint funding in infrastructure-focused efforts.
- Fully fund healthy homes programs within CDC's National Center for Environmental Health, including the Childhood Lead Poisoning Prevention Program, the National Asthma Control Program, and the Environmental Public Health Tracking Network.
- Fully fund lead and healthy homes activities at EPA.

## FOR MORE INFORMATION

National Center for Healthy Housing, 410-992-0712, <http://www.nchh.org/>.

National Safe and Healthy Housing Coalition, [www.nshhcoalition.org](http://www.nshhcoalition.org).

HUD's Office of Lead Hazard Control and Healthy Homes, <https://www.hud.gov/lead>.

CDC's Healthy Homes and Lead Poisoning Prevention Program, <http://www.cdc.gov/nceh/lead/>.



# Housing Needs of Survivors of Domestic Violence, Sexual Assault, Dating Violence, and Stalking

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By Monica McLaughlin, Director of Public Policy, and Debbie Fox, Deputy Director of Housing Policy and Practice, National Network to End Domestic Violence

**Administering Agencies:** Department of Health and Human Services (HHS) for the “Family Violence Prevention and Services Act” (FVPSA), Housing and Urban Development (HUD), Department of Agriculture (USDA), the Treasury Department, and the Department of Justice (DOJ)/Office on Violence Against Women (OVW) for housing programs and protections under the “Violence Against Women Act” (VAWA) and the Office for Victims of Crime (OVC) for “Victims of Crime Act” (VOCA) funds.

**Year Started:** FVPSA, 1984; VAWA, 1994; VAWA Housing Protections (under HUD, USDA and Treasury Department), 2005; HUD Continuum of Care Domestic and Sexual Violence Bonus funds, 2018

**Number of Persons/Households Served:** More than one million survivors and their children are served each year

**Populations Targeted:** Victims of domestic violence, sexual assault, dating violence, human trafficking, and stalking (regardless of sex, gender identity, or sexual orientation)

**Funding: (Request)** VAWA Transitional Housing, \$50 million; FVPSA, \$500 million; HUD Domestic Violence and Sexual Assault Bonus Continuum of Care (DV CoC), \$75 million

## HISTORY

FVPSA, which created the first federal funding stream for domestic violence shelters and programs, passed in 1984 and is administered by HHS. VAWA passed in 1994 and was reauthorized in 2000, 2005, and 2013. The

2018 Transportation, Housing, and Urban Development (THUD) appropriations bill created the first annual funding set aside for domestic and sexual violence survivors administered by HUD Special Needs Assistance Program (SNAPS) office. VAWA created the OVW transitional housing federal housing funding stream in 2005 and the first federal law to encourage coordinated community responses to address and prevent domestic and sexual violence. Various federal agencies are responsible for VAWA housing rights compliance; housing-related agencies are HUD, USDA, and the Treasury Department.

## ISSUE SUMMARY

Domestic and sexual violence are consistently identified as significant factors in homelessness, especially for women, children, families, and particularly for LGBTQ+ and communities of color. Domestic violence is often life threatening; in the U.S. three women are killed each day by a former or current intimate partner. Survivors must often flee their homes to escape danger, yet do not have the means to secure affordable independent permanent housing. Complex relationships exist between housing insecurity, sexual assault, and power; homelessness and sexual violence often affect the most vulnerable members of society. When access to basic needs such as housing and safety are compromised, individuals can experience heightened risks of violence. Access to safe, affordable housing can be a critical protective factor from sexual violence. Advocates and survivors identify housing as a primary need of survivors and a critical component in survivors’ long-term safety and stability.

The impact of homelessness and domestic and sexual violence is compounded for women of color and LGBTQI communities, particularly

Native American and African American women. Native American and Alaska Native Women face both a lack of housing and disproportionate rates of violence. Discriminatory nuisance ordinances disproportionately target and impact African American survivors of violence resulting in evictions and homelessness. Racial and gender disparities have been exacerbated as a result of the pandemic, the economy, racist, transphobic, and homophobic attacks, and on-going natural disasters.

Rates of domestic and sexual violence are increasing and the need for safe, affordable, trauma-informed housing has never been greater. Survivors face increased economic and health barriers caused by the pandemic and widespread housing shortages, making it challenging to flee abuse. Over the course of the pandemic, domestic violence shelters have reduced the capacity of their communal buildings and are using hotel/motel space, extended stay apartments, flexible funding and/or rental assistance to house survivors. Victim service providers have used and helped survivors access resources such as HUD Emergency Solutions Grants Program (ESG) “CARES Act,” HUD ESG and CoC and permanent Emergency Housing and Stability Vouchers, Treasury Department Emergency Rental Assistance, VOCA, FVPSA, VAWA Transitional Housing and state, local and private funding to provide housing and assistance to survivors. Sexual violence programs struggled to meet the housing needs of survivors without adequate resources. Many survivors needed to leave their homes due to sexual violence and/or harassment by landlords, neighbors, or people in their home such as family and roommates. For most programs, providing any form of housing is not part of the services offered, nor do they receive any funding that would support housing services.

Although safe housing can give survivors pathways to freedom, there are many barriers that prevent survivors from maintaining or obtaining safe and affordable housing. Many survivors have faced economic abuse as part

of the violence, meaning that they have not had access to family finances, have been prohibited from working, and have had their credit scores destroyed by their abuser or have faced sexual harassment from a landlord. Survivors often face discrimination in accessing or maintaining housing based on the violent and criminal actions of perpetrators and systemic barriers endemic in housing markets such as racism, sexism, and family demographics. Additionally, survivors are limited in the locations and types of housing they can access because of their unique safety and confidentiality needs, and many housing/homelessness assistance programs have screening tools and barriers that inadvertently exclude victims of violence and their specific vulnerabilities. Finally, survivors face common economic barriers, such as unemployment, access to healthcare, lack of affordable housing, living-wage jobs, transportation, safety nets, and childcare options, with additional safety barriers as abusers sabotage their attempts to leave the relationship. As a result, many survivors face the impossible choice between staying with or returning to an abusive situation or becoming homeless because they cannot find or afford safe, long-term, permanent housing.

Domestic violence programs do their best to serve those in need of emergency, transitional housing, and permanent and supportive housing. Due to a lack of resources, however, every day, thousands of abused adults and children are turned away from emergency shelters and denied housing services because programs lack adequate resources and funding. The National Network to End Domestic Violence’s [16th Annual Domestic Violence Counts Report](#) found that in just one 24-hour period in 2021, almost 6,049 nationwide requests for shelter and housing went unmet.

## PROGRAM SUMMARIES

[FVPSA shelters and services](#), the [VAWA transitional housing program](#), and the [HUD CoC Domestic and Sexual Violence](#) set-aside are critical components in the effort to reduce

homelessness and housing instability among victims of domestic and sexual violence. These essential programs respond to an array of victims' needs, from emergency shelter and transitional housing to permanent housing.

### **"Family Violence Prevention and Services Act"**

FVPSA is administered by HHS. FVPSA created the first and only dedicated federal funding stream for community-based domestic violence programs and shelters. Approximately 1,600 emergency domestic violence shelters and programs across the country rely on FVPSA to sustain lifesaving support to victims trying to escape violence through emergency shelter and housing programs. The American Rescue Plan included almost \$1 billion in supplemental FVPSA funds that can be used to meet COVID related costs for testing, vaccines, mobile health units, and support for domestic and sexual violence and culturally specific programs. FVPSA funds cover basic needs and provide rental assistance, hotel and motel rooms, and utilities for domestic violence survivors and their children and can be utilized to match funds for HUD Continuum of Care resources. The funds are primarily distributed through a state formula grant. In addition to shelter, FVPSA-funded programs provide counseling, legal assistance, crisis intervention, and services for children.

### **"Violence Against Women Act"**

VAWA includes many discretionary grant programs, including the Transitional Housing program administered by OVW. The program distributes grants to more than 200 entities annually across the country on a competitive basis, including states, units of local government, Indian tribes, and other organizations such as domestic violence and sexual assault victim service providers or coalitions, other nonprofit and nongovernmental organizations, and community-based and culturally specific organizations. Transitional housing grants allow entities to offer direct financial assistance for housing and housing-related costs for six to 24 months, operate transitional housing programs, and provide

supportive services including advocacy in securing permanent housing. With VAWA Transitional Housing funding, organizations can provide a critical bridge from crisis to stability. The vast majority of VAWA transitional housing participants exit the program to safe, permanent housing.

VAWA, originally passed in 1994 and reauthorized in 2000, 2005, and 2013, created the first federal law to encourage coordinated community responses to combat domestic and sexual violence. The 2005 VAWA reauthorization instituted landmark protections to ensure that victims can access the criminal justice system without facing discrimination or jeopardizing their current or future housing, strengthened confidentiality protections for victims accessing housing and homelessness services, and maintained the transitional housing grant program. The 2013 VAWA reauthorization built upon the strengths of these housing programs and protections with key improvements.

VAWA housing protections prohibit covered housing programs from denying housing or evicting a victim (of domestic violence, sexual assault, dating violence, or stalking) simply because they are victims; allow public housing agencies (PHAs) to prioritize victims for housing when their safety dictates; clarify that Housing Choice Vouchers are portable for victims; and delineate an emergency transfer policy process for victims who face continued threats or violence or who have been sexually assaulted on the premises. The covered federally subsidized housing programs are: public housing, tenant- and project-based Section 8, McKinney-Vento homeless assistance programs, the HOME Investment Partnerships Program, the Section 221(d)(3) Below Market Interest Rate Program, the Section 236 program, the Housing Opportunities for Persons with AIDS Program, the Section 202 Supportive Housing for the Elderly Program, the Section 811 Supportive Housing for People with Disabilities Program, USDA Rural Development Housing Properties, and Low-Income Housing Tax Credit (LIHTC) properties.

VAWA was reauthorized in March of 2022 and builds on existing VAWA housing protections. The law addresses the needs of sexual assault survivors by amending the homelessness definition, enhances the emergency transfer process, covers the remaining federal housing programs, strengthens compliance, implementation, and training and technical assistance, prohibits retaliation against tenants and program participants exercising their VAWA rights, and protects the right to report crime. VAWA 2022 also established a HUD Gender-Based Violence Prevention Office with a VAWA Director.

Advocates call on administering federal agencies to issue timely updates to guidance for all programs to fully implement the VAWA housing protections for survivors. New regulations, along with on-going training and technical assistance will help promote more consistent implementation of the protections. HUD and the other administering agencies should strongly enforce VAWA protections, ease the burden on victims to provide documentation, and reduce other barriers that arise when victims assert their rights or simply attempt to remain safe.

### **The “HEARTH Act” and McKinney-Vento Homeless Assistance Programs**

Domestic violence shelters and housing programs depend on HUD McKinney-Vento funding to operate and provide safe housing and shelter for survivors. Dedicated funding to serve domestic violence survivors - the Domestic Violence/Sexual Assault (DV/SA) Bonus - coupled with targeted technical assistance, improvements to HUD’S Notice of Funding Availability (NOFA) and related guidance, have increased the capacity of the domestic violence field to provide trauma-informed, safe and confidential housing to domestic violence survivors. Since FY18, Congress has set aside at least \$50 million in the DV/SA Bonus to support projects serving victims of domestic violence, dating violence, and stalking via Rapid Rehousing (RRH), Joint Component (Transitional Housing and Rapid Rehousing) or Coordinated Entry Supportive Service Only projects. Since FY18 CoC NOFA

awarded points to CoCs that demonstrated efforts to address the needs of persons fleeing domestic violence by including victim service providers on CoC boards, offering training on coordinated entry best practices for serving survivors of domestic violence, having safety planning protocols for coordinated entry, and determining the needs of domestic violence and homelessness victims based on data from victim service provider Comparable Databases. We continue to urge HUD to provide clear guidance on how to evaluate the efficacy of domestic and sexual violence survivor housing, to maintain language in the NOFA encouraging communities to address domestic violence, and to continue to issue guidance and messaging to encourage communities to meet the needs of domestic and sexual violence survivors.

### **Emergency Housing Vouchers (EHVs)**

As part of the “American Rescue Plan Act (ARP) of 2021,” Congress appropriated \$5 billion for Emergency Housing Vouchers (EHVs) intended to assist individuals and families who are homeless or facing housing instability, as well as individuals and families who are *fleeing or attempting to flee domestic violence, sexual assault, dating violence, stalking, or human trafficking*.

The EHVs are a form of permanent affordable housing tenant-based rental assistance similar to the Housing Choice Voucher program. Public Housing Authorities (PHAs) are the entities that have been designated to receive and administer EHVs at the local level. Collaboration is not only highly encouraged by HUD, but also mandated in several instances, particularly in regard to working with CoCs and victim service providers, including culturally specific victim service organizations. HUD requires that PHAs enter a Memorandum of Understanding (MOU) with their CoCs, VSPs, and culturally specific victim service organizations, and other service providers to establish a partnership for the administration of the EHV program. The primary role of CoCs, VSPs, and other service providers is to make direct referrals of EHV-eligible survivors to the PHAs to access this new housing resource.



The [HUD EHV website](#) is specifically dedicated to EHV-related information and resources. The webpage contains HUD guidance and materials related to EHV, an EHV FAQ document, registration links for upcoming HUD EHV webinars, and recordings and materials from previously held HUD EHV webinars.

## **HOME Funds**

In addition to EHV, ARP allocated \$5 billion to the HOME program to address homelessness, including addressing homelessness amongst those who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking, as defined by the Secretary. Participating Jurisdictions should work with victim service providers to ensure funded projects target survivors and include them in the allocation plans.

## **Stability Vouchers**

In 2022 HUD distributed \$43.4 million in Stability (or new incremental) Vouchers to assist households who are homeless, including those fleeing or attempting to flee domestic violence, dating violence, sexual assault and stalking, or human trafficking. The allocation should be approximately 4,000 new incremental vouchers. Eligible PHAs apply for the funds and must demonstrate a strategy to pair vouchers with services. PHAs are encouraged to partner with COC, priority given to CoCs who have an existing referral partnership with VSPs.

## **TIPS FOR LOCAL SUCCESS**

### **“Violence Against Women Act”**

Advocates can play a key role in promoting safe housing for victims of domestic and sexual violence by encouraging consistent implementation of VAWA housing protections in local jurisdictions. Housing advocates should work in partnership with domestic violence advocates to familiarize themselves with VAWA housing protections, improve advocacy for individuals, and improve covered housing programs’ policies and procedures. Domestic and sexual violence advocates can

train PHA staff, hearing officers, field offices, Section 8 owners, resident groups, and other stakeholders of covered housing programs on VAWA implementation and the dynamics of domestic and sexual violence. PHAs should be encouraged to institute a preference for survivors when making admission decisions. Advocates must also get involved with their PHA’s planning process to ensure that survivors’ needs are addressed and that VAWA housing protections are adequately communicated to consumers.

### **“HEARTH Act”**

Implementation of the “HEARTH Act” and related funding decisions must reflect and respond to victims’ serious safety needs and their desperate need for housing. Performance measures, evaluation, confidentiality, data collection, and more have an impact on funding decisions and ultimately on victims’ access to safe housing. Implementation and funding decisions must support the unique role that domestic and sexual violence service providers play in meeting victims’ specific needs. Communities must ensure that they have “HEARTH Act” funded domestic and sexual violence housing and shelter available. Each community should ensure that survivor advocates are significantly involved in all homelessness resource planning.

Communities should use guidance from HUD and USICH to help support funding for domestic and sexual violence programs. HUD, OVW, Office for Victims of Crime, and FVPSA at HHS support the Domestic Violence and Housing Technical Assistance Consortium (DVHTAC) to better address the critical housing needs of victims of domestic violence and their children. The Consortium aims to foster increased collaboration among domestic violence and homeless service providers and provide national training, technical assistance, and resource development on domestic violence and housing. Communities are encouraged to contact the DVHTAC to address specific needs around implementation of HEARTH (see [www.safehousingpartnerships.org](http://www.safehousingpartnerships.org)).



## FUNDING

Increasing funding for FVPSA and VAWA programs and the CoC DV/SA bonus is critical to ending domestic and sexual violence and homelessness. When adequately funded, these acts help to reduce the societal cost of domestic and sexual violence. In fact, by supporting critical services for victims, VAWA saved \$12.6 billion in net averted social costs in its first six years alone. Despite their lifesaving potential and efficacy, these programs are woefully underfunded; there is a serious gap caused by a lack of available resources. It is unacceptable that victims fleeing violence should be turned away from emergency shelters because the programs are full. Victims who must wait in emergency shelter for an available housing unit remain unstable, while other victims in crisis cannot access shelter.

FY22 funding levels include \$43 million for VAWA transitional housing and \$195 million for FVPSA, and \$52 million for the DV Bonus set aside. In FY23, advocates should call on Congress to provide \$450 million for FVPSA, increases transitional housing VAWA funds, CoC funds.

## WHAT TO SAY TO LEGISLATORS

Advocates should tell Members of Congress why eviction prevention, flexible funding, emergency shelter, transitional housing, and permanent housing are essential for survivors of domestic and sexual violence. Housing providers should talk about the victims that programs serve and about the struggles that programs face in meeting survivors' unique needs for safety. Advocates should share the latest information about the pervasive scarcity of emergency and transitional housing, and of safe, affordable long-term housing in their communities.

For these federal laws and programs to realize their full potential in meeting survivors' housing needs, program funding must be increased to its authorized level, new and existing VAWA housing protections must be fully implemented, and "HEARTH Act" funding and implementation must address survivors' needs.

Specifically, advocates should ask the House and Senate Appropriations Committees to increase investments in domestic violence shelter and housing programs including:

- In the Commerce, Justice, Science Appropriations bill, \$100 million for VAWA Transitional Housing.
- In the Labor, Health and Human Services Appropriations bill, \$500 million for FVPSA/ domestic violence shelters, including cash assistance that can be utilized for housing and housing related expenses.
- In the Transportation, Housing, and Urban Development (THUD) bill, support \$75 million designated for domestic violence housing and encourage CoC and Emergency Solutions Grants funding processes to reflect the needs of victims of domestic violence and \$15 million to ensure compliance and implementation of VAWA, support a VAWA office, and provide related training and technical assistance.
- Continued incremental housing vouchers/ stability vouchers for PHAs to provide vouchers for use by survivors of domestic violence, or individuals and families who are homeless, or at risk of homelessness.

## FOR MORE INFORMATION

National Network to End Domestic Violence, 202-543-5566, [www.nnedv.org/census](http://www.nnedv.org/census).

NNEDV Tools on Confidentiality, <https://www.techsafety.org/confidentiality>.

NNEDV Toolkit on Housing for Domestic Violence Survivors <https://nnedv.org/content/housing/>, <https://nnedv.org/wp-content/uploads/2022/11/EHV-Roadmap-Serving-Survivors.pdf>.

DVHTAC: To learn more about expanding safe housing options for domestic and sexual violence survivors, please visit [www.SafeHousingPartnerships.org](http://www.SafeHousingPartnerships.org), a website of the Domestic Violence and Housing Technical Assistance Consortium (DVHTAC).

Members: NNEDV; Safe Housing Alliance <https://www.safehousingta.org/>.

National Resource Center on Domestic Violence  
[www.VAWnet.org](http://www.VAWnet.org) (search housing)

CSI, Inc. <http://www.collaborative-solutions.net/>.

National Sexual Violence Resource Center  
<https://www.nsvrc.org/>; STTARS Indigenous Safe  
Housing Center <https://www.niwrc.org/housing>.

National Housing Law Project VAWA protections  
<https://www.nhlp.org/initiatives/protections-for-survivors-of-domestic-and-sexual-violence/>.



which has the oldest policy in the U.S., passed its first inclusionary zoning ordinance in 1971. Montgomery County, Maryland, established its Moderately Priced Dwelling Unit program in 1974. Since then, more than 1,000 inclusionary housing programs have been adopted by over 700 jurisdictions across 35 states and the District of Columbia.

## LEGAL CONSIDERATIONS

Inclusionary housing programs generally rely on local governments’ power to regulate land use. While the right of zoning power granted to governments has been established and upheld for generations, this is still a rapidly evolving area of law. Recent federal court decisions have limited zoning power in ways that do not prohibit inclusionary housing programs but can influence how they are designed.

In addition to federal legal considerations, state law can impact the design of inclusionary housing in significant ways. For instance, in some states there are statutory limitations on local policies that control rents on private property. In a subset of those states, such laws have been interpreted by courts as rendering mandatory inclusionary policies for rental housing illegal. A few states have adopted legislation that either explicitly permits or preempts (prohibits or limits) local inclusionary housing policies. States also have different legal frameworks regarding municipal authority to enact local legislation; these differences in municipal authority also impact the ability of local jurisdictions to adopt inclusionary housing policies.

The *Inclusionary Housing Map and Program Database* summarizes the state legal framework relevant to local inclusionary housing policies for each of the 50 states.

## POLICY CONSIDERATIONS

No two inclusionary housing policies are exactly the same. Policymakers in each community must consider several distinct questions. Key policy design questions include: Will the policy be mandatory or voluntary? Will it apply city-wide or only to certain geographies or neighborhoods?

What household income levels should be served to address housing needs and racial disparities in the community? Will developers be offered incentives to help offset the cost of compliance? Will there be alternative methods of compliance beyond building the affordable units on site? What are the racial equity implications of each of these policy choices?



Every policy addresses each of these questions, though the specific answers differ considerably from place to place depending on local conditions. More details on these policy considerations can be found [here](#).

## PROGRAM CONSIDERATIONS

Passing a policy is only the first step in making inclusionary housing successful. Inclusionary housing programs cannot be successful unless they are well run and adequately staffed, and they must secure sufficient funding for ongoing administrative costs. Communities also need to be able to track program data in order to evaluate outcomes and make needed changes over time. Key program elements include supporting builders to comply with policy, monitoring rental units, and stewarding homeownership units.

Program implementation is also where some of the most powerful steps can be taken to advance racial equity. For example, programs can set strong marketing requirements for inclusionary

housing units, require developers to select tenants based on a lottery system rather than first come/first served, and limit the reasons that property owners may deny applications for inclusionary housing units (e.g., limit use of eviction and/or criminal record reviews).

More details on program implementation can be found [here](#).

## CONSIDERATIONS FOR POLICY ADOPTION

At the local level, inclusionary housing policies tend to be popular when the housing market is strong (i.e., housing prices are high and there is sufficient new housing construction). However, there is usually a delay from the time at which an inclusionary housing policy is first considered to the time it is adopted, which can sometimes mean that by the time a policy is adopted the housing market may already have begun to turn down. This is one of many reasons it may make sense to adopt an inclusionary housing policy [before the market heats up](#). More communities with mixed housing markets, like Detroit and Minneapolis, have recently adopted inclusionary housing policies. Inclusionary housing is also appealing during periods of low federal and state funding because it leverages the profitability of new development to pay for affordable housing without significant public subsidy.

At the state level, there has been an increasing trend toward state preemption of local inclusionary housing policies, with Tennessee and Wisconsin passing new laws preempting inclusionary housing in 2018 and Florida passing a new law limiting inclusionary housing in 2019. Advocates for local policies in states without a history of inclusionary housing policies should assess the potential risk of triggering a preemptive backlash at the state level.

## WHAT TO SAY TO LEGISLATORS

The article [\*Ten Ways to Talk About Inclusionary Housing Differently\*](#) from [Grounded Solutions Network](#) offers tips to help communicate about inclusionary housing in ways that circumvent common misperceptions and create a new

narrative for policymakers in moderate markets and more conservative political climates.

Some of the key benefits of inclusionary housing that may be compelling to legislators include:

1. **Sharing the benefits of growth.** As housing and land costs increase, a relatively small number of landowners receive most of the benefit while, often, the lowest-income residents bear much of the burden in the form of higher rents and displacement pressure. Inclusionary housing leverages the profitability of new development to pay for new affordable housing units and supports the creation of more economically diverse and inclusive communities.
2. **Economic integration.** Inclusionary housing policies were first developed to specifically counteract a history of exclusionary zoning policies that reinforced economic and racial segregation. A wealth of recent research has convincingly demonstrated that concentrated poverty is a cause of many of the worst social problems and is especially damaging to children. Inclusionary housing has been successful in creating sustainable mixed-income communities.
3. **Conservation of scarce public resources.** Public funding for housing has been declining for decades, and in the current political climate, will probably continue to shrink. New affordable housing development can require over \$200,000 of local investment per unit. Inclusionary housing is one of the few ways to create reasonably priced housing without significant public subsidy. Jurisdictions can adopt inclusionary housing without draining the general fund.

Policymakers are often concerned that inclusionary housing requirements will become a barrier to housing development. While there is not much evidence of this outcome occurring at any significant level in real programs, this is an appropriate concern that plays a central role in the debate whenever any community considers affordable housing requirements.



There is evidence that it is possible to set affordable housing requirements so high that they prevent developers from wanting to build or landowners from wanting to sell. If this happens it can result in a reduced supply of housing and ultimately higher housing prices. However, data suggest that programs that provide incentives and flexibility can successfully require significant affordable housing without any impact on market supply or prices. [Economic feasibility analyses](#) can analyze the extent to which local market-rate housing development projects can realistically support a set-aside of lower cost units without slowing or deterring construction.

Policymakers may also be concerned that the costs of inclusionary housing requirements will be passed on to market-rate renters and homeowners. This is unlikely to happen for two reasons:

1. Market rate is market rate. Developers can't "pass along" the costs of inclusionary housing policies to market-rate renters and buyers because those renters and buyers will only pay what the market will bear. If developers and property owners could charge more, they would already be doing so.
2. The costs of inclusionary housing requirements are generally borne by landowners. One common concern is that if affordable housing requirements are set too high, developers may not be able to make sufficient profits and will choose not to build or to build in another community with fewer requirements. But because landowners can't move to another community, they will have to lower land prices to attract developers, meaning that landowners are the ones whose profits ultimately drop.

[This page, \*Will Inclusionary Housing Prevent Development?\*](#), addresses these concerns in more detail and includes an easy-to-understand video.

## FOR MORE INFORMATION

[InclusionaryHousing.org](https://inclusionaryhousing.org).

[Inclusionary Housing Map and Program Database \(https://inclusionaryhousing.org/map/\)](https://inclusionaryhousing.org/map/).

[Inclusionary Housing Calculator \(https://inclusionaryhousing.org/calculator/\)](https://inclusionaryhousing.org/calculator/).

[GroundedSolutions.org](https://groundedsolutions.org).

# Manufactured Housing

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By Doug Ryan, Vice President, Policy & Applied Research, Prosperity Now; Lance George, Director of Research & Information, Housing Assistance Council; and Kimberly Vermeer, Consultant to Lincoln Institute of Land Policy & I'm HOME Network

**M**anufactured homes are an often overlooked and maligned component of our nation's housing stock, but these homes are an important source of housing for millions of Americans, especially those with low incomes and in rural areas. Although the physical quality of manufactured housing continues to progress, the basic delivery system of how these homes are sold and financed, and how manufactured home communities are owned and managed are all still in need of improvement to ensure that they are a viable and quality source of affordable housing.

## ISSUE SUMMARY

There are approximately 6.7 million occupied manufactured homes in the U.S., comprising about 6% of the nation's housing stock. Manufactured Housing is factory-built housing constructed to meet a national standard—the HUD Code—rather than local building codes. More than half of all manufactured homes are in rural areas around the country. In a typical year, new manufactured housing accounts for about 10% of all new single-family housing starts. Although the demographics of manufactured housing are changing, lower-income households are still the primary residents of manufactured homes. Manufactured homes have their origins in the automobile and recreational travel trailer industry, but modern factory-built dwellings produced today are more comparable in quality and safety to conventionally constructed single-family homes. It is equally important to recognize the existing stock of older manufactured or mobile homes. An estimated one-fifth of currently

occupied manufactured homes were built before 1980. These older units are likely to be smaller, less safe, and have fewer amenities and less investment potential than newer manufactured homes. The adoption of the HUD Code (see below) in 1976 and subsequent updates have significantly improved this housing type.

Affordability and convenience make manufactured homes a popular housing option. The average sales price of a new manufactured home in 2021 was \$108,400 (excluding land costs); much less compared to an average of \$365,900 (excluding land costs) for a newly constructed single-family home and approximately \$357,100 (including land costs) for an existing site-built home (see the U.S. Census Bureau's *Manufactured Homes Survey* and *Characteristics of New Housing*, along with the Manufactured Housing Institute's *2022 Manufactured Housing Facts* and the National Association of Realtors' *Median Sales Price of Existing Homes*). Manufactured homes cost about half of what site-built homes cost per square foot, though transportation and onsite work slightly increase the final costs. Even though the purchase price of manufactured homes can be relatively affordable, financing them may not. Contrary to common narratives, just about 42% of manufactured homes are financed with personal property, or chattel loans (see the Consumer Financial Protection Bureau's *Manufactured Housing Finance: New Insights from the Home Mortgage Disclosure Act Data (2021)*). With shorter terms and higher interest rates, personal property loans are generally less beneficial for consumers than conventional mortgage financing. Chattel loans do, however, typically have lower closing costs and can close faster than conventional mortgages. Approximately 93% of chattel manufactured home loans in 2019 were classified as high cost (having a substantially high interest rate) which is more than eight times the level of high-cost lending for all homes nationally according to the Bureau. Data from the "Home

Mortgage Disclosure Act” allows for a greater understanding of how specific manufactured home characteristics impact consumer lending rates and affordability. Borrowers whose loan was secured by both the unit and land on which the home is placed had a lower rate of high-cost lending at about 52%. In some cases, dealers resort to unscrupulous sales and financing tactics, trapping consumers into unaffordable loans. See *The Mobile Home Trap: How a Warren Buffett Empire Preys on the Poor*.

A significant portion of manufactured and mobile homes are in community or park settings, though this is becoming less common. According to the U.S. Census Bureau, in 2020, approximately 27% of new manufactured homes were sited in such settings. Estimates suggest that approximately 40% of all manufactured homes are in 45,000 to 50,000 land lease communities. Though about three quarters of manufactured homes are owner-occupied, the sector has a history of being placed on rented land and therefore manufactured homes have a pattern of land tenure status that is unique to this form of housing. In manufactured home communities, many residents own their homes and rent the land, which can devalue the asset. Ownership of land is an important component to nearly every aspect of manufactured housing, ranging from quality to assets and wealth accumulation. Residents who do not have control over the land on which their home is placed often have reduced legal protections compared to other homeowners. Other common concerns faced by tenants of manufactured home communities include excessive rent increases, poor park management and maintenance, restrictive rules, and restricted access to municipal services. For these and other reasons, alternative park ownership models, such as resident, nonprofit, and government ownership are gaining traction.

## WHAT ADVOCATES SHOULD KNOW

### Federal Resources for Affordable Manufactured Housing

Manufactured housing is largely financed in the private marketplace. However, there are several existing federal resources that support the development, financing, and rehabilitation of affordable manufactured housing, such as HUD-HOME, USDA Rural Development, Veterans Affairs, and Weatherization funds. Fannie Mae and Freddie Mac are increasing their manufactured home loan offerings.

### Affordable Housing Development with Manufactured Housing

Once shunned by nonprofit housing developers, manufactured homes are now seen as options for infill, new developments, and other settings. Much of this progress is attributable to a growing and innovative group of advocates who challenged assumptions and convention about developing and preserving manufactured housing. Across the nation, several organizations and initiatives are utilizing manufactured homes to provide and maintain affordable housing. These efforts avoid the pitfalls of traditional dealer-based manufactured housing purchase and finance, and investor ownership of communities.

### The HUD Code

An important factor in the designation of a manufactured home is whether the unit was built before or after June 15, 1976. This date marked the implementation of the “Manufactured Home Construction and Safety Standards Act” (42 U.S.C. Sections 5401-5426) regulating the construction of manufactured homes and commonly referred to as the “HUD code.” HUD developed and administers the code that implements the statute. These federal standards regulate manufactured housing design and construction, strength and durability, transportability, fire resistance, and energy efficiency. The HUD code evolves over time and has undergone several major modifications since 1976. In 2018, HUD launched

an effort to revise various regulations and other guidance governing the HUD Code and issued a proposed rule for comment in July 2022. Look for the final rule to be issued in 2023.

## LEGISLATIVE AND REGULATORY ACTIONS

### Duty to Serve

The “Housing and Economic Recovery Act of 2008” mandates that Fannie Mae and Freddie Mac (the government sponsored enterprises, or GSEs) have a duty to serve underserved markets. Manufactured housing was identified in the act as one of three underserved markets along with rural areas and housing preservation. Under the act, the GSEs will increase mortgage investments and improve the distribution of capital available for mortgage financing in these markets. In 2016, the Federal Housing Finance Agency (FHFA) issued a final rule on the duty to serve requirements.

FHFA approved the GSE’s 2022 – 2024 Duty to Serve plans in April 2022 after initially rejecting the Enterprises’ plans in January 2022. Both GSEs remain largely conservative in their manufactured housing-related activities. Jointly, Fannie Mae and Freddie Mac outline modest increases in their loan purchase targets for Manufactured Housing Titled as Real Property (MHRP), citing prevailing market trends such as increasing home prices and interest rates.

In its 2022 -2024 plan, Freddie Mac made a tangible commitment to enter the chattel market, intending to conduct a risk management assessment to develop a chattel (personal property) loan product. Fannie Mae continues to work with FHFA to determine the viability of a chattel loan pilot program.

### Energy Efficiency Standards

In May 2022, the U.S. Department of Energy (DOE) released the final rule for the updated Manufactured Housing Energy Efficiency Standards. Manufacturer compliance with the updated regulation is required by May 2023. The updated standard offers modest efficiency increases for single-section homes and greater

efficiency increases for multi-section homes. The energy standards must be integrated with the HUD Code. As of December 2022, HUD, with input from the Manufactured Housing Consensus Committee (MHCC), must now determine if it will incorporate DOE’s energy standards into the HUD Code by reference or undergo a new rulemaking process for updating the energy standards under the HUD Code to align with DOE’s final rule. The MHCC is a federal advisory committee established by the National Manufactured “Housing Construction and Safety Standards Act of 1974” to provide periodic recommendations to the HUD Secretary pertaining to the HUD Code.

Subsequent to DOE’s release of the updated Energy Efficiency Standards, the U.S. Environmental Protection Agency (EPA) issued a request for stakeholder comments for updates to the ENERGY STAR Manufactured Homes Program, Version 2.1, that would go into effect in May 2023 to align with the DOE regulation implementation date. EPA is expected to issue final program guidelines in early 2023.

### 2023 Appropriations - Manufactured Housing Improvement and Financing Program

In July 2022, the U.S. House Appropriations Committee approved a groundbreaking federal investment, the Manufactured Housing Improvement and Financing Program, in the Fiscal Year 2023 Transportation, Housing and Urban Development, and Related Agencies Funding Bill. The program would create a fund to preserve and revitalize manufactured home communities (MHCs), home to 8.5 million Americans. The fund is expected to be named after Chairman David Price (D-4<sup>th</sup> – NC) of the Transportation, Housing and Urban Development (THUD) Appropriations Subcommittee.

Grants would be distributed through a competition, with eligible applicants including states, local governments, Tribes, nonprofits, CDFIs, resident-owned manufactured housing communities or cooperatives, and possibly other entities. While funds will be available for a variety of uses (including relocation assistance and eviction prevention), the primary purpose



is to bring community infrastructure up to code, providing clean drinking water and safe sanitation, and to increase resiliency in the face of increasing flood, fire, and storm events. The fund will also support acquisitions, including resident purchases.

As of the deadline for this handbook, Congress is working to conference the appropriations bills in the House and Senate, which will ultimately determine whether the final FY23 HUD Appropriations bill includes this important new program.

### **2019 Appropriations - “Minibus - HR 1865”**

The appropriations bill that funded HUD for FY 2020 includes language from the HUD “Manufactured Housing Modernization Act of 2019.” This required HUD to “issue guidelines to jurisdictions on how to assess the potential inclusion of manufactured homes in a community’s comprehensive housing and affordability strategy and community development plans.” If implemented, this would raise the profile of manufactured housing as part of a local community’s affordable housing market as it decides priorities for federal housing funds. As of December 2022, HUD has not issued guidance on the act. Therefore, participating jurisdictions will likely delay analyzing the role manufactured housing has in their local housing markets. This will limit resident access to federal resources and threaten local housing preservation efforts.

### **The “Economic Growth, Regulatory Relief, and Consumer Protection Act”**

In 2018, the president signed into law S. 2155, which includes a provision on manufactured home loans. The statute amended the “Truth in Lending Act” (TILA) to specify that a retailer of manufactured housing is generally not considered a mortgage originator. The provision was not supported by affordable housing advocates because it reduced already weak consumer protections in the manufactured housing market.

### **The “Dodd-Frank Wall Street Reform and Consumer Protection Act” (PL 111-203)**

Enacted in 2010, Dodd-Frank revised TILA to establish specific protections for mortgage loans, origination activities, and high-cost lending. These provisions enhance consumer protections for purchasers of manufactured homes. Dodd-Frank also created what’s now known as the Consumer Financial Protection Bureau to supervise manufactured housing finance activities. S. 2155 (above) modifies one provision of Dodd-Frank.

## **WHAT TO SAY TO LEGISLATORS**

Advocates should speak to lawmakers with the message that:

- Manufactured homeowners should be provided opportunities to obtain standard mortgage lending instead of more costly personal property loans.
- Borrowers with personal property loans should be afforded consumer protections consistent with real property or standard mortgage loans.
- Legislation should be enacted that limits predatory lending practices involving manufactured homes.
- HUD must issue guidance to implement the HUD “Manufactured Housing Modernization Act of 2019.”
- HUD must issue a final rule to update the HUD Code and incorporate the DOE Energy Efficiency Standards.
- HUD should revise the Title I Manufactured Housing loan program to provide an affordable and equitable financing alternative for chattel loans.
- USDA, HUD, and the GSEs should be encouraged to conduct innovative and responsible pilot programs to improve manufactured homeowners’ access to credit.
- The GSEs should be held accountable to implement the manufactured housing elements of their current Duty to Serve plans.



- Policies and programs should be enacted to facilitate manufactured housing community preservation, such as protection from community sales, closures, and predatory rent increases. Residents should be properly notified and given first right of refusal on the sale of their community.
- Improved data collection for manufactured homes should be incorporated into publicly available data resources such as the “Home Mortgage Disclosure Act,” The American Community Survey, and the American Housing Survey. Manufactured home data should indicate property status (personal property or real property) and location information indicating whether the unit is in a manufactured home community or on a scattered site lot. The inclusion of these updated and enhanced manufactured home data would provide a much more complete assessment of manufactured housing.

## FOR MORE INFORMATION

I’m HOME Network, Lincoln Institute of Land Policy, <https://www.lincolninst.edu/our-work/innovations-in-manufactured-homes-network-im-home>.

The Housing Assistance Council: 202-824-8600, <http://www.ruralhome.org/>.

Rural Data Portal: <http://www.ruraldataportal.org/>.

Manufactured Homes by County (Interactive Map): <http://bit.ly/1KDssyX>.

High Cost Manufactured Home Loans by County (Interactive Map): <http://bit.ly/14QHVLk>.

Next Step: <https://nextstepus.org/>.

ROC USA: 603-856-0246 <http://www.rocusa.org>.

National Consumer Law Center: 202-452-6352 <http://www.nclc.org/issues/manufactured-housing.html>.

National Manufactured Homeowners Association: <http://www.nmhoa.org/>.

# Olmstead Implementation

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By Sherry Lerch, Director, and Alicia Woodsby, Senior Associate, Technical Assistance Collaborative, Inc.

## SUMMARY

In its 1999 *Olmstead v. L.C.* decision, the United States Supreme Court found that the institutionalization of persons with disabilities who were ready to return to the community was a violation of Title II of the “Americans with Disabilities Act (ADA).” Since *Olmstead*, states have made different amounts of progress on supporting people with disabilities in the most integrated settings possible.

Prior to the declaration of a public health emergency due to the COVID-19 pandemic in 2020, several states were in the process of implementing “Olmstead Plans,” *Olmstead*-related settlement agreements, or other related activities — such as Medicaid reform — that would improve access to services and supports intended to assist individuals with disabilities to succeed in integrated, community-based settings. Unfortunately, state social service systems are still struggling to rebound from the impact of the pandemic on the economy, the workforce, and access to affordable housing. These challenges have diverted many states’ attention away from *Olmstead* and other federal and state priorities, with a negative impact on transitions to integrated community settings.

Significant national efforts are underway to strengthen and expand behavioral health crisis services, intended to divert people from entering restrictive, acute care settings and to provide them with more and better “upstream” services. The launch of the national 988 Suicide and Crisis Lifeline, implementation of “American Rescue Plan Act” (ARPA)-funded mobile crisis response, and states’ utilization of their five-percent increase to the Community Mental Health Services Block Grant (MHBG) to support infrastructure for additional crisis

services should, in theory, reduce unnecessary hospitalizations. However, an inadequate workforce, diminished access to support services, and lack of affordable housing units are resulting in an emerging trend of states returning to reliance on more institutional and restrictive, congregate community-based settings.

Despite these challenges, some states have pressed forward with *Olmstead* activity, and the U.S. Department of Justice (DOJ) has continued to initiate new *Olmstead*-related activity. The Biden Administration’s commitment to tackle the national mental health crisis resulted in \$300 million awarded to states in September 2022 for new and existing Certified Community Behavioral Health Clinics (CCBHCs), which offer community-based mental health and substance use treatment, including crisis services, 24 hours a day, 7 days a week. An additional \$15 million in planning grants was announced in October as part of the implementation of the “Bipartisan Safer Communities Act.” Opportunities continue for states to expand home and community-based services and to provide rental assistance to support people with disabilities in independent living. Access to “upstream” services such as permanent supportive housing, case management, outpatient treatment, and supported employment will be necessary to prevent unnecessary inpatient admissions.

Stakeholders should continue advocating for these funds to be directed toward gaps in community-based services and supports. This chapter identifies strategies for states to reinvestigate their community-based services. Chapter 4 identifies strategies to increase access to rental assistance for people with disabilities. These strategies are essential for states to fulfill their responsibilities under *Olmstead*.

## ADMINISTRATION

DOJ is the federal agency charged with enforcing ADA and *Olmstead* compliance. Other federal agencies, including the U.S. Department of

Housing and Urban Development (HUD) and the Health and Human Services (HHS) department, hold funding, regulatory, and enforcement roles related to the ADA and *Olmstead*. Protection and Advocacy (P&A) agencies in each state are federally authorized and also have legal, administrative, and other appropriate remedies to protect and advocate for the rights of individuals with disabilities.

## HISTORY

In its 1999 decision in *Olmstead v. L.C.*, the Supreme Court found that the institutionalization of persons with disabilities who were ready to return to the community was a violation of Title II of the ADA. The court said that indiscriminate institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. The court also found that confinement in an institution severely diminishes everyday life activities, including “family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.”

The court was careful to say that the responsibility of states to provide health care in the community was “not boundless.” States were not required to close institutions, nor were they to use homeless shelters as community placements. The court said that compliance with the ADA could be achieved if a state could demonstrate that it had a “comprehensive and effectively working plan” for assisting people living in “restrictive settings,” including a waiting list that moved at a “reasonable pace not controlled by the state’s endeavors to keep its institutions fully populated.”

Historically, community integration was achieved by moving people out of large, state-run institutions into community settings (deinstitutionalization). In recent years, there has been increasing scrutiny of ways that certain types of large, congregate residential settings in the community are restrictive, have characteristics of an institutional nature, and

are inconsistent with the intent of the ADA and *Olmstead*. Such facilities are known by a variety of names, (e.g., adult care homes, residential care facilities, boarding homes, nursing homes, assisted living), but share similar characteristics, including many residents with disabilities, insufficient or inadequate services, restrictions on personal affairs, and housing that is contingent upon compliance with services. Furthermore, the reduction in state hospital beds that began in the 1960s, combined with inadequate investment in comprehensive community-based mental health systems (including treatment for co-occurring mental health and substance use disorders), has resulted in the trans-institutionalization of people with psychiatric conditions in prisons and jails (Insel, Healing, 2022).

## IMPLEMENTATION

Since 1999, states have made varied amounts of progress on supporting people with disabilities in the most integrated settings possible. Prior to the declaration of the COVID-19 public health emergency in 2020, several states were in the process of: implementing “Olmstead Plans” that expand community-based supports, including new integrated permanent supportive housing opportunities; implementing *Olmstead*-related settlement agreements that require the creation of thousands of new integrated permanent supportive housing opportunities in conjunction with the expansion of community-based services and supports; or implementing other related activities, such as Medicaid reform, that will increase access to services and supports intended to help individuals with disabilities to succeed in integrated, community-based settings. Unfortunately, many states never developed plans, have outdated plans, or are doing very little to comply with *Olmstead* specifically.

In 2011, DOJ issued the *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.* Included in that Statement are the definitions for integrated and segregated settings that remain in place

today. Guidance issued in June 2020 by the federal Centers for Medicare and Medicaid Services (CMS) advised states of their ongoing responsibility “for compliance with the integration mandate of Title II of the [Americans with Disabilities Act] and the 1999 *Olmstead v. L.C.* decision to avoid subjecting persons with disabilities to unjustified institutionalization or segregation.”

DOJ defines the most integrated setting as:

“a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible. Integrated settings are those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, just like individuals without disabilities. Integrated settings are located in mainstream society; offer access to community activities and opportunities at times, frequencies, and with persons of an individual’s choosing; afford individuals choice in their daily life activities; and, provide individuals with disabilities the opportunity to interact with nondisabled persons to the fullest extent possible. Evidence-based practices that provide scattered-site housing with supportive services are examples of integrated settings. By contrast, segregated settings often have qualities of an institutional nature. Segregated settings include, but are not limited to: (1) congregate settings populated exclusively or primarily with individuals with disabilities; (2) congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals’ ability to engage freely in community activities and to manage their own activities of daily living; or (3) settings that provide for daytime activities primarily with other individuals with disabilities.”

States with *Olmstead* litigation or settlement agreements, as well as states trying to comply with *Olmstead* through proactive strategies, are working to expand access to integrated

permanent supportive housing opportunities for people with significant and long-term disabilities. *Olmstead*-related settlement agreements typically require significant numbers of new permanent supportive housing opportunities. It is important to note, however, that prior to the pandemic, several of these states were already struggling to meet supportive housing compliance targets due to lack of resources for housing assistance and services. Now, states are faced with even greater challenges due to the direct services workforce crisis and unprecedented increases in rental costs.

Implementation efforts have largely focused on expanding community living options and services that support transitions to, and successful tenancy in, community-based housing, with less attention paid to integrated employment or other activities. Several *Olmstead* plans do address competitive, integrated employment, and there have been limited actions on employment in some states such as Rhode Island and Oregon regarding persons with intellectual and developmental disabilities who have been unnecessarily segregated in “sheltered workshops” and related day activity service programs. Supported employment is an evidence-based approach to vocational rehabilitation for people with serious psychiatric disorders and is often paired with permanent supportive housing to promote sustained housing stability in the community. The nation’s record low unemployment rate creates more opportunities for people with disabilities, as employers struggle to find workers to fill positions. In September 2022, the unemployment rate for people with disabilities was 7.3 percent, and 3.1 percent for people without disabilities; labor force participation was at 23.2 percent and 67.8 percent, respectively (U.S. Department of Labor, Office of Disability Employment Policy). In addition, the dramatic shift to e-commerce and remote working may make previously unattainable jobs available to people with mobility and other disability-related challenges.

The growing crisis in housing affordability is a challenge for both people with disabilities and



for government agencies working to comply with ADA requirements. The cost of housing continues to skyrocket nationwide, with the median rent of a two-bedroom apartment increasing nearly 18 percent between the first quarter of 2021 and the first quarter of 2022 (*Out of reach: The high cost of housing, 2022*). Lack of access to affordable housing forces many people with disabilities into costly and segregated nursing facilities, state hospitals, or homelessness. Most people with disabilities living in restrictive settings qualify for federal Supplemental Security Income (SSI) payments that average \$875.41 per month nationally (*Priced out: The housing crisis for people with disabilities*). The average monthly rent for a basic one-bedroom apartment is \$1,111, or 127 percent of the income of a person living on SSI. Even before the pandemic, the Technical Assistance Collaborative's biannual *Priced Out* repeatedly demonstrated that in no housing market in the country could an individual on SSI afford the fair market rent.

Several states have created or expanded state-funded rental subsidies directly related to their *Olmstead* efforts (*State funded housing assistance programs*). These are typically designed as “bridge” subsidies to help people until a permanent HUD subsidy can be obtained, but often come at the expense of funding that could have been used for other necessary services. Housing subsidy holders are increasingly unable to find units to rent within HUD's payment standards because the value of their subsidies has not kept pace with extreme rent increases. As a result, HUD used private sector data to set the Fair Market Rent (FMR) for fiscal year 2023, thus reducing the gap between its payment standards and actual market conditions. Still, the tight rental market and low vacancy rates are making it even harder to identify landlords willing to take rental subsidies, provide units for supportive housing, or accept referrals for vulnerable people with disabilities in general. As a result, more national, state, and local resources are being directed toward housing navigation and landlord engagement and recruitment efforts for housing programs serving people with disabilities who are experiencing homelessness.

CMS is also supporting efforts by states to rebalance their health care systems from institutional to community-based care. Many of Medicaid's highest-cost members are individuals with complex and co-occurring health and behavioral health conditions who are experiencing homelessness or housing crises (Linkins, K., Brya, J., & Chandler, D. (2008). *Frequent users of Healthcare Initiative: Final Evaluation Report*. Falls Church, VA: The Lewin Group). People with disabilities have historically faced multiple barriers in Medicaid to receiving community-based long-term services and supports, such as inadequate support for self-direction and person-centered planning, lack of housing and transportation, and the lack of a streamlined process for hospital discharges to the community, to name a few. A growing list of states are utilizing Medicaid waivers to provide evidence-based housing supports that improve housing stability and stop the revolving door of emergency departments, hospitalizations, detox, and other acute and crisis services for populations with chronic and disabling conditions.

## OLMSTEAD ACTIVITY IN 2022

States' social service systems are still struggling to rebound from the impact of the COVID-19 pandemic. Provider capacity is strained nationwide as direct service workforce shortages continue at crisis proportions. Behavioral health systems are overextended, attempting to respond to the increased demand for treatment and services for people with mental illnesses and substance use disorders (SUDs) (*The implications of COVID-19 for mental health and substance use*).

Significant national efforts to strengthen and expand behavioral health crisis services are intended to divert people from restrictive, acute care settings by providing them with more upstream services. Implementation of the national 988 Suicide and Crisis Lifeline has amplified attention to the availability of immediate telephonic response for individuals in crisis, but states lack the human resources to create adequate mobile response and



ready access to follow-up treatment. The implementation of ARPA-funded mobile crisis has just started, with Oregon the first state to be approved by CMS and several other states expressing interest. Many states are using their five-percent increase to the MHBG to support infrastructure for additional crisis services, which in theory should decrease unnecessary hospitalizations. However, the inadequate workforce, reduced access to support services, and lack of affordable housing units are resulting in an emerging trend of states returning to reliance on more institutional and restrictive, congregate community-based settings. In New York City, Mayor Adams' recent announcement of plans to address treatment and service needs for people with mental illness includes a policy of involuntarily hospitalizing more people with mental illness (*New York City to involuntarily remove mentally ill people from streets*). California recently enacted CARE Courts that will compel people with untreated schizophrenia and other serious mental illnesses into housing and treatment (*CARE Court will change how California addresses serious, untreated mental illness. Here's how*).

Despite these challenges, some states have pressed forward with *Olmstead* activity. North Carolina issued a cross-disability *Olmstead* Plan in January and is moving forward with implementation. Minnesota continued implementing and refining its *Olmstead* Plan. Other states have worked to comply with settlement agreement implementation, including North Dakota and Rhode Island.

DOJ opened new *Olmstead* investigations in 2022, including in Kentucky (*Justice Department launches civil rights investigation into Kentucky's mental health service system*) and Oklahoma (*Justice Department launches investigation of Oklahoma's mental health service system and Oklahoma City's and Oklahoma Police Department's response to mental health crises*). The investigations will focus on whether these systems fail to provide integrated community-based mental health services, leading to unnecessary institutionalization and encounters with law enforcement. A DOJ investigation in Colorado found that the state is

unnecessarily segregating adults with physical disabilities in nursing facilities, and failing to ensure that individuals have a meaningful opportunity to live in community-based settings appropriate to their needs (*Information and technical assistance on the Americans with Disabilities Act: Olmstead enforcement*). In May 2022, DOJ issued a Statement of Interest in support of a New York State regulation intended to reduce reliance on Adult Homes. Finally, a recent and unprecedented **DOJ investigation** found that Alameda County's mental health system is violating the ADA by forcing people with psychiatric disabilities to cycle between institutions and jails due to the lack of access to proven community-based services.

Stakeholders should be aware of recent state-initiated activity in Mississippi that could affect *Olmstead* enforcement in the future. Following a trial in 2019, a Federal Judge ruled in favor of DOJ that Mississippi was in violation of Title II of the ADA. In 2022, Mississippi's Solicitor General filed an appeal with the 5<sup>th</sup> District Court, arguing that "The remedies provided under Title II are to persons," and that alleged violation would need to be on behalf of an individual, not a class action filed by the United States (*Federal ability to enforce ADA's mental health protections at risk in Mississippi case*).

In October, judges for the 5th U.S. Circuit Court of Appeals in New Orleans responded critically to DOJ's arguments in favor of federal intervention in Mississippi's mental health care system. A ruling in favor of the State of Mississippi could affect the ability of the federal government to intervene in state disability systems across the nation under the ADA's Title II. After the 5th Circuit issues a ruling, the case could go to the U.S. Supreme Court, where a judgment in favor of Mississippi could fundamentally alter the authority of the federal government to intervene in similar future cases nationwide.

## FORECAST FOR 2023

State budgets have received significant federal relief to mitigate the economic impact of the pandemic, however some states have used these

funds to address shortfalls more broadly, and less to shore up critical housing and services that support people with disabilities in integrated community settings. The Biden Administration's commitment to tackle the national mental health crisis resulted in \$300 million awarded to states in September 2022 for new and existing Certified Community Behavioral Health Clinics that offer community-based mental health and substance use treatment, including crisis services, 24 hours a day, 7 days a week, regardless of ability to pay. An additional \$15 million in planning grants was announced in October as part of the implementation of the "Bipartisan Safer Communities Act."

The expansion of home-and-community-based services and a more robust behavioral health and crisis response have the potential to reduce reliance on institutional and congregate care settings. However, realizing this potential will continue to be a struggle absent aggressive strategies to address the workforce shortage crisis. Increased funding to states must be passed on through rate increases, and in turn used to raise direct service staff wages, or providers will continue to struggle to maintain staffing to perform this critical work. Wages must be increased equally across systems to avoid disparities in pay and benefits that will cannibalize workers from one system to another. States may also look to expanded employment opportunities for individuals with lived experience and to paying family members as caregivers.

In the coming months, states will continue to focus on planning for the unwinding of the public health emergency, which is currently in effect through January 11, 2023. CMS is encouraging states and health care providers to plan for the end of emergency waivers and other flexibilities as soon as possible and to begin reestablishing previous standards. The continuous coverage requirement protecting nearly all Medicaid enrollees will expire with the end of the public health emergency, and states will have up to 12 months to return to previous eligibility and enrollment operations. However, some

emergency measures will remain in place, such as the expansion of telehealth for the diagnosis, evaluation, and treatment of mental health disorders codified through the "Consolidated Appropriations Act of 2021."

Several states will continue *Olmstead*-related planning, and others will continue to implement *Olmstead* settlement agreements that should result in additional community living opportunities despite state budget limitations. Such states include Louisiana, Minnesota, New York, North Carolina, and North Dakota. Many states have also made modifications to service delivery to sustain access. Several states have institutionalized the expanded use of telehealth to serve as an important tool to provide treatment and support services to people with disabilities. A growing handful of states have submitted new and amended 1115 Medicaid waivers to address social determinants of health, including stable housing. The expansion of community-based crisis services could further divert people from more restrictive settings, but access to upstream services, such as permanent supportive housing, case management, outpatient treatment, and supported employment, will be needed.

## STAKEHOLDER ACTIONS WITH POLICYMAKERS

Though states have already determined how they will use increased allocations to the Substance Abuse Prevention and Treatment Block Grant and the MHBG awards, which must be expended by 2025, stakeholders should continue advocating for these funds to be directed to filling gaps in community-based services and supports to both divert and transition individuals from institutional and other segregated care settings.

Paramount to successful tenure in integrated housing is access to flexible and intensive support services. Advocates should learn about the opportunities afforded to states in using Medicaid programs, such as 1115 demonstration waivers to address social determinants of health and must monitor the demonstrated outcomes. Oregon, Wisconsin, Massachusetts, and Arkansas are moving forward with using Medicaid to

help support transitions to independent living, including through the provision of bridge rental assistance.

Stakeholders must press policymakers and funders to pursue any and all remedies to address the direct care workforce crisis. Funding is one important tool, as long as increases are passed along to the direct care workers. Additional approaches to pursue include providing increased training and supervision to staff, professionalizing the workforce, establishing pathways for career advancement, expanding job opportunities for people with lived experience, paying family members as caregivers, and expanding the use of technology to alleviate the strain on staff resources.

In addition, the *Olmstead* planning lens requires intentional state efforts to address the ongoing overrepresentation of individuals with mental health and co-occurring mental illness and SUDs in the criminal justice system, along with equity strategies for people with disabilities from racially and ethnically diverse communities.

June 2022 marked the 32nd anniversary of the ADA. After more than three decades of affording individuals with disabilities the right to live, spend meaningful time and engage in social activities as fully included members of the community, we cannot allow current challenges, no matter how great, to drive states back to relying on institutional and segregated settings.

## FOR MORE INFORMATION

Technical Assistance Collaborative, Inc. (TAC),  
617-266-5657, [www.tacinc.org](http://www.tacinc.org).

# Housing Access for People Impacted by the Criminal-Legal System

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By Kim Johnson, Public Policy Manager, NLIHC

**T**he United States is the world's largest jailer, imprisoning around 2 million people in state and local jails and prisons, juvenile correctional facilities, immigrant detention facilities, and prisons and jails on tribal or territorial lands. The FBI estimates as many as one in three Americans has some type of criminal record, including convictions for minor offenses or arrests that never resulted in a conviction.

Bias inherent to the criminal-legal system has caused people of color – particularly Black, Latino, and Native people – as well as people with disabilities and members of the LGBTQ+ community, to be disproportionately impacted by the criminal-legal system. Modern policing rose out of “Slave Patrols” that began in the 1700s to terrorize, monitor, and control enslaved Black people. After the Civil War, Southern states enacted “Black Codes,” which criminalized Black people for engaging in everyday activities, including “walking at night” or “walking without a purpose.” These unjust laws swept Black people into prisons and jails, separating families and imposing collateral consequences that lasted long after release.

The prison population continued to expand throughout the early 20<sup>th</sup> century, spurred by a growing fear of crime rooted in racist lies and stereotypes about people of color and immigrants, as well as the enactment of a series of mandatory sentencing laws and increased policing of Black and immigrant communities. In the 1960's and 1970's, politicians – including then-President Richard Nixon – adopted “tough on crime” rhetoric that falsely linked crime and race to appeal to white voters in the south and working-class voters in the north, an approach dubbed the “Southern Strategy.”

The “War on Drugs” launched in the 1970s and 1980s marked the beginning of the era of mass incarceration, as new laws were enacted imposing longer, harsher sentences against those convicted of drug possession. The “Anti-Drug Abuse Act of 1986” established mandatory minimum sentencing policies that disproportionately punished Black people, and the “Violent Crime Control and Safe Streets Act of 1994” created a federal “three strikes law,” under which someone convicted of a “serious violent felony” in federal court would receive life imprisonment if they had two or more previous convictions on their record, including at least one other “serious violent felony” or “serious drug offense.” These bills also filtered money into policing efforts that disproportionately targeted Black communities.

As a result of these policies, the number of people incarcerated in the United States increased by almost 700% between 1972 and 2009, when incarceration levels reached their peak. Nationally, Black men are five times more likely to experience incarceration than white men, while Black women are incarcerated at double the rate of white women.

After decades of imprisoning people with punitive and destructive mandatory minimum sentences, lawmakers and criminal-legal system reform advocates are making progress in the decarceration of prison inmates across the country. Since reaching its peak in 2009, the state and federal prison population decreased 11% by the end of 2019 and between February 2020 and February 2021, the number of people incarcerated in state, federal, and private prisons dropped by 16%.

However, as more formerly incarcerated people return to their communities, there is growing concern about how they will fare upon reentry. Formerly incarcerated people typically return to low-income communities where resources,

particularly affordable, accessible housing, are scarce. In addition to facing a national shortage of 7 million rental units affordable and available to extremely low-income households, a conviction or arrest record poses an additional barrier to accessing affordable, accessible housing. These barriers place people impacted by the criminal-legal system at risk of housing instability, homelessness, and ultimately recidivism.

One study showed that returning individuals without stable housing were twice as likely to recidivate than those living in stable housing. Public housing authorities (PHAs) and owners of federally assisted housing have broad discretion in screening out applicants with records or precluding returning citizens from rejoining their families. Unless the Administration and Congress work to reduce these barriers by providing additional guidance and housing resources, large-scale decarceration efforts will result in an even greater unmet demand for affordable, accessible housing.

## LEGISLATIVE BACKGROUND

In past decades, Congress passed legislation that included increasingly stringent crime and drug enforcement policies in public housing. These policies increased penalties for certain drug-related activities and gave broad discretion to PHAs to evaluate potential and current residents. They also broadened resident accountability to include the behavior of a wider range of individuals, including minors and social acquaintances, and increased the oversight and penalties for PHAs that failed to make progress in implementing strategies to lower crime and drug use.

The “Anti-Drug Abuse Act of 1988” required PHAs to include a provision in their lease agreements that would allow them to evict tenants who used drugs or behaved in a way that threatened the safety of other tenants (Pub. L. No. 100-690, 102 Stat. 4181, 4300, 1988). Ten years later, Congress passed the “Quality Housing and Work Responsibility Act of 1998,” which allowed PHAs to exclude applicants with conviction records and use discretion in

determining whether an applicant was a potential safety risk to current residents (Pub. L. No. 105-276, 112 Stat. 2461, 2518, 1998). Additionally, the “Cranston-Gonzalez National Affordable Housing Act of 1990” created a mandatory three-year ban on readmitting tenants who had previously been evicted for engaging in drug-related criminal activity (Pub. L. No. 101-625, 104 Stat. 4079, 4180, 1990), and gave PHAs the option to increase the ban beyond the initial three years. The “Housing Opportunity Program Extension Act of 1996” (HOPEA) increased PHA’s ability to evict tenants and allowed them to request applicants’ criminal records from the National Crime Information Center and local police departments (Pub. L. No. 104-120, 110 Stat. 834, 836, 1996). HOPEA also granted PHAs the ability to reject applicants they believed were abusing drugs or alcohol or whose history of drug or alcohol use could pose a potential risk to the health and safety of current residents.

## MANDATORY SCREENING POLICIES

Although PHAs have broad discretion in evaluating current and prospective tenants, there are several federal admissions policies that all PHAs and project owners are required to follow. However, these policies merely act as a floor that many PHAs supplement with additional screening policies. Under federal law and regulation, PHAs and project owners must impose a permanent admission ban when a household includes a person who is required to register as a sex offender for life [42 U.S.C. § 13663(a) (2015); 24 C.F.R. §§ 960.204(a) (4), 982.553(a)(2), 2012]. Additionally, PHAs must impose a permanent admission ban or permanently terminate a household’s tenancy when a household member has been convicted of manufacturing methamphetamine on federally assisted property [42 U.S.C. § 1437f(n) (2015); 24 C.F.R. §§ 960.204(a)(3), 982.553(a)(1)(ii)(C), 2012].

PHAs and project owners are also required to prohibit admitting a household for three years if a household member has been evicted from



federally assisted housing for drug-related criminal activity [42 U.S.C. §13661(a) (2015); 24 C.F.R. §§ 960.204(a)(1), 982.553 (a)(1)(i), 2012]. However, the PHA or project owner has discretion to admit the household if it is determined that the member successfully completed drug rehabilitation or the circumstances leading to the eviction no longer exist (e.g., the incarceration or death of the person who committed the drug-related criminal activity). Additionally, households must be denied admission if a member is currently engaged in illegal drug use or alcohol abuse [42 U.S.C. §13661(b) (2015); 24 C.F.R. §§ 960.204(a)(2)(i), 982.553 (a)(1)(ii) (a), 2012]. PHAs and project owners must also prohibit admitting households where the PHA or property owner has reason to believe that a household member's historical or current abuse of illegal drugs or alcohol "may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents" [42 U.S.C § 13661(b)(1) (2015); 24 C.F.R. §§ 960.204(a)(2)(ii), 982.553(a)(1)(ii)(B) (2012)].

These policies, along with whatever additional screening criteria a PHA or project owner may develop, are contained in the housing provider's written admissions policy and grant housing providers broad discretion in screening out tenants with a conviction record. Depending on the program, these written policies are referred to as: admission and continued occupancy policies for public housing, administrative plans for the Housing Choice Voucher program, or tenant selection plans for project-based Section 8 developments.

## ISSUES

Much of HUD's guidance on evaluating current and potential tenants is advisory and not mandatory so PHAs and project owners across the country have developed their own criteria, creating additional barriers for people with conviction and arrest records and raising fair housing concerns.

One issue that continues to prevent people with a conviction or arrest history from accessing affordable housing arises from PHAs and project-

owners using unreasonable lookback periods to evaluate applicants' conviction records. Federal law instructs housing providers to look back in an applicant's history of criminal activity within a "reasonable time," but neither the statute nor HUD explicitly define what constitutes a reasonable time; instead, HUD has provided suggested time limits or best practices for establishing a reasonable lookback time. This lack of formal guidance has allowed a large number of housing providers to establish admissions policies that have no time limit on using a person's conviction history to evaluate their application. Although HUD expects housing providers to define a "reasonable time," some neglect to do so or leave it open ended and, as a result, discourage people with conviction or arrest records from applying. Others impose blanket lifetime bans or use overly long lookback periods for particular crimes.

Despite HUD's suggested limit on lookback periods for certain crimes (for example, three years or less from the date of a criminal offense that resulted in conviction), housing providers routinely look further back into a person's conviction history, sometimes as long as 20 years. Such lengthy lookback periods act as a de facto ban on people with conviction or arrest histories, conflicting with HUD's long-held assertion that permanent admissions bans contradict federal policy.

Housing providers often neglect to include what events in a lookback period trigger denial (e.g., the criminal activity itself, a conviction, or release from incarceration), again making it difficult for people with conviction records to determine their eligibility. HUD's Public Housing Operating Guidebook also lacks clarity around when a PHA has the discretion to screen for criminal activity that "would adversely affect the health, safety, or welfare of other tenants." Too often, PHAs use "health, safety, and welfare" as a catch-all for criminal offenses, including those with no bearing on an applicant's success as a tenant. By casting such a wide net over almost any conviction, which can include shoplifting and jaywalking, housing providers screen out

potential tenants to the point that anyone with a conviction record need not apply. As a result, housing providers create a de facto ban on individuals with a conviction record, even if they do not have a policy explicitly barring individuals with a conviction record from being admitted.

Until a 2015 HUD guideline banned the use of arrest records in federally assisted housing decisions (Notice PIH 2015-19), an arrest alone could trigger denial even if it did not lead to a subsequent conviction. Still, housing providers do not always comply with this guidance, and providers are increasingly turning to private tenant screening companies to review applicants' conviction and arrest records and make recommendations about whether to admit or deny. These companies usually pull criminal records data from public databases that are often incomplete or inaccurate. For example, a jurisdiction might misreport a misdemeanor as a felony or vice-versa, fail to indicate when a record has been expunged or sealed, or mix up the conviction histories of two people with the same name.

Tenant screening companies use the records they gather to make an “up or down” determination as to whether a prospective tenant should be approved for residency. Despite federal law guaranteeing tenants' right to see a copy of their criminal background report, not all housing providers comply. This lack of transparency means applicants are typically left in the dark about the information used to deny their admission.

Too often, PHAs and project owners ignore or do not provide mechanisms for applicants to present mitigating evidence and explain the totality of circumstances surrounding a conviction. PHAs are required by federal law to consider mitigating circumstances during their admissions process, including the time, nature, and extent of the applicant's conduct, as well as the seriousness of the offense. PHAs can also take into consideration actions that indicate future good conduct, such as an applicant successfully completing a drug rehabilitation program.

However, PHAs often fail to inform applicants of their right to present evidence or choose to ignore mitigating circumstances when considering an application. For the Housing Choice Voucher program and Section 8 project-based properties, HUD merely encourages housing providers to consider mitigating circumstances rather than requiring them to do so. Some housing providers are reluctant to adopt such a policy, arguing that its subjective nature makes it too hard to apply uniformly and puts them at risk of violating the “Fair Housing Act” (FHA). However, adopting a one-size-fits-all policy that is not narrowly tailored and fails to consider mitigating circumstances may violate the FHA if it has a disparate impact on a protected class of people, including people of color or people with disabilities.

Returning citizens attempting to reunite with their families living in federally subsidized housing are sometimes barred from doing so or are not permitted to be added to the household's lease. Although HUD has no prohibition on adding returning citizens to a lease, it is widely believed that PHAs and project owners are not permitted to do so. Housing providers' refusal to add returning citizens to a lease places these individuals at risk of housing instability and homelessness, and puts their families at-risk of eviction if their loved one is found residing in the household.

Finally, people with conviction or arrest records who have managed to secure a Housing Choice Voucher can run into trouble if they need to transfer their voucher to another jurisdiction. When a household moves from one jurisdiction to another, the receiving PHA might rescreen the household using more stringent criteria than the one used by the initial PHA. If the receiving PHA determines that the household does not meet its criteria, it will try to terminate assistance.

This practice of rescreening prevents individuals with a conviction history and their families from being able to move to new areas that offer greater opportunities. In 2015, HUD published a final rule on voucher portability that reiterated PHAs' ability to rescreen families, stating, “[R]

receiving PHAs should be allowed to apply their own screening standards consistently among families in their program and for families moving into their jurisdiction under portability. However, it is important that moving families be informed that they are subject to screening based on the receiving PHA's criteria, and that the receiving PHA's screening criteria may be different than that of the initial PHA."

### **Impact of COVID-19**

The coronavirus pandemic continues to pose a threat to people residing in congregate settings, including jails and prisons. In 2020, some state and local incarceration facilities released incarcerated individuals with underlying health conditions more vulnerable to COVID-19 complications and individuals determined not to pose a threat to the health and safety of others. HUD issued in PIH Notice 2020-05 in April 2020, providing PHAs broad authority to waive regulatory and statutory provisions in an effort to increase access to federally assisted housing. These waivers could be adopted by PHAs to allow individuals with a conviction history to obtain residency in housing supported by the Housing Choice Voucher (HCV) or Project Based Voucher (PBV) program. However, adopting these waivers was not mandatory and was left up to the discretion of PHAs; as a result, these policies were inconsistently implemented, and sometimes not implemented at all.

PHAs were given the option of waiving regulation HQS-10 § 982.401(d), which if adopted would allow current tenants of HCV- and PBV-assisted housing to add individuals to the household lease even if doing so would exceed HUD's minimum standard for adequate space. This waiver allowed people with a conviction record to be added to the lease of a family member residing in assisted housing. HUD also gave PHAs the option to waive 24 CFR § 960.202(c)(1) and 24 CFR § 982.54 (a), which allowed PHAs to amend and adopt changes to their Admission and Continued Occupancy Policy (ACOP) and Administrative Plans without formal board approval. If adopted, PHAs could use these waivers to change their tenant screening policies and reduce barriers to

accessing housing for people with a conviction or arrest record. For example, PHAs could remove criminal record screening policies for individuals released from incarceration in response to COVID-19, as these individuals have already been determined not to pose a threat to the health or safety of others.

## **RECENT EFFORTS TO ADDRESS CRIMINAL RECORDS AND HOUSING**

### **Administrative Efforts**

The Obama Administration first took action in helping returning citizens gain access to housing in 2011, when then-HUD Secretary Shaun Donovan issued a letter to PHA executive directors stating, "[T]his is an Administration that believes in the importance of second chances—the people who have paid their debt to society deserve the opportunity to become productive citizens and caring parents, to set the past aside and embrace the future. Part of that support means helping justice-involved individuals gain access to one of the most fundamental building blocks of a stable life—a place to live."

Secretary Donovan further encouraged PHAs to allow people with a conviction history, when appropriate, to live with their families in public housing or the Housing Choice Voucher program and asked that when PHAs screened for criminal records, they "consider all relevant information, including factors which indicate a reasonable probability of favorable future conduct." A year later, Secretary Donovan sent a similar letter to owners and agents of HUD-assisted properties.

In 2013, the U.S. Interagency Council on Homelessness (USICH) published a guidebook for PHAs that included best practices and policies to increase access to housing. In the guidebook, USICH notes the relationship between incarceration and homelessness, "as difficulties in reintegrating into the community increase the risk of homelessness for released prisoners, and homelessness increased the risk of re-incarceration." Like Secretary Donovan, USICH encouraged PHAs to consider individual factors

when screening potential tenants with conviction records in order to remove barriers to housing assistance.

In November 2015, then-President Barack Obama announced new actions to promote the rehabilitation and reintegration for formerly incarcerated people, including a new \$8.7 million demonstration program to address homelessness and reduce recidivism rates. President Obama also announced that HUD would provide \$1.75 million to aid eligible public housing residents under the age of 25 in expunging or sealing their criminal records under the new Juvenile Reentry Assistance Program.

In conjunction with the announcement, HUD released PIH 2015-19, recognizing the responsibility PHAs and project owners have in ensuring people with a conviction record are not automatically barred from federally subsidized housing. The guidance clarifies the use of arrest records to determine who can live in federally subsidized properties and notes an individual's arrest record cannot be used as evidence that they have committed a crime, stating "[T]he fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity warranting denial of admission, termination of assistance or eviction."

The guidance also makes clear that HUD does not require PHAs and project owners to adopt or enforce "one strike" policies that deny admission to anyone with a conviction record or that require families to be automatically evicted any time a household member engages in criminal activity in violation of the lease. However, it does not preclude PHAs and owners from utilizing such a policy. Instead, the guidance urges PHAs and owners to exercise discretion before making such a decision and to consider all relevant circumstances, including the seriousness of the crime and the effect an eviction of an entire household would have on family members not involved in the criminal activity. Additionally, the guidance reminds PHAs and property owners of the due process rights of tenants and applicants applying for housing assistance.

In April 2016, HUD issued legal guidance from the Office of General Counsel stating that housing providers, both in the public and private housing market, likely violate the FHA when employing blanket policies refusing to rent or renew a lease based on an individual's conviction or arrest history, since such policies would likely have a disparate impact on racial minorities. The FHA prohibits housing discrimination on the basis of race, color, religion, sex, familial status, national origin or disability while coining these as "protected classes" of people and noting, "Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history-based restrictions on access to housing are likely disproportionately to burden African Americans and Hispanics."

The guidance, known as the "disparate impact rule," states that when a housing provider's seemingly neutral policy or practice has a discriminatory effect, such as restricting access to housing on the basis of conviction or arrest history, the policy or practice is unlawful under the FHA if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if the interest could be served by another practice that has a less discriminatory effect.

Some landlords and property managers assert that the reason they have blanket conviction history policies is to protect other residents and the property. HUD's 2016 disparate impact guidance declares that "bald assertions based on generalization or stereotype that any individual with an arrest or conviction record poses a greater risk than those without such records are not sufficient." Landlords and property managers must be able to prove through reliable evidence that blanket policies assist in protecting residents and property.

The guidance also states that a housing provider with a policy that excludes people because of a prior arrest without conviction cannot satisfy its burden of showing the policy is necessary to achieve a "substantial, legitimate, nondiscriminatory interest," since an arrest is not a reliable basis upon which to assess



an applicant's potential risk to residents or property. When a person has been convicted, the policy must be applied on a case-by-case basis considering the nature and severity of the conviction, what the individual has done since conviction, and how long ago the conviction took place.

In addition, the guidance discusses how a housing provider may violate the FHA if the provider intentionally discriminates when using criminal history information in evaluating applicants and tenants, "which occurs when the provider treats an applicant or renter differently because of race, national origin or another protected characteristic. In these cases, the housing provider's use of conviction records or other criminal history information as a pretext for unequal treatment of individuals because of race, national origin or other protected characteristics is no different from the discriminatory application of any other rental or purchase criteria."

In August 2019, the Trump Administration proposed changes to HUD's disparate impact rule that would have made it more difficult to challenge a housing provider's discriminatory policies. The Biden Administration moved in June 2021 to withdraw the proposed changes to the disparate impact rule and reinstate the 2013 guidelines. Under the rule's 2013 guidelines, bringing a disparate impact claim requires a three-part "burden-shifting" standard that begins with a plaintiff, usually the target of a discriminatory policy, showing a policy or practice causes (or will likely cause) a discriminatory effect. Next, the burden shifts to the defendant, usually a housing provider, to prove that the policy or practice is necessary to achieve a legitimate, nondiscriminatory interest. Finally, if the defendant can prove the policy is necessary, the burden shifts back to the plaintiff who must then prove that the defendant's interest can be achieved through another policy or practice that has a less discriminatory effect.

In March 2021, President Biden signed into law the "American Rescue Plan Act," a \$1.9 trillion coronavirus relief package with nearly \$50

billion in essential housing and homelessness assistance. The bill provided \$5 billion for an estimated 70,000 emergency housing vouchers (EHVs) targeted specifically to people at risk of or experiencing homelessness and those escaping domestic violence, dating violence, sexual assault, stalking, or human trafficking. HUD Notice PIH 2021-15 clarifies that people exiting incarceration "who are at-risk of homelessness due to their low incomes and lack of sufficient resources or social supports" are eligible for EHVs.

The Consumer Financial Protection Bureau (CFPB) issued in November 2021 and advisory opinion warning consumer reporting agencies – including tenant screening companies – that using inadequate matching procedures like name-only matching may violate the "Fair Credit Reporting Act."

HUD Secretary Marcia Fudge issued a directive in April 2022 instructing HUD to review and identify internal policies and procedures that may increase barriers to housing access for people impacted by the criminal-legal system. HUD staff were given six months to review existing HUD guidance, regulations, and sub-regulatory documents and suggest needed changes to ensure increased access to federally assisted housing for people with conviction records. As of this article's publication, the Department has yet to release updated guidance or proposed rules.

### **Efforts in Congress**

In December 2018, Congress passed and President Trump signed into law the bipartisan "First Step Act" (P.L. 115-391), which rolls back mandatory minimum sentences in certain circumstances and expands on "good time credits" for incarcerated people looking to shorten their sentences. While advocates acknowledged the bill was not perfect, they agreed it was a modest step forward for comprehensive criminal legal reform. The bill also included the "Second Chance Reauthorization Act" that supports state, local, and tribal governments and nonprofit organizations in their work to reduce recidivism



and improve outcomes for people returning from incarceration. Second Chance grants support a variety of reentry services, including housing, job training, education, mentoring, and mental health treatment. The “Second Chance Reauthorization Act” expands opportunities for community-based nonprofits to apply for grants to develop support programs, such as housing, and drug treatment programs. It also requires coordination among multiple federal agencies (including HUD), state and local governments, and service providers on federal programs and policies related to reentry.

In July 2019, Representative Alexandria Ocasio-Cortez (D-NY) and then-Senator Kamala Harris (D-CA) introduced legislation to ensure that people with criminal records have access to federally assisted housing. The “Fair Chance at Housing Act” would ban “one-strike” and “no-fault” eviction policies, demand higher standards of evidence to reject an applicant on the basis of their criminal record, and mandate an individualized review processes that takes into account both the totality of circumstances surrounding a criminal offense and any mitigating evidence provided by a prospective tenant. These measures would allow families to reunify when a household member returns home after serving time in prison or jail and help end the cycle of homelessness and recidivism too often experienced by justice-involved individuals.

In March 2020, the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) was signed into law. The CARES Act provided states and communities with much-needed resources to respond to the coronavirus pandemic, including additional funding for housing and homelessness assistance. While the CARES Act failed to provide resources to specifically address the housing needs of people exiting incarceration, there is nothing in the bill prohibiting funds being used to assist people with a criminal record in finding or maintaining safe, stable, affordable housing.

## FORECAST FOR 2023

Congress and the White House must continue working together to enact meaningful reforms

that would ensure people exiting incarceration and those with a conviction or arrest history are able to obtain safe, stable, affordable housing. HUD is expected to release updated guidance for PHAs related to the use of criminal or arrest records in tenant screening, and to announce proposed rules for the implementation of federal affordable housing programs to decrease barriers to federally assisted housing.

During his campaign, President Biden set a goal of “ensuring 100% of formerly incarcerated individuals have housing upon reentry” by directing HUD to only contract with housing providers willing to rent to formerly incarcerated people, and by investing federal funding into the construction of transitional housing. While important, in order to maximize federal investments and ensure longer-term housing stability funding should also be dedicated to the construction of permanent housing with supportive services where needed. Further, passing a federal source of income discrimination ban would help ensure that more people using a voucher find housing – including individuals with a conviction history – are able to fully utilize their voucher.

Additionally, it is crucial that the “First Step Act” receive full funding in the new fiscal year to fully implement the reforms established by the law. Criminal justice advocates will also continue pushing for new reforms and remind lawmakers that as its title suggests, the “First Step Act” is just that: a first step and one of many steps toward comprehensive criminal justice reform. Advocates can press for legislation, including the “Fair Chance at Housing Act,” that helps people returning from incarceration get back on their feet and reconnect with their communities.

## HOW ADVOCATES CAN TAKE ACTION

### Urge legislators to:

- Enact a federal ban on source of income discrimination.
- Pass comprehensive spending bills that include full funding for implementation of the

### “First Step Act.”

- Ensure that criminal legal system reform efforts include a comprehensive plan addressing the housing needs of people with criminal records.
- Support legislation that reduces housing barriers for people with criminal records, including the “Fair Chance at Housing Act.”

### Urge HUD to:

- Mandate PHAs adopt regulatory waivers to increase access to federally assisted housing for people with a conviction history.
- Ensure compliance with and build upon HUD guidance that would expand access to federally assisted housing for people with a criminal record.
- Require all federally subsidized housing providers to consider mitigating circumstances when making admissions decisions.
- Provide concrete guidance on reasonable lookback periods.
- Place limitations on what criminal activity housing providers may consider when reviewing applications.
- Set minimum standards for the quality and nature of criminal background information that can be used by PHAs and federally assisted housing providers to make housing decisions.
- Work with the Consumer Financial Protection Bureau and Federal Trade Commission to identify comprehensive, interagency solutions to tenant screening problems.
- Increase data collection on applicant screening practices.

## FOR MORE INFORMATION

Visit the Reentry and Housing Working Group,  
<http://www.reentryandhousing.org>.

# Criminalization of Homelessness

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Lily Milwit, Housing Not Handcuffs  
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Center

Every day in America, people experiencing homelessness are threatened by law enforcement, ticketed, and even arrested for living in public spaces when they have no other alternative. Millions of individuals, families, and youth experience homelessness each year and millions more lack access to decent, stable housing they can afford. Rather than providing adequate housing options, too many communities criminalize homelessness by making it illegal for people to stand, sit, sleep, shelter oneself with anything from a blanket to a vehicle, or even ask for help. These laws and policies violate constitutional, civil, and human rights, traumatize homeless individuals and negatively impact their physical and mental health (including creating police encounters that can lead to unnecessary use of force or death), create arrest records, fines, and fees that stand in the way of homeless people securing jobs or housing, and perpetuate racial inequity.

2022 was a particularly trying year for unhoused and unsheltered individuals and communities and the advocates fighting for their liberation. With significant increases in homelessness and encampment communities, spurred by the COVID-19 pandemic and widespread economic hardship, criminalization was also on the rise. A Texas-based think tank, the Cicero Institute, published and promulgated a “[Reducing Street Homelessness Model Bill](#)” that diverted “American Rescue Plan Act” funding away from long-term permanent housing solutions and toward short-term shelter facilities and encampment communities, while also endorsing the criminalization of “unauthorized sleeping [or] camping...” and making it easier to place psychiatric holds and administer involuntary medical treatment to unhoused people experiencing mental health conditions. The model bill has already gained traction in state

legislatures around the country, with versions introduced in Georgia, Arizona, and Wisconsin and passed in Texas, Missouri, and Tennessee.

Even with these troubling legislative developments, there remains widespread commitment to the fight to end criminalization and to sharing the reality that advocates have known for decades: Criminalization harms entire communities and does nothing to address the root causes of homelessness and housing insecurity. Hard-fought victories in the courts and strong allies in the current Administration suggest good reason for optimism in 2023 as we continue to unite in the fight for Housing, Not Handcuffs.

## HISTORY

From vagrancy laws and the workhouses of pre-industrial England to [legal segregation](#), [sundown towns](#), and [anti-Okie laws](#) in the U.S., ordinances regulating the use of public space have long been used to exclude marginalized persons based on race, gender identity, national origin, disability, age, and economic class. With the advent of modern homelessness in the 1980s, rather than addressing the underlying lack of affordable housing, communities faced with increasingly visible homelessness began pushing homeless persons out of public view with laws criminalizing life-sustaining acts such as self-sheltering (“camping”), sleeping, resting, eating, or asking for donations. Other communities have used disparate enforcement of other ordinances, such as jaywalking or littering, to harass and push homeless persons out of certain spaces. These practices gained even more traction with the trend toward “broken windows” policing in the 1990s. For homeless youth, paternalistic status offense laws like runaway statutes and curfews ignore youths’ own assessments of where they are safest and can turn them into criminals or “delinquents” the second they step out the door without the intent to return.

Since 2006, the National Homelessness Law

Center tracked these laws in 187 cities and across all 50 states and the District of Columbia. The Law Center found that between 2006 and 2019, city-wide bans on camping increased by 92%, on sitting or lying by 78%, on loitering by 103%, on panhandling by 103%, and on living in vehicles by 213%. The Law Center also recently found state statutes criminalizing homelessness in 48 states and the District of Columbia. Meanwhile, a 1,300% growth of homeless encampments has been reported in all 50 states. Too often, homeless residents experience forced evictions or “sweeps” of the encampments, usually with little notice and no provision of alternative housing, frequently resulting in the destruction of important documents, medicines, and what little shelter the residents have.

However, recent court victories have provided advocates with new opportunities to change the conversation. These include the 2018 victory in *Martin v. Boise* in the 9th Circuit, successfully defended from Supreme Court review in 2019, which held that in the absence of adequate alternatives, it is cruel and unusual punishment under the 8th Amendment to punish someone for life-sustaining activities like sleeping, resting, or sheltering oneself. This year, the 9th Circuit affirmed and expanded *Martin* in its *Johnson v. City of Grants Pass* decision, handed down on September 28. The Court reiterated that it is violative of the 8th Amendment’s prohibition on cruel and unusual punishment to criminalize unavoidable acts of survival undertaken by unsheltered individuals in the absence of adequate shelter and applied *Martin*’s holding to civil citations that subject homeless people to future criminal punishment for sleeping outside or taking measures to stay warm and dry while living outside.

Similarly, since the 2015 *Norton v. Springfield* decision in the 7th Circuit, no panhandling ordinance challenged in court has withstood constitutional scrutiny under the 1st Amendment, and dozens of cities have since repealed their ordinances, some instituting more effective day shelter and day labor programs. In fact, the Law Center’s 2022 Litigation Manual

Supplement found that 100% of lawsuits challenging panhandling bans since 2015 have led to favorable outcomes, which include findings of unconstitutionality in the courts, settlement agreements that appropriately redress the harms to unhoused plaintiffs, and repeals of the challenged anti-panhandling laws.

Other court cases have found sweeps of homeless encampments to violate due process and property protections under the 4th Amendment, and other laws criminalizing homelessness to violate the 14th Amendment’s equal protection and due process clauses, along with other state constitutional or common law protections. While litigation must always be done in coordination with legislative advocacy and movement-building, the Law Center found that litigation remains a useful tool in the fight to end the criminalization of homelessness. Based on summaries and analyses of more than 180 lawsuits, the Law Center found that 60% of cases challenging camping bans and/or sweeps of encampments have led to favorable outcomes, 77% of cases challenging loitering or vagrancy bans have led to favorable outcomes, and 66% of cases challenging food sharing bans have led to favorable outcomes.

## ISSUE SUMMARY

The growing affordable housing gap and shrinking social safety net have left millions of people homeless or at-risk, and most American cities have fewer emergency shelter beds than people who need shelter. Despite this lack of affordable housing and shelter space, many cities have chosen to criminally or civilly punish people living on the street for doing what any human being must do to survive, like sleeping, resting, and eating – activities we all do every day and take for granted.

It is important to note that BIPOC communities experience criminalization in disparate and discriminatory ways. This is not only because Black people and people of color experience homelessness across the country at disproportionately high rates, but also because Black and Latinx people are 9.7 times and 5.8

times, respectively, more likely to be cited under laws that criminalize homelessness when compared to white individuals. In 2022, thanks to advocacy from directly impacted communities, the UN Committee on the Elimination of Racial Discrimination specifically condemned the disparate racial impact of criminalization of homelessness and made recommendations to the U.S. to take remedial steps to eliminate it.

Other marginalized groups that disproportionately experience homelessness, including people with disabilities and LGBTQ+ individuals, are also at risk of being discriminatorily targeted and affected by criminalization. While these communities' experiences with homelessness and criminalization have come to the forefront more in recent years, there is significant work to be done when it comes to amplifying and centering the voices and experiences of individuals who experience homelessness while also holding other marginalized identities and statuses.

Criminalization policies are ineffective and, in fact, make homelessness harder to exit. Because people experiencing homelessness are not on the street by choice but because they lack choices, criminal and civil punishment serves no constructive purpose. Instead, arrests, unaffordable tickets, and the collateral consequences of criminal convictions make it more difficult for people to exit homelessness and get back on their feet. Criminalization of homelessness might mean that individuals experiencing homelessness are taken to jail, where they may remain for weeks if they cannot pay their bail or fines, perhaps losing custody of their children, property and/or employment in the process. Once released, they could have criminal records that make it more difficult to get or keep a job, housing, or public benefits. Moreover, fines and court fees associated with resolving a criminalization case can amount to hundreds, or even thousands, of dollars. Without the resources to pay, homeless people may be subject to additional jail time.

Criminalization is the most expensive and least effective way of addressing homelessness and

wastes scarce public resources on policies that do not work. A growing body of research comparing the cost of homelessness, including the cost of criminalization, with the cost of providing housing to homeless people shows that ending homelessness through housing is the most affordable option in the long run. Indeed, the provision of housing using a Housing First model, which focuses on providing people with quick, low-barrier access to housing followed by any needed services to maintain housing stability, is cheaper and more effective than all other strategies for addressing homelessness. For example, a study in Charlotte, NC, found that the city saved \$2.4 million over the course of a year after creating a Housing First facility, as tenants spent 1,050 fewer nights in jail and 292 fewer days in the hospital and had 648 fewer visits to emergency rooms. With state and local budgets stretched to their limit and the threat of additional federal cuts on the horizon, rational, cost-effective policies are needed, not ineffective measures that waste precious taxpayer dollars.

## PROGRAM SUMMARIES

In response to growing cost data and advocacy at the international and domestic levels, many federal agencies have taken an increasingly strong stance against criminalization of homelessness.

### U.S. Interagency Council on Homelessness

For years, USICH has been generally opposed to criminalization, but there was significant backsliding under the Trump Administration. Over the last year, the agency has published several resources and guidance materials aiming to reaffirm its anti-criminalization stance. Perhaps most notably, USICH published “7 Principles for Addressing Encampments” in June 2022. The principles aim to serve as guidance to local decision-makers, and include suggestions such as “establish a cross-agency, multi-sector response,” “engage encampment residents to develop solutions,” “address basic needs and provide storage,” and “develop pathways to permanent housing and supports,” among others. This guidance states definitively that



“strategies that use aggressive law enforcement approaches that criminalize homelessness, [and] clos[ing] encampments without offering shelter or housing options ... will not succeed.” Still, the resource is not without shortcomings, primarily because it ultimately endorses law enforcement as a frontline response system to homelessness, despite what advocates know and have made clear about the ways in which police are ill-equipped to work nonviolently with unhoused residents and the ways in which their presence legitimizes the criminal legal system’s role in addressing homelessness. The guidance also prioritizes what local governments should do with cleared encampment spaces after encampment closures, with less attention paid to what happens to the communities and individuals that may have been displaced.

When USICH solicited comments and feedback related to it’s the next iteration of its Federal Strategic Plan to Prevent and End Homelessness, many stakeholders raised criminalization as a key concern area. The agency received more than 1,500 comments and conducted close to 100 listening sessions in communities across the country, and published a list of key themes in advance of its release of the Strategic Plan. The first of the key themes was “end the criminalization of homelessness and implement solutions that treat housing as a right,” signaling that ending the criminalization of homelessness will be an integral piece of the forthcoming Strategic Plan.

### **U.S. Department of Justice**

In 2015, DOJ filed a statement of interest brief stating that “Criminally prosecuting those individuals for something as innocent as sleeping, when they have no safe, legal place to go, violates their constitutional rights.” The DOJ has also offered informal guidance, ranging from newsletters to a letter on the impact of excessive fines and fees for poor, to a comment on a proposed encampment ordinance in Seattle. In 2021, the DOJ opened a civil rights investigation into the Phoenix police department, for the first time explicitly listing police violations of homeless communities as a subject of their

investigation. While these are welcome steps, the agency could be doing more, such as requiring law enforcement agencies to disaggregate data by housing status to further understand the extent of the problem, weighing in through statement of interest briefs or other guidance, opening more investigations, and taking a stance against the state-level criminalization bills passed thus far in Texas, Missouri, and Tennessee.

### **U.S. Department of Housing and Urban Development**

In 2015, HUD inserted a new question into its application for the \$2 billion Continuum of Care (CoC) funding stream, giving local governments and providers higher scores and potentially increased funding if they demonstrate that they are preventing the criminalization of homelessness. In 2016, this question was updated with increased points and more specific steps CoCs could take, which have remained in subsequent years.

This year, HUD introduced a funding package aimed at addressing unsheltered homelessness and homeless encampments. The \$365 million package includes grant funds and vouchers meant to enable localities to connect unsheltered individuals to housing, health care, and supportive services. While this funding package does intend to incentivize alternatives to criminalization, HUD could be adding additional incentives in other grant streams and making clearer consequences for localities that continue to criminalize.

### **U.S. Department of Education**

In 2016, the Department of Education issued guidance on homeless students, reminding school personnel that they have to work outside the school building to remove barriers to homeless students’ success in school, including working with state legislatures and local governments to address the criminalization of homelessness.

## **FORECAST FOR 2023**

With the Supreme Court victory in *Martin v. Boise*, advocates are looking to try to push

the decision as far as it can go to help turn communities from criminalization to housing solutions. However, a backlash is also brewing, with communities looking to find loopholes in constitutional compliance, and deep concern for the long-term impacts of the pandemic on homelessness. Advocates should help legislators look for opportunities to include incentives or requirements for non-criminalization in legislation. In 2021, federal legislators introduced several promising pieces of legislation that included anti-criminalization provisions, including the “Ending Homelessness Act,” “Housing is a Human Right Act,” and the Unhoused Bill of Rights. Additionally, the “George Floyd Justice in Policing Act” includes requirements for data collection on use of force disaggregated by housing status. We hope these bills will be reintroduced in 2023 and that federal legislators continue to incorporate these types of anti-criminalization provisions into future legislative measures aimed at addressing the housing and homelessness crises.

We anticipate that the Cicero Institute-based legislation will continue to gain traction in state legislatures around the country in 2023, and we are working with allies and partners to develop a legislative and litigatory response. Of particular concern is the Cicero Institute’s model bill provision that makes it easier to place psychiatric holds on and involuntarily administer medical treatment to unhoused individuals experiencing mental health conditions. The similar [CARE Court proposal](#) in California, which was signed into law by Governor Newsom this year, provides mechanisms by which Californians living with disabilities, substance use disorders, and mental health conditions can be placed under involuntary court-ordered treatment. Legislative measures like this one, and the one included in the Cicero Institute’s model bill, are meant and likely to target unhoused communities. They also perpetuate a harmful narrative that mental health problems cause homelessness, inviting decision-makers and people in power to continue to gloss over the structural and systemic root causes of homelessness such as racism, classism, and ableism.

## WHAT TO SAY TO LEGISLATORS

The Housing Not Handcuffs Campaign has developed [Model Policies](#) for local, state, and federal governments that emphasize 1) shortening homelessness by stopping its criminalization, 2) preventing homelessness by strengthening housing protections and eliminating unjust evictions, and 3) ending homelessness by increasing access to and availability of affordable housing. The National Coalition for Housing Justice also has a useful statement on criminalization, and the American Bar Association, American Medical Association, American Public Health Association have put out policies opposing criminalization, and even the National League of Cities has offered its critique. The Housing Not Handcuffs Campaign also has [model one-pagers](#) and [Six Ideas for Talking About Housing Not Handcuffs](#) that may be useful in framing conversations with legislators, including a sample script:

**Value:** Together, we have the opportunity—and responsibility—to do better for the worst off amongst us. Everyone can agree that it does not make any sense to arrest people for being homeless. And we can also all agree that we don’t want to see people sleeping on the sidewalks.

**Problem:** But instead of solving homelessness, we have expensive policies that make it worse. Unfortunately, too many places in this country are ignoring data/common sense and are using handcuffs rather than housing to address homelessness. But when anyone experiencing homelessness faces criminal punishment for simply trying to survive on the streets, these criminal records only make it more difficult to hold a job and regain housing. Not only do these policies make homelessness harder to solve, they also cost MORE taxpayer dollars than the policies that actually work.

**Solution:** But there is a better way. We’ve seen in city after city that where they change their laws and policies to reduce their reliance on law enforcement and instead invest in affordable, supportive housing, it gets homeless people off the streets far more effectively, and, as it turns

out, far more cheaply than endlessly cycling people through courts, jails, and back onto the streets. It increases public safety when police cars, jails, and courts aren't clogged with people being arrested simply for trying to survive. It increases public health when people are able to get services and are housed, rather than forced to the margins.

Action: If you want to see an end to homelessness in your community, join our campaign for Housing Not Handcuffs, learn more about the best practices that are working around the country, and call for an end to criminalization and more support for housing so we can all enjoy a community where no one has to sleep on the streets or beg for their daily needs.

Recent court victories provide an additional opportunity for local elected officials to shift some political pressure from themselves to the courts. When constituents come to them complaining of visible homelessness, they can now say “look, the courts have told us we can’t just criminalize people living on the streets, but if you work with me, we can find creative solutions that will be a win-win for everyone.”

The Housing Narrative Lab has also published helpful tools on how to effectively message in the homelessness advocacy space. The organization’s “[Messaging Guidance on Homelessness Messaging](#)” includes tips for how to invoke shared desires among diverse stakeholders and spur legislative solutions. Housing Narrative Lab’s research finds that “Housing First” messaging that speaks to the sacrifices people make to provide for their families and demonstrates the impossibility of finding pathways out of homelessness for most families are most likely to generate support among audiences who may have been otherwise opposed.

## FOR MORE INFORMATION

National Homelessness Law Center, 202-638- 2535, [info@homelesslaw.org](mailto:info@homelesslaw.org); <https://homelesslaw.org/>.

Housing Not Handcuffs Campaign, <http://www.housingnothandcuffs.org>.

# The Mortgage Interest Deduction

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Andrew Aurand, Senior Vice President for Research, NLIHC

**T**he mortgage interest deduction (MID) is a federal tax expenditure that allows homeowners to deduct from their federal taxable income the interest paid on the first \$750,000 of home mortgage debt originated after December 15, 2017 or on the first \$1 million of home mortgage debt originated before December 16, 2017. Although the “Tax Cuts and Jobs Act of 2017” significantly reduced its cost, the MID remains a regressive tax benefit for higher-income homeowners at a cost of more than \$145 billion between 2022 and 2025 in lost federal tax revenue ([U.S. Department of Treasury, Office of Tax Policy, 2022](#)). The revenue lost to the MID primarily benefits higher-income households and would be better spent on housing assistance for the lowest-income households with the greatest needs.

## HOW IT WORKS

Taxpayers can subtract from their federal taxable income either (1) a fixed dollar amount known as the standard deduction or (2) itemized deductions allowed by the federal tax code. Taxpayers must itemize their tax deductions to benefit from the MID. Most taxpayers, however, do not itemize their deductions, because their standard deduction is higher. Affluent households are more likely to itemize their deductions and, therefore, benefit from MID. Fewer than 10% of the nation’s 164 million federal tax returns in 2020 included itemized deductions. Further, tax returns with reported annual incomes of more than \$100,000 accounted for only 19.4% of all tax returns, but they accounted for 59% of tax returns with itemized deductions ([Internal Revenue Service, 2022](#)).

MID’s value to taxpayers depends on their marginal tax rate. Taxpayers in the 37% tax bracket, for example, can reduce their taxes by 37% of the interest paid for their mortgage, while taxpayers in the 22% tax bracket can reduce

their taxes by 22% of the interest paid. Because higher-income homeowners are more likely to claim the MID and the value of the MID increases with income, taxpayers with incomes over \$100,000 received 73% of MID’s benefits in 2020 (*Ibid*).

## HISTORY

Contrary to popular belief, MID was not created to encourage homeownership. When the federal income tax was implemented in 1913, personal interest on all loans was an allowable deduction from taxable income. At the time, it was difficult to differentiate personal consumption and home loans from business loans for farms, small businesses, and individual proprietors ([Ventry, D., 2010](#)). There is no evidence that Congress intended to use the interest deduction to encourage homeownership. One-third of homeowners had a mortgage in 1910, but few benefited from the interest deduction since 98% of households were initially exempt from the federal income tax given its generously high tax-free income threshold (*Ibid*). The post-World War II housing boom, fueled by FHA- and VA-insured mortgages, and the broadening of the federal income tax to cover more households made the interest deduction available to an increasing number of homeowners with mortgages. The cost of MID grew significantly through the 1980’s to late 2000’s, along with the growth in homeownership rates and home values. Before tax reform in 2017, the cost of MID was approximately \$70 billion per year.

The “Tax Cuts and Jobs Act of 2017” made significant changes to the value of the MID to taxpayers. The act reduced the amount of a mortgage eligible for MID from \$1,000,000 to \$750,000 for loans taken after December 15, 2017 and eliminated the MID for home equity loans not for substantial home improvement. Previously, interest paid on up to \$100,000 on any home equity loans could be deducted. The act also significantly increased the standard

deduction for taxpayers, making itemized deductions less likely for middle-income taxpayers.

The “Tax Cuts and Jobs Act of 2017” reduced the cost of the MID from approximately \$70 billion per year prior to tax reform to an estimated \$30 billion in 2020 ([U.S. Department of Treasury, Office of Tax Policy, 2017 & 2018](#)), but skewed the MID’s benefits even more to affluent taxpayers.

## OTHER THINGS TO KNOW ABOUT MID

A study of MID reform in Denmark indicated that the tax benefit does not promote homeownership, but induces homeowners to buy larger, more expensive homes and incur greater debt than they otherwise would ([Gruber, J., Jensen, A., and Kleven, H., 2017](#)).

MID also contributes to racial and gender inequities. A study by Trulia found that single women were 6.2% less likely than single men of the same age and income to own a home with a mortgage ([Chacon, F., 2016](#)). Black and Hispanic households were 56.9% and 50.9%, respectively, less likely than white households to own a mortgaged home. Without mortgages, single women and people of color do not receive MID benefits to the same extent as white households. [An analysis](#) by the Institute for Economic and Racial Equity (IERE) at Brandeis University and NLIHC found that white households received 71% of MID’s benefits even though they account for 66% of households in the United States. Black and Latino households received only 18% of MID’s benefits yet they account for more than 26% of U.S. households.

The MID is a costly federal tax expenditure that disproportionately benefits higher-income households who do not need assistance to afford their homes. The tax changes enacted in 2017 expire in 2026, when the standard deduction will decline to pre-2017 levels and the cap on mortgage debt eligible for MID will return to \$1 million. As a result, the [U.S. Treasury’s Office of Tax Policy](#) estimates that the federal revenue lost to the MID will increase from nearly \$39 billion in 2025 to \$107 billion in 2026, if the tax package

enacted in 2017 is not extended. At the same time, nearly eight million extremely low-income renters spend more than half of their incomes on housing ([National Low Income Housing Coalition, 2022](#)), forcing them to sacrifice other necessities. The federal revenue lost to the MID would be better spent on housing assistance for these lowest-income households who have the greatest need.



# Advocating for Housing-Related Services in Your State's Medicaid Plans

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States are expanding opportunities to deliver housing related services and other Health Related Social Needs (HRSNs) screenings and services. Affordable housing advocates should be aware of the basics of their state's processes, so that they can leverage these new services and potential coalitions to achieve their goals of more equitable communities, supportive housing at scale and greater opportunities for ALL community members to thrive.

NLIHC calculated the 2022 national housing wage at \$25.82 per hour, which is the wage needed to afford a modest two-bedroom home. Yet, the federal minimum wage remains \$7.25 an hour deficit of this amount at \$18.57 per hour leaving affordable housing out of reach for millions. Within this widespread affordable housing crisis, persons with disabilities are even more likely to be poor and to experience homelessness. According to *Priced Out*, there is nowhere in America where a person on Supplemental Security Income (SSI), the basic income program for persons with disabilities, can afford a decent place to live. SSI is the basic income program for persons with disabilities. Our country's history of structural and institutional racism contributed to more Black, Indigenous and People of Color (BIPOC) being dependent upon this income than whites. As a result of these inequities, BIPOC are more likely to be homeless, suffer the effects of mass incarceration, and have poorer health. A growing body of literature highlights that BIPOC are more likely to live in nursing homes or congregate care settings and that often deliver lower quality of care.

Persons with disabilities can benefit from supportive housing, a program model that combines affordable housing and support services in order to assist low-income persons with disabilities. Supportive housing provides a chance for tenants to achieve affordable, stable housing to fully integrate into their

communities. A [2019 CSH Needs Assessment](#) estimates that creating an additional 1.1 million supportive housing units nationwide would address a variety of housing needs, including: homelessness, institutional placements, reentry from incarceration, and aging populations. Medicaid, as an entitlement program, is currently the only feasible program option for funding the supportive services needed to move beyond pilot programs and create supportive housing at scale.

The creation of new supportive housing generally requires three sources of funding:

1. The necessary capital to acquire land and build housing;
2. Operating subsidies to keep the housing affordable to persons with extremely low incomes; and
3. Services funding to assist persons with disabilities and other needs access, locate and maintain housing.

Notably, programs that use community landlords, commonly called scattered-site programs would not need capital funding, if a local landlord network will accept operating subsidies and agree to participate in a supportive housing program.

## Creating or Adapting Your State's Medicaid Housing Related Services (HRS) Benefit

For many communities, services funding can be the most challenging to access and braid with the other funding streams to create new supportive housing. In many states, advocates and state officials have worked together to leverage a state's Medicaid program to offer Housing Related Services (HRS). HRS commonly includes pre- and post-tenancy services. **Pre-tenancy services** helps people find eligible housing and **post-tenancy services** help people maintain housing over time. Medicaid programs in at least [20 states](#) now offer some type of HRS as part of the

state Medicaid plan. For example, Massachusetts and Louisiana have been using their state's Medicaid plan for this purpose for close to two decades. The Centers for Medicare and Medicaid Services (CMS) offered guidance in 2021, noting that states can choose whether or not to offer this service.

Once a state elects to offer the service, your state Medicaid office has important decisions to make, which advocates can influence. These choices will determine **IF** this benefit can assist in the creation of new supportive housing for Medicaid beneficiaries. These decisions include:

- Determining benefit eligibility and how that eligibility is proven to the state.
- Defining eligibility broadly or narrowly: a broad definition could allow eligibility for persons with at least one chronic health condition, or a narrow definition could establish a certain risk score.
- Simplifying the administrative process for Medicaid beneficiaries in how they prove their eligibility or states can making the process administratively burdensome so that fewer people qualify.
- Deciding which services to offer, such as pre-tenancy, post-tenancy, housing deposits, community transition, or home modification services.
- Choosing to offer the benefit via a Third-Party Administrator who is tasked with bringing in housing related providers to the network of services providers OR states can offer via their Managed Care Organizations (MCOs). Although the latter creates administrative burden for housing related agencies who would then need to contract with and bill the many MCOs that may cover their residents.

Advocates also play a role in ensuring that state choices are guided by principles of equity and inclusion. They can advocate for a program that serves as many people as possible while creating simple, accessible systems of access. Affordable housing and homeless services providers should also ensure that there is a clear pathway to

reimbursement of their services.

Medicaid benefit programs often evolve in important details over time. States typically develop amendments to services, as persons served, providers, advocates, and family members provide feedback on which aspects of the program are working and which aspects are not. Advocates should know there is always the potential for change in the program. As an entitlement service, if the new services are offered via a State Plan Amendment (SPA) Medicaid authority, the state is required to deliver services TO ALL who meet the criteria and can prove that eligibility to the state or state contractors. State or Managed Care rates for providers may also change over time, if providers can provide documentation that proves the cost of delivering care exceeds the rate of reimbursement. State may choose to pay providers through one of the three most common payment mechanisms:

- 15-minute increments.
- Per diem (a daily rate).
- Per Member, Per Month (PMPM).

Out of these methods, PMPM rates provide the lowest administrative burden for providers. On the other hand, 15-minute increment payments are the most burdensome for direct care workers and agencies to document and bill.

### **Align the Benefit with Affordable Housing in Your Community at the Systems Level**

HRS will only create new supportive housing if persons in need can access these services AND the affordable housing needed to create supportive housing. Structural connections need to be in place at the systems level between these new HRS and the affordable housing options in communities. Since approximately only 1 in 4 persons who qualify for housing assistance receive that assistance, communities will have to develop cross sector referral systems between these new housing related services and affordable housing opportunities in communities. New waivers in Arizona, California, and Oregon can offer short-term housing options of either

Medical Respite (called Recuperative Care by Medicaid) or six months of housing assistance. These programs can be bridges to long-term affordable housing opportunities in communities, but only **if** that affordable housing exists and is linked systemically to these Medicaid-funded housing options. Aligning these systems should occur at the government or system level, with a goal to ensure equitable access. To align housing and services, communities need to establish a **cross-sector referral system** between housing and services. Equity needs to be centered in the process of creating such a referral system. In an ideal, equitable system, individuals are referred to housing options in a community, including short-term housing options. There should be no gap between these shorter-term settings and when individuals enter permanent, affordable housing options.

For systems to come together to create a cross-sector referral system, both sectors need to be aligned on serving the same population with similar goals. If the housing sector is prioritizing persons experiencing chronic homelessness or those over age 65, who is the health sector prioritizing? Data matching between systems can help determine a priority population and create a list of people who meet all eligibility criteria and can be engaged for these housing opportunities. Without alignment on populations served, a state or community risks leaving groups without services and serving no one effectively.

## NEXT STEPS FOR ADVOCATES

### **Learn: Where is my State Medicaid plan, regarding covering Housing Related Services (HRS)?**

Use the CSH interactive [map](#) to determine if your state offers these services and to whom? If your state does not offer these services, advocate to have these services covered by your state's Medicaid plan. Likewise, get involved and raise issues with your state legislators or Medicaid offices around populations served, linkages to long-term affordable housing, and how your state can make Medicaid enrollment simpler and easier. Organize housing and homeless services

providers around the challenges that make it difficult to operate efficiently, and advocate to eliminate or reduce those barriers. If your state is not a Medicaid expansion state, support and join the state coalition working on that issue.

### **Network**

Who are the healthcare partners that are implementing Health Related Social Needs (HRSN) programs? What are they learning and finding about those needs in your communities? How are they addressing those needs and resource gaps? Are they authentic partners with community members and social services organizations that are already on the ground and addressing those needs? As a growing number of health care partners recognize the need for affordable housing, you have an opportunity to build a network and coalition of new healthcare partners.

### **Research**

If your state has a HRS benefit, who is accessing the benefit and is access equitable? If not, what changes would be needed to make access to the benefit equitable? Is the benefit reducing health costs and helping people thrive in communities? If so, tell that story! What reports do your state already have about the benefit that need to be promoted in order to gain broader support or effect change? Does your benefit have significant administrative barriers that hinder progress? How can those barriers be eliminated or reduced?

### **Organize**

If your state does not have a benefit, organize those who would benefit to tell their story about why expanding access to supportive housing is so important to your community. If your state does have a benefit but the benefit is inaccessible, communicate the impact this fact has on community members. If your state is doing well, tell that story to demonstrate impact and maintain support for the program.

### **Conclusion**

Medicaid for supportive services is the best option for moving beyond pilots and creating enough supportive housing for all. As more

healthcare providers are screening for Health-Related Social Needs (HRSNs) and moving towards a better understanding of the resource gaps in our communities, affordable housing advocates can find powerful new partners in their work. Equity and the voices of people with lived expertise (PLE) of institutionalization and housing instability must be centered in these evolving efforts. This advocacy work is essential to ensure full community integration, end homelessness and make sure that everyone in need has equitable access to supportive housing in communities of their choice.

# Disaster Housing Programs

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By Noah Patton, Senior Policy Analyst,  
NLIHC

**T**he Federal Emergency Management Agency (FEMA) leads the federal government's efforts to prepare for potential disasters and to manage the federal response and recovery efforts following any disaster that overwhelms local and state authorities. FEMA provides immediate, direct financial and physical assistance to those affected by disasters and is responsible for coordinating government-wide relief efforts.

## A BRIEF NOTE ON "NATURAL DISASTERS"

A disaster occurs when a hazard, defined as a "source of danger that may or may not lead to an emergency or disaster," overwhelms the ability or emergency services in a local government or a region to effectively respond. A hazard created by technology, such as a chemical spill or atomic bomb, is called a "technological hazard," while a hazard created through natural effects, like a tornado, is labeled a "natural hazard." The likelihood that a hazard will lead to a disaster is called "risk."

The term "natural disaster" is a misnomer because a disaster is created by society's inability to sufficiently prepare for and respond to a hazard, even if the hazard is created through nature. Using the term "natural disaster" implies that a disaster was somehow unavoidable or an "act of God," when in fact disasters are created by the culmination of policy makers' decisions regarding how and where to build homes and businesses, and how to prevent and respond to hazards. Advocates are advised to use the phrase "disaster" alone instead of "natural disaster."

## HISTORY

In 1803, a congressional act was passed providing financial assistance to a New Hampshire town that had suffered a large fire – the first example of federal involvement in a local

disaster. Until the 1930s, *ad hoc* legislation was passed in response to hurricanes, earthquakes, floods, and other natural disasters. When the federal approach to disaster-related events became popular, the Reconstruction Finance Corporation and the Bureau of Public Roads were both given authority to make disaster loans for repair and reconstruction of certain public facilities following an earthquake, and later, other types of disasters. In the 1950's, emergency management efforts were housed primarily within the Department of Defense, a series of White House Civil Defense Offices, and state-level civil defense organizations that primarily focused on preparing the population for an eventual nuclear attack. These civil defense coordinators are considered the first "emergency managers" as we know them today.

By the 1970's, emergency management functions were spread throughout the federal government, with the Department of Housing and Urban Development (HUD) taking responsibility for disaster relief. Following the destructive Hurricane Betsy, Agnes, and the San Fernando Earthquake in 1971, the "Disaster Relief Act of 1974" provided HUD with the most significant authority for disaster response and recovery, and firmly established the process of presidential disaster declarations. Still, more than 100 federal agencies remained involved in some aspect of disaster response and recovery.

With no clear federal lead agency in emergency management, state civil defense coordinators and the National Governors Association pushed for the consolidation of emergency management functions into a single agency. Finally, on April 1, 1979, President Jimmy Carter signed Executive Order 12127, merging many of the separate federal disaster-related responsibilities into the newly created FEMA and ensuring FEMA's director would directly report to the president. Through subsequent decades, FEMA worked to standardize and consolidate emergency management standards and the federal



government's response to disasters.

FEMA's role was further standardized by the "[Robert T. Stafford Disaster Relief and Emergency Assistance Act](#)" (Public Law 100-707), which became law on November 23, 1988. The bill amended the "Disaster Relief Act of 1974" to create the response and recovery system still in place today, through which presidential disaster declaration of an emergency triggers financial and physical assistance through FEMA. The act gives FEMA responsibility for coordinating government-wide relief efforts and provides orderly and systemic federal disaster assistance for state and local governments. Congress' intention was to encourage states and localities to develop comprehensive disaster preparedness plans, prepare for better intergovernmental coordination in the face of a disaster, encourage the use of insurance coverage, and provide federal assistance for disaster-related losses.

As FEMA continued to grow, changes in administrations often resulted in dramatic swings in priorities between preparing for nuclear attack, natural hazards, and after 2001, terrorism. In 2003, FEMA became part of the newly formed Department of Homeland Security (DHS), the FEMA director lost direct access to the President, and many disaster response and recovery authorities were spread to numerous sub-offices in the new agency. DHS sought to utilize remaining FEMA programs to focus on responding to terrorist attacks, and cannibalized FEMA funding to support high-priority programs within DHS. As a result, 75% of available federal emergency management resources were being applied to terrorism-related work. These decisions directly contributed to the failed response to Hurricane Katrina in 2005, which killed over 1,856 people and left tens of thousands displaced and suffering due to an inadequate response by emergency management officials. In response to this well-publicized failure, Congress passed the "Post-Katrina Emergency Management Reform Act of 2006," which elevated FEMA within DHS, protected its funding, and returned its direct access to the President.

In the succeeding years, additional reform efforts occurred, typically following a catastrophic event. President Barack Obama signed the "Sandy Recovery Improvement Act (SRIA) of 2013" in January 2013, which authorized several significant changes to the way FEMA delivered federal disaster assistance. The "Disaster Recovery Reform Act," (Public Law 115-254) was signed into law in October 2018, after the destructive 2017 hurricane and wildfire seasons. The act further reforms FEMA, increasing the agency's pre-disaster planning process and its overall efficiency. Notably, the act changes the factors FEMA considers when advising a president to issue a federal disaster declaration, so that it must consider a disaster-stricken state's ability to pay for its own recovery along with damage reports and assessments.

## EMERGENCY RESPONSE AND COVID-19

FEMA was not initially called upon to coordinate the federal government's response to the COVID-19 pandemic. Instead, the Centers for Disease Control and Prevention (CDC) and the Department of Health and Human Services (DHHS) were placed in charge of the response, in accordance with pandemic-related policies established in the past decade. As the scope of the pandemic became clear and CDC and DHHS capabilities began to be overwhelmed, FEMA was tasked with helping coordinate the federal response. You can find out more about FEMA's actions in the "Role of FEMA in COVID-19 Response" section of this *Guide*.

It should be noted that given the chaotic history of the agency, FEMA personnel and many emergency managers around the country remain fiercely defensive of the agency and extremely apprehensive toward any external attempt to curtail or otherwise marginalize the agency and agency-created frameworks for disaster response and recovery. FEMA priorities are typically slow to change, and conscious of how rapid shifts in political and public consensus about FEMA's role and objectives have directly impacted the agency's ability to respond to disasters. This also

has contributed to the agency's reluctance to partner with other federal agencies in areas of conflicting authorities, including disaster housing recovery.

In addition, the agency has significant morale issues and staffing shortages that may impact FEMA leadership's perception of the agency's capacity and the quality of the agency's response. Initiatives in recent years, such as FEMA's efforts to decrease the number of disaster declarations issued each year and provide for state-administered disaster housing programs, demonstrate that FEMA is seeking to respond to capacity issues by devolving administrative responsibilities while maintaining its role as funder. Therefore, it is highly advisable that advocates build and maintain relationships with state and local emergency management agencies and offices *before* disasters occur to ease communication and cooperation with both FEMA and their local counterparts.

As mentioned above, HUD was initially a major player in the world of disaster recovery and response. Today, this history is reflected by the agency regularly allocating long-term recovery funding to disaster-impacted areas. HUD also operates several additional programs focused on housing and economic recovery. While common sense would dictate that the agency would have a larger role in the immediate aftermath of disasters given its experience in housing low-income and vulnerable households, the agency primarily operates within the long-term recovery space, with a few notable exceptions.

## FEDERAL PROGRAMS

### FEMA

Along with other government agencies, FEMA may provide disaster victims with low-interest loans, veterans' benefits, tax refunds, excise tax relief, unemployment benefits, crisis counseling, and free legal assistance. These resources are available once the president grants a governor's request for Individual Assistance (IA) programs as part of a disaster declaration. FEMA determines whether to recommend that the president approve IA by collecting

Preliminary Damage Assessments and looking at the response capability, demographic data, and economic indicators in disaster-affected areas. Disaster housing and community development programs unique to FEMA include:

*Transitional Shelter Assistance (TSA).* In recent, large-scale disasters, FEMA provided TSA to cover the cost of staying in an approved hotel or motel for an initial period of up to 14 days (which may be extended in 14-day intervals for up to six months). TSA does not cover additional fees, such as resort fees, that hotels may include in the cost of a room. Some participants in the program have been required to present credit cards before being provided access to rooms, in accordance with an individual hotel's policy on incidentals. These costs and requirements constitute major barriers to accessing temporary housing under this program. TSA is funded through the Public Assistance Program, discussed later in this article.

*The Individuals and Households Program (IHP).* The Housing Assistance provision of the IHP provides financial and direct assistance for disaster-caused housing needs not covered by insurance or provided by any other source. IHP Assistance lasts for up to 18 months, although the impacted state may request an extension that must be approved by FEMA personnel. To receive IHP housing funds, a disaster survivors' home must be shown at inspection to be uninhabitable and require repairs to be made habitable or be otherwise inaccessible due to disaster damage. It is important to note that individuals who were experiencing homelessness before a disaster are not eligible for the majority of IHP programs.

Since at least 1995, FEMA's title requirement has barred many of the lowest-income survivors, including owners of mobile homes and other low-income homeowners who may not have updated title documentation, from receiving the assistance for which they are eligible. After some recent disasters, FEMA allowed survivors to use a declaration form to prove ownership of their home in cases where updated title documents were inaccessible, but these forms were never officially provided to disaster survivors by FEMA.

Due to pressure from NLIHC and its partners, the agency recently expanded the list of eligible documentation permitted to demonstrate that a disaster survivor owns or occupies their home.

Four types of housing assistance are available under IHP:

1. Temporary housing assistance, which includes:

a. *Lodging Expense Reimbursement (LER).*

Financial assistance to reimburse for hotels, motels, or other short-term lodging while an applicant is displaced from their primary residence. Funds are awarded for expenses incurred from the start date of the disaster to seven days following the disaster survivor's approval for rental assistance. While LER is similar in concept to the TSA program discussed above, program funding is only available to reimburse disaster survivors for short-term lodging costs that already have been paid. As a result, this program is often inaccessible to disaster survivors with lower incomes, who have less of an ability to pay such expenses up front.

b. *Rental Assistance.* FEMA may provide for 18 months of financial assistance to rent temporary housing. The initial amount is based on the impacted area's Fair Market Rent (FMR) and covers rent plus utilities typically for two months, although it may also be used as a security deposit equal to one month of FMR. Households may seek Continued Temporary Housing Assistance when alternate housing is not available. Full rental assistance is available for a period of 18 months. FEMA's rental assistance program often is unworkable for low-income survivors because assistance is only provided in 2-month increments and the amount of assistance may not be enough to secure housing.

c. *Direct Temporary Housing Assistance.*

FEMA may provide direct housing assistance when disaster survivors are unable to use Rental Assistance due to a lack of available housing resources. The program is open to renters whose primary residence was destroyed and to homeowners whose primary residence suffered damage above \$12 per square foot. Recipients of Direct Temporary Housing Assistance are required to work with a case manager to access alternative permanent housing at the conclusion of the program. Assistance is provided for up to 18 months unless extended at the request of the impacted government and approved by FEMA. Direct Temporary Housing Assistance is not counted toward the IHP maximum award amount and must be specifically requested by the impacted government. Direct Temporary Housing Assistance may include:

- Direct Lease Program, which allows FEMA to lease directly with existing, non-damaged, rental properties for disaster survivors. In recent years, Direct Lease Programs have been unable to serve many households because it has been challenging to recruit landlords to participate.
- Manufactured Housing Units provided by FEMA and made available to use as temporary housing.
- Multi-Family Lease and Repair, which allows FEMA to enter into lease agreements with owners of multi-family rental properties and make repairs to provide temporary housing.
- Permanent or Semi-Permanent Housing Construction, which allows home repair and/or construction services to be

provided in insular areas outside the continental U.S. and other locations where no alternative housing resources are available, and where other types of FEMA Housing Assistance are unavailable, infeasible, or not cost effective.

2. Home repair cash grants, available to homeowners for damage not covered by insurance. These grants are intended to repair homes to safe, sanitary, or functional conditions. Grants are not intended to return the home to its pre-disaster condition. However, recent FEMA reforms now permit accessibility features needed due to a disaster-created disability, as well as some home strengthening measures to be added.
3. Home replacement cash grants, available to homeowners to help replace a destroyed home that is not covered by insurance.

*Other Needs Assistance (ONA):* In addition to housing assistance, the IHP includes ONA, which provides financial assistance for disaster-related necessary expenses. There are two categories of ONA: those that do not require a household to have been denied a Small Business Administration (SBA) loan, and those that do require such a denial. “Non-SBA dependent” types of ONA that may be awarded regardless of a household’s SBA status include covering medical, dental, childcare, and funeral expenses. Also included in this category is Critical Needs Assistance, which provides up to \$500 to meet lifesaving or life-sustaining needs such as water, food, first aid, prescriptions, infant formula, diapers, consumable medical supplies and durable medical equipment, and fuel for transportation. Assistance that depends on a household being denied an SBA loan or receiving a partial SBA loan that is not adequate to meet needs include funds to repair or replace damaged personal property, repair or replace vehicles, and cover moving and storage costs. State, Tribal, and Territorial governments are required to pay for 25% of ONA costs, while FEMA covers the remaining 75%. Governments can decide

to administer the program directly, in tandem with FEMA, or allow FEMA to fully administer the program.

*Critical Needs Assistance (CNA).* Upon request from a state, tribal, or territorial government, FEMA may provide financial assistance under the ONA to applicants who have immediate or critical needs because they are displaced from their primary residence, or to applicants who need assistance to leave their pre-disaster primary residence to temporarily shelter elsewhere. Immediate or critical needs are lifesaving and life-sustaining items including, but not limited to: water, food, first aid, prescriptions, infant formula, diapers, CMS, DME, personal hygiene items, and fuel for transportation. Eligible individuals are those that register within the CNA eligibility period, can verify their occupancy within the approved area, can show that they have been displaced due to the disaster or are requesting alternative shelter, report damage to their home, and assert that they have critical needs and request financial assistance. In 2022, the CNA assistance cap was raised to \$700. This assistance is provided as a one-time award.

*Public Assistance (PA):* FEMA provides disaster assistance to state, territorial, tribal, and local governments as well as certain private nonprofits through the PA program. Under the Permanent Work component of Public Assistance, FEMA provides grants to state and local governments to repair roads, bridges, water control facilities, public utilities, public buildings, and parks and recreational facilities (Categories C through G). In addition, PA can be provided to nonprofits to restore damaged facilities, which could include repair funds for public housing agencies. The Emergency Work component of PA aids in the removal of debris and carries out emergency protective measures – which can include emergency mass sheltering (Categories A and B). FEMA generally provides 75% of the cost of PA, requiring the state and subgrantees (for example, counties) to provide the remaining 25%. FEMA has the authority to temporarily modify this cost share ratio under certain circumstances.



*Hazard Mitigation Grant Program (HMGP):* To reduce the risk of damage and reliance on federal recovery funds in future disasters, FEMA administers the HMGP. HMGP provides state and local governments funds for long-term mitigation following a federally declared disaster. Nonprofits, individuals, and businesses may apply through their local government. Uses of HMGP include acquiring an individual property in a flood-prone zone and permanently removing the property, raising a home so that flood water flows underneath, erecting barriers to prevent flood water from entering a home, flood diversion and storage, and aquifer storage and recovery. FEMA provides up to 75% of the funds for mitigation projects.

### **National Flood Insurance Program**

The National Flood Insurance Program (NFIP) was created in 1968 to make flood insurance available to homeowners for the first time. The “Flood Disaster Protection Act of 1973” made the purchase of flood insurance mandatory for properties in Special Flood Hazard Areas (SFHAs) if the property had a mortgage from a federally regulated or insured lender. To participate in NFIP, a community must adopt and enforce floodplain management ordinances. The NFIP has an arrangement with private insurance firms to sell and service flood insurance.

### **HUD**

*Community Development Block Grant Disaster Recovery (CDBG-DR):* CDBG-DR funding is provided for presidentially declared major disasters by appropriations acts and is generally tailored to specific disasters. To determine how much a state or local government receives, HUD uses a formula that considers damage estimates and disaster recovery needs unmet by other federal disaster assistance programs such as FEMA and SBA. In addition to any requirements cited in the specific appropriation act, the regular CDBG regulations at 24 CFR 570 apply to CDBG-DR funds. However, CDBG-DR appropriations generally grant HUD broad authority to issue waivers and alternative requirements identified in a *Federal*

*Register* notice issued by HUD following the announcement of the appropriation.

CDBG-DR grantees, usually states, must prepare an action plan to assess housing, infrastructure, and economic revitalization needs and then identify activities to address unmet needs. Public participation in devising the action plan is required. In the regular CDBG program, a minimum 30-day public review and comment period is required. However, in recent CDBG-DR *Federal Register* notices, HUD has reduced the public participation period to a mere 14 days. Advocates stress that more time for public engagement is necessary, especially since the consequences of the final plan will have long-term impacts on low-income households.

The regular CDBG program requires that at least 70% of the funds be used for activities that benefit low- and moderate-income households or those with income at or less than 80% of the area median income. The CDBG-DR *Federal Register* notices regarding funds for the 2017 disasters maintained the 70% low/mod-income benefit requirement; however, most of the major notices between Hurricane Katrina in 2005 and 2016 allowed waivers so that only 50% of the CDBG-DR had to meet the low/mod benefit test. In 2020 FEMA and HUD signed a Memorandum of Understanding that streamlined the use of CDBG-DR funds to pay for portions of FEMA PA projects. Under this new streamlining agreement, only the portion of the project funded directly by HUD CDBG-DR is required to meet CDBG requirements, such as targeting low-income households. Previously, the use of CDBG-DR funding on FEMA PA projects would extend such requirements to the entire project.

Recent *Federal Register* notices have required that at least 80% of the total funds provided to a state address unmet needs within an area designated by HUD as being the most impacted and distressed. They have also required the action plan to propose allocating CDBG-DR to primarily address unmet housing needs and describe how the grantee’s program will promote housing for vulnerable populations, including a description of activities to address the housing needs of



homeless people and to prevent extremely low-income households from becoming homeless.

Grantees must submit Quarterly Performance Reports (QPRs) using HUD's electronic Disaster Recovery Grant Reporting System, showing each activity's progress, expenditures, accomplishments, and beneficiary characteristics such as race, ethnicity, and gender.

*CDBG Mitigation (CDBG-MIT):* As part of a new focus on pre-disaster mitigation and preparedness after the destructive 2017 and 2018 hurricane seasons, Congress has begun to appropriate funds under HUD's CDBG-MIT program. Like CDBG-DR, CDBG-MIT funding is provided for areas that suffered from a presidentially declared disaster and is distributed similarly to CDBG-DR. Program funding is available for mitigation and resiliency projects, defined as activities that reduce the risk to life and property by lessening the impact of a future disaster. These projects are not required to address an existing disaster impact, but rather, areas that are likely to be impacted in the future. Like the CDBG-DR program, the regular CDBG regulations at 24 CFR 70 apply to CDBG-MIT funding subject to waivers and alternative requirements released by HUD in the program's enacting *Federal Register* notice.

The process for CDBG-MIT grantees is also essentially the same as the CDBG-DR program, with the grantee developing an action plan that outlines the planned use of the funds. The plans are subject to public comment and HUD approval. The program requires a 30-day public participation window and specifies a minimum number of public meetings to be held that correspond to the amount of funding allocated to that state. As this program is relatively new, program guidelines and policies can be expected to change as the program develops.

*Disaster Housing Assistance Program (DHAP):* The aftermath of Hurricane Katrina in 2005 demonstrated that HUD, not FEMA, was best suited to oversee and administer federal disaster housing assistance to people with the lowest incomes. Congress amended the "Stafford Act"

to require the federal government to create a disaster housing plan. In 2009, that plan made clear that HUD should play a key role in creating and operating disaster housing assistance programs and recommended that Congress make the DHAP permanent. The 2011 National Disaster Recovery Framework also recommended that HUD, not FEMA, serve as the coordinating agency for delivering housing assistance. However, before HUD can put a DHAP program in place, FEMA must enter an interagency agreement with HUD. In the wake of recent major disasters, FEMA has resisted working with HUD to stand up DHAP programs.

DHAP has been used after past disasters, including Hurricanes Katrina, Rita, Gustav, Ike, and Sandy, to provide low-income, displaced families with safe, decent, and affordable rental homes while they rebuild their lives and get back on their feet. DHAP is administered through HUD's existing network of local Public Housing Agencies (PHAs), which have significant local market knowledge and experience administering HUD's Housing Choice Voucher program.

DHAP provides displaced households with temporary rental assistance, covering the cost difference between what a family can afford to pay and the cost of rent, capped at a reasonable amount. Over the course of several months, families are required to pay a greater share of their rent to encourage and help them assume full responsibility for housing costs at the end of the program. All families receiving DHAP rental assistance are provided wrap-around case management services to help them find permanent housing, secure employment, and connect with public benefits.

DHAP helps fill the gaps that low-income households experience with FEMA's Transitional Shelter Assistance (TSA) and Rental Assistance programs. Many hotels do not participate in TSA, and those that do often charge daily resort fees, ask for security deposits, and require that displaced households have credit cards, all of which are barriers for low-income households. Because disasters generally reduce the amount of available housing stock, low-income renters

are often unable to use FEMA Rental Assistance in their communities. If a displaced household relocates, the Rental Assistance amount, which is based on the Fair Market Rent (FMR) of the impacted area, may not be enough to cover the cost of an apartment in a different community.

*Rapid Unsheltered Survivor Housing (RUSH):* In a major advocacy victory, HUD created the RUSH program during the 2022 Atlantic Hurricane Season to address some of the issues created by the failure to utilize DHAP. In the aftermath of large disasters, the program allocates unused Emergency Solutions Grants (ESG) funding to impacted communities to assist individuals that were experiencing homelessness in the area prior to the disaster and households at risk of homelessness afterward. HUD plans to only deploy these funds after exceptionally large disasters.

Funds can be used for rapid re-housing, which provides up to 24 months of assistance, and financial assistance for moving costs, utilities, supportive services, outreach, and assistance to meet urgent needs of unsheltered individuals. Eligible families are people experiencing homelessness and households paid under 30% of area median income who either live in severe overcrowding, will face eviction within 21 days, or have another risk factor for homelessness.

*Federal Housing Administration (FHA):* The FHA grants a 90-day moratorium on foreclosures and forbearance on foreclosures of FHA-insured home mortgages. HUD's Section 203(h) program provides FHA insurance to disaster victims who have lost their homes and need to rebuild or buy another home. Borrowers from participating FHA-approved lenders may be eligible for 100% financing. HUD's Section 203(k) loan program enables those who have lost their homes to finance the purchase of or refinance a house along with repairs through a single mortgage. It also allows homeowners who have damaged houses to finance the rehabilitation of their existing single-family home.

## **U.S. Small Business Administration (SBA)**

After households apply to FEMA, they might be contacted by SBA to apply for a low-interest loan. If eligible, the household does not have to accept the loan. If a household is not eligible for an SBA loan, they will be referred to FEMA to be considered for a FEMA ONA grant. To be considered for an ONA grant, a household must have submitted an SBA loan application.

SBA can provide physical disaster loans to cover uninsured or uncompensated losses of a home or personal property. A homeowner can apply for a loan to repair or rebuild a primary residence to its pre-disaster condition based on the verified losses, and homeowners may apply for up to \$200,000 to repair or replace their home to its pre-disaster condition. The loan amount can increase by as much as 20% to help homeowners rebuild in a manner that protects against damage from future disasters of the same kind, up to the \$200,000 maximum. Both homeowners and renters may apply for loans—up to \$40,000—to replace personal property (anything not considered real estate or part of the structure of the home) lost in a disaster. The interest rate on SBA physical disaster loans depends on the applicant's ability to secure credit from another source. In 2017, applicants unable to obtain credit elsewhere were charged 1.75% interest; for those who could obtain credit elsewhere, the interest rate was 3.5%. The term of loans is often 30 years.

Businesses, including rental property owners and nonprofit organizations, can apply for loans for real estate and personal property loss up to a maximum of \$2 million. In addition, businesses and nonprofits can apply for economic injury loans of up to \$2 million to cover working capital to meet their ordinary financial obligations.

## **U.S. Department of Agriculture**

The U.S. Department of Agriculture (USDA) provides loans, grants, and loan servicing options to its loan borrowers and their tenants or grant recipients. It also will adjust Supplemental Nutrition Assistance Program (SNAP) limits to provide greater access to food in disaster-affected areas.

## U.S. Department of the Treasury

Congress authorized the Department of the Treasury to provide special Low-Income Housing Tax Credits (LIHTCs) and other tax incentives after recent major disasters without a permanent disaster recovery program in place. In the case of hurricanes Katrina and Rita, the Treasury established Gulf Opportunity (GO) Zone tax credits, GO Zone tax-exempt bonds, and additional New Markets Tax Credits to help rebuild housing. After Superstorm Sandy in 2011, Congress also authorized additional LIHTCs, private activity bonds, and New Markets Tax Credits. The same occurred after the 2018 California wildfire season, with Congress approving additional LIHTC funding to replace destroyed housing stock.

Revenue Procedure 2014-49 (Rev. Proc. 2014-49) from 2014 provides guidance to owners and state housing finance agencies (HFAs) regarding temporary relief from certain requirements that apply to the LIHTC program. A key provision allows an owner to provide up to twelve months of emergency housing to households that have been displaced by a presidentially declared major disaster. Households are eligible for emergency housing in a LIHTC unit if their home is in an area eligible for FEMA individual assistance.

Unless a property's written policies and procedures provide a preference for households displaced by a presidentially declared disaster, an owner may not skip over households on a waiting list to provide emergency housing. Existing households cannot be displaced to provide emergency housing.

Rev. Proc. 2014-49 relieves an owner and household of providing evidence of income eligibility. All other LIHTC rules apply, however, including LIHTC rent limits. The emergency relief period ends one year after the date the disaster was declared. After that date, displaced households that are not income-eligible under the LIHTC program cannot occupy a unit assisted under the LIHTC program. To provide emergency housing, an owner must request written approval from the HFA.

Additional issues can arise when LIHTC units are damaged by disasters. Owners of LIHTC units knocked out of service by a presidentially declared disaster have a “reasonable period” (defined as 25 months by the IRS) to finish rebuilding to retain their tax-credit status and avoid IRS tax credit recapture. Depending on the level of devastation caused by the disaster, some owners struggle to meet this deadline. Housing providers can petition the IRS for an extension to the 25-month deadline if needed, although such extensions are considered rare. This issue was notably seen in California after the 2018 wildfire season and in the aftermath of Hurricane Harvey in Houston. Advocates and housing providers should remain aware of this deadline and work proactively to avoid a lapse in tax-credit status and possible recapture.

## FORECAST FOR 2023

Recovery continues to progress from 2017, 2018, 2019, 2020, and 2021 disasters. 2022 also saw an active Atlantic Hurricane Season which resulted in two major hurricanes striking both Florida and Puerto Rico; devastating flooding and tornados in Kentucky; typhoons in Alaska; and wildfires along the West Coast. Meanwhile, Congress continued to deliberate on several bills that encourage quick and equitable recovery. In 2021, Senators Brian Schatz (D-HI), Susan Collins (R-ME), Todd Young (R-IN), Patrick Leahy (D-VT), Bill Cassidy, M.D. (R-LA), and Ron Wyden (D-OR), and Representative Al Green (D-TX) introduced the “Reforming Disaster Recovery Act” (S.2471/H.R.4707), which permanently authorizes the CDBG-DR program. The bill also creates important safeguards and tools to ensure that federal disaster recovery and rebuilding efforts reach all impacted households, including those with the lowest incomes that are often hardest hit by disasters but have the fewest resources. NLIHC strongly supports this bill. The bill has previously passed out of the House Financial Services Committee by unanimous vote and passed by a bipartisan vote of the House of Representatives. The bill, or a similar legislative proposal, is expected to be pushed in 2023.

In addition, the “Housing Survivors of Major

Disasters Act” (S.5035/H.R.3037), introduced in 2019 and again in 2021 by Congressman Adriano Espaillat (D-NJ) and Senator Elizabeth Warren (D-MA), passed unanimously out of the House Transportation and Infrastructure Committee and then the entire House of Representatives in 2020. The bill addresses the requirement that applicants for FEMA disaster assistance provide title documentation to show ownership over disaster damaged property. This requirement constitutes a major barrier to aid for low-income households. People living in manufactured housing such as mobile homes and people with inherited, family-owned property without formal legal documentation – known as “heirs’ property” – often lack access to clear title. These households are forced into lengthy and expensive legal title clearing procedures before they can be found eligible for FEMA assistance.

The “Housing Survivors of Major Disasters Act” would require FEMA to expand the list of documents eligible to prove ownership for the purposes of receiving recovery assistance and require the agency to develop a “declarative form” allowing owners who are unable to procure ownership documents to attest to ownership of their home under penalty of perjury. The bill will continue to be pushed by NLIHC and its congressional partners in 2023.

Several other Members of Congress introduced bills directing FEMA to standardize damage assessments, streamline emergency notification services, create a universal application for disaster assistance, and boost pre-disaster planning efforts. In October 2022, Congress approved \$19 billion in FEMA funds for 2022 disasters as well as over \$2 billion in CDBG-DR funds. Any future disaster relief bill should include resources to ensure that all survivors, including people with the lowest incomes, are equitably served.

In addition to potential legislative changes, advocates should remain aware of administrative and programmatic releases from federal agencies regarding disaster recovery. FEMA has recently demonstrated a commitment to equity within its programs, indicating that substantial changes

are underway at the agency. One major reform announced by FEMA in 2021 would permit some survivors to self-certify ownership of their homes when they do not have other documentation, overcoming a major hurdle to recovery. FEMA also allowed all survivors to submit a broader array of documents to prove occupancy and ownership of their homes. This reform was the result of sustained administrative pressure by NLIHC and its partners. However, significant barriers to assistance remain for individuals without clear title to their homes – thousands of applicants were denied assistance in Puerto Rico at least partially because of failure to verify ownership. DHRC members will continue to push for the formalization and distribution of such self-certification methods.

HUD has released guidance and allocations for almost all 2019, 2020, and 2021 CDBG-DR grantees in the *Federal Register*. Funds are currently being spent at different rates across 2017-2021 disaster regions. The reasons for the slow disbursement range from issues with community input for the program, high administrative burdens and the COVID-19 pandemic. As the process of releasing guidelines for, allocating, and spending down funds continues, advocates should be prepared to ensure that all guidelines and policies, including federal civil rights law, are being followed as long-term recovery dollars begin to reach disaster areas.

## FOR MORE INFORMATION

National Low-Income Housing Coalition, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

Join the NLIHC-led Disaster Housing Recovery Coalition: <https://nlihc.org/disaster-housing-coalition>.

The Disaster Housing Recovery Coalition’s webpage, <http://nlihc.org/issues/disaster>, including its recommendations:

- [To Congress.](#)
- [To HUD.](#)
- [To FEMA.](#)

NLIHC's Report, "Reforming America's Broken Disaster Housing Recovery System, Part One: Barriers to a Complete and Equitable Recovery", <https://bit.ly/2RZHmuK> & "Part Two: Policy Framework Reform Recommendations", <https://bit.ly/3n5lnzq>.

NLIHC's Top Priorities for Any Disaster Recovery Package, <https://bit.ly/2K8Mp6b>.

NLIHC's Disaster Recovery Resources webpage: <https://nlihc.org/issues/disaster/resources>.

NLIHC's Disaster Housing Assistance Program fact sheet: <https://bit.ly/2QZ2WvP>.

NLIHC's Disaster Housing Recovery Coalition's Administrative Transition Recommendations, <https://bit.ly/3gD7GFf>.



# Housing Access for Immigrant Households

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By Kayla Laywell, Housing Policy Analyst, NLIHC

**D**uring its tenure, the Trump Administration used several federal agencies, including HUD, to sow distrust among immigrant communities and prohibit low-income immigrant families from accessing safe, decent, and affordable housing. Due to the efforts of advocates nationwide, the Biden Administration took swift action beginning in January 2021 to expand access to housing for immigrant households. The Biden Administration reversed the previous Administration’s harmful changes to the “public charge” rule and withdrew the proposed changes to the “mixed status” rule.

As of March 2021, immigrant families’ access to housing benefits is no longer at risk by harms created under the Trump Administration. Specifically, the “public charge” rule, which evaluates whether an individual applying for seeking admission into the U.S., applying for a green card, or an extension of their non-immigrant status is likely to rely on the government for assistance if they obtain lawful permanent residence, has been amended to clarify that housing assistance – such as assistance through public housing, Housing Choice Vouchers, and Project-Based Rental Assistance, among other programs – is not considered in an individuals’ application for permanent residency. In other words, these housing benefits are not considered in the “public charge” test.

Additionally, the Biden Administration withdrew the previous Administration’s proposed changes to Section 214, also called the “mixed status” rule. “Mixed-status” families are those consisting of some members who are U.S. citizens or have green cards and other members that are undocumented. The withdrawal of the “mixed status” rule means that “mixed status” families can pursue the housing assistance they are eligible for without fear of being the family being separated or evicted.

NLIHC opposes policies that deter eligible immigrant families from seeking housing benefits or proposals that force immigrant families currently receiving housing benefits to forego that assistance or face eviction.

## IMMIGRATION STATUS ELIGIBILITY IN FEDERALLY SUBSIDIZED HOUSING

There are two main sources of immigration status restrictions on eligibility for federal housing and homelessness programs: Section 214 of the “Housing and Community Development Act of 1980” (Section 214) and title IV of the “Personal Responsibility and Work Opportunity Reconciliation Act of 1996” (PRWORA). Tenants of Public Housing and Section 8 programs must meet immigration status eligibility requirements established under Section 214 of the “Housing and Community Development Act”. Only some immigrants eligible for this federal housing assistance would also potentially be subject to the “public charge” test: parolees, immigrants granted withholding of removal, and those lawfully admitted pursuant to Section 141 of the Compacts of Free Association with the Marshall Islands, the Federated States of Micronesia, and Palau (COFA). Since family members’ use of benefits is not counted against an applicant, individuals subject to public charge living in a mixed-status immigrant household can continue living with family members receiving housing assistance without harming their own immigration case.

Residents of certain federally subsidized units are subject to immigration status restrictions under Section 214 of the “Housing and Community Development Act of 1980” (Section 214). HUD programs under Section 214 include public housing, Section 8 Housing Choice Vouchers, Section 8 Project-Based Rental Assistance (PBRA), Section 235 Home Loan Program, Section 236 Rental Assistance Program, and the Rent Supplement Program. Section 214 also

governs the Section 542 Rural Development Voucher program, Section 502 Guaranteed Rural Housing Loans, the Section 504 Home Repair program, and Section 521 Rental Assistance for the Section 515 and Section 514/516 programs operated by the U.S. Department of Agriculture's (USDA's) Rural Housing Service (RHS).

Under Section 214, individuals with the following immigration status are eligible for federal housing assistance programs: U.S. citizens and nationals, lawful permanent residents (people with “green cards”), “Violence Against Women Act” (VAWA) self-petitioners, asylees and refugees, parolees, persons granted withholding of removal, victims of trafficking, individuals residing in the U.S. under COFA, and immigrants admitted for lawful temporary residence under the “Immigration Reform and Control Act of 1986.” Being ineligible for housing assistance is not equivalent to being undocumented. Immigrants with student visas, Temporary Protected Status, U nonimmigrant status, and other statuses are also not eligible for federal housing subsidies.

## CHANGES TO THE DEFINITION OF “PUBLIC CHARGE”

### Background

The “public charge” test is a long-standing component of U.S. immigration policy used to determine if an individual is likely to depend on government benefits as their main source of support. If someone is deemed likely to become a “public charge,” the federal government can deny admission to the U.S. or deny an application for lawful permanent resident status (a “green card”). Permanent residents applying to become U.S. citizens are not subject to the public charge test. The current policy under the May 26, 1999, *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds* defined “public charge” as a noncitizen who is “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.”

When making public charge determinations, immigration officials look at the use of federal, state, or tribal cash assistance, such as Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI), in addition to the individual's circumstances, including age, income, education and skills, health, family size, and support from friends or family in the U.S. All these factors are considered as part of the public charge test so that positive factors can help overcome negative factors.

Decisions about applications for admission or lawful permanent resident status inside the U.S. are made by the U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security (DHS); applications for admission or green cards outside the U.S. at embassies or consular offices abroad are reviewed by the Department of State. Each agency has its own regulations, but the Administration has worked to align the policies. Refugees, asylees, survivors of trafficking and other serious crimes, certain people who have been paroled into the U.S., self-petitioners under the “Violence Against Women Act (VAWA),” special immigrant juveniles, and several other categories of noncitizens are exempt from the public charge rule.

### Now Vacated: Trump “Public Charge” Rule

The Trump Administration proposed expanding the list of benefits considered as part of the public charge test, which would make it easier for immigration officials to deny entry or permanent resident status to low-income immigrants because they use, or might in the future use, vital health, nutrition (specifically, the Supplemental Nutrition Assistance Program, SNAP), or housing assistance programs (specifically, public housing, Housing Choice Vouchers, and Project-Based Rental Assistance (PBRA) While the Trump Administration sought to implement its rule on “*Inadmissibility on Public Charge Grounds*” (Public Charge Rule) in October 2018, advocates pushed back, and submitted more than 266,000 public comments during the 60-day comment period. The final rule was set to go into effect on October 15, 2019, but several courts blocked

the rule from implementation until the lawsuits were settled. Additionally, state, county, and city governments joined nonprofits and individuals in suing the Trump Administration in a total of nine cases. Three courts ordered national injunctions, preventing DHS from implementing the rule until a final decision was made. These orders were eventually lifted by the Supreme Court and USCIS began implementing the rule on February 24, 2020, for a short period of time.

President Joe Biden signed three Executive Orders (EOs) on immigration reform on February 2, 2021, setting into motion changes to reverse the previous Administration's harmful public charge rule. [Executive Order 14012](#) "[Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans](#)" directed agencies to develop strategies that promote integration, inclusion, and citizenship. On March 9, 2021, the Supreme Court agreed to dismiss litigation on the previous Administration's Public Charge Rule at the request of the Biden Administration. Immediately, the Department of Homeland Security [announced](#) it would no longer implement the 2019 Trump public charge rule. DHS [released the final rule](#) vacating the harmful public charge rule amendments on March 15, 2021. DHS announced in a [statement](#) that it and USCIS will follow the policy in the [1999 Interim Field Guidance](#), the policy that was in place before the 2019 rule. Under this policy, DHS will not consider a person's receipt of Medicaid, public housing, or Supplemental Nutrition Assistance Program (SNAP) benefits as part of the public charge inadmissibility determination.

### **Protecting Immigrant Families**

Led by the National Immigration Law Center and the Center for Law and Social Policy, the [Protecting Immigrant Families \(PIF\) Coalition](#) organized opposition to the Public Charge Rule and has worked to ensure that immigrant communities facing attacks by the Trump Administration know their rights.

Once the harmful 2019 public charge rule was removed, PIF advocated for a public charge policy

that prevents abuses like those under the Trump Administration and secures access to programs that help immigrant families live healthy and fulfilling lives. On April 25, 2022, [NLIHC and the PIF coalition submitted a comment on the Biden Administration's public charge proposal signed by 1,070 organizations](#). Importantly, the comment's signatories included a diverse set of national organizations and organizations from every state and Washington, D.C., signaling to the Administration that they could count on a broad base of support in communicating the final public charge regulation to immigrant communities.

PIF consistently kept advocates updated with the latest research on the impacts of the Public Charge Rule, updates on litigation, fact sheets and "Know Your Rights!" messages for community members, and guidance and additional resources for immigration lawyers. PIF members were involved in legal battles against the Trump Administration's changes to the Public Charge Rule over the last four years and were leaders during the public comment campaign.

DHS [issued a final rule](#) on the "public charge" regulation on September 8, 2022, adding critical protections to immigrant families' access to social safety net programs, including housing. The final rule clarifies that several health and social services are not considered in a public charge determination. The final rule took effect on December 23, 2022.

## **MIXED-STATUS FAMILIES IN FEDERALLY SUBSIDIZED HOUSING**

### **Background**

Families with at least one U.S. citizen or eligible immigrant are allowed to live in a HUD-subsidized housing unit. These families are referred to as "mixed-status" and receive prorated assistance so that the subsidy amount is decreased to only cover family members with eligible immigration status. Family members applying for assistance must have their immigration status verified; ineligible family members can choose not to contend eligibility, which allows the family to receive prorated assistance. Noncitizens 62 years old or older are

only required to provide a signed declaration of eligible immigration status and a document proving their age.

Housing programs within the USDA's Rural Housing Service (RHS) do not prorate assistance for mixed-status families. The agency attempted in 2004 to implement Section 214 for all residents of Sections 515 and 514/516 housing, but the proposed regulation failed to properly follow the law. The 2004 rule ignored the full list of eligible immigration statuses listed in Section 214, required all residents of Sections 515 and 514/516 units be citizens or legal permanent residents even if they were not receiving rental assistance, and did not allow for proration. After advocacy organizations threatened the agency with litigation, RHS indefinitely postponed the rule with respect to the Section 515 program but failed to widely publish this change. Given the inconsistent guidance, some owners enforce the requirements of the 2004 rule and others do not.

### **Now Withdrawn: Trump Administration's Proposed Mixed-Status Families Rule**

On May 10, 2019, HUD released a proposed rule that would have further restricted eligibility for federal housing assistance based on immigration status by prohibiting mixed-status families from living in subsidized units subject to Section 214. The rule would have forced impacted households to choose between separating as a family to keep their subsidy or face eviction and potentially homelessness. According to HUD's own analysis, the proposed rule would have effectively evicted 25,000 immigrant families from their homes, including 55,000 children eligible for housing assistance. In fact, two-thirds of people in mixed-status families were already U.S. citizens, most of them children, at the time HUD released its proposal.

The final rule was never published under the Trump Administration. On April 2, 2021, the Biden Administration published a notice in the *Federal Register* announcing its intention to withdraw the Trump Administration's proposed rule.

The Trump Administration pursued a similar mixed-status families rule within USDA's RHS. The proposed rule, "Implementation of the Multi-Family Housing U.S. Citizenship Requirements," aimed to prohibit mixed-immigration status families from receiving housing assistance from some RHS programs covered by Section 214 of the "Housing and Community Development Act of 1980." This included the Rural Development (RD) voucher program (Section 521) and rental assistance for the Section 515 and Section 514/516 programs. The proposed RHS rule would have led to families splitting up, forgoing assistance, or being evicted from their homes. The rule was never published in the *Federal Register* under the Trump Administration and was withdrawn by the Biden Administration.

### **Keep Families Together Campaign**

In response to the proposed Mixed-Status rule, NLIHC, the National Housing Law Project (NHLP), and other partners launched the Keep Families Together campaign to mobilize opposition. During the public comment period, individuals and organizations submitted over 30,450 comments; the previous time a HUD proposal garnered significant public attention resulted in just over 1,000 public comments. An NHLP analysis of these comments found that more than 95% of the comments opposed the rule. An archived summary of actions taken during the Trump Administration can be found on the Keep Families Together website at [www.keep-families-together.org](http://www.keep-families-together.org)

## **FORECAST FOR 2023**

The withdrawal of these harmful rules were due in part to the efforts of advocates and litigation partners in recent years. Legislative opportunities exist to expand resources to immigrant families and combat the chilling effects from the previous Administration's anti-immigrant regulations.

In the 117<sup>th</sup> Congress, Representatives Pramila Jayapal (D-WA) and Tony Cárdenas (D-CA) introduced H.R. 5227, "Lifting Immigrant Families Through Benefits Access Restoration Act of 2021," or the "LIFT the BAR Act." Senator Mazie Hirono (D-HI) introduced a companion



bill in the Senate, [S.4311](#), with lead cosponsors including Senators Cory Booker (D-NJ), Patty Murray (D-WA), Patrick Leahy (D-VT), Ed Markey (D-MA), Elizabeth Warren (D-MA), Bernie Sanders (I-VT), Sherrod Brown (D-OH), Alex Padilla (D-CA), and Kirsten Gillibrand (D-NY). The “LIFT the BAR Act” would restore access to public programs for lawfully present immigrants by removing the five-year waiting period and other restrictions to accessing federal public benefits. The “bar” represents harmful barriers created by the “Personal Responsibility and Work Opportunity Reconciliation Act of 1996” (PRWORA). PRWORA created an arbitrary five-year waiting period for immigrants to access vital healthcare and social service programs, including Medicaid, the Children’s Health Insurance Program (CHIP), the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), and certain housing assistance programs, including public housing, Housing Choice Vouchers, Section 8 Project-Based Rental Assistance, and some rural housing programs. These barriers stoked fear and confusion among immigrants and their families, reducing participation in essential social safety net programs. NLIHC supports the LIFT the BAR Act, and signed a [national letter](#) led by PIF in support of the bill.

NLIHC will work to reintroduce and enact the LIFT the BAR Act in the 118th Congress.

## HOW ADVOCATES CAN TAKE ACTION

**Advocates should speak to lawmakers with the message that:**

- Blaming struggling families will not fix the long waitlist for housing assistance or the affordable housing crisis. Congress should instead make significant new investments in affordable housing resources to ensure that every family, regardless of immigration status, who is eligible for HUD assistance has access to one of the most basic of human rights: a safe, accessible, and affordable place to call home.

- The previous Administration’s rules have directly impacted thousands of immigrant families’ access to housing and have had a chilling effect on children’s ability to receive essential health, food, and housing federal assistance. This country is already facing an affordable housing crisis and limiting access for more people will only exacerbate the problem.
- Human needs do not change based on immigration status. It is simply impractical, dangerous, and inhumane to only allow citizens to access critical, lifesaving benefits such as housing assistance. Members of Congress should work to restrict or halt the implementation of these harmful rules.
- Ensuring mixed-status families and immigrant families have access to affordable, secure, and safe housing will allow these families to safely isolate and prevent contracting the coronavirus.

**Urge legislators to:**

- Adequately address the needs of low-income immigrant families.
- Work to pass essential immigration reform legislation such as the “LIFT the Bar Act”.

**Urge DHS/HUD/RHS to:**

- Align HUD and RHS policy when addressing mixed-status families to limit confusion.
- Issue clear guidance and resources to community members on the policy changes to limit the chilling effect these rules have had on families pursuing public benefits.

## FOR MORE INFORMATION

National Housing Law Projects’ “Immigration Requirements: Other Assistance Programs for Housing and Homelessness (ESG, CDBG, HOME, FEMA, CRF, and ERAP): <https://bit.ly/3Vis9ma>.

DHS’s (formerly Immigration and Naturalization Service) 1999 “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds” final rule: <http://bit.ly/3vizXYy>.



The Trump Administration’s DHS “Inadmissibility on Public Charge Ground” Final Rule: <https://bit.ly/38zU9K6>.

The Biden Administration’s DHS “Public Charge Ground of Inadmissibility” Final Rule: <https://public-inspection.federalregister.gov/2022-18867.pdf>.

The Trump Administration’s HUD “Housing and Community Development Act of 1980: Verification of Eligible Status” Proposed Rule: <https://bit.ly/2YGfu07>.

A summary of the Trump Administration’s USDA proposal, “Implementation of the Multi-Family Housing Citizenship Requirements,” was in the 2020 Spring Regulatory Agenda at: <https://bit.ly/3jZ2FbC>.

Executive Order “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans”: <http://bit.ly/3rkGdfW>.

Keep Families Together campaign: <https://www.keep-families-together.org/>.

National Housing Law Project: <https://www.nhlp.org/initiatives/immigrant-rights/>.

Protecting Immigrant Families campaign: <https://pifcoalition.org/>.

# Land Use Restrictions and Affordable Housing

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Andrew Aurand, Senior Vice President for Research, NLIHC

Local governments use zoning and land use regulations to control which types of housing are permissible in which locations. Thirty years ago, HUD identified biases in residential zoning in favor of lower density single-family housing and against multifamily housing that were significant barriers to affordable housing (HUD, 1991). A 2019 analysis published by the New York Times found that bias still exists today as up to 75% of residential land across many cities is zoned exclusively for detached single-family homes (Badger & Bui, 2019). Local zoning reform is necessary, but not sufficient, to address our national shortage of affordable housing and increase housing options for extremely low-income renters.

## THE IMPACTS OF LOCAL ZONING

The exclusion of higher-density housing like apartment buildings in favor of single-family homes is not the only local zoning practice that constrains the housing supply. Other restrictions within the zoning code like minimum lot sizes, set-back requirements, and parking requirements can constrain supply and raise prices, because they typically increase the amount of land needed for each home. These zoning practices are widespread. In addition to the New York Times investigation, a survey by the Urban Institute found that a majority of municipal representatives reported either little change or an increase during the last 10 to 15 years in land dedicated to single-family housing within their jurisdiction (Badger & Bui, 2019; Urban Institute, 2019). And a survey of suburban land use regulations found minimum lot sizes are used more widely now than 10 years ago and are more severe (Gyourko, Hartley, & Krimmel, 2019). Between 2006 and 2018, the share of suburban municipalities with minimum lot size

requirements increased from 83% to 96% and minimum sizes of one or more acres became more common.

This exclusionary zoning hurts affordability by limiting the supply of housing. A study of communities in Massachusetts, for example, found that minimum lot size requirements could increase the price of single-family homes by as much as 40% over a ten-year period (Zabel & Dalton, 2011). Other studies also show relationships between more stringent land use regulation and higher housing prices (HUD, 2018).

These exclusionary zoning practices further limit housing opportunities for low-income households by prohibiting or curtailing the types of housing that are more likely to be rental housing and affordable, including small and large multifamily developments. More low-density and single-family zoning are associated with less rental housing in local communities, which in turn limits access for people with low incomes and people of color, populations who are disproportionately renters (Pendall, 2000). Because of this impact, low-density zoning is associated with greater racial segregation and also spatial concentrations of affluent households in communities where zoning has excluded others (Rothwell & Massey, 2009; Lens & Monkkonen, 2016).

Developers may produce higher-density housing under restrictive zoning, but they must obtain special permits or zoning variances to do so. This need for approval from public boards, which typically require public input, creates opportunities for vocal opponents to block new development that includes higher-density or affordable housing.

## ZONING REFORMS

Some cities and states have enacted zoning reform to allow somewhat higher-density housing by-right, meaning no special variance is needed. Minneapolis, for example, eliminated single-family districts in 2018 and now allows up to three units where previously only one was permitted. The state of Oregon enacted land-use policies in 2019 that allow duplexes in neighborhoods previously zoned single-family in cities with at least 10,000 residents and allow even higher densities in cities with more than 25,000 residents. California enacted reform in 2021 that allows owners to build duplexes or fourplexes on parcels previously zoned for single-family structures.

These density-related reforms are too recent for us to fully know their impact. Allowing higher densities does not immediately guarantee an increase in the general housing supply or an increase in rental housing, but it at a minimum allows the opportunity for higher-density housing to be built. Research in Chicago found that five years after upzoning, mixed-use and commercial districts saw an increase in property values, but not in the supply of housing (Freemark, 2020). More time may be needed, however, to see the longer-term impact given the long timelines for development. Also, many questions are unanswered about how these zoning reforms should be designed.

A growing number of cities have eliminated parking requirements with an aim to reduce development costs and lower the cost of housing, including Cambridge, MA and Culvert City, CA, which enacted citywide eliminations in 2022. Recent research shows that San Diego's elimination of parking requirements near transit stops resulted in greater financial viability for affordable housing development.

## FEDERAL IMPLICATIONS

Federal legislation could potentially incentivize or require local jurisdictions to enact less restrictive zoning. Legislation introduced in the 117<sup>th</sup> Congress (2021-2022) included a bill from

Senators Todd Young (R-IN) and Brian Schatz (D-HI), the “Yes In My Backyard Act,” or YIMBY Act, that would require Community Development Block Grant recipients to make efforts to reduce barriers to affordable housing, including zoning reform that enables more multifamily housing and reduces minimum lot size requirements. NLIHC supports the “Yes In My Backyard Act.” CDBG funds, however, may be a weak incentive for smaller, affluent jurisdictions to change their zoning. In some states, few cities and towns with land use powers receive CDBG funds directly from HUD (Schuetz, 2018). In addition, CDBG's allocation formula provides more funds to larger and poorer communities than to more affluent communities where more and less expensive housing is likely needed. Another bill introduced in the 117<sup>th</sup> Congress, the “Housing Supply and Affordability Act”, by Senators Amy Klobuchar (D-MN), Rob Portman (R-OH), and Tim Kaine (D-VA) provided competitive grants for states, regions, and localities to support their development and implementation of comprehensive plans that reduce barriers, such as zoning restrictions, to new housing. The Biden Administration's Housing Plan calls for giving a competitive advantage in certain federal transportation and economic development grant programs to jurisdictions that have reformed their land use policies. It also calls for competitive grants to help jurisdictions eliminate barriers to housing production.

Zoning reform in many communities is a necessary step for increasing the housing supply and creating housing options for households with limited incomes. On its own, however, reform will not eliminate the shortage of housing for extremely low-income renters. What many extremely low-income renters can afford to pay in rent is too low for the private market to adequately respond to their housing needs. A family of three with poverty-level income, for example, can afford a monthly rent of approximately \$576, assuming they should not spend more than 30% of their income on housing. Many families cannot even afford to spend 30%. This rent does not typically cover the development and operating costs of new housing

and often doesn't even cover the expenses of maintaining older housing. Zoning reform provides the opportunity for more housing and higher-density multifamily housing to be built, but we need significant federal investment in housing assistance like Housing Choice Vouchers, the national Housing Trust Fund, and the Low-Income Housing Tax Credit, to enable extremely low-income renters to afford that housing.

## FOR MORE INFORMATION

Urban Institute. (2019). [Zoning Matters: How Land-Use Policies Shape Our Lives](#).

U.S. Department of Housing and Urban Development. (Spring, 2018). [Regulatory Barriers and Affordable Housing](#).

# Shelter Access for Transgender People Experiencing Homelessness

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By Kayla Laywell, Housing Policy Analyst, NLIHC

**D**uring its tenure, the Trump Administration made a concerted effort to remove the protections and rights of lesbian, gay, bisexual, transgender, and queer (LGBTQ) people. In 2019, HUD, under the leadership of Secretary Ben Carson, announced plans to gut protections for transgender and gender-nonconforming people experiencing homelessness by removing a crucial provision in the Equal Access Rule of 2016. This proposed rule change was an explicit attack on a community that already faced steep barriers to accessing shelter. One in three transgender Americans has been homeless at some point in their lives. The 2015 U.S. Transgender Survey found that 70% of respondents reported mistreatment in shelters due to their gender identity, and 44% reported they had to leave shelters due to poor or unsafe conditions. In April 2021, HUD, under the Biden Administration, withdrew the previous Administration's harmful changes to the Equal Access Rule, and reaffirmed HUD's mission and commitment to creating inclusive communities. The withdrawal also sends a signal that the agency will not engage in the federally funded discrimination proposed by the Trump Administration.

## CHANGES TO THE EQUAL ACCESS RULE

### Background

On February 3, 2012, HUD published its final rule entitled "[Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity](#)." The 2012 Equal Access Rule was created to ensure that HUD's housing programs would be open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. On September 21, 2016, HUD published a follow-up rule, "[Equal Access in Accordance with an Individual's](#)

[Gender Identity in Community Planning and Development Programs](#)," which built upon the Equal Access Rule of 2012, ensuring equal access to HUD's Office of Community Planning and Development (CPD) programs, specifically shelters, in accordance with a shelter seeker's gender identity. HUD's 2016 Equal Access Rule amendments constitute crucial policy to improve the treatment of transgender and gender-nonconforming individuals in securing emergency shelter.

### Now Withdrawn: Anti-Transgender Equal Access Rule

On July 24, 2020, the Trump Administration published its proposed anti-transgender changes to the Equal Access Rule, "[Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs](#)". This proposed rule change would have weakened protections for transgender people experiencing homelessness and seeking emergency shelter, allowing shelter providers to deny admission or access to services consistent with a person's gender identity.

Features of the harmful proposed changes included:

- Revisions to the definition of gender identity to mean actual or perceived gender-related characteristics (deleting the current rule's "the gender by which a person identifies, regardless of the sex assigned to that person at birth and regardless of the person's perceived gender identity").
- Allowing shelter providers to place and accommodate individuals on the basis of the shelter provider's policies for determining someone's sex.
- Allowing shelter providers to deny admission using a range of factors, including the provider's "good faith belief" that an individual is not of the sex that the



shelter serves (e.g., a women's shelter), an individual's sex as reflected in official government documents, or the gender with which a person identifies.

- Allowing shelter providers to use physical characteristics as “reasonable considerations” to determine a person's biological sex. This may include factors such as height, the presence of facial hair, the presence of an Adam's apple, and other physical characteristics that the Trump Administration claimed “when considered together, are indicative of a person's biological sex.”

Despite admitting that data was lacking, HUD under the Trump Administration based its justifications on anecdotal evidence and dangerous stereotypes, undocumented “religious freedom” assertions, unfounded regulatory burdens on shelters, and other false, misleading, and discriminatory claims.

Due in part to the tremendous success of the Housing Saves Lives campaign and efforts by advocates nationwide, the publication of the final rule was delayed and never published by the Trump Administration.

### **Housing Saves Lives Campaign**

In response to the proposed rule, True Colors United launched the Housing Saves Lives campaign, co-led by over 50 national and local organizations, including NLIHC. The Housing Saves Lives campaign encouraged advocates to submit comments during the 60-day comment period in opposition to the Trump Administration's proposed rule. Together, the campaign worked with members of Congress to urge HUD to rescind the rule, hosted a *Week of Action* with an array of national events led by partner organizations, recruited mayors and other public officials from across the nation to submit a public comment letter opposing the proposed rule, submitted op-eds and contributed to news articles. More than 66,000 public comments were submitted during the 60-day period, becoming the largest comment campaign on a HUD regulation ever.

### ***Bostock v. Clayton County* Ruling**

On June 15, 2020, The United States Supreme Court issued a landmark ruling on the civil rights of LGBTQ people. In a 6-3 vote in *Bostock v. Clayton County, Georgia* and *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission*, the court held that Title VII of the “Civil Rights Act” bars discrimination based on gender identity and sexual orientation. This landmark civil rights ruling protects LGBTQ people from discrimination in employment, extending protections for millions of LGBTQ workers and making it illegal to be fired for simply being LGBTQ. The majority's interpretation is consistent with the Equal Access Rule's 2016 provision to ensure protections for transgender people from discrimination in homeless shelters and HUD-funded services.

Title VIII of the “Civil Rights Act of 1968” (the “Fair Housing Act”) and its proceeding amendments made it unlawful to sell, rent, or otherwise make unavailable or deny a dwelling to anyone because of race or color, religion, sex, national origin, familial status, or disability. In addition to the Equal Access Rule of 2012 and the addition to it in 2016, HUD has historically enforced the Fair Housing Act's prohibition of sex stereotyping to cover LGBTQ people. The *Bostock* ruling will continue to influence fair housing rulings because the lower courts often rely on Title VII when interpreting the Fair Housing Act.

### **President Biden's Executive Order Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation**

On his first day in office, President Joe Biden signed Executive Order 13998 directing the federal government to fully implement the U.S. Supreme Court's landmark ruling in *Bostock v. Clayton County, Georgia*. The order reinforced laws that prohibited sex discrimination, including the Fair Housing Act, which prohibits discrimination on the basis of gender identity or sexual orientation.

This order repudiated the anti-transgender rhetoric that was commonplace in the previous Administration and instructed the heads of

all federal agencies to review agency actions relating to sex discrimination and make decisions consistent with the instruction of the order within 100 days. The order required agency directors to consider whether to revise, suspend, or rescind such agency action, or create new agency actions, as necessary to fully implement statutes that prohibit sex discrimination and the policy set forth in the Executive Order.

### **HUD Withdraws Anti-Transgender Proposal**

HUD published in the *Federal Register* on April 27, 2021, a withdrawal of its proposed rule “[Making Admissions or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs; Withdrawal; Regulatory Review](#).” This removed the previous Administration’s harmful anti-transgender proposal from HUD’s Spring 2021 Unified Agenda and Deregulatory Actions. HUD also restored most guidance and technical assistance from the 2016 Equal Access Rule to CPD-funded emergency shelters, temporary housing, buildings, housing, and other programs that were designed to ensure they comply with the rule. HUD continued to release resources by technical assistance providers to HUD grantees.

### **Legislative Action**

In the 117<sup>th</sup> Congress, Senator Jeff Merkley (D-OR) and Representative David Cicilline (D-RI) introduced “The Equality Act,” (H.R. 5/S.393), which would expand civil rights protections to LGBTQ people by banning discrimination based on sexual orientation and gender identity in housing, education, employment, and other areas. The bill defines and includes sex, sexual orientation, and gender identity among the classes protected against discrimination or segregation and amends the 1964 Civil Rights Act to explicitly prohibit discrimination on the basis of sexual orientation and gender identity in employment, education, housing, credit, jury service, public accommodations, and federal funding. In the 117<sup>th</sup> Congress, the bill passed the U.S. House of Representatives but has not received a vote in the U.S. Senate.

## **HOW ADVOCATES CAN TAKE ACTION**

### **Urge legislators to:**

- Pass the “Equality Act,” to expand civil rights protections to LGBTQ individuals by banning discrimination based on sexual orientation and gender identity in housing, education, employment, and other areas.
- Pass the “Fair and Equal Housing Act” (H.R. 4286 in the 117th Congress) to prohibit housing discrimination based on sexual orientation and gender identity.
- Address issues of discrimination and violence against transgender people, especially Black and Latinx transwomen.

### **Urge HUD to:**

- Work to address the housing and emergency shelter needs of the LGBTQ community.
- Urge the Biden Administration to:
- Work with Members of Congress to pass S.393, the “Equality Act” and ensure immediate and full enforcement across all federal departments and agencies.
- Work to address the housing and emergency shelter needs of the LGBTQ community.
- Address issues of discrimination and violence against transgender people, especially Black and Latinx transwomen.

## **FOR MORE INFORMATION**

The “Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity” is at

<https://www.govinfo.gov/content/pkg/FR-2012-02-03/pdf/2012-2343.pdf>.

The “Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs” is at <https://www.govinfo.gov/content/pkg/FR-2016-09-21/pdf/2016-22589.pdf>.

HUD’s Press Release: “HUD Withdraws Proposed Rule, Reaffirms Its Commitment to Equal

Access to Housing, Shelters, and Other Services Regardless of Gender Identity:” <https://bit.ly/3EQGgJT>.

HUD’s Withdrawn Proposed Rule: “Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs; Withdrawal; Regulatory Review:” <https://bit.ly/3hVXTPr>.

Executive Order “Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation”: <https://bit.ly/3OxFwwh>.

HUD’s Office of Fair Housing and Equal Opportunity’s (FHEO’s) LGBTQ website is at [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/housing\\_discrimination\\_and\\_persons\\_identifying\\_lgbtq](https://www.hud.gov/program_offices/fair_housing_equal_opp/housing_discrimination_and_persons_identifying_lgbtq).

National Center for Transgender Equality: <https://transequality.org/>.

True Colors United: <https://truecolorsunited.org/>.

# The Preservation of Affordable Housing

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By Dan Emmanuel, Senior Research Analyst, NLIHC

**T**he United States faces a shortage of approximately 7 million rental homes affordable and available to the lowest income renters. Federal housing subsidies, meanwhile, provide a vital, albeit insufficient, supply of affordable housing. How to expand this supply and promote housing stability is a primary concern for federal affordable housing policy. Yet preserving the existing federally assisted housing stock is also a critical question for federal policy. The existing stock must be preserved to ensure both housing quality and stability for current tenants. Efforts to expand the federally assisted housing stock and close affordability gap also hinge on preservation, since the loss of federally assisted units can undermine efforts to expand supply through new production.

## BACKGROUND

### What Is Preservation?

Federal project-based subsidies often provide a one-time upfront allocation of capital for development, or a time-limited operating subsidy (e.g., rental assistance contracts). Yet, federally assisted affordable housing receives limited rental revenue from tenants to finance future capital needs or ongoing operating costs when operating subsidies end. Sustained and renewed funding commitments are needed to ensure future affordability and habitability as federally assisted housing ages and existing rent and tenant eligibility requirements come up for renewal or extension. Ensuring sustained funding and the long-term affordability, quality, and financial viability of federally assisted housing is the cornerstone of affordable housing preservation.

Preservation efforts are shaped by different risks facing the federally assisted stock. Reina (2018) identifies three basic types of risks for preservation: expiration or exit, depreciation,

and appropriations. The applicability and extent of each risk varies across federal project-based subsidy programs, and the risks can be interrelated.

Exit risk results from affordability and eligibility restrictions that can expire or policies that enable property owners to exit these restrictions early. In exchange for receiving a federal project-based subsidy, property owners typically agree to affordability and eligibility restrictions for a set period. The duration of these restrictions is determined prior to the awarding of a one-time capital subsidy, tied to the payment of a mortgage, or subject to the renewal of a rental assistance contract. In some instances, property owners can exit before affordability and eligibility restrictions are set to expire through prepayment of a mortgage, foreclosure, or a legal loophole such as the qualified contract (QC) option in the Low-Income Housing Tax Credit (LIHTC) program. Properties with for-profit owners are generally considered to be at greater risk for exit, particularly in tighter markets where the owners can operate the properties more profitably as market-rate housing.

Depreciation risk refers to the degree to which the financial stability and physical quality of federally subsidized housing can deteriorate over time. The risk of depreciation can be a greater threat than exit risk to the preservation of federally assisted housing. The limited rental income resulting from the eligibility and affordability requirements essential to affordable housing programs mean that owners of federally assisted housing typically require ongoing operating or subsequent capital support, or sometimes both, to maintain the financial stability and physical viability of such housing. Absent continued public investment, federally assisted housing can become physically outdated, or even fall into disrepair, posing a threat to habitability. Failed physical inspections can lead to the removal of assisted housing from federal programs. Centralized data on the physical condition of the federally assisted stock

are, however, only available for some federal programs, significantly limiting our knowledge of depreciation risk.

Appropriations risk refers to the degree to which federally subsidized housing depends on Congress to provide continual funding in order to continue to operate as affordable housing. Federally assisted housing is not a one-time cost. Funding for rental assistance contracts or operating assistance must not only be continually renewed by Congress, but also be expanded to keep pace with inflation. Failing to do so means rental assistance contracts might not be renewed, or assistance might fail to keep pace with increasing operating costs, creating the potential for loss of affordable units through exits or depreciation. Capital subsidies must also continue to be made available by Congress after initial construction to ensure the availability of funds for physical preservation to prevent depreciation. In some programs, such as LIHTC, subsequent allocations of capital subsidies might present the only way to extend eligibility and affordability restrictions within a program.

### **Why Does Preservation Matter?**

Preservation is essential for any realistic approach to protecting the lowest-income renters and expanding the supply of affordable housing for them. Preservation stops displacement and housing instability for current tenants, prevents the loss of difficult-to-replace housing in desirable neighborhoods, mitigates further disinvestment from distressed communities, presents an opportunity to reduce greenhouse gas emissions through energy retrofitting, and prevents the further decline of the already limited federally subsidized housing stock.

The failure to preserve federally subsidized housing can lead to unaffordable rents, a loss of habitability, or evictions for current tenants. Preservation directly addresses these sources of housing instability. Though some federal housing programs offer tenant protection vouchers (TPVs) to tenants when preservation efforts fail, recent research questions their efficacy as a safety net and TPVs are not available to tenants of the

largest federal housing production program, LIHTC (NLIHC and PAHRC, 2018). Preservation might be the only existing option to ensure housing stability for many LIHTC tenants so long as existing eligibility and affordability requirements are maintained in the process. Replacing federally assisted housing lost from neighborhoods offering a high degree of amenities such as access to transportation, good schools, and employment opportunities is also difficult, if not impossible. The cost of land, regulatory barriers, and ‘Not in My Backyard’ mentality (NIMBYism) can present significant barriers to new development in such neighborhoods. Preservation of affordable homes provides continued access to these neighborhoods for low-income households and combats displacement and further residential segregation. The same issues that make it difficult to replace housing in high-cost and exclusionary neighborhoods could also make preservation more cost-effective than new construction. In disadvantaged neighborhoods, preservation has the potential to prevent further disinvestment.

Preservation also presents a clear opportunity to retrofit older federally assisted housing for energy-efficiency, lowering greenhouse gas emissions and figuring in a larger national strategy to combat climate change. These efforts could also lower utility costs. The residential sector, when including emissions from electricity use, accounted for 15.4% of US greenhouse gas emissions in 2020 (EPA, 2022) Further research is needed to fully compare the environmental impact of new construction and preservation.

Finally, preservation prevents the loss of units from the federally assisted stock. Given the current shortage of approximately seven million affordable and available units for the lowest-income renter households and chronic underfunding for federal programs, preventing the loss of the already limited assisted stock is critical. The stock will remain the same or decline if the loss of units equals or exceeds new production. Preservation, for all these reasons, is central to promoting housing stability and



quality, as well as expanding the reach of federal affordable housing policy.

## FORECASTING PRESERVATION NEEDS

Nearly 5 million affordable rental homes are supported by federal project-based subsidies, representing 10% of the total U.S. rental housing stock. LIHTC supports half of federally assisted homes, making it the largest program, followed by project-based Section 8 (28%), public housing (18%), and Section 515 Rural Rental Housing Loans (8%). Since some subsidies only provide a portion of the funding needed to build or maintain federally assisted housing, 40% of federally assisted homes rely on funding from multiple subsidy programs.

The National Housing Preservation Database (NHPD) allows users to examine the federal subsidies associated with assisted housing at the property level, including when eligibility and affordability restrictions associated with these subsidies are set to expire. In cases where properties have multiple subsidies, the NHPD allows users to determine the latest effective end date for restrictions at a given property. Analysis of NHPD data indicates eligibility and affordability restrictions are set to expire for 312,446 federally assisted homes by the end of 2025, which is 6% of the federally assisted stock. LIHTC (44%) and project-based Section 8 (42%) currently account for most of these homes. The portion of expiring properties assisted by LIHTC is expected to continue rising towards the end of the decade as more properties begin to reach 30 years of service and the end of their federally mandated eligibility and affordability restrictions, though some states mandate or incentivize longer affordability. The NHPD accounts for state-mandated affordability restrictions beyond the federal 30-year minimum based on reviews of current and past state qualified allocation plans (QAPs). The availability of property-level LIHTC data regarding QC waivers and state-level incentives for longer use restrictions, however, is extremely limited, which undermines efforts to identify specific LIHTC properties at risk of loss

and produce more accurate program-wide risk estimates (NLIHC and PAHRC, 2022).

Many properties losing their restrictions will renew their assistance or secure new funding to remain affordable, while a smaller share will not. Others might be subject to local voluntary eligibility or affordability restrictions that are longer in duration than required under federal law. Properties in strong housing markets owned by profit-minded owners are at the greatest risk for converting to market-rate housing. Based on past trends, 176,760 federally assisted homes with affordability restrictions expiring over the next five years could be lost from the affordable housing stock if preservation efforts aren't expanded. Whether these homes will continue to provide affordable rents in the private market is uncertain and will depend on a variety of factors including the motivations of owners, local housing market conditions, and capital needs.

The full scope of depreciation risk for the federally assisted stock is uncertain since housing quality data aren't required to be collected for 51% of federally assisted homes. Data on physical quality, however, are available for public housing and HUD Multifamily assisted properties through REAC scores. Inspectors assign a REAC score based on the frequency and severity of housing quality and safety deficiencies observed while examining the building exterior, systems, and a sample of homes at each property. Twenty-three percent of public housing homes and 4% of homes assisted by project-based Section 8 scored below 60 and failed their last REAC inspection. Ten percent of homes assisted by public housing and 2% assisted by project-based Section 8 failed at least two of their past three inspections and likely face higher depreciation risk. These properties likely require immediate investment to cover outstanding maintenance deficiencies and provide safe and healthy living conditions for residents. There is already an estimated \$70 billion capital needs backlog for public housing alone.

## WHAT TO SAY TO LEGISLATORS

Advocates should make it clear to legislators that continual reinvestment is needed to preserve existing federally assisted housing, and that preservation is needed to close the affordable housing gap. Specifically:

- Federal capital and operating subsidies should be increased to both preserve and expand the existing supply of affordable housing. Priority should be given to funding programs such as the national HTF, public housing, project-based Section 8, and USDA rural rental assistance and preservation programs that serve the lowest income renters.
- Annual federal appropriations for public housing, project-based Section 8, USDA rural housing programs must, at a minimum, keep pace with inflationary costs.
- Congress must address the capital needs backlog for public housing. The best way to do this is through direct investment in the public housing capital fund.
- Congress should close the QC loophole for future LIHTC properties and revise the formula for determining the QC sale price to reflect actual market value for existing LIHTC properties.
- Greater investments in staff and technology are needed to improve the quality and availability of property-level LIHTC data for preservation. Congress should also explore granting more explicit oversight and enforcement powers to collect program data to HFAs or HUD and require the IRS to share its program data with HUD. Better data collection is needed to improve the quality and completeness of existing LIHTC data for preservation, including property-level data on ownership, QC waivers, and use restriction end dates.

## FOR MORE INFORMATION

Environmental Protection Agency (EPA). (2022). Inventory of US greenhouse gas emissions and sinks 1990-2020. Retrieved from <https://www.epa.gov/system/files/documents/2022-04/us-ghg-inventory-2022-main-text.pdf>.

NLIHC and PAHRC. (2022). Improving Low-Income Housing Tax Credit data for preservation. Washington, DC: Authors. Retrieved from <https://preservationdatabase.org/wp-content/uploads/2022/10/Improving-Low-Income-Housing-Tax-Credit-Data-for-Preservation.pdf>.

NLIHC and PAHRC. (2021). Picture of preservation 2021. Washington, DC: Authors. Retrieved from [https://preservationdatabase.org/wp-content/uploads/2021/10/NHPD\\_2021Report.pdf](https://preservationdatabase.org/wp-content/uploads/2021/10/NHPD_2021Report.pdf).

NLIHC & PAHRC. (2018). Balancing priorities: Preservation and neighborhood opportunity in the Low-Income Housing Tax Credit program beyond Year 30. Retrieved from <https://preservationdatabase.org/wp-content/uploads/2018/10/Balancing-Priorities.pdf>.

Reina, V. (2018). The preservation of subsidized housing: What we know and need to know. Lincoln Institute of Land Policy. Retrieved from [https://www.lincolninst.edu/sites/default/files/pubfiles/reina\\_wp18vr1.pdf](https://www.lincolninst.edu/sites/default/files/pubfiles/reina_wp18vr1.pdf).



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# **Chapter 7:**

## TENANT PROTECTIONS AND EVICTION PREVENTION

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# State and Local Tenant Protections during and beyond the COVID-19 Pandemic

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By Sarah Gallagher, Senior Project Director, and Victoria Bourret, Senior Project Coordinator, NLIHC

**T**he COVID-19 pandemic has highlighted the connection between housing and public health, as millions of renters – predominantly people of color – struggled to remain safely and stably housed. To mitigate the spread of COVID-19 and keep people in their homes, the Center for Disease Control and Prevention issued a nationwide eviction moratorium, Congress appropriated 46.55 billion in emergency rental assistance, and many states and local jurisdictions across the country passed a variety of tenant protections to ensure access to Emergency Rental Assistance (ERA), prevent evictions, and ensure housing stability for the most marginalized households.

The ERASE State and Local Tenant Protections Database provides information about protections passed or implemented since January 2021. The database includes information about the jurisdictions enacting protections, the implementing authorities, the status of protections, brief descriptions of these protections, and links to more information on both short-term protections directly related to emergency rental assistance and long-term tenant protections intended to outlast the pandemic.

To date, more than 150 state and local laws have been passed to support tenants' rights and housing stability. These tenant protections can be separated into five categories and are described in detail below: (1) state and local eviction moratoriums (2) pauses on the eviction process to allow for ERA processing; (3) mandates that require landlords to apply for or share information on ERA before filing an eviction and that limit tenant fees; (4) increases to tenant representation during the eviction process; and

(5) protections that reduce discrimination and promote housing stability.

## STATE AND LOCAL EVICTION MORATORIUMS

To further mitigate an eviction crisis during the public health emergency, many states and local jurisdictions supplemented Congress' and the CDC's eviction moratoriums with a patchwork of state and local moratoriums.

According to Eviction Lab's "Preliminary Analysis: A Year of Eviction Moratoria," between March 2020 and March 2021, 43 states, the District of Columbia, and five territories implemented eviction moratoriums. The state actors instituting the moratoriums varied from court officials and governors to state legislatures. The characteristics and strengths of these protections also varied, as did the justifications of the moratoriums (e.g., public health measure or response to the economic crisis), the durations (ranging from one month to one year), and the stages of the eviction process in which the eviction was frozen (e.g., written notice, eviction filing, court hearing, court decision, or writ enforcement).

The eviction moratoriums passed during the pandemic demonstrated the power that federal, state, and local governments have in protecting citizens during a public health emergency and simultaneous economic crisis. According to the American Journal of Epidemiology, COVID-19 infection and mortality rates steadily increased in states after the "CARES Act" eviction moratorium expired in the summer of 2020, due to households doubling up with other renters or entering homeless shelters. Thus, the eviction moratorium was necessary in halting the spread of COVID-19, and lawmakers should consider implementing eviction moratoriums in their jurisdictions when responding to future public health emergencies and natural disasters.

## **Pauses on the Eviction Process to Allow for ERA Processing**

In 2021, with the rollout of the federal ERA program, several state and local courts issued rulings that tied tenant protections to the availability of ERA in their area. These protections varied in aim and structure, but in general they were designed to ensure that landlords and property owners had made every effort to resolve problems related to rental arrears before turning to the eviction process.

Some states, like California, Virginia, and Connecticut, enacted legislation or issued executive orders requiring that landlords apply for ERA prior to filing an eviction. In some cases, these policies also ensured tenants were given a 30-day notice before an eviction could be filed.

Jurisdictions also established wait periods and safe harbors to ensure that renters who applied for assistance were not evicted as they waited for their applications to be approved. Most such protections, like those enacted in Arizona, California, and Oregon, delayed eviction proceedings for 30 to 90 days, pending a tenant's successful ERA application. These safe harbor policies were critical in allowing ERA program administrators time to process large numbers of applications during the pandemic.

Eviction stays were another effective strategy in reducing eviction filings. During the pandemic, 16 state and local jurisdictions enacted protections that paused or delayed eviction judgments to allow time for tenants to apply for ERA and for the program to disburse assistance. In Illinois, for example, the state Supreme Court redirected every new eviction filing to the state's ERA program. Eviction stays were a critical intervention, helping delay final judgments and giving renters opportunities to apply for ERA and avoid eviction.

## **Mandates That Increase Access to Information and Limit Late Fees**

The eviction process can be complicated and time-consuming. It often includes multiple steps, fees, and deadlines, which if missed, can lead to a judgement against the tenant. Increasing

access to information and reducing additional tenant late fees can reduce burdens and increase successful outcomes for tenants with multiple barriers.

To help ensure tenants and landlords had the information they needed to successfully apply for and access ERA and prevent evictions, in 2021, 10 states and localities implemented policies requiring that information on ERA be shared before an eviction could be filed, as well as throughout the eviction process.

Some policies required landlords to provide tenants facing eviction for nonpayment of rent with information about ERA during the court summons process. A court summons is issued to notify a tenant that their landlord intends to initiate eviction proceedings against them and is issued before an eviction has been filed. Providing information about ERA during the summons process helped increase awareness of the program and connected tenants to resources to address rental arrearage and prevent eviction.

Policies that reduce or limit late fees typically extend the period during which a tenant can pay rent without being charged a late fee or cap the size of the late fee a landlord can charge. Four states and three local jurisdictions passed such laws in 2021. Some ERA programs implemented policies requiring landlords to limit or reduce late fees as a condition of receiving ERA. For example, the ERA program in Lexington-Fayette County, Kentucky, required landlords who received ERA to forgive all late fees, penalties, and interest related to a tenant's rental arrears.

## **Increases to Tenant Representation during the Eviction Process**

Data shows that when tenants have legal representation during the eviction process, they are more likely to remain in their homes. With legal representation, tenants may be more informed of their rights, better positioned to navigate complicated eviction processes, and more able to access tenant protections that reduce fees or rent owed and allow them to stay in their homes. Two long-term strategies to increase representation are to develop

mediation programs within state and local courts and develop and fund tenants' right to counsel programs.

## LANDLORD AND TENANT MEDIATION

Landlord-tenant mediation, combined with emergency rental assistance and additional tenant protections, can be an important tool for reducing the prevalence and harmful consequences of eviction. During the pandemic, several states and localities enacted policies that required or incentivized landlords to participate in mediation prior to proceeding with an eviction.

Mediation policies' participation requirements vary by state and locality. Most policies, such as those in Illinois and Washington State, require landlords to provide notice of available mediation services prior to filing an eviction and to delay filing if a tenant agrees within a certain number of days to participate. Landlords in Philadelphia, however, are required by law to participate in mediation before filing an eviction for nonpayment of rent.

While mediation can be a useful tool, its effectiveness largely depends on whether additional renter protections are in place. Research indicates mediation works best with a combination of financial assistance, access to legal aid, and additional tenant protections and resources. The voluntary nature of some eviction mediation policies may be a barrier to widespread participation. Requiring landlords to engage in mediation prior to filing an eviction may reduce evictions and their devastating, enduring consequences.

## ESTABLISHING RIGHT-TO-COUNSEL PROGRAMS

The most effective way of ensuring tenants facing eviction have access to legal aid is to implement and fund right-to-counsel laws, which guarantee defendants in a civil court case – including eviction cases – access to legal counsel. In eviction cases, access to legal representation can make the difference between a tenant remaining safely, stably housed and facing eviction and, in

the worst case, homelessness. In fact, one study estimates that 90% of tenants who have legal representation in eviction court avoid being displaced into homelessness. However, according to the American Civil Liberties Union (ACLU), only 10% of tenants have legal representation in eviction cases, compared to 90% of landlords.

Recognizing the importance of legal aid, three states and 15 cities have enacted right-to-counsel policies for tenants facing eviction in recent years. New York City was the first jurisdiction to pass right to counsel legislation and laid the groundwork for similar campaigns in other parts of the country. Many of these initiatives were led by grassroots organizers including tenants who had faced eviction and saw right to counsel as a way to access power.

A major component of many right-to-counsel programs is income eligibility, often because resources are limited. Programs that include income eligibility typically set income limits at or below 200% of the federal poverty line, or 80% or below of area median income (AMI). Some programs have additional requirements, such as the Louisville Kentucky program, which restricts participation to tenants with at least one child.

Funding is another critical component of right to counsel legislation, needed for program implementation and legal services. States and cities that implemented right-to-counsel laws before the pandemic utilized general revenue funds and private donations to help fund their programs. Federal relief packages, including the “American Rescue Plan Act” and the “CARES Act,” have funneled an unprecedented amount of flexible funds into states and cities, and have been used to establish right-to-counsel programs more recently.

### Protections That Reduce Discrimination and Promote Housing Stability

Source of income protections and laws that allow for the sealing and expungement of eviction records are long term tenant protections that can help balance the unequal power dynamic between landlords and tenants.

## SOURCE-OF-INCOME PROTECTIONS

Many low-income tenants who use housing subsidies like housing vouchers, emergency rental assistance, and other forms of public assistance struggle to find or maintain safe, quality, affordable housing due to source-of-income (SOI) discrimination – the practice of denying an individual the full and equal enjoyment of housing based on that individual’s lawful source of income. One of the most common examples of source of income discrimination is against section 8 voucher holders - many landlords refuse to accept the vouchers, often placing the perspective renters in a situation where they must return the vouchers to the housing agency because their allotted time to find housing ran out.

SOI laws prohibit landlords, owners, and real estate brokers from refusing to rent to current or prospective tenants based on the income they use to pay for their housing, although not all laws cover voucher holders. Research conducted by HUD in 2018 shows lower rates of discrimination against voucher holders in jurisdictions that include section 8 as a source of income protection.

A key element of source of income laws is enforcement, which is determined by the individual jurisdictions. Enforcement may be through the courts, such as pursuing legal action against landlords who violate the law, testing routine violators of the law, or through administrative action. Education is another key element of source of income protections. Many jurisdictions that have passed SOI laws created education campaigns to inform renters of their rights and help landlords understand the law’s expectations.

Before the pandemic, approximately 16 states and 90 municipalities had SOI laws in place. In 2021 and 2022, three states and 16 local jurisdictions passed SOI laws, bringing the total number of states and local jurisdictions with active SOI laws to 19 and 106, respectively.

## SEALING AND EXPUNGEMENT OF EVICTION RECORDS

Laws that allow for the sealing and expungement of eviction records can help mitigate the devastating consequences of eviction and increase access to safe, stable housing moving forward. Expungement, while less common than sealing, means a record is removed from a court system’s public view, preventing prospective landlords from seeing an eviction on a tenant’s rental history and allowing the applicant to answer “no” when asked if they have been evicted. Eviction sealing refers to a court controlling and restricting access to a record. Tenants whose eviction records are sealed must still reveal those records on housing applications, which often triggers an automatic denial.

At least eight states currently have some form of eviction record-sealing laws in place: California, Colorado, Illinois, Minnesota, Nevada, New Jersey, New York, and Oregon. The Cleveland Municipal Housing Court and Toledo Housing Court have enacted local rules that allow for eviction records to be sealed in certain circumstances. Several states with existing eviction record-sealing and expungement legislation – California, Illinois, Nevada, New Jersey, Oregon, and Washington, DC – also passed new legislation or amended existing laws to limit sealing to cases filed specifically during the pandemic.

The strength of these laws varies, depending on the stage of the eviction process the law is sealing. For example, Colorado’s eviction sealing law requires that courts suppress records of eviction cases only while they are moving through the court process and that records are kept hidden only if the tenant wins. Therefore, tenants who are evicted are no longer protected from the eviction sealing law, meaning that displaced tenants with the greatest need for rehousing face the greatest barriers to safe affordable housing. Eviction sealing laws can also present a challenge to housing advocates and legal service providers trying to access eviction data to inform their advocacy and work supporting tenants.



States and localities must work to strengthen these laws by ensuring that all records of the eviction process – from notice to judgement – are sealed. They must also mitigate some of the unintended consequences involved in accessing eviction data by facilitating data-sharing agreements between eviction courts and nonprofit organizations, so that housing advocates and legal aid providers can better serve low-income and marginalized tenants.

## RECOMMENDATIONS

The pandemic highlighted the need for additional tenant protections but also presented opportunities to learn how existing protections can be strengthened and expanded in the future. Emergency rental assistance and the short-term tenant protections tied to ERA will eventually expire, but long-term tenant protections, like source-of-income discrimination laws, right to counsel, and sealed eviction legislation, will outlast the pandemic and can guide housing advocates and policymakers looking to pass similar protections in their own jurisdictions.

NLIHC recommends the following actions at the state and local levels to protect tenants, prevent evictions, and support long-term housing stability:

- State and local governments should make permanent those ERA-era tenant protections enacted during the pandemic and continue to pass tenant protections focused on all stages of the eviction process to advance housing as a human right.
- States and localities must assess their tenant-protection laws and programs to ensure maximum effectiveness in preventing evictions, from improving enforcement of source-of-income discrimination laws to adequately funding right-to-counsel programs.
- ERA programs, states, and local courts should develop collaborative partnerships to ensure the successful implementation and enforcement of tenant protections at all stages of the eviction process.
- State and local courts should centralize eviction filing and outcome data for facilitating access to ERA to those in need, enforce existing tenant protections, and track housing stability outcomes for tenants who may have been evicted.
- Long-term federal tenant protections, such as a Tenant’s Bill of Rights, source-of income discrimination laws, “just cause” eviction standards, right to counsel, and sealed eviction legislation, are needed to ensure that all renters – across all jurisdictions – share a basic level of protection.
- A permanent program to provide emergency rental assistance, such as that proposed in the “Eviction Crisis Act,” is needed to ensure housing stability for households that experience financial shocks in the future.

## FOR MORE INFORMATION

“ERASE State and Local Tenant Protections Database,” National Low Income Housing Coalition, accessed November 30, 2022, <https://nlihc.org/tenant-protections>.

Alexander, A. K. & Lee, S. “Preliminary Analysis: A Year of Eviction Moratoria,” Eviction Lab Updates (blog), Eviction Lab, March 29, 2021, <https://evictionlab.org/one-year-of-eviction-moratoria/>.

Leifheit, K. et al. “Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality,” American Journal of Epidemiology 190, no. 12 (2021): 2503–2510, <https://academic.oup.com/aje/article/190/12/2503/6328194>.

Jade Vasquez et al. “Tenant Protections and Emergency Rental Assistance During and Beyond the COVID-19 Pandemic,” National Low Income Housing Coalition, January 2022, [https://nlihc.org/sites/default/files/Tenant-Protections\\_Emergency-Rental-Assistance-during\\_beyond\\_COVID-19\\_Pandemic.pdf](https://nlihc.org/sites/default/files/Tenant-Protections_Emergency-Rental-Assistance-during_beyond_COVID-19_Pandemic.pdf).

Park, S. & Pollock, J. “Tenants’ Right to Counsel is Critical to Fight Mass Evictions and Advance Race Equity During the Pandemic and Beyond,” News & Commentary, ACLU, January 12, 2021, <https://www.aclu.org/news/racial-justice/tenants-right->



to-counsel-is-critical-to-fight-mass-evictions-and-advance-race-equity-during-the-pandemic-and-beyond.

Parrish, D. “Designing for Housing Stability: Best Practices for Court-Based and Court-Adjacent Eviction Prevention and/or Diversion Programs,” American Bar Association & Harvard Law School, 2021, <https://hnmcp.law.harvard.edu/wp-content/uploads/2021/06/Deasigning-for-Housing-Stability.pdf>.

Steinkamp, N. “Right to Counsel: The Nationwide Movement to Fight the Eviction Crisis,” Stout, October 14, 2019, <https://www.stout.com/en/insights/article/right-to-counsel-nationwide-movement-fight-eviction-crisis#National>.

“The Right to Counsel for Tenants Facing Eviction: Enacted Legislation,” NCCRC, October 2022, [http://civilrighttocounsel.org/uploaded\\_files/283/RTC\\_Enacted\\_Legislation\\_in\\_Eviction\\_Proceedings\\_FINAL.pdf](http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf).

“Source of Income Laws,” Local Housing Solutions, accessed November 30, 2022, <https://localhousingsolutions.org/housing-policy-library/source-of-income-laws/>.

Bell, A., Sard, B., & Koepnick, B. “Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results,” Center on Budget & Policy Priorities, December 2018, <https://www.cbpp.org/sites/default/files/atoms/files/10-10-18hous.pdf>.

“Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program, Appendix B: State, Local and Federal Laws Barring Source of Income Discrimination,” Poverty & Race Research Action Council, September 2022, <http://www.prrac.org/pdf/AppendixB.pdf>.

# Rent Control

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By Dan Threet, Former Research Analyst, NLIHC, and Andrew Aurand, Senior Vice President for Research, NLIHC

**R**ent control, or rent regulation more generally, refers to policies that either limit the maximum rent or the rate of rent increases for privately owned rental homes. While such policies will not solve the housing affordability crisis on their own, research suggests they can dampen price appreciation, slow displacement, and improve housing stability for some lower-income renters.

## TYPES OF RENT REGULATION

Rent control policies come in many forms. While historically some policies imposed a ceiling on rents, most forms of rent control today instead regulate the speed and size of rent increases, referred to as rent stabilization. Some rent stabilization policies sharply restrict increases, while others merely prohibit large and sudden spikes or price gouging. Rent control policies also vary in the proportion of the private-market rental stock they regulate. While some cover all rental homes in an area, most policies target older rental homes to avoid discouraging new construction. Some rent regulations exempt smaller buildings, and some allow homes to be brought up to market rate when they are vacated.

In recent years, there has been increasing support for rent regulation measures in some states and cities, though most jurisdictions with rent regulation are still found in New York, New Jersey, and California. In 2019, for example, Oregon limited annual rent increases on many rental homes more than 15 years old to 7% plus the consumer price index (CPI) measure of inflation, prohibiting large increases far greater than general inflation. In 2021, St. Paul, Minnesota voters passed stringent rent stabilization that limited annual rent increase to 3% for most rental housing. However, the city

established a process for landlords to request an exemption to the rent-increase cap. The city also approved additional amendments to the rent control policy that took effect January 1, 2023, including a 20-year exception for newly constructed rental buildings and the allowance of a rent increase of as much as the CPI plus 8% after a just cause eviction. In 2022, voters in Pasadena, CA passed a ballot initiative, Measure H, which creates a board to limit rent increases to 75% of CPI annually for multifamily rental units built before February 1, 1995.

Rent regulation remains overwhelmingly an issue for state and local politics, rather than a federal issue—partly because a permanent national policy would face greater legal challenges and partly because a uniform set of regulations would not serve high- and low-cost markets equally. NLIHC has called on the Biden Administration to use rent stabilization as an anti-rent gouging measure and prevent landlords from imposing exorbitant rent increases on tenants in the wake of a global pandemic.

## RENT REGULATION AS AN ANTI-DISPLACEMENT TOOL

In some jurisdictions, rent control may be a useful means of preventing the displacement of renters in rapidly gentrifying areas. Proponents argue that regulation can correct power imbalances between landlords and renters and give due recognition to long-term tenants' interest in staying in their homes. Because rent control lowers the rent burden for existing tenants and protects them from sudden increases, renters in controlled rental homes tend to remain in their homes longer than those in uncontrolled homes. Longer tenures may reflect greater housing stability and better access to neighborhood opportunities. On the other hand, longer tenures may also reflect restricted mobility, if renters stay in regulated homes of the wrong size or far from work to keep lower rents.

Rent control benefits renters who happen to occupy regulated homes, not necessarily the renters who have the greatest need. While some higher-income renters will benefit, renters in regulated homes are much less likely than renters in unregulated homes to be wealthy. In New York City, the median income of renters in rent-stabilized homes is considerably lower than the median income of renters in unregulated homes. All the same, critics argue that insensitivity to need makes rent regulation inefficient, wasting resources on higher-income tenants.

Lower-income renters may be disadvantaged by poorly designed regulations. Lower-income households are more likely to need to move for work, health, or family, so they may not be able to hold onto regulated homes as well as higher-income renters. Higher-income renters may be willing to initially pay above-market rents for stabilized units, confident that they will eventually benefit from slower increases, which lower-income renters are less likely to be able to do. Some have argued that regulations give landlords incentives to apply stricter screening criteria, which could make housing searches harder for younger tenants and tenants with children.

## **BROADER EFFECTS OF RENT REGULATION**

The benefits and risks of rent control for low-income renters not yet living in the area or not living in rent-regulated homes are less well understood. Research provides mixed evidence of how rent control affects overall housing supply, rent levels in uncontrolled homes, and housing quality. There is little evidence that rent control increases economic or racial integration or reduces homelessness.

### **Housing Supply**

Conventional wisdom holds that rent control will diminish the supply of available rental homes by discouraging new construction and encouraging landlords to pull homes out of the market, but empirical evidence is mixed. Several studies found that rent regulation does not dampen new construction, though that likely depends

on how much the policy restricts increases and how long new construction is exempted from regulation. Rent regulation can increase the likelihood that owners convert rental homes to condos or redevelop them for other purposes. What effect rent regulation has on housing supply may depend on related regulations, like whether landlords are prevented from taking homes off the market or are guaranteed a certain rate of return.

### **Rent Levels in Unregulated Homes**

If rent regulation limits housing supply, then it might raise rents in unregulated homes, but the empirical evidence is also mixed on this point. Some studies show rising housing costs for uncontrolled homes in cities with rent regulations, while other research has found no impact or even a decrease in the rents of nearby uncontrolled rental homes. Given this uncertainty, it may be best to consider this an unresolved worry about the side effects of rent regulation—low-income renters who do not secure a regulated home may have to spend more on rent than they would in a city without regulation. Of course, the design of rent regulation affects the size of the unregulated market.

### **Housing Quality**

It is unclear what effect rent control has on housing quality. Some economists argue that regulation discourages landlords from investing in their buildings. While some research has found a modest decline in the quality of regulated buildings, which could point to decreased investment, others argue that factors like the state of economy matter more. A study of rent control in the District of Columbia found that unregulated homes had more maintenance issues than regulated homes. A recent review of studies from the University of Minnesota found some evidence that major capital improvements may not be impacted by rent regulation, especially if the costs can be passed through to rent, but more general upkeep may suffer.

## Other Effects

No consistent relationship has been observed between rent regulation and rates of homelessness. Likewise, existing research does not find any consistent effect on rates of overcrowding. While some proponents of rent regulation tout mixed-income neighborhoods as a goal of rent control policies, there is little evidence that rent control consistently increases economic integration in the long term. However, to the extent that rent regulation slows displacement, it could allow lower-income renters to stay in a neighborhood longer. Finally, there is mixed evidence whether people of color access rent-controlled homes in proportion to their share of the population. While people of color were overrepresented in regulated homes in New Jersey, they were underrepresented in Boston.

Proponents readily admit that rent regulation needs to be paired with other measures to create more affordable housing, since it does not increase the supply, benefit all lower-income renters, or ensure economic and racial integration. One common argument for rent regulation is that it is fast, scalable, and cheap, since it does not require a direct subsidy. It may allow many lower-income renters to remain in place in cities with rising housing prices. There are still opportunity costs involved, however, since rent regulation requires administrative oversight and enforcement, and lower rents can affect property values and tax revenue that could be used for other purposes. Given the uncertainties about how rent regulation affects housing supply, unregulated rent levels, and housing quality, any rent regulation policy needs to be carefully designed and paired with supplementary regulation to protect low-income renters.

## FOR MORE INFORMATION

Chew, A., & Treuhaft, S. 2019. Our homes, our future: How rent control can build stable, healthy communities. Washington, DC: PolicyLink.

Goetz, E., Damiano, A., Hendee Brown, P., Alcorn, P., & Matson, J. 2021. Minneapolis rent stabilization study. Minneapolis, MN: University of Minnesota Center for Urban and Regional Affairs.

Pastor, M., Carter, V., & Abood, M. 2018. Rent matters: What are the impacts of rent stabilization measures? Los Angeles: USC Dornsife.

Rajasekaran, P., Treskon, M., & Greene, S. 2019. Rent control: What does the research tell us about the effectiveness of local action? Washington, D.C.: Urban Institute.

Sturtevant, L. 2018. The impacts of rent control: A research review and synthesis. Washington, DC: National Multifamily Housing Council.

# Promoting Housing Stability through Just Cause Legislation

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By Sarah Gallagher, Senior Project Director, and Victoria Bourret, Senior Project Coordinator, NLIHC

## BACKGROUND

The end of a lease term is a particularly vulnerable time for low-income tenants. In many states and localities around the country, landlords are not required to provide a reason for evicting a tenant at the end of a lease term or for evicting a tenant without a lease (i.e., a resident with a month to-month tenancy). Landlords who are unable to evict a tenant during their lease term may choose not to renew the tenant's lease and use the lease holdover as grounds for eviction. Moreover, a tenant at the end of their lease is also at risk of unreasonable rental increases.

To support renters at risk of housing instability, a growing number of lawmakers have passed "just cause" eviction legislation. Just cause legislation provide legal protections to make the lease renewal process more predictable, protect renters from excessive rent increases, empower tenants to advocate for better living conditions without fear of retaliation, and promote long-term housing stability for low-income and marginalized renters ("Good Cause Eviction Salazar S3082/Hunter A5573 Frequently Asked Questions." Housing Justice for All).

Just cause laws can be enacted at federal, state, or local levels. Currently, no federal just cause laws exist. And as of this writing, five states across the country have implemented just cause legislation: New Jersey, California, New Hampshire, Oregon, and Washington. New Jersey was the first state to pass such renter protections (in 1974), and Washington is the most recent (in 2021). In the absence of federal or state just cause laws, many housing advocates have worked to advance such protections at the local level, in the hopes of scaling the protections up into state legislation.

## WHAT IS JUST CAUSE LEGISLATION?

Just cause – also known as “good cause” or “for cause” – eviction laws are tenant protections that prevent evictions and promote housing stability by limiting the causes for which a landlord can evict a tenant or refuse to renew a tenant's lease when the tenant is not at fault or in violation of any law (“Just Cause Eviction Policies.” Local Housing Solutions). Just cause laws aim to benefit low-income tenants by:

- Protecting renters from evictions for no fault of their own.
- Delivering a sense of stability to tenants.
- Discouraging renters from self-evicting when they receive eviction notices from landlords.
- Empowering tenants experiencing poor living conditions, discrimination, or other illegal landlord behavior to advocate for improvements with landlords or file complaints without fear of retaliation.
- In some cases, protecting tenants from unreasonable rent increases.

While the specific protections embedded in just cause legislation vary by jurisdiction, protections always include provisions that define the legal causes for which a landlord can evict a tenant or refuse to renew a tenant's lease. Legal definitions of “just cause” usually involve substantial violations of a lease by a tenant, such as failure to pay rent or destruction of property. If a tenant receives an eviction notice without just cause, the tenant can challenge the eviction in court (Ham, Kate. “Why New York Needs Good Cause Eviction.” September 29, 2021. Community Service Society). Additionally, just cause laws commonly include provisions placing caps or limiting the power of landlords to increase rents and expanding eviction notice provisions.



## CORE COMPONENTS OF JUST CAUSE LEGISLATION

Just cause legislation enacted by state and local jurisdictions typically includes three core components: (1) the definition of the legal grounds for eviction, (2) the placing of limits on rent increases, and (3) the enhancement of written notice requirements. While the protections discussed in this article display similarities, they also exhibit unique characteristics that reflect the state and local contexts shaping their enactment and that are important to consider in efforts to develop new just cause legislation.

### Defining the Legal Grounds for Eviction

Just cause laws aim to prevent evictions of tenants who are not at fault by defining the legal grounds on which a landlord can evict tenants or refuse to renew a lease. Just causes for eviction commonly include failure to pay rent, property damage, disturbance or disorderly conduct, other lease violations, criminal activity in a unit, and intent on the part of the landlord to sell, repair, or move into the unit.

For example, New Jersey's "Anti-Eviction Act", enacted nearly 50 years ago, was designed to address the state's severe housing shortage by preventing landlords from unfairly and arbitrarily displacing their tenants (*447 ASSOCIATES v. Miranda*. 115 N.J. 522, 1989). The act limits the ability of landlords to remove tenants who have not violated the terms of their lease and defines the legal causes for eviction as failure to pay rent or rent increases, disorderly conduct, damage or destruction to property, illegal activity, violation of landlord rules or the lease agreement, or a desire on the landlord's part to convert rental property to a condominium or use the property personally. The act further establishes that for failure to pay rent after a rent increase to be considered grounds for eviction, "the rent increase must not be unconscionable and must comply with all other laws or municipal ordinances, including rent control" (*Grounds for An Eviction Bulletin*. 2008, New Jersey Department of Community Affairs).

Washington State's HB 1236, passed in May 2021, requires landlords to provide a valid reason for ending a tenancy. Under the law, just causes for eviction include failure to pay rent, unlawful activity, destruction of property, and the landlord's intent to sell or move into the rental property.

Oregon's SB 608, enacted in 2019, protects tenants from no-cause evictions after their first year of occupancy. However, unlike the New Jersey and Washington State legislation, SB 608 provides exemptions allowing landlords to evict tenants who have not violated any lease terms in cases in which (1) the landlord wishes to demolish a building or convert it into a business or make substantial repairs to or renovate the unit; (2) the landlord or their relative wishes to move into the unit; or (3) the landlord has sold the unit to someone who wants to move into it.

California's just cause legislation, the "Tenant Protection Act of 2019" (AB 1482), applies to renters who have lived in their units for 12 months or more and distinguishes between at-fault and no fault evictions. According to the California Rental Housing Association (CalRHA), at-fault evictions are based on the actions and activities of renters. To justify an eviction, a landlord must have evidence of any of the following: failure to pay rent, violation of a lease term, criminal activity, disturbance on the property as defined by California law, or refusal to execute a landlord's request of a written extension or renewal of the lease based on similar terms of a tenant's previous lease.

Like Oregon's legislation, California's law provides exemptions allowing no-fault evictions to proceed in certain cases. California's exemptions include cases in which the owner intends to withdraw the unit from the rental market or demolish or substantially remodel the unit, or the owner or the owner's relative intends to occupy a unit, as well as cases in which the owner is complying with a local ordinance, court order, or other governmental entity that requires a tenant to vacate the property. However, because the reason for eviction is beyond the tenant's control, in such cases the evicting landlord must assist the tenant

in relocating, regardless of the tenant's income, by providing a direct payment of one month's rent to the tenant or providing a written waiver for the tenant's last month of rent.

### **Placing Limits on Rent Increases**

In 2021, the cost of rent rose on average 14% nationally, while in cities like New York, Austin, and Miami, rents increased by as much as 40% (*Rental Market Tracker: Rents Rise 14% in December—Biggest Jump in Over Two Years*. January 21, 2022. Redfin). Rents could rise even further in 2023, making housing even less affordable, and more households – particularly the lowest income households, whose members are disproportionately people of color – are at higher risk of housing instability and homelessness. When combined with rental caps, just cause laws can preserve affordable rental units by making it more difficult for landlords to significantly increase rent for existing tenants (Ham, Kate. “Why New York Needs Good Cause Eviction.” September 29, 2021. Community Service Society). Without reasonable restrictions on rent increases, tenants who are unable to afford new rents are likely to face eviction and displacement as rents increase in their areas.

Oregon's SB 608 (discussed in the previous section) provides basic protections against extreme rent increases and no-cause evictions (SB 608: Protecting Renters.” Oregon Housing Alliance). With its passage in 2019, SB 608 became the first statewide law to place a percentage cap on the amount by which a landlord can raise rent (William, Timothy. “Is Your Rent Through the Roof? Oregon Wants to Fix That.” February 25, 2019. The New York Times). To address the urgency of Oregon's affordable housing crisis, SB 608 capped annual allowable rent increases for buildings more than 15 years old at 7% plus the rate of inflation as defined by the Consumer Price Index (CPI). The law requires Oregon's Department of Administrative Services to announce the maximum annual percent increase on September 30 of every year. In 2022, for example, the maximum allowable rent increase was set at 9.9%.

Likewise, California's AB 1482 placed caps on annual rent hikes while also limiting the ability of landlords to evict tenants without documented lease violations. Under AB 1482, landlords may raise rents to a maximum of 5% plus the applicable CPI rate, or 10% – whichever is lower. In a 2019 press release, Governor Gavin Newsom expressed his support for the bill, stating that “these anti-gouging and eviction protections will help families afford to keep a roof over their heads, and they will provide California with important new tools to combat our state's broader housing and affordability crisis” (“Governor Newsom Statement on Passage of Strongest Package of Renter Protections in the Country.” September 11, 2019. Office of Governor Gavin Newsom).

### **Enhancing Written Notice Requirements**

Knowing and understanding the reason for an eviction can help a tenant collect required documentation and prepare for their court hearing. Written notices are typically provided by landlords to tenants to communicate that a landlord does not wish to maintain a lease, with or without cause, and that the tenant should vacate the property by a specified date. Depending on the jurisdiction, the requirements of the notice – such as its length and the type of causes that can be cited – vary. Oregon, Washington State, and New Hampshire have each put into place enhanced written notice requirements as part of their just cause eviction laws.

In Oregon, if a no-cause eviction occurs that utilizes one of the exemptions listed above, SB 608 requires that the landlord provide the evicted tenant with a 90-day notice. If the property owned by the landlord has five or more units, the landlord is also required to provide the evicted tenant with a payment equaling one month's rent.

Under Washington's HB 1236, a landlord who wishes to evict a tenant must serve the tenant a written notice that specifies the lease violation and gives the renter the opportunity to cure that violation. The law also increases the time landlords are required to provide advance written

notice from when the tenancy is deemed expired from 20 to 60 days, granting tenants more time to find housing.

New Hampshire's just cause law requires landlords to give tenants 30 days advance notice of any new lease term that includes a rental increase. The law also requires landlords to provide evicted tenants a 30-day written notice to vacate a rental unit. However, if the reason for eviction is nonpayment of rent, the length of the notice decreases to seven days.

## LOCAL LEGISLATION CAN SET THE PATH FOR STATEWIDE REFORM

With no federal just cause standards in place, and only five states with enacted protections, many housing advocates have focused their advocacy efforts on passing local just cause laws and other needed tenant protections. Local governments have opportunities to build buy-in from the public and their state legislatures by passing just cause ordinances in their jurisdictions and collecting eviction data to demonstrate the impact of the laws and influence future state legislation. Decades before Washington State passed just cause legislation, for example, Seattle adopted a local ordinance from which state lawmakers would later learn. Similarly, in California, about 20 cities and counties across the state had enacted their own form of rent control prior to the passage of AB 1482 (Healy, Jon. *Building an ADU? What you need to know about rent control*. March 8, 2022. Los Angeles Times). Once it was enacted, AB 1482 extended protections to renters who were not covered by local ordinances or who lived in areas where local ordinances prohibited protections, applying rental caps and just cause standards to an additional 2.4 million apartments across California, as well as single-family rental homes meeting the act's requirements, according to an analysis by researchers at the University of California, Berkeley's Turner Center for Housing Innovation (Dillon, Liam. *Here's how California's new plan to cap rent increases would work*. September 5, 2019. Los Angeles Times).

## CONCLUSION

As states begin to run out of emergency rental assistance and housing prices continue to rise, local, state, and federal governments must intervene to protect low-income and marginalized households from eviction and, in the worst cases, homelessness. Just cause eviction legislation is an important tenant protection that can provide stability and predictability at the end of a lease term and mitigate the harms resulting from unprecedented rental increases in cities and states across the country. As the federal government continues to delay actions to address the country's housing affordability and homelessness crisis, state and local governments must work to provide robust and permanent tenant protections at all stages of the eviction process.

# Right to Counsel for Tenants Facing Eviction

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By John Pollock, Coordinator, National Coalition for a Civil Right to Counsel

**A** right to counsel is a law at the city, county, or state level guaranteeing that an eligible person will be provided a lawyer at government expense. In the landlord/tenant context, a right to counsel means that eligible tenants will have legal representation in an eviction proceeding, and potentially in related proceedings (such as terminations of a housing subsidy or certain affirmative actions to enforce tenant rights).

## HISTORY OF CIVIL RIGHT TO COUNSEL

While the federal constitution provides a right to counsel for indigent defendants in criminal cases, there is no similarly broad federal constitutional right in civil cases. The U.S. Supreme Court has twice considered the right to counsel in civil cases, once for termination of parental rights and once for parents civilly incarcerated due to being unable to pay child support. In both instances, the Court declined to recognize a federal constitutional right to counsel. While the Court has never addressed the right to counsel for eviction cases, it *has* said there is no fundamental right to housing, which when combined with its right to counsel jurisprudence makes it highly unlikely that it would ever recognize such a right to counsel under the federal constitution. Because of this landscape, the right to counsel in all civil cases, including eviction matters, is left for state and local governments to determine.

Based on their individual state constitutions, state courts can recognize constitutional rights that the Supreme Court does not. Many have done so for matters involving parental rights or physical liberty. However, to date there has not been a decision from a state court that fully addresses, much less recognizes, the right to counsel for tenants facing eviction.

Regardless of the position of the courts, city and state governments can pass laws to enact a right to counsel. Each year, hundreds of bills are introduced around the country that create or strengthen the right to counsel in one or more types of civil cases. In the housing context, eighteen jurisdictions, including three states and fifteen cities, have passed ordinances or bills that create a right to counsel for tenants facing eviction.

## RIGHT-TO-COUNSEL FOR TENANTS AS COMPARED TO INCREASED TENANT REPRESENTATION FUNDING

A right to counsel law creates a legal obligation for a city, county, or state to provide eligible tenants with a lawyer. This legal obligation is essential, as it creates a concomitant requirement to provide funding for the representation. Without the right to counsel, a jurisdiction can quietly and easily discontinue legal aid funding as part of an often-inaccessible budget process, but with an ordinance or statute in place, the funding is better protected from a political sense because repealing the ordinance is much more of a public process. The enactment of a law ensures that the government has a stake in making the program work and provides more assurances to legal aid providers that the program will last, which is critically important as such providers will have to invest substantial time and resources into scaling up to meet the demands of increased representation. Finally, in most jurisdictions, over half the tenants do not respond to the eviction complaint or participate in the proceedings, often due to feelings of disempowerment or despair. Enacting a law sends a message to the community that the jurisdiction is firmly committing to changing the existing system.



## PARAMETERS AND STRUCTURE OF EVICTION RIGHT-TO-COUNSEL LAWS

Covered proceeding: As noted above, right to counsel laws enacted so far have focused on court proceedings in which a landlord seeks to evict a tenant. However, some enactments go further to cover situations where a housing authority seeks to terminate a housing subsidy such as Section 8 (as losing the subsidy will almost always cause the tenant to fall behind on rent and be evicted), and sometimes cover some matters where the tenant seeks to enforce rights (like anti-discrimination or lead paint laws).

Eligibility: In terms of who is eligible for the right to counsel, the gold standard provides coverage for all tenants. Some jurisdictions limit eligibility to people under a certain income level (for instance, 200% of the federal poverty level) or have other requirements, such as only covering tenants with children.

Legal representation: In the traditional legal services model, attorneys “triage” cases, directing resources to the cases they perceive to be most meritorious and providing limited services to the rest. But under a right to counsel model, all eligible tenants are provided full representation, meaning the attorney must provide whatever services are necessary to best fulfill the tenant’s goals regardless of resources. Note that this does not mean that the attorney is obligated by the law to take any particular action, such as seeking a full hearing or filing motions. Rather, the attorney must identify the actions that would benefit the particular case and pursue those actions. In some instances, the best outcome can be obtained through negotiating with the landlord or helping obtain rent assistance.

Funding: Right to counsel programs are paid for by the city, county, or state government. Sometimes this comes from general revenue, while at other times a specific revenue source is created or tapped, such as a tax or fee on rental units. Recently, some jurisdictions have relied on COVID-19 emergency federal funding, such as the Emergency Rental Assistance Program

and Fiscal Recovery Funds. This funding flows to legal aid programs with which the jurisdiction contracts, and the programs then provide the legal representation to tenants.

## JUSTIFICATIONS FOR AN EVICTION RIGHT TO COUNSEL

### Collateral Consequences of Evictions

The destructive consequences of eviction have been well documented. A percentage of evicted tenants become homeless, potentially facing incarceration and criminal prosecution, serious health consequences, and loss of child custody, employment, and belongings. Tenants who are evicted but avoid homelessness may still come face to face with similar consequences due to rapid displacement, relocation, and housing instability. Additionally, an eviction record, often referred to as a “Scarlet E”, is typically a public record that can make it extremely difficult to secure new housing.

### Race Equity

Data has conclusively shown that tenants of color are disproportionately affected by the 3.6 million evictions filed annually. Black women face eviction at twice the rate of white tenants. Moreover, during the pandemic, the Census’s Household Pulse Survey data showed this disparity maintaining and growing in terms of tenants who indicated they were unable to pay rent and feared they faced eviction.

### Imbalance of Power

In a landlord tenant relationship, the imbalance of power begins the moment the landlord and tenant enter a contract to rent because the contract is prepared by the landlord, with set terms the tenant typically cannot negotiate. When eviction is in the picture, the power imbalance is further amplified by the unequal interests at stake, since only the tenant is risking loss of home. Without a right to counsel in place, on average only 3% of tenants are represented nationwide, compared to 81% of landlords. This massive disparity has affected the way housing courts operate. For instance, landlord attorneys or representatives are often “repeat



players” in the court: they appear frequently, build substantive and procedural experience, and develop relationships with court staff and judges. Additionally, the imbalance has led many courts to establish a practice of sending unrepresented tenants to meet with the landlord’s attorney in the hallway prior to tenants attempting to present their case. During these hallway meetings, tenants are often pressured to agree to terms set out by the landlord’s attorney.

### **Legal Complexity of Evictions**

Evictions are complex legal proceedings, and like most legal proceedings they were not designed with unrepresented litigants in mind. Evictions can raise issues as varied as whether the lease terms have been breached, whether the tenant was properly served with notice of the eviction, whether the landlord has complied with the “Fair Housing Act,” whether the landlord has properly credited all rent paid or has tacked on illegal surcharges, and whether other federal, state, and local laws have been followed (such as eviction moratoria, just cause eviction laws, lead paint registration, landlord licensing, or filing requirements related to rental assistance). In fact, any tenant protections enacted by a jurisdiction may be ineffective if there is no tenant’s attorney to ensure they are being complied with, as courts do not proactively screen landlord cases for legal flaws. In nonpayment of rent cases, a landlord’s failure to maintain and repair the unit can be a defense to eviction, but studies have shown tenants cannot successfully assert such a defense without counsel.

Even where there are no legal issues to be addressed, courts still have to make three important determinations in a case where the tenant is going to vacate the unit: 1) whether the eviction will be on the tenant’s record; 2) whether the landlord will receive a judgment for rent owed in addition to regaining possession of the unit; and 3) the amount of time the tenant will have to relocate. Without counsel, tenants are hard pressed to succeed on any of these fronts, and these matters can conclusively determine whether the tenant is able to both obtain new housing and avoid homelessness.

### **Effectiveness of Counsel**

Even before any jurisdiction had enacted a right to counsel for tenants facing eviction, decades of studies had demonstrated that the presence of counsel makes a determinative difference in eviction cases. For instance, a California study found that fully represented tenants stayed in their units three times as often as those receiving limited or no legal assistance. When tenants did have to move, fully represented tenants were given twice as long to do so. A study out of Hennepin County Minnesota found that a) represented tenants were twice as likely to stay in their homes, received twice as long to move if necessary, and were four times less likely to use a homeless shelter than those without counsel; and b) 78% of represented tenants left with a clean eviction record, compared to 6% of unrepresented tenants.

The enacted right to counsel programs have only reinforced these success statistics. For instance, in New York City, 84% of represented tenants were able to remain in their homes, while in San Francisco, the figure is 59% and in Boulder it has been 63%. In Cleveland, 93% avoided an eviction judgment or an involuntary move, 83% of clients who desired rental assistance were able to obtain it, and of the 21% who were unaware of rental assistance at the time they contacted Legal Aid, approximately 98% wanted rental assistance and Legal Aid helped 81% of those clients obtain it. For Kansas City, in Jackson County, the pre-right to counsel eviction rate was 99% and in the first 3 months of right to counsel it was less than 20%.

Also notable is the effect that right to counsel has had on the eviction filing rate. In New York City, the eviction filing rate dropped 30% after funding began for expanded representation in 2014, while in San Francisco the filing rate dropped 10% in the first year. Such a drop in the filing rate has a positive effect on court resources.

### **Cost Savings**

Beyond the impacts on individual tenants and families, evictions take a high toll on communities due to the high costs of homeless

shelters, emergency medical care, foster care for children, unemployment benefits, and school displacement costs. However, studies have repeatedly shown that providing a right to counsel saves substantially more than it costs. For instance, the most recent report out of Detroit found that “For every dollar invested in a right to counsel for low-income tenants facing eviction in Detroit, Stout conservatively estimates an economic benefit to Detroit of at least \$3.52.”

## FOR MORE INFORMATION

National Coalition for a Civil Right to Counsel’s eviction right to counsel page.

ACLU, Issue Brief: No Eviction Without Representation.

Center for American Progress, A Right to Counsel is a Right to a Fighting Chance.

CityHealth, Legal Support for Renters.

National League of Cities, Using Right to Counsel as an Eviction Diversion Strategy (blog) and Expanding Access to Legal Representation: Right to Counsel & Eviction Prevention (webinar).

# Court-Based Eviction Diversion Programs

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By Samira Nazem, Principal Court Management Consultant, National Center for State Courts

**E**vacuation court has come to be defined by its notoriously quick speed, stubbornly low appearances rates, and consistently uneven levels of legal representation. By the time a landlord-tenant dispute ends up in court, eviction often seems like an inevitable outcome. Court-based eviction diversion programs are working to challenge that narrative, redesigning their eviction courts to function as opportunities for support and connection, rather than as places of last resort.

During the COVID-19 pandemic, the number of court-based eviction diversion programs grew rapidly as state and local courts sought out opportunities to leverage increased federal funding for legal aid, rental assistance, and other housing stability services. While state and local moratoria halted most eviction proceedings, courts engaged with service providers and government partners to collaboratively design and implement new programs to divert landlords and tenants away from the traditional eviction process and towards stabilizing resources.

Courts now have an opportunity to permanently institutionalize their pandemic-era programs, adapting them from temporary, crisis-response programs into long-term, sustainable ones. The next generation of eviction diversion programs can facilitate holistic connections to both legal and non-legal resources to better support litigants in resolving not just the immediate legal crisis, but also any underlying root issues. These eviction diversion programs will vary greatly in design and structure, but successful programs will share the same vision: a better court process that provides landlords and tenants with the time, information, and resources necessary to resolve a dispute in the least harmful way.

## BUILDING AN EVICTION DIVERSION REFERRAL NETWORK

A court-based eviction diversion program requires a formal referral network of legal, financial, and social service providers who can offer support to landlords and tenants seeking alternatives to eviction. Even the most highly motivated landlords and tenants can benefit from outside help working through a housing dispute or accessing available resources in their community.

Courts should think expansively when building a referral network of program partners. Most programs will integrate at least two - if not all three - of the following: rental assistance, legal aid, and mediation. Rental assistance has been a key part of eviction diversion programs during the pandemic with unprecedented amounts of federal rental assistance funding become available. Mediation programs offer paid or volunteer mediators to support landlords and tenants in identifying common ground and crafting mutually agreeable settlement agreements. Legal services, ranging from same-day brief advice to representation at trial, ensure that meritorious defenses or procedural defects are properly identified and brought before the court. In making referrals to any of these program partners, courts should strive to build collaborative relationships and to remove barriers that may prevent litigants from accessing services. Many courts share data and space (both physical and virtual) with their program partners to expedite and simplify the referral process.

Beyond these common partners who can help litigants address and resolve the immediate legal problem, court-based diversion programs can also function as referral avenues to wraparound supportive services. Through their diversion programs, courts have forged relationships with school districts, healthcare providers, community banks, public benefits screeners, food pantries, and countless other partners. Some courts have

even secured funding to hire social workers who can offer case management services to landlords and tenants using the diversion program. Housing problems rarely begin or end in court, and a successful diversion program will create linkages to a broad range of legal, financial, and social service providers.

## MAKING SPACE FOR EVICTION DIVERSION TO WORK

Eviction diversion is not an immediate process; landlords and tenants need time to go through a diversion program and to work with program partners. Court-based eviction diversion programs must design a court process that builds in formal opportunities for landlords and tenants to engage with the diversion program and enough time for them to do so in a meaningful way. In many jurisdictions, this will require some changes to the management and timing of an eviction case.

One defining characteristic of a court-based eviction diversion program is when and how landlords and tenants will access the program. Court programs may focus on resolving issues before a case has been filed (pre-filing) or after (post-filing). They may be designed as voluntary or mandatory programs. Some operate fully remotely, while others take place on-site at a courthouse. Any model will have advantages and disadvantages, and the range of diversion programs reflects the diversity of the courts and communities in which they operate.

The best programs will build in multiple points of entry, giving litigants several opportunities to

access program resources at different stages of litigation. The gold standard eviction diversion program will include opportunities for diversion both before and after a case is filed, as illustrated in Figure 1.

A court-based program that includes pre-filing access to diversion resources allows landlords and tenants to resolve a case without the cost and complexity of a formal court proceeding and without the negative consequences of an eviction filing on a tenant's record. However, many litigants may not learn about or take advantage of a pre-filing program; offering a post-filing entry point to diversion will allow those litigants an additional opportunity to access program resources even as the case moves through the court process.

Once an eviction case is filed with the court, the clock begins ticking, even if the parties engage with a diversion program. Effective court-based programs will build in a mechanism for slowing down or temporarily pausing an eviction case to allow the litigants sufficient time to use the available resources. Courts may elect to add a case management date or pre-trial conference to the eviction process to build in additional time for the parties to access the diversion program before setting a trial date. Courts may also create a process for temporarily pausing a case for a defined period of time if the litigants opt to engage in diversion. Any procedural changes will need to work within the timing constraints set by the governing landlord-tenant law and may require changes to court rules or longstanding practices.

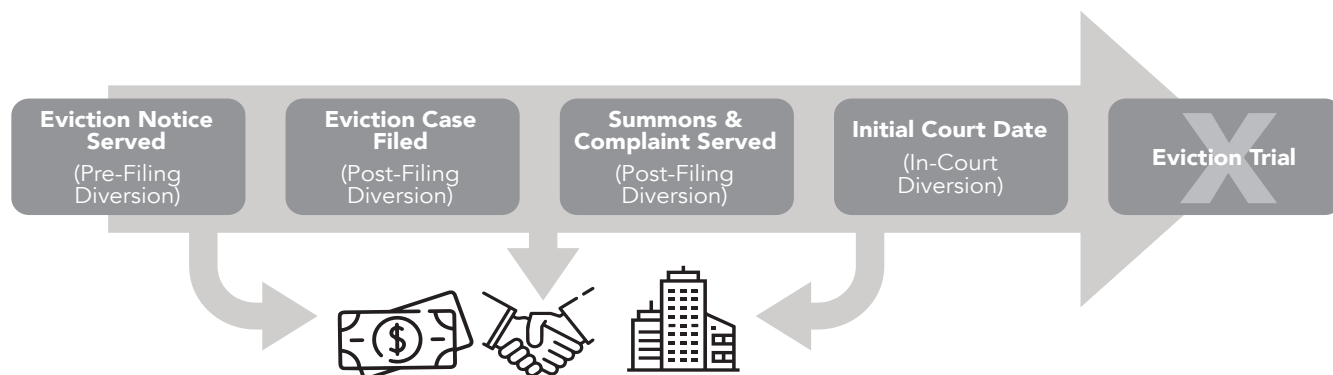


Figure 1: Eviction Diversion Program Process Map with Multiple Entry Points

## ENGAGING LITIGANTS IN EVICTION DIVERSION

Outreach and engagement strategies are crucial to any eviction diversion program; the program resources can't work if litigants don't show up and take advantage of them. Eviction courts often struggle with low appearance rates for defendants, and court-based diversion programs must be proactive in addressing this challenge. Courts should think about how and when they communicate with litigants, as well as what they communicate. Supplementing traditional court communications can be crucial for engaging with tenants who might otherwise have not known about diversion or opted out of the court process altogether.

Courts should identify ways to supplement and improve their eviction Summons, the court papers that first inform tenants of a new case that has been filed against them. The Summons itself should be written in plain language, translated into commonly spoken languages besides English, and designed in a user-friendly way that allows the tenant to easily understand and act on the information presented. The Summons should also be supplemented by a program flyer advertising the eviction diversion program and available resources. Courts can proactively mail information about the program as soon as a new case is filed or mandate that program information be attached to the Summons.

Courts are increasingly looking for supplemental ways to communicate with litigants, rather than relying exclusively on court papers and mail. Electronic communications like text messaging reminders and email notifications are becoming more common, especially as courts embrace electronic filing. Grassroots outreach campaigns and partnerships with community organizations can also be effective, especially in reaching communities that may be at an elevated risk of eviction or that have had negative experiences with courts in the past. Working with trusted community partners who can run door-knocking campaigns, post on social media platforms, or share information through other community events can amplify the message that tenants

should engage with the court process and that eviction diversion resources are available to help them.

## FOR MORE INFORMATION

The National Center for State Courts has developed a diagnostic tool and supplemental resources to support courts in designing and implementing eviction diversion programs. Visit [ncsc.org/eviction](https://ncsc.org/eviction) to learn more.





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# Chapter 8:

## HOUSING TOOLS

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# Housing Counseling Assistance

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By Cristy Villalobos-Hauser, Housing Policy Director, National Housing Resource Center

**Administering Agency:** HUD's Office of Housing Counseling

**Year Started:** 1968

**Number of Persons/Households Served:** More than 24 million counseling units from 2006-2020

**Populations Targeted:** Low- and moderate-income households, people of color, people with limited English proficiency, senior citizens, and rural households

**Funding:** \$57.5 million in FY2022.

The Housing Counseling Assistance (HCA) Program provides competitive grants to nonprofit HUD-approved housing counseling agencies.

## HISTORY

HUD's Housing Counseling Assistance Program was originally authorized by the "Housing and Urban Development Act of 1968" "to provide counseling and advice to tenants and homeowners, to assist them in improving their housing conditions, meeting their financial needs, and fulfilling the responsibilities of tenancy or homeownership."

Later, the Obama Administration signed the "Dodd-Frank Wall Street Reform and Consumer Protection Act" into law in 2010. This legislation made significant changes to HUD's Housing Counseling Assistance program, including the creation of the Office of Housing Counseling (OHC) within HUD. It also required all housing counselors in HUD-approved counseling agencies to become certified by August 2021. As a result, there is a shortage of HUD-certified housing counselors to help meet the high demand for services nationwide.

## PROGRAM SUMMARY

HUD-approved housing counseling agencies have been on the frontlines of helping predominantly low and moderate-income households achieve their housing goals including purchasing their first home, saving their home from foreclosure, and affordable rental housing. Housing counselors also work to improve their clients' financial outlooks by teaching them household budgeting skills, steps on paying down debt, and ways to increase savings.

HUD-approved counseling agencies provide both counseling services and educational programs. Housing counseling is conducted one-on-one with clients to deliver personalized information including a review of income, credit, household budget, and savings. Almost two-thirds of all clients of HUD-approved counseling agencies seek out one-on-one counseling and over one-third engaged in group education. All one-on-one counseling begins with an in-depth review of household finances, including income, expenses, credit, and debts. When the counselor and client have a better understanding of the client's financial picture, they work together to create an action plan to address the client's specific housing needs. Education programs deliver general information in a group workshop setting or online.

Two-thirds of counseling clients seek to either purchase a home, often for the first time, or resolve or prevent mortgage delinquency or default. The remaining one-third of counseling clients who seek assistance with rental housing or homelessness are seniors interested in a reverse mortgage, homeowners seeking home maintenance, and financial management assistance.

## HOUSING COUNSELING ASSISTANCE FUNDING

Federal funding for housing counseling is a constant legislative effort among advocates,

especially in recent years. At its peak, federal funding for HUD's HCA program was \$87.5 million for FY2010. Unfortunately, since the elimination of the National Foreclosure Mitigation Counseling (NFMC) program, and major reductions to HUD HCA allocations, the housing counseling field has had to manage operations with lower overall funding, staff cuts, and significant agency closings.

For FY2019, the Housing Counseling Assistance program was funded at \$50 million. For FY2020, the House and Senate Conference funded the program at \$53 million. For FY2021 & FY 2022, congressional funding was \$57.5 million. The program was flat-line funded two years in a row, which acts as a program cut in today's inflationary environment.

Housing counseling advocates will remain involved in a broad range of housing policy advocacy, including the expansion of language capacity in the lending and servicing industries for people with limited English proficiency, expanding homeownership opportunities, bridging the wealth gap for minorities, eviction prevention, and integrating housing counseling into the mortgage process. There will be opportunities to include housing counseling in various federal government programs and housing initiatives.

Disaster recovery legislation is a major concern for housing advocates. Disaster recovery efforts should include housing counseling services to help families meet their housing needs. The bipartisan "Reforming Disaster Recovery Act" would permanently authorize Community Development Block Grant Disaster Recovery funding and make it year-round rather than requiring separate authorizations for each disaster, speeding up the availability of recovery funding and housing counseling services.

## TIPS FOR LOCAL SUCCESS

When talking with legislators, keep advocacy as locally focused as possible.

- Schedule meetings with House Republicans leaders and Senate Democrat leaders to

discuss HCA funding

- Discuss the local communities served by advocates, why people from low-moderate income communities are seeking housing counseling services, and the outcomes housing counselors are helping them to achieve. Quantify any outcomes if possible or share client stories when appropriate.
- Describe some of the local trends that advocates are seeing (e.g., are more first-time homebuyers seeking out pre-purchase counseling, or are large numbers of folks still seeking delinquency and default counseling?).
- Focus on the real-life impact that HUD-approved counseling agencies have on people in the state/district. Meeting a first-time homebuyer or a former client of a housing counseling agency can have a lasting impact on a legislator or his or her staff. Offer to help constituents who call the district office with housing issues, which is the best way to develop an ongoing and valued relationship with the legislator.

Do not assume that every congressional office is aware of the HUD-approved counseling agencies in their district or state. Provide a list of HUD-approved counseling agencies that serve relevant communities (search for HUD-approved counseling agencies by state using the HUD search tool at <https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> or by zip code using the CFPB search tool at <https://www.consumerfinance.gov/find-a-housing-counselor/>). When providing a list of local agencies to staff, explain its value to their constituents who call the legislative office about housing issues.

Finally, data is always a powerful tool to showcase impact. Every HUD-approved counseling agency provides data to HUD (9902 data), including client income level, race and ethnicity information, and types of counseling sought. In addition to HUD 9902 data, local counseling agencies can provide their local data to present at advocate meetings. The national 9902 data is available [here](#) (the fourth quarter data is the full data for the year).



## WHAT TO SAY TO LEGISLATORS

The profile and perception of housing counseling have improved in recent years. With the creation of the OHC, past concerns about HUD's administration of the program seem to have dissipated and housing counseling advocates are generally well-received by both Democratic and Republican offices. That said, advocates should adjust their messaging appropriately for the office with which they are meeting.

- **Have a concrete ask.** If talking with a member of the Appropriations Committee, “Please support \$100 million for HUD Housing Counseling in the upcoming budget.” If talking with a legislator, “Please tell your Appropriations Committee leadership that you support \$100 million for HUD Housing Counseling in the upcoming budget.”
- **Focus on local issues.** Focus on the local impact counseling has in the legislator's state or district, including using localized data as often as possible, if available (please see “Tips for Local Success,” above).
- **Use current data and research.** Make sure any data presented demonstrate the effectiveness and value of counseling. Advocates should be prepared to point to one or two studies and talk to their representatives about the value of housing counseling services, not just for consumers but for all participants in the housing process (i.e., benefits to lenders, investors, servicers, etc.). OHC has a comprehensive review of research into the effectiveness of housing counseling at <https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Counseling-Works.pdf>.
- **Connect program effectiveness to funding.** Highlight the connection between funding levels and the ability to start, continue, and/or expand operations to serve their communities (please see “Funding,” above).
- **Be a resource.** Turnover is very common on the Hill, so many legislators and their staff may hold a meeting with very little knowledge

or understanding of housing counseling. In these instances, advocates must position themselves as a resource for the office. Highlight how an agency can be of assistance to their office, either for constituent services or if they need housing data for internal or external policy documents.

- **Build a champion.** The overall goal when meeting with legislators is to win them over as champions for housing counseling who will be willing to tell leadership that fully funding counseling is a top priority. Try to approach meetings with legislators as an opportunity to give that legislator a reason to want to be a champion for housing counseling.
- **Stay on message.** Not all lawmakers understand or support housing counseling assistance. Explain what a typical counseling session looks like. Be specific but clear. Focus on the holistic approach counseling takes to improve clients' overall financial well-being and sustainability. Emphasize stories and data from the local district.
- **Tell the National Housing Resource Center (NHRC) about a housing counseling champion.** Contact Cristy Villalobos-Hauser at NHRC about a strong housing counseling supporter at [cvillaloboshauser@hsgcenter.org](mailto:cvillaloboshauser@hsgcenter.org). NHRC will follow-up on your good work.

## TALKING TO APPROPRIATORS

When talking to appropriators or their staff, advocates are likely to hear either that they are unable to fully fund all of the programs because spending levels are too low or that they would love to fully fund HCA but do not have much say because they are in the minority. There are several responses to this, including:

- Housing counseling is a much cheaper investment than unnecessary foreclosures and evictions.
- Housing counseling is a small program with a high return on investment.
- Additional funding could help create more housing counseling jobs and further increase

the capacity of local agencies to meet high demand of services among local communities.

- Demand for pre-purchase counseling and rental assistance is soaring. Potential homebuyers must be given the tools they need to become successful homeowners.
- Although foreclosures are down from their peak, default, and delinquency continue to be a major share of our work (if that is true for your agency).

NHRC is an advocacy organization for the nonprofit housing counseling community and has resources for counselors and advocates: [www.hsgcenter.org](http://www.hsgcenter.org).

## RESOURCES FOR HOUSING COUNSELING

HUD's OHC website has relevant resources for housing counselors, advocates, homeowners, and tenants: <https://www.hudexchange.info/programs/housing-counseling/>.

Find housing counseling in a specific area: <https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> (to search by state) or <https://www.consumerfinance.gov/find-a-housing-counselor/> (to search by ZIP code).

HUD 9902 quarterly reports (these are the quarterly reports each HUD-approved counseling agency is required to submit and include data on client demographics and types of counseling provided): <https://www.hudexchange.info/programs/housing-counseling/9902-quarterly-reports/>.

OHC has an excellent summary of research into the effectiveness of housing counseling: <https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Counseling-Works.pdf>.

A particularly helpful study on pre-purchase counseling: <https://www.huduser.gov/portal/periodicals/cityscpe/vol18num2/ch4.pdf>.

A particularly helpful study on foreclosure prevention counseling: [http://www.neighborworks.org/Documents/HomeandFinance\\_Docs/Foreclosure\\_Docs/ForeclosureCounseling\(NFMC\)\\_Docs/2014\\_NFMC\\_UrbanInstituteReport.aspx](http://www.neighborworks.org/Documents/HomeandFinance_Docs/Foreclosure_Docs/ForeclosureCounseling(NFMC)_Docs/2014_NFMC_UrbanInstituteReport.aspx).

# Fair Housing Programs

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By Jorge Andres Soto, Associate Vice President of Advocacy & Government Affairs, National Fair Housing Alliance

**Administering Agency:** The U.S. Department of Housing and Urban Development's (HUD) Office of Fair Housing and Equal Opportunity (FHEO)

**Year Started:** The Fair Housing Assistance Program (FHAP) was created in the federal "Fair Housing Act" in 1968. The Fair Housing Initiatives Program (FHIP) was created in the "Housing and Community Development Act of 1987."

**Number of Persons/Households Served:** According to the [2022 Fair Housing Trends Report](#), in 2021 organizations primarily funded by FHIP investigated 22,674 complaints of housing discrimination, and local or state civil and human rights government agencies that participate in FHAP processed 6,413 complaints, and HUD FHEO processed 2,093 complaints in its administrative complaint process.

**Population Targeted:** Protected classes under the Fair Housing Act are based on race, national origin, color, religion, sex, familial status, and disability.

**Funding:** \$56 million for FHIP, \$25 million for FHAP, and \$88 million for HUD FHEO Salaries and Expenses in FY22.

**See Also:** For related information, refer to the *Affirmatively Furthering Fair Housing* section of this *Guide*.

The federal "Fair Housing Act" protects the public from discrimination on the basis of race, national origin, color, religion, sex, familial status, and disability in all housing transactions, public and private. HUD has also applied the Supreme Court's decision in *Bostock v. Clayton County*, 140 S. Ct. 1731, 590 U.S. (2020) to the Fair Housing Act's prohibition on sex discrimination to prohibit discrimination based on sexual orientation or gender identity in HUD-assisted housing and housing insured by the Federal Housing

Administration.

## ADMINISTRATION

HUD's Office of Fair Housing and Equal Opportunity (FHEO) is responsible for administering FHIP, FHAP, and HUD's investigation of fair housing and fair lending complaints submitted through its administrative complaint process. The Civil Rights Division of the U.S. Department of Justice (DOJ) may also investigate complaints and is responsible for litigating on behalf of the federal government in cases of fair housing and fair lending violations. DOJ also retains exclusive fair housing authority over complaints the government receives involving zoning, land use, and pattern and practice cases.

## HISTORY AND PURPOSE

The federal Fair Housing Act was passed in 1968 and amended in 1974 to prohibit discrimination on the basis of sex. In 1988, the Fair Housing Act was amended to prohibit discrimination based on familial status and disability status, as well as to provide additional enforcement powers to HUD to better implement the goals and purpose of the Act. FHIP and FHAP were created as a means of carrying out the objectives of the act.

## PROGRAMS SUMMARY

There are two federal programs that support enforcement of the Fair Housing Act. FHIP is a competitive grant program that funds private fair housing organizations serving local housing markets across the nation. FHAP reimburses state and local government agencies that enforce a local fair housing law that is substantively equivalent to the Fair Housing Act.

### Fair Housing Initiatives Program

FHIP supports private nonprofit fair housing organizations in their efforts to provide education and outreach to the public and housing providers and to enforce the Fair

Housing Act by investigating allegations of rental, real-estate sales, homeowner insurance, and lending discrimination in their local housing markets. FHIP is a competitive grant program administered by FHEO. FHIP supports three primary activities: The Private Enforcement Initiative enables qualified private nonprofit fair housing enforcement organizations to conduct complaint intake, testing, investigations, and other enforcement activities. The Education and Outreach Initiative funds organizations to educate the public about fair housing rights and responsibilities and local housing providers about how to comply with the law. The Fair Housing Organizations Initiative builds the capacity and effectiveness of fair housing organizations and funds the creation of new organizations. According to the [2022 Fair Housing Trend's Report](#), in 2021, FHIP-funded organizations investigated over 22,674 complaints of housing discrimination across the country, more than twice that of all state and federal agencies combined and over three times as many as local and state government agencies participating in HUD's FHAP program combined during the same period.

### **Fair Housing Assistance Program**

State and local government agencies certified by HUD to enforce state or local fair housing laws that are substantially equivalent to the Fair Housing Act receive FHAP funds. HUD funds FHAP agencies by reimbursing them based on the number of cases they successfully process. In addition, FHAP funds help cover administrative expenses and training. New FHAP organizations receive three years of capacity building funding before moving to the reimbursement phase. According to the [2022 Fair Housing Trend's Report](#), in 2021, FHAP entities investigated 6,413 complaints of housing discrimination.

## **FUNDING**

The FY22 enacted budget is \$56million for FHIP and \$25 million for FHAP. At least \$73.5 million, including \$5 million for a systemic testing program, must be provided for the FHIP program going forward. FHAP must be funded at \$35.2

million.

An increased FHIP appropriation would provide fair housing groups with the capacity to address larger systemic issues, such as discriminatory sales practices, insurance policies, and bringing about investigations into increasingly harmful blanket policies that have a widespread impact on available housing choice in entire markets. FHIP must also be increased to allow for private nonprofit fair housing organizations to address discrimination based on sexual orientation and gender identity to fully implement the *Bostock decision*, as well as to continue to address discrimination in mortgage lending, home appraisals, and the increasing use of artificial intelligence and machine learning which may discriminate against protected classes.

## **FORECAST FOR 2023**

Advocates should call on Congress to increase funding for FHIP and FHAP and annual increases of 3% to ensure grantees can retain their highly trained staff and attract new fair housing experts to the field. Advocates must also advocate for increased funding for salaries and expenses to better staff HUD's Office of Fair Housing and Equal Opportunity, which is responsible for processing complaints submitted through HUD's administrative complaint portal by the public and FHIP grantees, ensuring housing and community development programs affirmatively further fair housing, and managing FHIP and FHAP. These funds are critical to ensuring that locally based nonprofit fair housing enforcement organizations and city and state civil and human rights agencies have the necessary resources to investigate and address various emerging issues. This includes increasingly complicated and systemic discrimination in housing, lending, and insurance products and services that rely on artificial intelligence and machine learning; sexual orientation and gender identity discrimination; appraisal discrimination; and source of income discrimination.

## TIPS FOR LOCAL SUCCESS

Individuals and advocates who suspect or observe a fair housing violation, including a failure to affirmatively further fair housing, should contact a local fair housing organization, the National Fair Housing Alliance, or submit a request for assistance using the “Report Housing Discrimination” feature at [www.nationalfairhousing.org](http://www.nationalfairhousing.org).

Fair housing complaints can be submitted to local fair housing organizations, state or local government agencies, or HUD.

Individuals who experience hate crimes in a dwelling should call the local authorities, but they should also reach out to their local fair housing organization or the National Fair Housing Alliance. The Fair Housing Act has a criminal section that protects victims of certain hate crimes at their place of dwelling.

Advocates working with distressed homeowners who believe they may have been victims of lending discrimination should encourage borrowers to submit mortgage complaints to the Consumer Financial Protection Bureau (CFPB). Individuals and advocates may submit mortgage complaints by visiting [www.consumerfinance.gov](http://www.consumerfinance.gov) or by calling 855-411-CFPB (2372). Non-English speakers can receive information and submit mortgage complaints in 200 languages by calling the CFPB.

## WHAT TO SAY TO LEGISLATORS

Advocates should speak to legislators with the message that local nonprofit private fair housing organizations investigate 2.6 times as many fair housing complaints as all local and federal government agencies combined. According to the 2022 Fair Housing Trends Report, the number of housing discrimination complaints increased significantly in 2021, despite the fact there were fewer agencies reporting complaint data. There were 31,216 housing complaints in 2021, an 8.7 percent increase over the number of complaints filed in 2020. This important service is historically underfunded and as a result, fair housing and fair lending violations remain under-

reported and unaddressed. Advocates should also urge legislators to increase funding for FHAP to better support the work of local and state civil and human rights agencies that HUD relies on to process administrative complaints. Funding for FHIP should be at least \$73.2 million, including \$5 million for a systemic testing program, and funding for FHAP should be \$35.2 million going forward. Advocates should also urge Congress to provide \$153 million for salaries and expenses to HUD’s Office of Fair Housing and Equal Opportunity. HUD FHEO has been chronically underfunded and has not received sufficient technology funding increases to meet the fair housing needs of the public.

## FOR MORE INFORMATION

National Fair Housing Alliance, 202-898-1661, 800-910-7315, [www.nationalfairhousing.org](http://www.nationalfairhousing.org).



# Disparate Impact

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agencies:** HUD's Office of Fair Housing and Equal Opportunity (FHEO), Department of Justice

**Year Started:** 1968

**Population Targeted:** The "Fair Housing Act" "protected classes"—race, color, sex, national origin, disability, familial status (in other words, households with children), and religion

**See Also:** *Affirmatively Furthering Fair Housing* section of this *Guide*

Title VIII of the "Civil Rights Act of 1968," also known as the "Fair Housing Act," prohibits discrimination on the basis of race, color, sex, disability, national origin, familial status, or religion (the "protected classes") in the sale, rental, or financing of dwellings and in other housing-related activities. Section 804(a) of the Fair Housing Act makes it unlawful "[t]o refuse to sell or rent..., **or otherwise make unavailable or deny**, any dwelling to any person because of race, color, national origin, religion, sex, familial status, or handicap." (emphasis added).

In simple terms, "disparate impact" refers to a method of proving housing discrimination without having to show that discrimination is intentional.

Some common examples of disparate impact include:

- Nuisance ordinances that endanger women experiencing domestic violence;
- Occupancy limit policies that adversely affect families with children;
- Policies that restrict access to housing for people who have arrest records or criminal convictions;
- Restrictive zoning laws and building codes that harm people with disabilities;
- Restrictive zoning laws and building codes that disproportionately impact people of color;

- Restrictive zoning laws and building codes that prevent the development of affordable housing, disproportionately harming people of color and perpetuating segregation
- Policies and practices that harm those relying on vouchers who are disproportionately people of color;
- Redevelopment policies and practices that result in greatly increased rents and/or displacement disproportionately harming people of color; and
- Disaster recovery policies and programs that disproportionately harm or underserve people of color.

## THE 2013 DISPARATE IMPACT RULE

For more than 45 years, HUD interpreted the Fair Housing Act to prohibit housing policies or practices that had a discriminatory effect, even if there was no apparent intent to discriminate. There are 13 U.S. Courts of Appeals, 11 of which had disparate impact cases before them and all of which upheld disparate impact and applied a "burden shifting standard" (described below). Because minor variations existed over the years in how the courts and HUD applied the concept of discriminatory effects, HUD published a proposed rule for public comment in 2011.

The preamble to the proposed rule provided examples of "disparate impact" and "perpetuating segregation," each based on court decisions. Examples included: zoning ordinances that restrict construction of multifamily housing to areas predominantly occupied by people of color, public housing agency use of a local residency preference for distributing Housing Choice Vouchers where most residents are white, and demolition of public housing principally occupied by African Americans.

A final Disparate Impact rule was published February 15, 2013. It defined the term "discriminatory effect" as a practice that actually

or predictably results in a “disparate impact” on a group of people or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, sex, handicap, familial status, national origin, or religion. Importantly, the 2013 rule established a uniform standard for determining when a housing policy or practice with a discriminatory effect violates the Fair Housing Act.

The three-step burden shifting standard in the 2013 rule was very simple:

1. The plaintiff (the party alleging disparate impact) has the burden of proving that a policy or practice caused or predictably will cause a discriminatory effect.
2. If the plaintiff satisfies that burden of proof, the burden shifts to the defendant (the housing provider, business, government, or other entity) to prove that the challenged policy or practice is necessary to achieve one or more of the defendant’s substantial, legitimate, nondiscriminatory interests.
3. If the defendant satisfies the above burden of proof, then the burden shifts again to the plaintiff to prove that the defendant’s substantial, legitimate, nondiscriminatory interests could be served by another policy or practice that has a less discriminatory effect.

## THE U.S. SUPREME COURT UPHOLDS DISPARATE IMPACT THEORY

On June 25, 2015, Justice Anthony Kennedy announced the 5-4 decision of the Supreme Court of the United States upholding the disparate impact theory in housing discrimination cases that was challenged by the State of Texas in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project*.

At issue was whether the Fair Housing Act of 1968 bars not only intentional discrimination, but also policies and practices that have a disparate impact – that do not have a stated intent to discriminate but that have the effect of discriminating against the Fair Housing Act’s protected classes.

The Inclusive Communities Project (ICP) sued the Texas Department of Housing and Community Development over the siting of most Low-Income Housing Tax Credit properties in predominately Black communities in Texas. ICP won in District Court. Texas appealed to the U.S. Supreme Court.

ICP is a Dallas-based nonprofit that assists low-income people in finding affordable housing and that seeks racial and socioeconomic integration in Dallas housing. ICP assists voucher holders who want to move into areas that do not have concentrations of people of color obtain apartments in such neighborhoods by offering counseling, assisting in negotiations with landlords, and by helping with security deposits.

NLIHC prepared a [summary](#) of the Supreme Court decision.

## DISPARATE IMPACT DURING THE TRUMP ADMINISTRATION

During the Trump Administration, HUD issued an [advance notice of proposed rulemaking](#) (ANPR) in the *Federal Register* on June 20, 2018. HUD acknowledged that the Supreme Court upheld the use of disparate impact theory, but HUD asserted that the Court “did not directly rule upon it [the disparate impact rule].” Advocates and their attorneys asserted that the Court implicitly endorsed the rule by not questioning it or challenging it. Since the *Inclusive Communities* Supreme Court decision, courts have found that the rule is consistent with the Supreme Court’s decision.

The Trump Administration subsequently [proposed](#) a drastic revision of the 2013 rule in August 2019 and issued a [final rule on September 24, 2020](#) that would make it far more difficult for people experiencing various forms of discrimination to challenge the practices of housing providers, governments, businesses, and other large entities. The 2013 rule’s three-part “burden shifting” standard to show disparate impact would be radically changed to a five-component set of tests placing virtually all the burden on people who are in protected classes. The changes were designed to make it much more difficult, if not impossible, for people in

protected classes to challenge and overcome discriminatory effects in housing policies or practices.

The proposed rule would have tipped the scale in favor of defendants (housing providers, governments, and business) that are accused of discrimination. It would have shifted the burden of proof entirely to the plaintiffs; victims of discrimination would be asked to try to guess what justifications a defendant might invoke, and plaintiffs would have to preemptively counter those justifications. HUD further proposed making a profitable policy or practice immune from challenge of disparate impact unless the victims of discrimination could prove that a company could make at least as much money without discriminating. In other words, according to HUD, profit justifies discrimination.

NLIHC prepared a [summary of key features](#) of the proposed rule and an [analysis of the final 2020 rule](#).

## U.S. DISTRICT COURT ISSUES PRELIMINARY INJUNCTION ON TRUMP FINAL DISPARATE IMPACT RULE

The National Fair Housing Alliance (NFHA), the NAACP Legal Defense and Educational Fund, Inc. (LDF), Fair Housing Advocates of Northern California, and BLDS, LLC filed a lawsuit against HUD with the U.S. District Court for the Northern District of California. In addition, the Open Communities Alliance (OCA) and SouthCoast Fair Housing of Massachusetts and Rhode Island filed a lawsuit with the United States District Court for the District of Connecticut.

The U.S. District Court for the District of Massachusetts issued a preliminary nationwide injunction on October 25, 2020 to halt implementation of HUD's final disparate impact rule, thanks to the efforts of Lawyers for Civil Rights and Anderson & Kreiger, with the Massachusetts Fair Housing Center and Housing Works, Inc. serving as plaintiffs on the case.

The plaintiffs claimed the new final disparate impact rule violated the Administrative

Procedure Act (APA). In order to obtain preliminary injunctive relief, the plaintiffs demonstrated: a substantial likelihood of success on the merits; a significant risk of irreparable harm if an injunction was withheld; a favorable balance of hardships; and a fit between the injunction and the public interest.

The court wrote, "There can be [no] doubt that the 2020 [disparate impact] Rule weakens, for housing discrimination victims and fair housing organizations, disparate impact liability under the Fair Housing Act. It does so by introducing new, onerous pleading requirements on plaintiffs, and significantly altering the burden-shifting framework by easing the burden on defendants of justifying a policy with discriminatory effect while at the same time rendering it more difficult for plaintiffs to rebut that justification. In addition, the 2020 Rule arms defendants with broad new defenses which appear to make it easier for offending defendants to dodge liability and more difficult for plaintiffs to succeed. In short, these changes constitute a massive overhaul of HUD's disparate impact standards, to the benefit of putative defendants, and to the detriment of putative plaintiffs (and, by extension, fair housing organizations, such as MFHC)."

An NLIHC [summary](#) provides more detail.

## DISPARATE IMPACT IN THE FIRST YEAR OF THE BIDEN ADMINISTRATION

President Biden issued "[Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies](#)" to the HUD Secretary on January 26, 2021 instructing HUD to examine the effect of the previous Administration's September 24, 2020 final disparate impact rule replacing the 2013 disparate impact rule.

The memorandum further instructed the HUD Secretary to take the necessary steps to prevent practices that have a disparate impact. The memorandum stated, "Based on these examinations, the Secretary shall take any

necessary steps, as appropriate and consistent with applicable law, to administer the Fair Housing Act including by preventing practices with an unjustified discriminatory effect.”

In addition, the U.S. Department of Justice withdrew the previous Trump-era HUD appeal of the case postponing implementation of the disparate impact rule. By withdrawing the appeal, the preliminary injunction described above continued to delay implementation of the Trump disparate impact rule.

HUD published a proposed rule in the *Federal Register* on June 25, 2021 to reinstate the 2013 disparate impact rule. The proposed rule would recodify the 2013 rule’s discriminatory effects three-step burden shifting standard. The proposed rule would also return the definition of “discriminatory effect” eliminated from the 2020 rule, which also erased “perpetuation of segregation” as a recognized type of discriminatory effect distinct from disparate impact. As of the date this article was drafted, a final rule was not sent to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB). Whether a final rule is published in 2023 remains uncertain.

## FOR MORE INFORMATION

NLIHC, 202-662-1530, Fair Housing: Disparate Impact, <https://nlihc.org/racial-equity-and-fair-housing-disparate-impact>.

HUD Updates and Links, <https://nlihc.org/hud-updates-and-links-0>.

NLIHC Resources, <https://nlihc.org/nlihc-resource-disparate-impact>.

National Fair Housing Alliance, 202-898-1661, <https://nationalfairhousing.org/?s=Disparate+Impact>.

NAACP Legal Defense and Educational Fund, Inc. (LDF), 202-682-1300, [https://www.naacpldf.org/search-results/?\\_sf\\_s=Disparate+Impact](https://www.naacpldf.org/search-results/?_sf_s=Disparate+Impact).

# Affirmatively Furthering Fair Housing (AFFH)

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** HUD's Office of Fair Housing and Equal Opportunity (FHEO)

**Year Started:** 1968

**Population Targeted:** The "Fair Housing Act" "protected classes"—race, color, sex, national origin, disability, familial status (in other words, households with children), and religion

**See Also:** *Consolidated Planning Process*, and *Public Housing Agency Plan* sections of this *Guide*

## AFFIRMATIVELY FURTHERING FAIR HOUSING

Title VIII of the "Civil Rights Act of 1968" (the "Fair Housing Act") requires jurisdictions receiving federal funds for housing and urban development activities to affirmatively further fair housing. The Fair Housing Act not only makes it unlawful for jurisdictions to discriminate; the law also requires jurisdictions to take actions that can undo historic patterns of segregation and other types of discrimination, as well as to take actions to promote fair housing choice and to foster inclusive communities. The "protected classes" of the Fair Housing Act are determined by race, color, national origin, sex, disability, familial status, and religion.

This article describes the Interim Final Rule (IFR) "[Restoring Affirmatively Furthering Fair Housing Definitions and Certifications](#)" published in the *Federal Register* on June 10, 2021 shortly after the Biden Administration took office. The IFR, which went into effect on July 31, 2021, requires "program participants" (local and state governments as well as public housing agencies, PHAs) to submit "certifications" (pledges) that they will affirmatively further fair housing (AFFH) in connection with their Consolidated Plans (ConPlans), Annual Action Plans to their ConPlans, and annual PHA Plans. The IFR does

not require a specific planning process such as the one in the 2015 AFFH Rule; instead, it creates a voluntary fair housing planning process.

HUD published the [first Affirmatively Furthering Fair Housing rule](#) on July 16, 2015. However, the 2015 AFFH rule was suspended by the Trump Administration in 2018, and then on August 7, 2020, the Trump Administration abruptly and without public review and comment, published the "[Preserving Neighborhood and Community Choice](#)" rule. The IFR rescinded that rule.

HUD published a complete [proposed AFFH rule](#) on February 9, 2023, intended to improve upon the 2015 AFFH rule. That proposed rule had a 60-day public review and comment period ending on April 10, 2023. At the time of writing, NLIHC was still assessing the many details of the proposed AFFH rule. Consequently, only a high-level overview of the proposed rule can be presented here. Advocates are urged to visit NLIHC's [Racial Equity and Fair Housing webpage](#) as the year progresses for more detailed analyses of the 2023 proposed rule and its status.

## HISTORY

Although affirmatively furthering fair housing has been law since the "Fair Housing Act of 1968," meaningful regulations to provide jurisdictions and PHAs with guidance on how to comply had not existed. The 1974 law creating the Community Development Block Grant (CDBG) program required jurisdictions to certify that they would affirmatively further fair housing. Eventually, that certification was defined in CDBG regulations (and later in Consolidated Plan, ConPlan, regulations) to mean that the executive of a jurisdiction "certified" (pledged) that the jurisdiction had an Analysis of Impediments (AI) to fair housing choice, that the jurisdiction would take appropriate actions to overcome the effects of the impediments, and that the jurisdiction



would keep records of its actions. In addition, the 1990 statute creating the Comprehensive Housing Affordability Strategy or CHAS (the statutory basis of the ConPlan) and the HOME Investment Partnerships Program, and the 1998 statute creating the PHA Plan for public housing agencies, each require jurisdictions and PHAs to certify in writing that they are affirmatively furthering fair housing (AFFH) in accord with the Fair Housing Act.

On July 16, 2015, HUD published the long-awaited final rule implementing the Fair Housing Act obligation for HUD to administer its programs in a way that affirmatively furthers fair housing. HUD began planning for an AFFH rule in 2009 by meeting with a broad spectrum of stakeholders, mindful of vehement opposition that erupted in 1998, which ultimately doomed HUD's effort to publish a rule then. On July 19, 2013, HUD published a proposed AFFH rule. On September 26, 2014, HUD published a proposed Fair Housing Assessment Tool to help guide the AFFH planning process. A final Fair Housing Assessment Tool for larger CDBG entitlement jurisdictions was published on December 31, 2015. An Assessment Tool for PHAs was published on January 13, 2017; however, PHAs did not have to use the Tool until HUD provided the needed data and issued a notice in the *Federal Register* announcing a new submission date. That data was never provided, hence PHAs did not have to use an Assessment Tool, unless they joined with their local city or county, in which case the city or county took the lead and used the local jurisdiction Assessment Tool. A proposed tool for states was published on March 11, 2016, but never finalized. Details about the 2015 final AFFH rule are available on NLIHC's [Racial Equity and Fair Housing webpage](#).

The 2015 rule and process were to be implemented on a staggered basis. Only an estimated 22 CDBG entitlement jurisdictions were required to use this new rule and process in 2016. Another estimated 105 CDBG entitlement jurisdictions were to begin in 2017. All other CDBG entitlement jurisdictions, states, and public housing agencies were required to use

the pre-existing Analysis of Impediments (AI) process.

HUD under Secretary Carson suspended use of the 2015 AFFH rule for all but 32 jurisdictions on May 23, 2018. Then, on August 16, HUD published an Advanced Notice of Proposed Rule Making (ANPR) inviting public comment regarding amending the AFFH rule. Subsequently, Secretary Carson published a proposed rule on January 14, 2020 that was not an AFFH rule; in fact it would gut fair housing by, among other means, falsely equating increasing the housing supply with fair housing choice. Finally, without public review and comment, the Trump Administration abruptly issued a final rule, "[Preserving Community and Housing Choice](#)" on August 7, 2020 repealing the [2015 regulations](#) implementing the statutory obligation to "affirmatively further fair housing" (AFFH).

In its final form, the Preserving Community and Housing Choice "AFFH" rule in essence was reduced to three lines, two of which were in a definition section. One line defined "fair housing" to mean "housing that, among other attributes, is affordable, safe, decent, free of unlawful discrimination, and accessible as required under civil rights laws." The other line defined "affirmatively further" to mean "to take **any** action rationally related to promoting **any** attribute or attributes of fair housing" (emphasis added). Theoretically, to "affirmatively further fair housing" a city could merely donate one abandoned building in a disinvested neighborhood to a developer to rehabilitate and rent to low-income households, some of whom might use Housing Choice Vouchers to make it affordable.

States, local governments, and public housing agencies receiving HUD funds ("program participants") had to certify that they were affirmatively furthering fair housing. The third line stated that such a certification "is sufficient if the program participant takes **any** action that is rationally related to promoting one or more attributes of fair housing." (emphasis added) Although the final rule was voluminous, the bulk of the document simply removed from all HUD

regulations, reference to the Assessment of Fair Housing (AFH) that the 2015 rule required.

On January 26, 2021, the Biden White House issued a Memorandum to the Secretary of Housing and Urban Development, which declared that the affirmatively furthering fair housing provision in the Fair Housing Act, “...is not only a mandate to refrain from discrimination but a mandate to take actions that undo historic patterns of segregation and other types of discrimination and that afford access to long-denied opportunities.” The Memorandum ordered HUD to examine the effects of the previous Administration’s actions against the AFFH Rule and the effect that it has had on HUD’s statutory duty ensure compliance with the Fair Housing Act and the duty to affirmatively further fair housing.

HUD published the Interim Final Rule (IFR), “Restoring Affirmatively Furthering Fair Housing Definitions and Certifications” in the *Federal Register* on June 10, 2021, becoming effective on July 31. The IFR restores a number of definitions from the 2015 AFFH rule and the certifications that were removed by the previous Administration.

Advocates sent recommendations for a renewed AFFH regulation to HUD’s Office of Fair Housing and Equal Opportunity (FHEO) on August 27, 2021. In October 2021, FHEO held a number of listening sessions with stakeholders to gather thoughts that might inform drafting of a proposed AFFH rule. In addition to detailed suggestions made during the listening sessions, advocates, including NLIHC sent a letter to FHEO highlighting suggestions made during those listening sessions.

HUD subsequently published a complete, proposed AFFH rule on February 9, 2023, taking as its starting point the fair housing planning process created by the 2015 AFFH rule and proposing refinements informed by lessons HUD learned from implementation of the 2015 AFFH rule and by feedback provided by stakeholders. The 2023 proposed rule would provide a framework under which program

participants set and implement meaningful fair housing goals that will determine how they leverage HUD funds and other resources to affirmatively further fair housing. In short, program participants will identify fair housing issues, prioritize the issues on which they will focus, and develop fair housing goals they will implement to overcome fair housing issues over the next three to five years (depending on their ConPlan cycle).

HUD will accept comments regarding the proposed rule until April 10, 2023, after which HUD will read all comments and eventually publish a final rule. It is not possible to predict when a final rule will be published. Even after a final rule is implemented, the way the proposed rule intends to roll out implementation by program participants of various sizes means that it could be several years before most program participants would be required to follow the provisions of a final AFFH rule. Until a program participant is required to comply with a final AFFH rule, it will continue to carry out its AFFH obligations following the IFR.

### **The Need for the AFFH Rule**

The pre-existing system based on the Analysis of Impediments (AI) to fair housing was not effective, as noted by the Government Accountability Office (GAO). There were numerous limitations of the pre-existing AFFH system, beginning with the absence of regulatory guidance (HUD published a booklet in 1996, the Fair Housing Planning Guide, but it did not have the authority of regulation, policy notice, or policy memorandum). Consequently, there was no authoritative source to suggest what might constitute impediments to fair housing choice, nor was there guidance to indicate what actions to overcome impediments might be adequate. Without guidance, many jurisdictions did not take meaningful actions to overcome impediments to fair housing. A classic abuse on the part of some jurisdictions was to assert that they were taking actions to overcome impediments to fair housing by placing fair housing posters around public places during Fair Housing Month. Without guidance and because public participation was

not required in the preparation of an AI, many wholly inadequate AIs were drafted. Although other AIs were quite extensive, they seemed destined to sit on a shelf in case HUD asked to see them (AIs were not submitted to HUD for review). In addition, AIs were not directly linked to a jurisdiction's ConPlan or annual action plan, or to a PHA's Five-Year PHA Plan and Annual Plans. AIs also had no prescribed schedule for renewal; consequently, many were not updated in a timely fashion.

## SUMMARY OF THE INTERIM FINAL RULE

The [AFFH webpage](#) of HUD's Office of Fair Housing and Equal Opportunity [website](#) has [Frequently Asked Questions](#) (FAQs) that are a bit clearer than the IFR itself. In addition, the AFFH webpage has links to the three 2015 rule Assessment Tools, AFFH Rule Guidebook, links to eight fact sheets, and links to the AFFH data and mapping tool.

### Definitions

The Interim Final Rule (IFR) restores certain definitions from the 2015 AFFH rule, in particular the definition of affirmatively furthering fair housing and the definition of meaningful actions.

“Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating

to housing and urban development.”

“Meaningful actions means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.”

### Certifications

The IFR [at 24 CFR §5.152] requires program participants to certify that they will comply with their obligation to affirmatively further fair housing when required by statutes governing HUD programs, such as the ConPlan statute. Under the 2015 rule, the definition of certification “meant that the program participant will take meaningful actions to further the goals identified in an Assessment of Fair Housing (AFH), and by referring to the ConPlan and PHA Plan regulations, that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.”

### Fair Housing Planning

The IFR does not require program participants to undertake any specific type of fair housing planning. They do not have to conduct an Assessment of Fair Housing (AFH) using an Assessment Tool as required by the 2015 rule, nor do they have to conduct an Analysis of Impediments (AI) to Fair Housing Choice, as was required prior to the 2015 rule. The IFR allows a program participant to engage in a fair housing planning process that supports its certification that it is affirmatively furthering fair housing. Program participants may voluntarily use the 2015 Assessment Tool to create an AFH, or may voluntarily undertake an AI. Program participants are not required to submit their fair housing planning documents to HUD for review, unlike with the 2015 AFFH rule. HUD will only conduct a review when there is reason to believe a program participant's certification is not supported by their actions. There is no formal mechanism for the public to file complaints regarding a program participant's certification or compliance with its obligation to affirmatively further fair housing.

The voluntary nature of the IFR will likely lead to similar failures by program participants to adequately examine whether their policies and practices are consistent with their obligation to affirmatively further fair housing.

### **No Public Participation Requirement**

The IFR does not have a public participation requirement specific to fair housing planning; instead, program participants merely have to follow the public participation requirements of the ConPlan or PHA Plan regulations – which will not necessarily provide adequate engagement regarding affirmatively furthering fair housing.

### **Loss of Text Regarding a Balanced Approach to AFFH**

IFR omits language from the 2015 AFFH Rule that included important language clarifying that AFFH encompasses more than mobility out of racially and ethnically concentrated areas of poverty and can include place-based strategies such as preservation of affordable housing. This key language illustrated what is commonly known as the “balanced approach” between mobility strategies and place-based investments adopted by the 2015 Rule. The 2015 rule’s explanation of the purpose of the rule read in part:

“...A program participant’s strategies and actions must affirmatively further fair housing and may include various activities, such as developing affordable housing, and removing barriers to the development of such housing, in areas of high opportunity; strategically enhancing access to opportunity, including through: Targeted investment in neighborhood revitalization or stabilization; preservation or rehabilitation of existing affordable housing; promoting greater housing choice within or outside of areas of concentrated poverty and greater access to areas of high opportunity; and improving community assets such as quality schools, employment, and transportation.”

## **PRELIMINARY HIGHLIGHTS OF KEY PROVISIONS OF THE 2023 PROPOSED RULE**

Because the proposed rule was published on February 9, 2023, NLIHC was still assessing its many details when this *Advocates’ Guide* was being finalized. Consequently, what follows is only a high-level overview of some of the proposed rule’s key provisions. NLIHC is generally pleased with the proposed rule, but even at this preliminary analysis stage, NLIHC has some concerns about the community engagement provisions and the failure to define “affordable housing” as housing that requires a household to spend no more than 30% of its adjusted income on rent or mortgage plus utilities. (This definition is known as the “Brooke Rule.”) In addition, NLIHC already has a number of suggestions for further improving the proposed rule. Advocates are urged to visit NLIHC’s [Racial Equity and Fair Housing webpage](#) for more detailed analyses of the 2023 proposed rule and its status as the year progresses.

### **Greatly Increased Community Engagement Requirements**

It is significant that HUD’s summary in the preamble to the proposed rule begins with a discussion of improved community participation provisions – placing upfront “community engagement” (as the proposed rule now terms community/citizen participation). In addition, throughout the proposed text, the rule reminds program participants of their community engagement obligations.

In general, the proposed rule requires program participants to “actively engage with a wide variety of diverse perspectives within their communities” and to “proactively facilitate” community engagement “during the development” of the “Equity Plan,” enabling the public to identify fair housing “issues” and set fair housing “goals,” taking into consideration views and recommendations received from the community. The Equity Plan (briefly described below) is the streamlined replacement for the 2015 final rule’s Assessment of Fair Housing



(AFH). The public must have a reasonable opportunity to be involved in the program participant's required incorporation of the Equity Plan's "fair housing goals as strategies and meaningful actions into the ConPlan, Annual Action Plan, PHA Plan, and other required planning documents."

Program participants must use communication methods designed to reach "the broadest possible audience" and should make efforts to reach members of protected classes and "underserved communities." The text provides examples of communication methods. As defined in the proposed rule, the term "underserved communities" notably provides as examples people experiencing homelessness, LGBTQ+ people, survivors of domestic violence, persons with criminal records, and rural communities.

The proposed rule requires program participants to prioritize fair housing issues in each fair housing "goal category" prescribed by HUD. However, the community engagement provisions do not specifically require public involvement regarding prioritizing fair housing issues. NLIHC is concerned that a program participant could just "listen" to public input about issues but ignore the public when setting which fair housing issues to prioritize. NLIHC will urge HUD to specially add that community engagement must also take place during the required prioritization of fair housing issues prior to setting fair housing goals.

The proposed rule requires program participants to hold at least three public "meetings" at various accessible locations and at different times to ensure protected class groups and underserved communities are afforded opportunities to provide input during the development of the Equity Plan. At least one of these meetings must be held at a location in which underserved communities disproportionately live, and efforts must be made to obtain input from members of underserved communities who do not live in underserved communities.

It is important to note that the proposed AFFH rule uses the term "meeting" instead of the

ConPlan's and PHA Plan's use of the term "hearing." Hearings are formal proceedings governed by state and local law and hence can be limiting. However, because fair housing, ConPlan, and PHA Plan decisions are ultimately "political" in nature, there is value in having community engagement with elected officials present (or politically appointed officials in the case of PHAs). On the other hand, there are advantages to having "meetings" because they are less formal, more flexible, and might be less intimidating to community members.

It is not clear whether the three required meetings must address different stages of developing an Equity Plan: for example, at one stage to gather input regarding fair housing issues, at another stage regarding setting priorities among all the identified fair housing issues, and at a third stage to engage the community in setting fair housing goals, strategies, and actions. Or does HUD intend that the three required meetings take place at the required different locations and times? NLIHC recommends the latter while adding four separate, additional required meetings: one for identifying fair housing issues, a second for setting fair housing priorities, a third for deciding on fair housing goals, strategies, and actions, and a fourth meeting calling for the public to have an opportunity to comment on a "draft" Equity Plan before it is sent to HUD for review.

The public will be able to file complaints directly with HUD regarding a program participant's AFFH-related activities, and this in turn will enable HUD to open a compliance review in response to a complaint.

### **Annual Evaluation of Progress toward Achieving Fair Housing Goals**

While an Equity Plan is in effect, program participants will be required to conduct and submit to HUD for posting on a HUD website Annual Progress Evaluations regarding the status of each fair housing goal. Program participants must assess whether to establish a new fair housing goal (or goals) or whether to modify an existing fair housing goal because it cannot



be achieved in the amount of time previously anticipated.

Program participants must engage the public at least annually through at least two public meetings at different locations, one of which must take place in an area in which underserved communities predominately live. This community engagement activity is separate from the three public meetings required during the development of the Equity Plan. The purpose of these meetings about the Annual Progress Evaluation is to receive public input indicating whether the program participant is “taking effective and necessary actions to implement the Equity Plan’s fair housing goals.”

In addition, an Equity Plan must include a summary of a program participants’ progress in meeting its fair housing goals set in prior-year Equity Plans. This is distinct from the requirement to have an Annual Performance Evaluation. Subsequent Equity Plans may have a compilation of previous years’ Annual Performance Evaluation summaries.

### **Greater Public Transparency**

The proposed rule provides the public with more opportunities to directly engage with HUD and provides HUD with regulatory ability to respond to the public and to encourage program participants to take necessary actions. All Equity Plans submitted to HUD for review will be posted to a HUD webpage. The public will be able to directly provide HUD with additional information about an Equity Plan still under HUD review, information that HUD will use in its review of an Equity Plan. Also to be posted on the HUD website will be the reasons HUD accepted an Equity Plan *or* HUD’s communications with a program participant indicating why an Equity Plan was not accepted, along with actions a program participant can take to resolve the non-acceptance. The HUD review, non-acceptance, recommended corrective actions, and program participant adoption or non-adoption of the recommendations can go back and forth many times, as long as necessary to arrive at HUD acceptance. In addition, a program participant’s

Annual Progress Evaluations will be posted on the HUD website, along with any important HUD communications regarding them.

### **The Equity Plan**

Every five years, program participants must develop and submit an Equity Plan to overcome local fair housing “issues” by conducting an analysis in their “geographic area of analysis” that identifies fair housing issues and the circumstances and factors that cause, increase, contribute to, maintain, or perpetuate those fair housing issues. The description of a fair housing issue must include its specific condition and any protected classes that are adversely affected by the issue. The analysis must be informed by community engagement, HUD-provided data, and local data and local knowledge.

After engaging the community, program participants must prioritize the identified fair housing issues in order to set one or more fair housing goals to overcome the prioritized fair housing issues for each fair housing “goal category.” An Equity Plan’s identification of priority fair housing issues and goals must address, at a minimum, the following fair housing goal categories, which HUD considers to be the core areas of the AFFH analysis:

- i. Segregation and integration;
- ii. Racially or ethnically concentrated areas of poverty (R/ECAPs, which are not well-defined);
- iii. Disparities in access to opportunity;
- iv. Inequitable access to affordable housing and homeownership opportunities;
- v. Laws, ordinances, policies, practices, and procedures that impede the provision of affordable housing in well-resourced areas of opportunity, including housing that is accessible for people with disabilities;
- vi. Inequitable distribution of local resources, which may include municipal services, emergency services, community-based supportive services, and investments in infrastructure;
- vii. Discrimination or violations of civil rights

law or regulations related to housing or access to community assets based on race, color, national origin, religion, sex, familial status, and disability.

ConPlan program participants must address all seven goal categories, which entail 31 questions plus 28 subquestions. PHAs must address five of the goal categories, which entail 21 questions plus 30 subquestions. HUD will not prescribe the format used by program participants to answer the questions.

To establish an Equity Plan's fair housing goals, program participants must prioritize the fair housing issues in each fair housing goal category, giving consideration to fair housing issues historically faced by "underserved communities." In determining how to prioritize fair housing issues within each fair housing goal category, program participants must give highest priority to fair housing issues that will result in the most effective fair housing goals for achieving material positive change for underserved communities. The Equity Plan must have timeframes for achieving a goal, including metrics and milestones.

Fair housing goals, when taken together, must be designed to overcome prioritized fair housing issues in each fair housing goal category and be reasonably expected to result in material positive change consistent with a balanced approach. Examples of potential goals include: siting future affordable housing outside of segregated areas; expanding mobility programs; reducing land use and zoning restrictions; removing nuisance or crime-free ordinances; enacting and enforcing source of income laws; enhancing housing accessibility features for people with disabilities; enacting protections for LGBTQ+ people; and revising PHA eviction, admissions, and prior criminal records policies.

### **More Direct Incorporation of the New Fair Housing Equity Plan into ConPlans and PHA Plans**

After HUD "accepts" an Equity Plan, a program participant must incorporate the Equity Plan's fair housing goals, strategies, and actions necessary

to implement the goals into its ConPlan, Annual Action Plans of the ConPlan, or PHA Plan. The purpose is to ensure that a program participant's programs, activities, and services, as well as its policies and practices, are consistent with the obligation to affirmatively further fair housing. In addition, program participants must identify specific, expected allocations of HUD funds (as well as other federal, state, local, and charitable funds) that will be used to carry out a program participant's programs, activities, and services in ways consistent with the obligation to affirmatively further fair housing. This more direct inclusion of an Equity Plan's fair housing goals, strategies, and actions, as well as fund allocations, in a program participant's ConPlan, Annual Action Plan, or PHA Plan is an improvement over the 2015 AFFH rule, which was less clear.

### **Clarification of and Emphasis on the Need for a Balanced Approach**

The proposed rule, unlike the 2015 rule, provides a detailed definition of "balanced approach" to affirmatively further fair housing. It means an approach to community planning and investment that balances a variety of actions to eliminate housing-related disparities using a combination of place-based and mobility actions and investments. Examples of place-based strategies include preserving existing affordable housing in racially or ethnically concentrated areas of poverty (which HUD calls "R/ECAPs") while also making substantial investments designed to improve community living conditions and community assets in those disinvested neighborhoods. Examples of mobility strategies, those that enable households to seek greater affordable housing opportunities by moving to areas that already have better infrastructure and community assets, include removing barriers (such as zoning ordinances, or PHA portability policies) that prevent people from obtaining affordable housing in well-resourced neighborhoods.

Reference to the need for a balanced approach is also included at three places in the text. One, regarding a program participant's fair housing

goals, requires those goals, when taken together, to be designed and reasonably be expected to result in material positive change consistent with a balanced approach. Another states that a program participant's fair housing goals "may not require residents of racially or ethnically concentrated areas of poverty to move away from those areas if they prefer to stay in those areas as a matter of fair housing choice." The third, pertaining to the incorporation of fair housing goals, strategies, and actions in a ConPlan, Annual Action Plan, or PHA Plan, states that strategies and meaningful activities may include "place-based strategies and meaningful actions that are part of a balanced approach, including the preservation of existing HUD-assisted housing and other affordable housing."

### **Phased Implementation for Program Participants Based on Size**

When a state, local jurisdiction, or a PHA will be required to have an Equity Plan will be phased in over many years, starting with the largest jurisdictions or PHAs. For example, for jurisdictions, those receiving a total of \$100 million or more in HUD formula grants from programs that are subject to the ConPlan requirements (CDBG, HOME, HTF, ESG, and HOPWA) for the "program year" beginning on or after January 1, 2024, their first Equity Plan must be submitted by 24 months after the day the AFFH rule is finalized and becomes effective or 365 calendar days before the date a new ConPlan is due – whichever is earlier. There are three more tiers: jurisdictions receiving a total of \$30-99 million in formula grant funds, those receiving a total of \$1-29 million, and those receiving less than \$1 million. For these jurisdictions, the program years that trigger the date an Equity Plan is due are after January 1, 2025, January 1, 2026, and January 1, 2027. For each, their Equity Plans are due no later than 365 days before the date for which a new ConPlan is due. It should be noted that a new ConPlan might not be due until years later if a jurisdiction had a new ConPlan approved just before the trigger date.

When a PHA must have an accepted Equity Plan will depend on the combined number of

public housing and Housing Choice Vouchers it administers. Up first will be PHAs that have 50,000 or more combined public housing and vouchers; their first Equity Plans must be submitted no later than 24 months after the AFFH rule becomes finalized and effective or 365 days before a new Five-Year PHA Plan is due following the start of the fiscal year that begins on or after January 1, 2024 – whichever is earlier. There are three more tiers: PHAs with 10,000-49,999 combined public housing and voucher units, PHAs with 1,000-9,999 combined units, and PHAs with fewer than 1,000 combined units. In each case, their Equity Plans are due no later than 365 calendar days before the date a new Five-Year PHA Plan is due following the start of the fiscal year that begins on or after January 1, 2025, January 1, 2026, and January 1, 2027, respectively.

After the first Equity Plan, subsequent Equity Plans must be submitted for review 365 calendar days before the date a new ConPlan or PHA Plan is due.

### **Complying with the AFFH Planning and Certification Requirements (of the IFR) until the First Equity Plan Is Due**

As is evident from the preceding discussion, it will be years before most program participants will have to develop and submit an Equity Plan. However, they will still have to meet their AFFH obligations. As established in the Interim Final Rule (IFR), program participants will still have to engage in fair housing planning, which could include preparing an Analysis of Impediments to Fair Housing Choice (AI) as was required until 2015, completing an Assessment of Fair Housing (AFH) as designed in the 2015 AFFH rule, completing some other fair housing planning, or even voluntarily creating an Equity Plan.

If a program participant has not conducted or updated its fair housing plan for more than three years before the effective date of a final AFFH rule, it must either conduct or update its fair housing plans and submit them to HUD for posting on the HUD website and potential review 365 calendar days after the AFFH rule becomes

effective. Program participants that have conducted or updated their fair housing plans during the three years before the effective date of the final AFFH rule must merely submit their existing fair housing plans to HUD for posting on the HUD website and potential review no later than 120 days from the effective date of the final rule.

### **HUD Review of Equity Plans**

Program participants must submit an Equity Plan for HUD review. HUD will post a submitted Equity Plan on a HUD-maintained website and the public may submit comments regarding it within 60 days from the date the Equity Plan is submitted to HUD. (NLIHC will recommend the final rule change this requirement to 60 days from the date HUD posts an Equity Plan on the HUD website.) HUD will have 100 days to determine whether the Equity Plan includes the required fair housing issue analysis, has identified fair housing issues, and has established fair housing goals in order to accept the Equity Plan.

HUD will not accept an Equity Plan if it is not in compliance with any of the provisions of the AFFH rule. The proposed rule offers examples of shortcomings which might cause HUD to not accept an Equity Plan if it:

- Does not identify local policies or practices as fair housing issues when they pose a barrier to equity.
- Has fair housing goals that are not designed and cannot be reasonably expected to result in material, positive change with respect to one or more prioritized fair housing issues.
- Was developed without the required community engagement.
- Has fair housing issues or fair housing goals that are materially inconsistent with data or other evidence available to a program participant.
- Has fair housing goals that are not designed to overcome the effects of the fair housing issues in the Equity Plan.
- Fails to acknowledge the existence of fair

housing issues identified during community engagement.

If HUD does not accept the Equity Plan, HUD will notify the program participant in writing with the reasons the Equity Plan cannot be accepted, along with guidance on how a non-accepted Equity Plan may be revised and resubmitted within 60 calendar days from the date of HUD notification. HUD will post on its website all communications with a program participant regarding nonacceptance and all revisions or resubmissions. HUD will have 75 calendar days to review revised Equity Plans. If HUD does not accept a revision, the process of notification, revision, and resubmission will repeat until a revised Equity Plan is accepted.

If a program participant does not have an accepted Equity Plan by the time its ConPlan or PHA Plan must be approved, in order to have that ConPlan or PHA Plan approved, the program participant must provide HUD with special assurances that it will achieve an Equity Plan that meets regulatory requirements within 180 days of the end of HUD's review period for its ConPlan or PHA Plan. At the end of the 180-day period, if a program participant still does not have a HUD-accepted Equity Plan, HUD will initiate termination of funding and will not grant or continue granting applicable funds.

### **TIPS FOR LOCAL SUCCESS**

Advocates should organize to convince their local jurisdictions and PHAs to follow the lead of the 2015 AFFH rule or voluntarily follow some or all of the 2023 proposed AFFH rule to create an Equity Plan and incorporate its fair housing goals, strategies, and actions into their ConPlans or PHA Plans.

### **FORECAST FOR 2023**

HUD published a complete proposed AFFH rule on February 9, 2023, with a 60-day public review and comment period ending on April 10, 2023. HUD will read all comments and eventually publish a final rule. It is not possible to predict when a final rule will be published. Even after a final rule is implemented, the way the proposed



rule intends to roll out implementation by program participants of various sizes means that it could be years before most program participants would be required to follow the provisions of a final AFFH rule. Advocates are urged to visit NLIHC's [Racial Equity and Fair Housing webpage](#) for more detailed analyses of the 2023 proposed rule and its status as the year progresses.

## WHAT TO SAY TO LEGISLATORS

The 2023 proposed AFFH rule would replace the 2015 rule's AFFH Assessment of Fair Housing (AFH) with a streamlined Equity Plan. It would also eliminate the 2015 AFFH Assessment Tool and instead require program participants to conduct a fair housing analysis to identify fair housing issues by responding to questions covering just a few broad areas (seven for Consolidated Plan recipients and five for PHAs). HUD will not prescribe the format used by program participants to answer the questions. In addition, the proposed rule would greatly enhance public accountability by requiring posting on a HUD-maintained website, Equity Plans, Annual Progress Evaluations, and related official correspondence between HUD and a program participant. The proposed rule has provisions greatly enhancing opportunities for community engagement throughout the AFFH process. As with the 2015 rule, program participants would be able to address any concerns raised by HUD regarding a submitted Equity Plan through a virtually unlimited iterative process.

## FOR MORE INFORMATION

NLIHC, 202-662-1530, <https://nlihc.org/explore-issues/policy-priorities/fair-housing>.

particularly a webpage containing archived information, <https://nlihc.org/racial-equity-and-fair-housing-affirmatively-furthering-fair-housing-affh>.

National Housing Law Project, 415-546-7000, <https://www.nhlp.org/initiatives/fair-housing-housing-for-people-with-disabilities/affirmatively-furthering-fair-housing>.

National Fair Housing Alliance, 202-898-1661, <https://nationalfairhousing.org>.

Poverty & Race Research Action Council, <https://prrac.org/fair-housing/affirmatively-furthering-fair-housing>.

The Interim Final Rule, easy to read version <https://public-inspection.federalregister.gov/2021-12114.pdf>, and official *Federal Register* version, <https://www.govinfo.gov/content/pkg/FR-2021-06-10/pdf/2021-12114.pdf>.

The 2023 proposed rule <https://www.govinfo.gov/content/pkg/FR-2023-02-09/pdf/2023-00625.pdf>, and an easier to read version <https://public-inspection.federalregister.gov/2023-00625.pdf>

HUD's Office of Fair Housing and Equal Opportunity (FHEO) homepage, [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp](https://www.hud.gov/program_offices/fair_housing_equal_opp).

FHEO's Affirmatively Furthering Fair Housing webpage, [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/affh](https://www.hud.gov/program_offices/fair_housing_equal_opp/affh).



# Consolidated Planning Process

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** HUD's Office of Community Planning and Development (CPD)

**Year Started:** 1990 as Comprehensive Housing Affordability Strategy (CHAS), significantly modified in 1995 as the Consolidated Plan

**See Also:** For related information, refer to the *Public Housing Agency Plan*

The Consolidated Plan, popularly called the ConPlan, is a tool advocates can use to influence how federal housing and community development dollars are spent in their communities. The ConPlan merges into one process and one document all the planning and application requirements of five HUD block grant programs: Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), Emergency Solutions Grants (ESG), Housing Opportunities for Persons With AIDS (HOPWA), and national Housing Trust Fund (HTF). States, large cities, and urban counties that receive any of these grants must have a ConPlan. In addition, Public Housing Agency Plans (PHA Plans) must be consistent with the ConPlan.

## HISTORY

The statutory basis for the ConPlan is the Comprehensive Housing Affordability Strategy (CHAS), a provision of the "Cranston-Gonzalez National Affordable Housing Act of 1990." CHAS established a state and local planning process that required a housing needs analysis and assignment of priorities for addressing those needs. In order to receive CDBG, HOME, ESG, or HOPWA dollars, jurisdictions had to have a CHAS. In 1995, HUD amended the CHAS regulations to create the ConPlan; there is no ConPlan statute.

The ConPlan regulations interwove the planning, application, and performance reporting processes of the four block grants and the CHAS, resulting in one long-term plan (the Strategic Plan), one application document (the Annual

Action Plan), and one set of performance reports, the Consolidated Annual Performance and Evaluation Report (CAPER), which no longer includes CDBG's Grantee Performance Report (GPR). The HTF was added to the ConPlan in 2015 when the regulations implementing the HTF required the HTF Allocation Plan to be integrated into a state's Strategic Plan and Annual Action Plans.

## SUMMARY

Jurisdictions develop ConPlans at least once every five years in the form of the long-term Strategic Plan, and jurisdictions must prepare Annual Action Plans during that period to show how resources will be used in the upcoming year to address Strategic Plan priorities. The regulations are at [24 CFR Part 91](#).

### The Seven Key ConPlan Elements

1. **Housing and Community Development Needs:** The ConPlan must estimate housing needs for the upcoming five years. It must also describe "priority non-housing community development needs." According to the regulations, the needs in the ConPlan should reflect the public participation process and the ideas of social service agencies, must be based on U.S. Census data, and "shall be based on any other reliable source." NLIHC's *Out of Reach* and "[Housing Needs by State](#)" and selecting "Resources" are excellent sources of data.

The ConPlan must estimate housing needs by:

- Income categories, including households with income less than 30% of the area median income (AMI) or less than the federal poverty line, called extremely low-income; between 30% and 50% of AMI (low-income), between 50% and 80% of AMI (moderate-income), and between 80% and 95% of AMI (middle-income).

- Tenure type (whether the household rents or owns).
- Family type, including large families (five or more people), individuals, and elderly households.
- A summary of the number of people who have a housing cost burden (pay more than 30% of their income for rent and utilities) or severe cost burden (pay more than 50% of their income for rent and utilities), live in very poor-quality housing, or live in overcrowded housing. Each of these characteristics must be presented by income category and tenure type.

The ConPlan must estimate the housing needs of:

- Domestic violence survivors,
- Persons with disabilities,
- Persons with HIV/AIDS and their families, and
- Persons who were formerly homeless and receive rapid re-housing assistance that is about to expire.

The ConPlan must also estimate:

- The need for public housing and Housing Choice Vouchers (Section 8), referring to waiting lists for those programs.
- The supportive housing needs of people who are elderly, have physical or mental disabilities, have addiction problems, are living with HIV/AIDS, or are public housing residents.
- The number of housing units containing lead-based paint hazards occupied by low-income households.
- The needs of any racial or ethnic group if their needs are 10% greater than all people in the same income category.

The ConPlan must describe the nature and extent of homelessness, addressing:

- The number of homeless people on any given night, the number who experience homelessness each year, and the number of

days people are homeless.

- The nature and extent of homelessness by racial and ethnic groups.
  - The characteristics and needs of people, especially extremely low-income people, who are housed but who are threatened with homelessness.
2. Housing Market Analysis: The housing market analysis requires a description of key features of the housing market, such as the supply of housing, demand for housing, and the condition and cost of housing. It must also have an inventory of facilities and services for homeless people, with categories for permanent housing, permanent supportive housing, transitional housing, and emergency shelters. A description of facilities and services for people who are not homeless but require supportive housing must be included, along with a description of programs ensuring that people returning from mental and physical health institutions receive supportive housing.

Localities (not states) have additional requirements:

- A description of the housing stock available to people with disabilities, HIV/AIDS, or special needs.
- An estimate of the number of vacant or abandoned buildings, with an indication of whether they can be rehabilitated.
- A narrative or map describing areas where low-income people and different races and ethnic groups are concentrated.
- A list of public housing developments and the number of units in them, along with a description of their condition and revitalization needs.
- A description of the number of units assisted with other federal (e.g., Project-Based Section 8), state, or local funds, including the income levels and types of families they serve.
- An assessment of whether any units are expected to be lost, such as through Section

8 contract expiration or Low-Income Housing Tax Credit (LIHTC) units that no longer have to house lower income households after the 30-year affordability period.

3. Strategic Plan: This long-term plan must be done at least every five years. It must indicate general priorities for allocating CPD money geographically and among different activities and needs (“CPD money” is used here to refer to each of the five block grant programs administered by CPD subject to the ConPlan). The Strategic Plan must describe the rationale for the fund allocation priorities given to each category of priority needs among the different income categories. Needs may refer to types of activities, such as rental rehabilitation, as well as to demographic groups, such as extremely low-income renter households. Although the regulations do not specifically require it, past HUD guidance required jurisdictions to assign to each priority need a relative priority of high, medium, or low. Since August 2012, HUD has only required priority assignments of high or low priority. The ConPlan must identify proposed accomplishments in measurable terms and estimate a timetable for achieving them.

For housing, the regulations add that the Strategic Plan must explain the reasoning behind priority assignments, the proposed use of funds, and how the reasoning relates to the analysis of the housing market, the severity of housing problems, the needs of the various income categories, and the needs of renters compared to owners. The number of families who will receive affordable housing must be shown by the income categories of extremely low, low, and moderate. The Strategic Plan must also describe how the need for public housing will be met.

Priority homeless needs must be shown. The Strategic Plan must also describe strategies for reducing and ending homelessness by helping people to avoid becoming homeless, reaching out to homeless people to determine their needs, addressing needs for emergency shelter and transitional housing, and helping

homeless people make the transition to permanent housing.

For people with special needs who are not homeless, the Strategic Plan must summarize the priority housing and supportive service needs of people who are elderly or who have disabilities (mental, physical, or developmental), HIV/AIDS, alcohol or drug addiction, or who are public housing residents.

For jurisdictions receiving CDBG funds, the Strategic Plan must summarize non-housing community development needs, such as daycare services, health centers, parks, roads, and commercial development.

4. Anti-poverty Strategy: The statute calls for a description of goals, programs, and policies for reducing the number of people with income below the poverty level. It also requires a statement of how affordable housing programs will be coordinated with other programs and the degree to which they will reduce the number of people in poverty.
5. Lead-based Paint: The Strategic Plan must outline actions to find and reduce lead paint hazards.
6. Fair Housing: Each year the jurisdiction must certify that it is affirmatively furthering fair housing (AFFH). Under the Trump Administration, HUD suspended the 2015 Affirmatively Furthering Fair Housing (AFFH) rule, so instead of carrying out that rule’s AFFH and related ConPlan provisions, virtually every jurisdiction must follow the flawed Analysis of Impediments (AI) to fair housing choice process – until HUD reinstitutes an AFFH rule (hopefully in 2023). That means that a jurisdiction has an AI, is taking appropriate actions to overcome the effects of impediments and keeps records. The AI is not required to be a part of the Strategic Plan or Annual Action Plan. Although HUD’s official 1996 *Fair Housing Planning Guide* says an AI “must be completed/updated in accordance with timeframes for the Consolidated Plan,” a September 2004

memorandum says that each jurisdiction “should maintain its AI and update the AI annually where necessary.” See the *Affirmatively Furthering Fair Housing* article.

7. Annual Action Plan: The Annual Action Plan must describe all the federal resources reasonably expected to be available, including those in addition to CDBG, HOME, ESG, HOPWA, and HTF, such as Low-Income Housing Tax Credits (LIHTCs), Continuum of Care (CoC) funds, and Housing Choice Vouchers. The Annual Action Plan must also indicate other private and local and state resources expected to be available. The geographic areas that will get assistance in the upcoming year must be indicated, and the Annual Action Plan must give reasons why these areas have priority.

Local jurisdictions’ Action Plans must describe the activities a jurisdiction will carry out in the upcoming year and the reasons for making these allocation priorities. Local jurisdictions must describe the use of CDBG for each activity in enough detail, including location, to enable people to determine the degree to which they could be affected.

State Action Plans must describe their method for distributing funds to local governments and nonprofits, or the activities the state will undertake itself. States must describe the criteria used to select CDBG applications from localities. States must also describe how all CDBG money will be allocated among all funding categories (e.g., housing, economic development, public works, etc.).

There must be an estimate of the number and type of households expected to benefit from the use of CPD funds (this does not apply to states). In addition, based on any funds available to the jurisdiction, the Action Plan must specify one-year goals for the number of non-homeless, homeless, and special needs households to be provided affordable housing through new construction, rehabilitation, acquisition, and rental assistance.

The Annual Action Plan must indicate the

activities that will be carried out in the upcoming year to reduce homelessness by: preventing homelessness, especially for those with income less than 30% of AMI, meeting emergency shelter and transitional housing needs, helping people make the transition to permanent housing and independent living, and meeting the special needs of people who are not homeless but have supportive housing needs.

### **The Five Steps of the ConPlan Calendar**

1. Identify Needs: The CDBG and CHAS laws require a public hearing to gather the public’s ideas about housing and community development needs. HUD’s regulations require this hearing to take place before a proposed ConPlan or Annual Action Plan is published for comment.
2. Proposed ConPlan or Annual Action Plan: There must be a notice in the newspaper that a proposed ConPlan or Annual Action Plan is available. Complete copies of the proposed ConPlan or Annual Action Plan must be available in public places, such as libraries. A reasonable number of copies of a proposed ConPlan or Annual Action Plan must be provided at no cost. There must be at least one public hearing during the development of the ConPlan or Annual Action Plan (this does not apply to states). The public must have at least 30 days to review and comment on the proposed ConPlan or Annual Action Plan.
3. Final ConPlan or Annual Action Plan: The jurisdiction must consider the public’s comments about the proposed ConPlan or Annual Action Plan, attach a summary of the comments to the final ConPlan or Annual Action Plan, and explain in the final ConPlan or Annual Action Plan why any suggestions were not used. The final ConPlan or Annual Action Plan must be sent to the CPD Field Office at least 45 days before the start of the jurisdiction’s “program year.” Program years vary from jurisdiction to jurisdiction – most start on July 1 and a number start on October 1. A copy of the final ConPlan or Annual



Action Plan must be available to the public.

HUD can disapprove the final ConPlan or Annual Action Plan for several reasons, including if a jurisdiction did not follow the public participation requirements, did not “satisfy all of the required elements,” or provided an inaccurate certification (for example, if HUD finds that a jurisdiction’s certification that it took appropriate actions to overcome impediments to fair housing is not accurate).

4. The Annual Performance Report: In this report a jurisdiction shows what it did during the past year to meet housing and community development needs. The report must include a description of the money available and how it was spent; the location of projects; and the number of families and individuals assisted, broken down by race and ethnicity as well as by income category, including income less than 30% of AMI. For CDBG-assisted activities, the performance report must describe the assisted activities and explain how they relate to the ConPlan priorities, giving special attention to the highest priority activities. The Annual Performance Report must describe the actions taken to affirmatively further fair housing.

There are several public participation features related to the Annual Performance Report. There must be reasonable notice that a report is completed, and the report must be available to the public. The public has only 15 days to review and comment on it; nevertheless, the jurisdiction must consider public comments and attach a summary of the comments.

The annual performance reporting requirements of the five block grant programs have been merged into a set of computer-based records, the Consolidated Annual Performance and Evaluation Report (CAPER) for local jurisdictions and the Performance and Evaluation Report (PER) for states. They must be submitted to the CPD Field Office 90 days after the close of a jurisdiction’s program year. These performance reports

only offer a general, aggregate picture of what a jurisdiction accomplished. Although no longer a part of the CAPER, local jurisdictions receiving CDBG must still complete a Grantee Performance Report (GPR), which also goes by the term IDIS Report PR03 (IDIS stands for Integrated Disbursement and Information System). The GPR should provide detailed information about each activity funded by CDBG. Although many jurisdictions do not make the GPR known to the public, it must be provided if requested – and advocates should request the latest GPR.

5. Amendments to the ConPlan: The ConPlan must be amended if there are any changes in priorities, or in the purpose, location, scope, or beneficiaries of an activity, or if money is used for an activity not mentioned in the Annual Action Plan. If there is a “Substantial Amendment,” then public participation similar to that for Annual Performance Reports is required, but with a 30-day comment period. HUD allows a jurisdiction to define Substantial Amendment. At a minimum, the regulations indicate that a Substantial Amendment must include a change in the use of CDBG funds, and a change in the way a state allocates CDBG money to small towns and rural areas.

## **Public Participation**

In addition to the public participation requirements mentioned in the previous paragraphs, each jurisdiction must have a written “citizen participation plan” available to the public. The plan must provide for and encourage public involvement in the creation of the ConPlan or Annual Action Plan, review of the Annual Performance Report, and any substantial amendment. It must encourage involvement by people with low incomes, especially in low-income neighborhoods and areas where CDBG money might be spent. Jurisdictions “are expected to take whatever actions are appropriate to encourage the participation of all of its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.” Jurisdictions must also



encourage involvement by residents of public and assisted housing.

There must be reasonable and timely access to information and records relating to the ConPlan or Annual Action Plan. The public must be able to review records from the previous five years related to the ConPlan and any use of federal money covered by the ConPlan. For local jurisdictions (not states) the public must have reasonable and timely access to local meetings, such as community advisory committee meetings and city council meetings.

Public hearings must be held after adequate notice to the public. “Publishing small print notices in the newspaper a few days before the hearing is not adequate notice,” according to the regulations, but “two weeks’ notice is adequate.” Public hearings must be held at times and places convenient for people with low incomes. Where there are a significant number of people with limited English proficiency, the public participation plan must show how they can be involved. The jurisdiction must give written, meaningful, and timely responses to written public complaints; 15 days is considered timely if the jurisdiction gets CDBG funding.

### **ConPlan Template and Mapping Tools**

ConPlans, their subsequent Annual Action Plans, and CAPERs must be submitted electronically using an electronic template tied into CPD’s management information system, known as IDIS.

The template is a combination of data tables and narratives that set a baseline of HUD’s expectations for the type and amount of information required. Jurisdictions can customize their templates by adding additional text, data, or images from other sources. The data tables required by the regulations pertaining to housing and homelessness needs and the housing market are automatically pre-populated with the required data; however, jurisdictions may substitute better data if they have it. Some of the data includes the five-year American Community Survey data from the Census Bureau, special Census

CHAS tabulations, public housing resident characteristics from HUD’s *Picture of Subsidized Housing*, and business and employment data from the Census.

Most jurisdictions’ ConPlans are posted on HUD’s ConPlan website. Advocates will benefit from reviewing the ConPlan Desk Guide containing the components of the template because it outlines the regulatory requirements that jurisdictions must follow and because it helps advocates know what the various template tables should look like (especially starting on page 80 of the June 2021 version, with the Strategic Plan on page 167, Action Plan on page 203, and CAPER on page 253). Unfortunately, advocates cannot use the template to electronically create their own alternative ConPlan because only jurisdictions have access to IDIS. Nevertheless, the Desk Guide provides advocates an outline of what jurisdictions must submit that advocates can use to manually fashion their own ideal ConPlan to promote prior to the public participation process.

CPD also has a mapping tool that allows both grantees and members of the public to access a large amount of data in a relatively user-friendly, web-based format. Jurisdictions are not required to use the maps. Users can search, query, and display information on the map that will help them identify trends and needs in their communities. Some of the features available on the mapping tool include the capacity to show where CDBG and HOME activities have been provided and where public housing and private, HUD-assisted housing and LIHTC housing is located. It is also possible to see housing, economic, and demographic characteristics of an area down to the census tract level. The web-based software enables advocates to draw custom geographies, such as neighborhood boundaries, which might not fit neatly into census tracts.

### **The ConPlan and the National Housing Trust Fund**

The HTF statute requires states to prepare an Allocation Plan each year showing how the state

will allot the HTF dollars it will receive in the upcoming year. Each state must distribute its HTF dollars throughout the state according to the state's assessment of priority housing needs as identified in its approved ConPlan.

HTF advocates should determine which state agency is responsible for drafting the HTF Allocation Plan (available on [HUD's HTF website](#) and on [NLIHC's HTF website](#)). It is probably not the same agency that drafts the ConPlan or Annual Action Plan. Advocates should inform the ConPlan agency (if it is different than the HTF state agency) that they are interested in participating in the process for planning where and how HTF money will be used.

Although the HTF statute requires public participation in the development of the HTF Allocation Plan, the HTF interim rule does not explicitly declare that, in order to receive HTF money, states must develop their Allocation Plans using the ConPlan public participation rules. It merely requires states to submit an HTF Allocation Plan following the ConPlan rule, which does have public participation requirements. After 2016, most state HTF Allocations Plans are found in a section of the ConPlan or Annual Action Plan concerning "program-specific" information, or in an appendix to the ConPlan or Annual Action Plan.

Action around the HTF Allocation Plan takes place at the state level. For advocates only accustomed to ConPlan or Annual Action Plan advocacy at the local level because a locality gets CDBG and HOME directly from HUD, the state HTF process will be an important new experience. To better ensure that HTF dollars are used properly, it might be necessary for advocates to learn how to influence their state ConPlan.

The interim HTF rule requires states receiving HTF dollars to submit a performance report according to the ConPlan regulations. The HTF performance report must describe HTF program accomplishments, and the extent to which the state complied with its approved HTF Allocation Plan and all of the requirements of the HTF

rule. NLIHC will monitor how HUD addresses performance reporting through changes to the ConPlan template.

## TIPS FOR LOCAL SUCCESS

The ConPlan is a potentially useful advocacy tool for directing funds toward activities more beneficial to people with low incomes because jurisdictions must provide for and encourage public participation, particularly by people with low incomes. Advocates and residents should monitor the needs assessment and priority setting processes, making sure that all needs are identified and assigned the level of priority they deserve. With the mapping tool, advocates can add information and data that a jurisdiction might not include, such as data from studies conducted by local universities. Advocates can also devise an alternative plan using the mapping tool to draw neighborhood boundaries that more realistically reflect community dynamics. Through the Annual Action Plan's public participation process, advocates and residents can strive to ensure that federal dollars are allocated to activities that will truly meet the high priority needs of low-income people.

## FOR MORE INFORMATION

NLIHC, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

HUD Consolidated Plan on HUD Exchange <https://www.hudexchange.info/programs/consolidated-plan>.

ConPlan template Desk Guide, <https://www.hudexchange.info/resource/2641/econ-planning-suite-desk-guide-idis-conplan-action-plan-caper-per>.

ConPlan mapping tool, <https://egis.hud.gov/cpdmaps> and CPD Maps Desk Guide, <https://www.hudexchange.info/resource/2405/cpd-maps-desk-guide>.

Find jurisdictions' ConPlans and Annual Action Plans at <https://cpd.hud.gov/cpd-public/consolidated-plans>.

End of year reporting, <https://www.hudexchange.info/programs/idis/idis-reporting>.

# Public Housing Agency Plan

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** HUD's Office of Public and Indian Housing (PIH)

**Year Started:** 1998

**See Also:** For related information, refer to the *Public Housing, Consolidated Plan*, and *Resident Participation in Federally Subsidized Housing* sections of this *Guide*.

The Public Housing Agency Plan (PHA Plan) is the collection of a public housing agency's key policies (such as admissions policies) and program intentions (such as demolition). This includes a Five-Year Plan and Annual Plan updates. The PHA Plan was meant to ensure local accountability through resident and community participation. However, various administrative and legislative efforts have weakened PHA Plans.

## ADMINISTRATION

PHA Plans are administered by local public housing agencies (PHAs), with oversight by HUD's Office of Public and Indian Housing (PIH). There are approximately 3,700 PHAs. PHA Plan regulations are at [24 CFR Part 903, Subpart B](#).

## HISTORY

The "Quality Housing and Work Responsibility Act of 1998" (QHWRA) established the PHA Plan because of the significant shift of authority to PHAs provided by that law. The PHA Plan was meant to ensure local accountability through resident and community participation opportunities. Resident Advisory Boards (RABs) were also created by QHWRA to ensure participation in the PHA Plan process by public housing residents and voucher-assisted households. One of provision of the "Housing and Economic Recovery Act of 2008" (HERA) eliminated the requirement to submit an Annual PHA Plan for PHAs administering fewer than 550 units of public housing and vouchers combined, known as "Qualified PHAs." There are nearly

2,700 Qualified PHAs. Also in 2008, PIH took administrative action to dilute the information provided to residents and the general public through the PHA Plan template.

## PLAN SUMMARY

All PHAs must develop Five-Year PHA Plans that describe the overall mission and goals of a PHA regarding the housing needs of low-income families in its jurisdiction. Larger PHAs, called "non-qualified PHAs," must also develop an Annual Plan, which is a gathering of a PHA's program intentions, such as demolition, as well as key policies, such as those relating to admissions, income targeting, rents, and pets. However, these larger PHAs must submit only a short PHA Plan template to HUD each year.

### The 19 Required PHA Plan Components

1. **Housing Needs** of extremely low-, very low-, and low-income families, elderly families, families with a member who has a disability, and those on public housing and Section 8 waiting lists.
2. **Tenant Eligibility, Selection, and Admissions Policies** as well as waiting list procedures, admissions preferences, unit assignment policies, and race and income deconcentration policies.
3. **Financial Resources** and planned uses of these resources for the upcoming year listed in categories such as operating funds, capital funds, other federal funds, and non-federal funds.
4. **Rent Determination** including rent policies for tenants, and for landlords receiving vouchers.
5. **Operations and Management** of facilities, including PHA programs, their organization, and policies governing maintenance (including policies regarding pest infestation).
6. **Grievance Procedures** for residents and applicants.

- 7. Capital Improvement Needs** and planned actions for the long-term physical and social health of public housing developments. This should include plans and costs for the upcoming year and a Five-Year Plan.
- 8. Demolition and Disposition Plans** that the PHA has applied for, or will apply for, including timetables.
- 9. Designation of Public Housing for Elderly or Disabled** identified.
- 10. Conversion of Public Housing** to tenant-based vouchers through Section 33 (required conversion) or Section 22 (voluntary conversion) of the “United States Housing Act.”
- 11. Homeownership Programs** described, such as Section 8(y) or Section 5(h).
- 12. Community and Self-Sufficiency Programs** that aim to improve families’ economic or social self-sufficiency, including those that will fulfill community service requirements. This also refers to a PHA’s Section 3 jobs efforts.
- 13. Safety and Crime Prevention** including coordination with police.
- 14. Pet** policy.
- 15. Civil Rights** as reflected in a formal pledge that the PHA will comply with the “Civil Rights Act of 1964,” the “Fair Housing Act,” Section 504 of the “Rehabilitation Act,” and the “Americans with Disabilities Act.”
- 16. Financial Audit** from the most recent fiscal year.
- 17. Asset Management** for long-term operating, capital investment, rehabilitation, modernization, or sale of the PHA’s inventory.
- 18. Domestic Violence** activities, services, or programs that prevent or serve survivors of domestic violence, dating violence, sexual assault, or stalking as added by the “Violence Against Women Act of 2005” as amended in 2013.

**19. Additional Information** including progress in meeting or deviating from the PHA’s mission and goals as listed in the Five-Year Plan.

### **Resident Advisory Boards**

As part of this planning process, PHAs are required to have at least one Resident Advisory Board (RAB) to assist in the development of the PHA Plan and any significant amendments to the plan. RAB membership must adequately reflect and represent residents served by the PHA, including voucher holders if they make up at least 20% of all those assisted.

To ensure that RABs can be as effective as possible, a PHA must provide reasonable means for RAB members to become informed about programs covered by the PHA Plan, communicate with residents in writing and by telephone, hold meetings with residents, and obtain information through the Internet.

A PHA must consider RAB recommendations when preparing a final PHA Plan or any significant amendment. A copy of the RAB’s recommendations and a description of whether those recommendations were addressed must be included with the final PHA Plan.

HUD’s Resident Advisory Board (RAB) webpage is at [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/pha/about/rab](https://www.hud.gov/program_offices/public_indian_housing/pha/about/rab) (Note that this page is no longer directly linked on the Office of Public and Indian Housing’s s PHA Plan webpages).

### **Resident and Community Participation**

The law and regulations provide for a modest public participation process. A PHA must conduct reasonable outreach to encourage broad public participation. A PHA’s board of commissioners must invite public comment regarding a proposed PHA Plan and conduct a public hearing to discuss the plan. The hearing must be held at a location convenient to PHA residents. At least 45 days before the public hearing, the PHA must publish a notice indicating the date, time, and location of the public hearing. Non-Qualified PHAs must also inform the public that the



proposed PHA Plan, required attachments, and other relevant information is available for public inspection at the PHA's main office during normal business hours. Notice from Qualified PHAs must make information relevant to any changes in the PHA's goals, objectives, or policies available for public inspection at the PHA's main office during normal business hours.

The final, HUD-approved PHA Plan, along with required attachments and other related documents, must be available for review at the PHA's main office during normal business hours. Small PHAs, those with fewer than 250 public housing units and any number of Housing Choice Vouchers (HCVs) submitting so-called streamlined Annual PHA Plans must certify that any revised policies and programs are available for review at the PHA's main office during normal business hours.

There are four places in the regulations indicating that writing and calling PIH to complain about the PHA Plan might secure attention and relief from PIH:

1. If a RAB claims in writing that a PHA failed to provide adequate notice and opportunity for comment, PIH may make a finding and hold up approval of a PHA Plan until this failure is remedied.
2. Before approving a PHA Plan, PIH will review "any... element of the PHA's Annual Plan that is challenged" by residents or the public.
3. PIH can decide not to approve a PHA Plan if the Plan or one of its components:
  - Does not provide all the required information.
  - Is not consistent with information and data available to PIH.
  - Is not consistent with the jurisdiction's Consolidated Plan.
4. To ensure that a PHA complies with all of the policies adopted in its PIH-approved PHA Plan, "HUD shall, as it deems appropriate, respond to any complaint concerning PHA noncompliance with the plan...HUD will take whatever action it deems necessary and appropriate."

## Significant Amendments

A PHA Plan must identify a PHA's basic criteria for determining what makes an amendment significant. "Significant Amendments" can only take place after formal adoption by a PHA's board of commissioners at a meeting open to the public and after subsequent approval by HUD. Significant Amendments are subject to all RAB and public participation requirements discussed above.

Advocates and residents should be alerted to changes to the PHA Plan at any time of the year because any policy or program in it can be modified. Advocates and residents should review the PHA Plan's criteria defining Significant Amendments and work to change them if they are written so that few modifications would be judged significant and therefore escape the RAB and public participation requirements.

## Major Changes since 2008

Congress weakened the usefulness of the PHA Plan with changes made in the "Housing and Economic Recovery Act of 2008" (HERA). This law included a provision greatly diminishing PHA Annual Plan requirements for PHAs that administer fewer than 550 units of public housing and vouchers combined. In 2020 there were nearly 2,700 so-called "Qualified PHAs." This means that about 71% of the nation's PHAs were exempt from developing an Annual Plan. Qualified PHAs only need to certify that they are complying with civil rights law and that their Five-Year PHA Plan is consistent with the local or state government's Consolidated Plan. Qualified PHAs must still hold a public hearing annually regarding any proposed changes to a PHA's goals, objectives, or policies. They must also have RABs and respond to RAB recommendations at the public hearing.

PIH also took action in 2008 that weakened the usefulness of the PHA Plan for larger PHAs. Previously, PIH required PHAs to use a computer based PHA Plan template. This was a helpful outline of all PHA Plan components required by the law. But PIH drastically diminished the template in 2008, reducing it from a helpful 41-



page, easy-to-access electronic guide, to a mere page-and-a-half-long form, making it much more difficult for residents and the public to know what the law requires and what changed at the PHA during the previous year.

The 2008 PHA Plan template made it more difficult for residents and others to understand the PHA Plan process, engage in it, and have access to information associated with the 19 statutorily required PHA Plan components. The template merely asked PHAs to indicate which of the components were revised, not how the components were revised. Also, there was no longer a list of required plan components prompting residents and others to proactively recommend their own revisions to the Annual Plan.

After proposing changes to the 2008 template in 2011 and 2012, PIH issued [Notice PIH 2015-18](#) on October 23, 2015 announcing final revised PHA Plan templates. Instead of one single Annual PHA Plan template used by all PHAs, HUD now has four types of Annual PHA Plan templates to be used for different categories of PHAs. These templates included several modest improvements over the streamlined PHA Plan in use since November 2008; however, they were still far less helpful for residents and advocates than the pre-2008 template.

These templates had an expiration date that passed on February 20, 2016 but continued to be available for PHAs with fiscal years ending 3/31/2022 or before if they choose. PHAs with fiscal years beginning 4/1/2022 and later are required to use new PHA Plans templates and certification forms. The new versions of the forms can be found here on [HUD'S Client Information Policy Systems \(HUDCLIPS\) website](#).

The new versions of Annual PHA Plan templates, that now expire on March 31, 2024 are:

- **HUD-50075-ST for Standard PHAs and Troubled PHAs.** A Standard PHA owns or manages 250 or more public housing units and any number of vouchers for a combined total of more than 550. The PHA was designated “standard” in its most

recent assessments for the Public Housing Assessment System (PHAS) and Section Eight Management Assessment Program (SEMAP). A Troubled PHA has an overall PHAS or SEMAP Score of less than 60%.

- **HUD-50075-HP for High Performer PHAs.** A High-Performer PHA owns or manages any number of public housing units and any number of vouchers, for a combined total of more than 550 and the PHA was designated a “high performer” in its most recent assessments for PHAS and SEMAP.
- **HUD-50075-SM for Small PHAs.** A Small PHA owns or manages fewer than 250 public housing units and any number of vouchers, for a combined total of more than 550 and the PHA was not designated as troubled in the most recent PHAS or SEMAP assessment, or at risk of being designated as troubled.
- **HUD-50075-HCV for HCV-Only PHAs.** A Housing Choice Voucher (HCV)-only PHA does not own or operate any public housing units but does administer more than 550 vouchers and the PHA was not designated as troubled in its most recent SEMAP assessment.

Qualified PHAs that were not designated as troubled in the most recent PHAS assessment or as having a failing SEMAP score during the prior 12 months are not required to complete and submit an Annual PHA Plan. However, Qualified PHAs must submit a Five-Year PHA Plan.

Previously, the PHA Plan template for the Five-Year PHA Plan and the Annual Plan were the same. Notice PIH-2015-18 introduced a separate template for the [Five-Year PHA Plan](#) to be used by all PHAs.

### Improvements Made in the 2015 Templates

Several modifications made in 2015 were improvements over the 2008 template and are retained in the 2022 templates. Each of the templates clearly state that a proposed PHA Plan, each of the statutorily required PHA Plan elements, and all information relevant to the public hearing about a proposed PHA Plan and

the proposed PHA Plan itself must be available to the public. The templates also require PHAs to indicate where the public can access the information. At a minimum, PHAs are required to post PHA Plans at each Asset Management Project (public housing developments or a group of developments) and at the PHA's main office. PHAs are encouraged to post PHA Plans on their official websites and provide copies to resident councils. Notice PIH-2015-18 added that the approved PHA Plan and required attachments and documents related to the PHA Plan must be made available for review and inspection at the principal office of the PHA during normal business hours. The PIH website does not have links to individual PHA's PHA Plans.

In the section titled "Revision of PHA Plan Elements," the templates list key statutorily required PHA Plan elements (for example, rent determination policies or grievance procedures), with boxes to check if a change has been made. This modification offers residents a clue about what some of the required elements are; without listing them, the 2008 template merely directed PHAs to identify any elements that were revised during the year. The 2015 templates also direct PHAs to describe any revisions.

The PHA Plan templates were also improved in 2015 because three of the four templates had a "New Activities" section for a PHA to indicate whether it intended to undertake a new activity, such as project-basing vouchers, converting public housing units under the Rental Assistance Demonstration, demolishing or selling public housing developments, or undertaking a mixed finance project. Any new activities must be described. Unfortunately, the 2022 HCV Only template removed the New Activities section. Therefore, an intent to project-base any of its HCVs will not be registered in the Annual PHA Plan of an HCV Only PHA.

The 2015 templates required PHAs to include any comments received from the RAB, along with the PHA's analysis of the RAB's comments and a description of the PHA's decision regarding RAB comments.

One of the changes trumpeted in Notice PIH-2015-18 was that the templates would have descriptions of a PHA's policies or programs to enable a PHA to serve the needs of survivors of domestic violence, dating violence, sexual assault, or stalking in accord with requirements of the "Violence Against Women Act" (VAWA). However, the body of the templates do not mention VAWA-related information. Only by reading the instructions regarding any revision to a PHA Plan statutorily required element and then carefully examining the last half of the entry pertaining to "Safety and Crime Prevention" does one detect VAWA-related language. The 2022 templates do not fix this problem.

### **Three New Features in the 2022 Templates**

The new PHA Plan templates for PHAs with fiscal years beginning April 1, 2022 and later all have a welcome new box called "Challenged Elements." The 2008 template required PHAs to submit as an attachment to the PHA Plan any challenge to one of the statutorily required PHA Plan elements. The regulations call for PIH to review any such challenge. Although Notice PIH-2015-18 acknowledged this aspect of the regulations, it removed the requirement to submit any challenge from the 2015 templates. The 2022 templates add this as a unique box and require a PHA to include information about any element of the PHA Plan that was challenged by residents or the public, a description of the challenge, the source of the challenge, and the PHA's response to the public.

A new certification, in addition to the "Civil Rights Certification," is the "Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan." The instructions state that this is a certification that any plan elements that have been revised were provided to the Resident Advisory Board (RAB) for comment before being implemented, approved by the PHA Board, and made available for review and inspection by the public (note: The template for High Performing PHAs already had this certification).

Each new template has a new chart, “Affirmatively Furthering Fair Housing” (AFFH). It requires a statement of a PHA’s strategies and actions to achieve fair housing goals outlined in an accepted “Assessment of Fair Housing” (AFH). The term “Assessment of Fair Housing” (AFH) is tied to the 2015 affirmatively furthering fair housing (AFFH) regulation that was eliminated by the Trump Administration. The Biden Administration will be issuing a proposed AFFH rule, probably sometime in 2023, but is likely to use a different term. The template indicates that PHAs are not required to submit the Affirmatively Furthering Fair Housing chart on the new PHA Plan templates until a PHA is required to submit an AFH. So, this new feature will not really be required until a new AFFH regulation is finalized, which could be another two years.

The instructions indicate that even if a PHA does not have to submit the AFFH chart, it must still follow the PHA Plan regulations regarding AFFH (24 CFR § 903.7(o)(3)). This means that a PHA: examines its own programs or proposed programs; identifies any impediments to fair housing choice within those programs; addresses those impediments in a reasonable fashion in view of the resources available; works with local jurisdictions to implement any of the jurisdiction’s initiatives to affirmatively further fair housing that require the PHA’s involvement; and maintain records reflecting these analyses and actions.

## ONGOING CONCERNS

NLIHC remains concerned that resident involvement in the PHA Plan will continue to diminish due to the loss of guidance in the PHA Plan template. The template still has fewer reminders about the role of the RAB in developing the PHA Plan. The template no longer includes the list of RAB members or residents on the PHA Board, nor does it include a description of the process for electing residents to the PHA board.

NLIHC is also concerned that PIH no longer posts a directory of approved PHA Plans by state. PIH should resume posting PHA Plans on its website.

PHA Annual Plans should be enhanced to provide additional data on:

- The number of Annual Contributions Contract (ACC) units a PHA has, by development, the occupancy level at each development, and a plan to reduce any development’s vacancy rate that is above 3%.
- The number of ACC units planned for redevelopment that will no longer be available or affordable to extremely low-income households.
- The number of authorized housing vouchers that a PHA has under lease.
- A PHA’s SEMAP ratings, any audits of the PHA performed by HUD, and any corrective action the PHA took regarding SEMAP or audit findings.

In addition, NLIHC thinks that more PHAs must be required to comply with the PHA Plan so that residents and community members can have an opportunity to learn about and participate in the decisions affecting the nation’s investments in public housing and vouchers.

## TIPS FOR LOCAL SUCCESS

Advocates should participate in the development of their local agency’s PHA Plan. Find out the dates PHA Plans are due to HUD; those dates are based on a PHA’s fiscal year start dates. Ask your PHA to provide notice well in advance of the required public hearing and ask specifically about proposed changes. Review all PHA Plan components thought to be important and prepare written comments as well as comment at the public hearing. Work with others, especially residents of public housing, voucher households, and other low-income people in the community to increase participation in the PHA Plan process. All year long advocates should be on the lookout for significant amendments and submit written comments as well as verbal comments at the public hearing required for significant amendments.

## WHAT TO SAY TO LEGISLATORS

Advocates should let their Members of Congress know that:

- The PHA Annual and Five-Year Plans are important, local tools that should be expanded to more PHAs and enhanced to require more information about components important to residents and other community members.
- HUD's diminished template for Annual PHA Plan submission should be returned to its original state.
- HUD should post all PHA Plans on its website as it had in the past.

## FOR MORE INFORMATION

NLIHC, 202-662-1530, [www.nlihc.org](http://www.nlihc.org), in particular at NLIHC's Public Housing webpage, <https://nlihc.org/explore-issues/housing-programs/public-housing>, including an outline of resident participation in the PHA Plan process, <https://bit.ly/3ogDnXN>.

HUD PHA Plan webpage, including the 2015 templates and a link to the 2022 templates, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/pha](https://www.hud.gov/program_offices/public_indian_housing/pha).

The new templates for PHAs with program years stating after April 1, 2022, [https://www.hud.gov/program\\_offices/administration/hudclips/forms/hud5](https://www.hud.gov/program_offices/administration/hudclips/forms/hud5) (scroll down to forms starting with "HUD-50075."

Notice PIH-2015-18, <https://www.hud.gov/sites/documents/PIH-2015-18.pdf>.

HUD list of Qualified PHAs, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/pha/lists](https://www.hud.gov/program_offices/public_indian_housing/pha/lists).

# The “Community Reinvestment Act”

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By Megan Haberle and Josh Silver,  
National Community Reinvestment  
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**T**he “Community Reinvestment Act (CRA) of 1977” established continuing and affirmative responsibilities for banks to meet the credit needs of all communities – expressing including low- and moderate-income (LMI) communities - in a manner consistent with safety and soundness. The three federal bank regulators - the Office of the Comptroller of the Currency (OCC) (within the Department of the Treasury), the Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve Board (Board) - set standards for CRA performance by banks. CRA provides for the assessment of bank performance within several areas relevant to housing and community development needs: lending (including mortgage lending), services (such as counseling), and investments (such as investments in affordable multifamily housing). Regulators and advocates can use CRA to push the banking sector to better meet the housing needs of LMI communities, through the regulators’ bank examination process and through commitments made in community benefits agreements

In summer 2022, the bank regulators published a joint CRA rulemaking for public comment, in what is poised to be the first major update of the CRA regulations since the mid-1990s. A final rule is anticipated in spring 2023. This update followed a short-lived attempt by the previous Administration to weaken the CRA: in 2020, the OCC had finalized a new rule on CRA that would decrease lending, investments and services in low- and moderate-income (LMI) neighborhoods, but this harmful rule was rescinded in December of 2021.

In addition, Congress has considered updating this critical law to strengthen CRA as applied to banks and expand CRA to non-bank financial institutions.

## HISTORY AND PURPOSE

Congress passed CRA in 1977 at a time when many banks and other financial institutions would routinely “redline” low-income or minority communities, refusing to invest in them or to extend credit to their residents. Since its enactment, CRA has expanded access to banking services and increased the flow of private capital into LMI communities.

## PROGRAM AND ADMINISTRATION SUMMARY

Three bank regulatory agencies ensure that banks comply with CRA: the Board, the OCC, and the FDIC. These three agencies are charged with evaluating the extent to which banks are meeting local credit needs. This takes the form of a periodic CRA examination of a bank, during which the bank is given a rating for its performance.

Banks are subject to different tests according to their size, as determined by asset thresholds set by the regulators. Large banks undergo a more comprehensive range of tests. The tests assess bank performance across a number of activities in the categories of lending, investments, and services, which implicate single-family and multi-family housing lending and investments, as well as other community development finance and services such as housing counseling. Banks receive CRA credit on exams for these activities, and can receive downgrades for negative performance (for example, due to fair lending violations). On this basis, CRA exams issue ratings, such as outstanding, satisfactory, needs-to-improve, or substantial noncompliance. The 2022 proposed rule would provide for more gradation and rigor in the rating system, in particular within the large bank retail lending test. Currently, about 98% of banks pass their CRA exams on an annual basis with just less than 10% receiving an Outstanding rating and almost 90% of them receiving a rating of Satisfactory.



Ratings influence banks' public relations and business strategies, and failing ratings (needs-to-improve and substantial noncompliance) have additional implications. The federal agencies consider banks' CRA records when ruling on merger applications. A weak CRA record may be grounds for denying a merger application. Although denials are rare, federal agencies occasionally approve merger applications subject to specific conditions around improving CRA and fair lending performance. As described below, mergers also provide the opportunity for community groups to push banks to make specific commitments within community benefit agreements. These commitments can include housing-related loans and resources and other support for community development.

## RESULTS

Because it holds lenders publicly accountable and empowers citizens and communities to engage in the regulatory process, CRA is effective in increasing access to credit and capital for traditionally underserved communities. Since 1996, CRA-covered banks have made more than \$2.5 trillion in small business and community development loans in LMI tracts. From 2009 through 2018, CRA-covered banks made more than \$2.3 trillion on home loans to LMI borrowers or LMI tracts.

A HUD publication reviewed CRA's accomplishments over its 40-year history. Studies conclude that lending is higher in low- and moderate-income census tracts than in tracts with median incomes just above CRA-income thresholds. In addition, a report published by the Federal Reserve Bank of Philadelphia concluded that home purchase lending in LMI tracts would have declined by about 20% had CRA not existed. In addition, the Penn Institute for Urban Research also published a series of CRA research and policy papers, one of which found that CRA has prevented branch closures in LMI communities.

CRA also spurs the creation of community benefits agreements (CBAs). During merger applications, regulatory agencies and the public at large review the banks' past CRA records

and future plans for providing a public benefit after the merger as required by law. These reviews have prompted banks to negotiate community benefit plans with community-based organizations. The plans specify future levels of loans, investments and services banks plan to make to communities of color and LMI neighborhoods.

As just one example, NCRC and our members negotiated a community plan that committed PNC Bank to make \$88 billion in reinvestment available over a four year time period. The plan included \$47 billion in home purchase lending and \$14.5 billion in community development lending and investment (CDLI) such as investments in housing tax credit programs, economic empowerment and social justice initiatives, as well as loans and investments to Community Development Financial Institutions (CDFIs).

## RECENT REGULATORY AND LEGISLATIVE ACTIVITY

The bank regulators jointly published a new CRA draft regulation in summer of 2023, proposing a number of significant updates to the CRA implementation framework. Among other provisions, the proposed rule would enhance the community development definitions to make the banks more responsive to community needs. Specifically, the proposed regulation contains new references to anti-displacement concerns, provides credit for activities remediating climate change for LMI communities, and would allow credit for affordable housing in high-opportunity areas. While those steps are positive, NCRC and other advocates also commented that the proposed rule needed to be further strengthened in order to effectively ensure that financing of "naturally occurring affordable housing" had to provide for long-term affordability, and urged the regulators to provide for tenant protection and fair housing considerations when awarding CRA credit or downgrading banks.

The OCC had issued a final rule in June of 2020 that would have fundamentally weakened CRA, but fortunately, the OCC rescinded that rule in

December of 2022. In its 2020 CRA regulation, the OCC implemented concepts that would have reduced CRA-related lending and investing. In particular, the agency proposed a “one ratio” measure that would consist of all CRA activity (the dollar amount of loans and investments) divided by bank deposits. Under the one ratio measure, banks could choose to forego certain activities such as low dollar mortgage lending to lower-income homebuyers in favor of large deals such as purchases of mortgage-backed securities that are not as responsive to immediate credit needs.

On the legislative front, several recent bills have focused on measures to strengthen CRA. The “American Housing and Economic Mobility Act” would strengthen CRA as applied to banks by updating assessment areas to include geographical areas in which banks make considerable numbers of loans and engage in other business activity but do not have branches. It would also mandate the inclusion of mortgage company affiliates on bank CRA exams. Finally, it would expand CRA to include independent mortgage companies.

## TIPS FOR LOCAL SUCCESS

CRA is vital to promoting safe and sound lending and investing in communities, including in affordable housing and community development. Community organizations are encouraged to comment on CRA exams and merger applications. The federal agencies post lists on their websites every quarter of upcoming CRA exams. Additionally, organizations should establish and expand upon dialogues with CRA officers at banks in their service areas to see how banks can increase their support of affordable housing, and to bring attention to fair housing and tenant protection concerns. This should include the expansion of housing to high opportunity areas, as well as community development resources for disinvested areas and preservation resources for rising-cost areas.

## WHAT TO SAY TO LEGISLATORS

Legislative efforts to weaken CRA may arise at any time. Members should:

- Oppose bills that would weaken or repeal CRA.
- Support any proposed bills that update and strengthen CRA.
- Ask Members of Congress to oppose regulatory efforts to weaken CRA and support those that would strengthen CRA.

## WHAT TO SAY TO REGULATORS

An important means to preserving and strengthening CRA is to use it. Comment on CRA exams and merger applications. Engage with the regulatory agencies and insist that their CRA exams and merger reviews are rigorous, including with regard to affordable housing and community development resources. This advocacy can potentially include a number of new criteria that may be included in the new regulation, such as anti-displacement protections.

## FOR MORE INFORMATION

National Community Reinvestment Coalition, [www.ncrc.org](http://www.ncrc.org).

For CRA exam results, [www.ffiec.gov](http://www.ffiec.gov).

# Section 3: Job Training, Employment, and Business Opportunities Related to HUD Funding

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** HUD's Office of Field Policy and Management (FPM)

**Year Started:** 1968

**Population Targeted:** Public Housing residents, other low- and very-low income households

**Funding:** None

## SUMMARY

Section 3 is a federal obligation tied to a significant portion of HUD funding. The Section 3 statute states that recipients of HUD housing and community development funding must provide, “to the greatest extent feasible,” job training, employment, and contracting opportunities for low-income and very low-income residents, “particularly those who are recipients of government assistance for housing.” Another Section 3 obligation is to support businesses owned or controlled by low-income people or businesses that hire them (“Section 3 businesses”). A “recipient” is an entity that receives Section 3-covered funds directly from HUD, such as a public housing agency (PHA), state, city, or county.

Section 3 applies to all HUD funding for public housing and Indian housing, such as the public housing Operating Fund and Capital Fund, Resident Opportunity and Self-Sufficiency (ROSS) grants, Family Self-Sufficiency (FSS) grants, and to some extent the Rental Assistance Demonstration (RAD). Section 3 also applies to other housing and community development funding that entails construction-related activities, including HOME Investment Partnerships, national Housing Trust Fund, and Housing Opportunities for Persons with AIDS (HOPWA), as well as certain activities assisted with Community Development Block

Grants (CDBG) (see “Section 3 Project” toward the end of this article). Public housing agencies (PHAs) and jurisdictions using those non-public housing programs, such as HOME must comply with Section 3 and ensure that contractors and subcontractors comply.

## ADMINISTRATION

Historically, Section 3 regulations had been at 24 CFR part 135 under the umbrella of the Office of Fair Housing and Equal Opportunity (FHEO). The final rule, published in the *Federal Register* on [September 29, 2020](#), moved Section 3 regulations from part 135 to a new [24 CFR part 75](#) under the Office of the HUD Secretary. Monitoring and enforcement of Section 3 is removed from FHEO and transferred to the relevant HUD program offices.

The relevant program offices are those that provide the funds that trigger the Section 3 obligation, such as the Office of Public and Indian Housing (PIH), the Office of Community Planning and Development (CPD), and the Office of Recapitalization (ReCap) for Rental Assistance Demonstration (RAD), demolition, rehabilitation, or new construction. This is a problem because Section 3 monitoring and enforcement should be carried out by HUD staff who are independent of the HUD program offices since program staff (at PIH, CPD, and ReCap) are too close to the PHAs, jurisdictions, and the development projects funded by their programs. A separate *Federal Register* notice on [October 5, 2020](#) announced a separate HUD office to manage Section 3 evaluation and reporting: the Office of Field Policy and Management (FPM).

## HISTORY

The Section 3 obligation was created as part of the “Housing and Urban Development Act of

1968.” The Section 3 statute has been amended four times; each time the amendments primarily sought to expand the reach of Section 3 and to better benefit low-income (VLI) households. After statutory amendments in 1992, revised regulations were proposed and ultimately an interim set of regulations were published on June 30, 1994 and remained in effect until a final regulation was issued on September 29, 2020.

The Section 3 obligation is too often ignored by the recipients of HUD funds and not enforced by HUD; therefore, Section 3’s potential benefits for low-income and VLI people and for qualified businesses is not fully realized. At the beginning of the Obama Administration in 2009, both lawmakers and HUD officials expressed interest in strengthening the program. Proposed improvements to the 1994 interim Section 3 regulations were published on March 27, 2015, but a final rule was not sent to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) as the Obama Administration ended. On May 9, 2018, HUD’s spring Regulatory Agenda under the Trump Administration removed the 2015 proposed rule. The new HUD Secretary, Ben Carson, had publicly expressed support for Section 3. On April 4, 2019 HUD published a proposed rule; a final rule was published on September 29, 2020 and became effective on November 30, 2020.

## **HUD ELIMINATES SECTION 3 COMPLAINT PROCESS**

The final rule eliminates any Section 3-specific complaint process. Instead, complaints may be reported to the relevant HUD program office or to the local HUD field office. The relevant program offices are those that provide the funds that trigger the Section 3 obligation and are too close to the development projects funded by their programs. However, the preamble to the rule causes confusion by stating that the Office of Field Policy and Management (FPM) will filter complaints to the appropriate HUD program office, instead of every HUD program office having its own complaint process. To date there

is no guidance for residents wishing to register a complaint.

The 1994 regulation had an entire section about complaints and compliance, including a section with details explaining how residents could submit complaints to FHEO. Other HUD program areas such as public housing, HOME, CDBG, and RAD do not have detailed provisions for residents to register a PHA’s or jurisdiction’s failure to meet a program requirement like Section 3.

## **SWITCH TO “LABOR HOURS WORKED” FROM “NEW HIRES”**

The 1994 interim rule required PHAs and jurisdictions to have goals of 30% of “new hires” at projects be so-called Section 3 residents. However, advocates had long observed that some contractors would hire Section 3 residents for a short time so that they would “count” toward the 30% goal but lay them off in short order. Or, a Section 3 resident would only be given 20 hours or less of work per week. Some contractors would shift some of their existing workforce to a Section 3 project so that the contractor could claim that they did not need to hire anyone new for the Section 3 project.

The final rule follows the recommendations made by advocates for many years: PHAs and jurisdictions must switch their employment opportunities compliance and reporting from “new hires” to “labor hours worked” by “Section 3 workers.”

However, Small PHAs, those with fewer than 250 public housing units, will not be required to report the number of labor hours worked by Section 3 workers (Note: The Section 3 definition of “Small PHA” differs from that of the PHA Plan definition.) Instead, they have the option to report “qualitative efforts,” such as holding job fairs, referring residents to services supporting work readiness, and outreach efforts to generate job applicants. Out of approximately 3,700 PHAs, more than 2,000 are small PHAs. “Qualitative efforts” are discussed later in the “Reporting” section of this article.



## SECTION 3 WORKER

The final rule introduces a new term, “Section 3 worker,” someone who currently fits or when hired within the past five years fit at least one of the following criteria:

- i. The worker’s income for the previous or annualized calendar year is less than the income limit set by HUD for the program triggering Section 3 (for example 80% of the area median income, AMI, for CDBG and HOME); or,
- ii. The worker is employed by a “Section 3 business” (explained later); or
- iii. The worker is a YouthBuild participant. (YouthBuild programs receive assistance under the “Workforce Innovation and Opportunity Act” and are administered by the U.S. Department of Labor).

HUD explains that the addition of “or when hired within the past five years” is intended to encourage an employer to keep Section 3 Workers.

The definition of Section 3 worker states that someone’s status as a Section 3 worker shall not be negatively affected if they have had a prior arrest or conviction. In addition, the rule clearly states that an employer is not required to hire someone just because they meet the definition of a Section 3 worker, and the Section 3 worker must be qualified for the job.

NLIHC comment: Retention is good, but does a five-year look-back period unduly reward a business that hired a low-income person at low wages five years ago and still pays low wages? HUD assumes that a person’s income grows over five years, but is that a realistic assumption and is that too long to look back?

NLIHC comment: The definition is not written to clearly state that a low-income person hired today could still be counted for five years going forward, but the preamble to the final rule shows that HUD intends a business to also have a five-year forward option. The rule’s section on “Recordkeeping” makes it clear that a business can look forward or backward five years.

NLIHC comment: Option ii, a worker “employed by a Section 3 business,” (discussed next) is a potential dead end because one option in the definition of a “Section 3 business” (option ii) uses the definition of Section 3 worker.

## SECTION 3 BUSINESS

Section 3 is not just about employment and training opportunities – there is also an obligation to make “best efforts” to give preference in awarding contracts to businesses owned and controlled by low-income people, or to businesses that hire a substantial number of low-income people.

A “Section 3 Business” is one that meets one of the following criteria documented within the last six-month period:

- i. Is at least 51% owned and controlled by low- or very low-income persons;
- ii. More than 75% of the labor hours performed for the business over the prior three-month period were performed by Section 3 workers; or
- iii. Is a business at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

The final rule states that the status of a Section 3 business shall not be negatively affected by a prior arrest or conviction of the owners or employees. In addition, the rule clearly states that there is no requirement to contract or subcontract with a Section 3 business, and any Section 3 business must meet the specifications of a contract.

## SECTION 3 EMPLOYMENT PRIORITIES

The final rule reflects the statute’s requirements for giving priority to certain categories of Section 3 workers.

### PHAs

PHAs and their contractors and subcontractors must make “best efforts” to provide employment and training opportunities to Section 3 workers in



the following order of priority:

- i. Residents of the public housing project funded with public housing money.
- ii. Residents of a PHA's other public housing projects, or residents with Section 8 vouchers or Section 8 project-based rental assistance at privately owned multifamily properties.
- iii. YouthBuild participants.
- iv. People in the metro area (or non-metro county) with income less than 80% of the area median income (AMI).

### **Jurisdictions**

The final rule states that jurisdictions and their contractors and subcontractors must “to the greatest extent feasible” ensure that employment and training opportunities “arising in connection with” Section 3 projects are provided to Section 3 workers who live in the metro area (or non-metro county).

The final rule adds that “where feasible” jurisdictions “should” give priority to providing employment and training opportunities to Section 3 workers who live in a project’s “service area or neighborhood” and to YouthBuild participants.

HUD defines the “service area or neighborhood” of a project as an area within one mile of the Section 3 project. If there are fewer than 5,000 people within one mile, then within a circle centered on the Section 3 project that includes at least 5,000 people.

While the final rule repeats the language in the statute, it strays from the old rule’s priorities, which gave first priority to residents of the service area or neighborhood of a project, (second priority to YouthBuild participants), third priority to homeless people, and only as a last priority other Section 3 residents in the metro area or non-metro county.

## **SECTION 3 CONTRACTING PRIORITIES**

### **PHAs**

PHAs and their contractors and subcontractors must make “best efforts” to award contracts and subcontracts to businesses that provide economic opportunities to Section 3 workers in the following order of priority:

- i. Section 3 businesses that provide economic opportunity for residents of the public housing project funded with public housing money;
- ii. Section 3 businesses that provide economic opportunity for residents of the PHA's other public housing projects, or residents assisted with Section 8 vouchers or Section 8 project-based rental assistance at privately owned multifamily properties;
- iii. YouthBuild participants; and
- iv. Section 3 businesses that provide economic opportunity to low-income people living in the metro area (or non-metro county).

### **Jurisdictions**

Jurisdictions and their contractors and subcontractors must “to the greatest extent feasible” ensure that contracts for work awarded “in connection with” Section 3 projects are provided to Section 3 businesses that provide economic opportunities to Section 3 workers in the metro area (or non-metro county).

Where “feasible” jurisdictions “should” give priority to:

- i. Section 3 businesses that provide economic opportunities to Section 3 workers living in the service area or neighborhood of the project; and
- ii. YouthBuild participants.

HUD defines the “service area or neighborhood” of a project as an area within one mile of the Section 3 project. If there are fewer than 5,000 people within one mile, then the geographic area is within a circle centered on the Section 3 project

that includes at least 5,000 people.

## TARGETED SECTION 3 WORKER

This is a new idea HUD intends as an incentive to PHAs and jurisdictions to focus on reaching workers given priority in the statute and workers at Section 3 businesses. Targeted Section 3 workers are a subset of all Section 3 workers.

### PHAs

A Targeted Section 3 Worker for PHAs is:

1. A Section 3 worker employed by a Section 3 business; or,
2. A Section 3 worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
  - i. A resident of any of the PHA's public housing or any resident assisted by Section 8, whether a voucher or project-based rental assistance;
  - ii. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is using public housing assistance; or
  - iii. A YouthBuild participant.

The five-year look-back is HUD's intent to encourage long-term employment.

NLIHC comment: A worker employed by a Section 3 business might be an acceptable but not entirely accurate substitute for an actual low-income person when defining "Section 3 worker" (someone employed at a Section 3 business is merely assumed to be low income – documentation is not needed). However, it is not acceptable for the definition of "Targeted Section 3 worker" when that definition is "a worker employed by a Section 3 business concern." Repeating a "worker employed by a Section 3 business" as one option in the definition of a "Targeted Section 3 worker" dilutes HUD's targeting idea for benchmarking (see next section).

### Jurisdictions

A targeted Section 3 worker for jurisdictions is:

1. A Section 3 worker employed by a Section 3 business; or
2. A Section 3 worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
  - i. Living in the service area or neighborhood of a project; or,
  - ii. A YouthBuild participant.

The problems are the same as those regarding PHAs (explained above), compounded by the geographic limitations of the rule's definition of service area, which HUD defines as an area within one mile of the Section 3 project. If there are fewer than 5,000 people within one mile, then the geographic area is within a circle centered on the Section 3 project that includes at least 5,000 people. Just because someone lives in the service area or neighborhood does not mean that they are low-income.

## SECTION 3 BENCHMARKS

The final rule establishes Section 3 "benchmarks" to replace the old rule's "goals."

The benchmarks will be used to monitor a PHA's and a jurisdiction's accomplishments toward directing job opportunities to Section 3 workers and the new subcategory of Section 3 worker called "Targeted Section 3 Worker." The benchmarks are the same for PHAs and jurisdictions:

1. Section 3 workers make up 25% of the total number of labor hours worked by all workers; and
2. Targeted Section 3 Workers make up 5% of the total number of labor hours worked by all workers.

The 5% of Targeted Section 3 Workers is included as part of the overall 25% threshold.

NLIHC and other advocates commented that the benchmark of 5% for Targeted Section 3 Workers

was far too low; at least 15% was recommended. HUD indicates that it will review benchmarks every three years and adjust if appropriate.

## SAFE HARBOR

If a PHA or jurisdiction certifies (pledges) that it has met the priorities for job and contract opportunities and has met the jobs benchmark, then HUD presumes the PHA or jurisdiction is complying with Section 3 – unless residents or advocates tell HUD about evidence that contradicts the PHA or jurisdiction. HUD calls this the “safe harbor.” At this stage, a PHA or jurisdiction would not have to continue reporting any additional Section 3 employment or contracting activities. If a PHA or jurisdiction cannot certify that it has met the job and contract priorities and jobs benchmark, then it will have to send “qualitative efforts” reports to HUD describing those efforts (discussed in “Reporting” next). Residents and advocates should monitor and report to HUD any evidence that contradicts a PHA’s or jurisdiction’s certifications or qualitative efforts.

## REPORTING

The reporting requirements are the same for PHAs and jurisdictions, requiring them to report to HUD each year their benchmark data:

- Total number of labor hours worked;
- Total number of labor hours worked by Section 3 workers; and,
- Total number of labor hours worked by Targeted Section 3 Workers.

This includes labor hours worked by contractors and subcontractors.

Section 3 workers’ and Targeted Section 3 Workers’ labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 Worker is established following the “recordkeeping” section of the rule. HUD states that this five-year period is there to “ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 Worker at the time of hire or the first reporting period...” This means a PHA or jurisdiction can

count back five years or count forward for five years.

The final rule does not require professional services be included in the benchmark. Professional services are defined as non-construction services that require an advanced degree or professional licensing such as legal services, financial consulting, accounting, environmental assessments, and architectural and engineering services. PHAs and jurisdictions may include labor hours worked by people in professional services when counting Section 3 workers and Targeted Section 3 Workers for their benchmark, without including them in the total number of hours worked. This could increase a PHA’s or jurisdiction’s benchmark number.

If a contractor or subcontractor does not track labor hours, a PHA or jurisdiction “may” accept the contractor’s or subcontractor’s “good faith assessment” of the labor hours of full-time or part-time employees.

If the benchmark is not met, a PHA or jurisdiction will be required to use a HUD form to report on the “qualitative” nature of its activities or the activities of contractors and subcontractors. Small PHAs may choose to only report their qualitative efforts. The final rule lists 14 examples of possible qualitative efforts, such as reaching out to generate job applicants, holding job fairs, connecting people with entities that help draft resumes and prepare for job interviews, referring people to job placement services, and reaching out to identify bids from Section 3 businesses.

## SECTION 3 PROJECT

The final rule defines a “Section 3 project” as one that is not funded with the public housing Capital and Operating Funds, but instead receives at least \$200,000 in funds from other HUD programs, such as HOME and CDBG, for housing rehabilitation or new housing construction or for other public construction projects (such as road repair). The per-project threshold is \$100,000 for various Lead Hazard and Healthy Homes programs. NLIHC had long raised concerns about the old rule’s \$100,000 per project threshold (for non-lead projects); the new rule makes things

even worse by going up to \$200,000.

A “project” is defined as “the site or sites together with any buildings and improvements located on the site(s) that are under common ownership, management, and financing.” With this definition of “project” and a \$200,000 per project threshold, many contractors would not have to comply with Section 3. Contractors awarded significant amounts of Section 3 covered funds in a single year to spend, all together, on a number of small, discreet activities (such as homeowner housing rehabilitation) would not have to hire Section 3 workers or subcontract with Section 3 businesses because each component activity costs less than \$200,000. For example, if a contractor receives \$1 million in CDBG funds to rehabilitate seven single-family homes and the contractor spends \$130,000 per home, that contractor would not have to comply with Section 3 because each home is considered a single project and not one of the seven rehabs had a contract for more than \$200,000.

## RENTAL ASSISTANCE DEMONSTRATION (RAD)

The Notices that govern the Rental Assistance Demonstration (RAD) program limit Section 3 to the construction- or rehabilitation-related activities identified in the RAD Financing Plan and RAD Conversion Commitment. After the conversion, Section 3 no longer applies unless additional federal financial assistance is later used for rehabilitation. NLIHC has long urged HUD to extend Section 3 obligations post-conversion because application of Section 3 obligations that apply to permanent PHA staff can greatly shrink if a significant portion of the public housing portfolio is converted – or can be totally lost if an entire portfolio is converted. The formerly permanent PHA staff can include maintenance workers, those who prepare units at turnover, or central office staff – potential pool for Section 3 training and employment.

The public housing portion of the Section 3 statute that applies to the operating assistance provided by the public housing program does not extend to public housing converted to Project-

Based Rental Assistance. PHAs will continue, however, to “manage” or have a controlling interest in public housing converted to Project-Based Vouchers (PBVs). Therefore, NLIHC has urged that the RAD Notice be modified to state that Section 3 will still apply to the permanent staff slots of the entities owning or managing a development converted to PBVs. This would extend some Section 3 training and employment opportunities post-conversion, rather than reduce them. Without such a change in the RAD Notice, economic opportunities shrink for residents of RAD-converted properties because only new construction or rehabilitation will trigger Section 3 after RAD conversion; as with public housing, Section 3 obligations should continue to apply to non-professional services staff involved in project operations.

## MULTIPLE FUNDING SOURCES

When a project is funded with public housing funds and also meets the Section 3 project criteria (receiving additional HUD funds such as CDBG), the project must follow the public housing Section 3 requirements for the public housing portion of the funds and may follow the public housing Section 3 requirements or the Section 3 project requirements for the community development funds. When a Section 3 project receives housing and community development funds from two different HUD programs (for example CDBG and HOME), HUD will tell the jurisdiction which HUD program office to report to. This *Advocates’ Guide* does not summarize this section of the final rule.

## FUNDING

There is no independent funding for Section 3. The number of jobs created or contracts provided to Section 3 individuals or businesses depends on the level of funding for the applicable public housing or housing or community development program.



## FORECAST FOR 2023

NLIHC has recommended that the Biden Administration review the Section 3 proposed rule published by the Obama Administration, identify acceptable provisions of the final rule, meet with advocates and residents, and issue a revised Section 3 rule. It is highly unlikely that HUD will revisit the final Section 3 rule.

## TIPS FOR LOCAL SUCCESS

The successes of Section 3 are almost exclusively attributed to oversight, monitoring, and advocacy by local advocates and community groups, as well as some local staff of recipient agencies implementing Section 3.

Advocates should contact resident organizations, local unions, minority and women-owned businesses, community development corporations, and employment and training organizations to discuss how they and their members or clients can use the Section 3 preferences to increase employment and contracting opportunities for the targeted low-income and very low-income individuals and Section 3 businesses.

In addition, advocates should meet with PHAs and other local recipients of housing and community development dollars (generally cities and counties) to discuss whether they are meeting their Section 3 obligations with respect to public housing funds or the HOME, CDBG, and RAD programs. Advocates should create or improve upon a local plan to fully implement Section 3 and seek information on the number of labor hours worked by low-income and very low-income individuals in accordance with Section 3 and the number of contracts with Section 3 businesses. Compliance with Section 3 should be addressed in the annual PHA Plan process or the Annual Action Plan updates to the Consolidated Plan process.

If compliance is a problem, urge HUD to monitor and conduct a compliance review of the non-complying recipients of federal dollars for public housing or housing and community development. Low-income persons and businesses with a

complaint about recipients of HUD funds or contractors' failure to comply with their Section 3 obligations should consider filing an official complaint with HUD. Raise complaints to both the Office Field Policy and Management's Section 3 Point of Contact staff, as well as the Field Office overseeing the program area where there is a lack of compliance, such as PIH, CPD, or ReCap. Unfortunately, there is no specific email address, phone number, or person identified for any of these offices responsible for Section 3 compliance. PIH Field Offices are here, CPD Field Offices (and Headquarters staff) are here, and the ReCap staff directory is here (advocates should consider focusing on the Resident Engagement and Protections branch).

## FOR MORE INFORMATION

NLIHC has both a detailed Summary and Analysis of the final Section 3 rule and a shorter outline summarizing the final Section 3 rule on NLIHC's Public Housing webpage at: <https://nlihc.org/explore-issues/housing-programs/public-housing>.

HUD's FHEO Section 3 website is at: [https://www.hud.gov/program\\_offices/field\\_policy\\_mgt/section3](https://www.hud.gov/program_offices/field_policy_mgt/section3).

- This website contains a PDF of Section 3 FAQs dated March 25, 2021 at: <https://www.hud.gov/sites/documents/11SECFAQS.PDF>.

The HUD Exchange page for Section 3 is at: <https://bit.ly/31VILcX>. This page also contains:

- A set of online FAQs with some FAQs dated June 2022 at: <https://www.hudexchange.info/section-3/faqs>.
- An online Section 3 Guidebook and related tools at: <https://www.hudexchange.info/programs/section-3/section-3-guidebook/welcome>.
- An online "Understanding Section 3" Training curriculum at <https://www.hudexchange.info/trainings/section-3>.
- A final rule training at: <https://www.hudexchange.info/trainings/section-3-final-rule-training>.



The Code of Federal Regulations version of the final Section 3 rule is at: <https://www.govinfo.gov/content/pkg/CFR-2021-title24-vol1/pdf/CFR-2021-title24-vol1-part75.pdf>.

The *Federal Register* version of the final Section 3 rule is at: <https://www.govinfo.gov/content/pkg/FR-2020-09-29/pdf/2020-19185.pdf>.

An easier to read version of the final rule is at: [https://nlihc.org/sites/default/files/Advanced\\_2020-19185-1.pdf](https://nlihc.org/sites/default/files/Advanced_2020-19185-1.pdf).

The benchmark *Federal Register* notice is at: [https://nlihc.org/sites/default/files/FR\\_Benchmark\\_2020-19183.pdf](https://nlihc.org/sites/default/files/FR_Benchmark_2020-19183.pdf).

An easier to read version of the benchmark notice is at: [https://nlihc.org/sites/default/files/Advance\\_Benchmark\\_2020-19183.pdf](https://nlihc.org/sites/default/files/Advance_Benchmark_2020-19183.pdf).

HUD published three separate guidance documents for implementing the new Section 3 rule for various programs:

- [Notice PIH 2022-10](#) pertains to public housing.
- [Notice CPD-21-07](#) pertains to HOME and the national Housing Trust Fund.
- [Notice CPD-21-09](#) pertains to CDBG.
- ReCap posted [a two-page document](#) pertaining to RAD.

The Office of Field Policy and Management Section 3 Contact staff are at: <https://www.hud.gov/sites/dfiles/FPM/documents/Sec3PointsContact.pdf>.

The PIH list of Field Offices is at: [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/about/field\\_office](https://www.hud.gov/program_offices/public_indian_housing/about/field_office).

The CPD list of Field Offices (and Headquarters staff) is at: [https://www.hud.gov/program\\_offices/comm\\_planning/staff](https://www.hud.gov/program_offices/comm_planning/staff).

ReCap's staff directory is at: [https://www.hud.gov/program\\_offices/housing/office\\_recapitalization\\_staff\\_directory](https://www.hud.gov/program_offices/housing/office_recapitalization_staff_directory) (advocates should consider focusing on the Resident Engagement and Protections branch).

# Continuum of Care Planning

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By Steve Berg, National Alliance to End Homelessness

**Administering Agency:** HUD's Office of Special Needs Assistance Programs within the Office of Community Planning and Development

**Year Started:** 1994

**Population Targeted:** People experiencing homelessness

**See Also:** For related information, refer to the *McKinney-Vento Homeless Assistance Programs*, *Ten-Year Plans to End Homelessness*, and the *Federal Surplus Property to Address Homelessness* sections of this *Guide*

The Continuum of Care (CoC) planning process is used by communities to apply for funding from HUD's CoC program. Through the CoC planning process, government agencies, service providers, advocates, and other stakeholders evaluate the needs of homeless people in the community, assess the performance of existing activities, and prioritize activities going forward. The CoC process was introduced by HUD in the mid-1990s. It was codified into law by Congress through the "Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009."

## HISTORY AND PURPOSE

The CoC process was developed by HUD in 1994 to coordinate the distribution of several competitive homeless assistance programs. Prior to the CoC process, organizations applied individually for funding from several homeless assistance programs. As a result, there was little coordination between these programs or between different organizations receiving funding in the same community. The CoC process was established to promote coordination within communities and between programs. It was also designed to bring together a broader collection of stakeholders such as public agencies, the faith and business communities, and mainstream

service providers. Guidelines for the CoC planning process were included in annual Notices of Funding Availability (NOFAs), recently changed to Notices of Funding Opportunity (NOFOs) in 2021. HUD regularly modifies the process.

On May 20, 2009, President Barack Obama signed the "HEARTH Act" (Public Law 111-22), providing congressional authorization of the CoC process. The "HEARTH Act" reauthorized the housing title of the "McKinney-Vento Act." HUD began issuing regulations in 2011, with the release of interim regulations on the Emergency Solutions Grant and the Homeless Management Information Systems, along with a final regulation on the definition of homelessness.

Regulations on the CoC program were published in the summer of 2012. Key changes made by the "HEARTH Act" include changes to outcome measures, funding incentives, eligibility for assistance, matching requirements, rural assistance, and administrative funding.

## SUMMARY

The term Continuum of Care (CoC) is used in many ways and can refer to the planning process, the collection of stakeholders involved in the planning process, the geographic area covered by the CoC, or the actual grant received from HUD.

The CoC planning process is typically lead and staffed by either a local government agency or a community-based nonprofit. The geography covered by a CoC can vary, covering an entire city, state, or a collection of counties. The goal of the CoC is to create a system-wide response to ensure that homelessness is rare, brief, and nonrecurring. The CoC is tasked with compiling information about homelessness in the community, including information about homeless populations and performance of homeless service programs and the community in reducing homelessness.

In recent years, HUD has incentivized coordination between CoCs and various entities

including Consolidated Plan jurisdictions, public housing authorities, Housing Opportunities for Persons with AIDS, Temporary Assistance for Needy Families, Runaway and Homeless Youth, Head Start programs, health care, and other programs.

Due to the pandemic, there was no FY 2020 CoC Program Competition, instead awarded \$2.5 billion to renew approximately 6,600 existing grants for local homeless assistance programs across the country. The CoC process was picked up again in 2021 and awards were made. Communities have applied for FY 2022 funding and are awaiting HUD's decision. Congress has not yet passed funding measures for FY 2023. Renewed funding continued to support various interventions for individuals and families experiencing homelessness.

## FORECAST FOR 2023

The FY2022 CoC NOFO applications were due September 30, 2022, with approximately \$2.8 billion available. Awards could be announced at any time. Assuming timely passage of appropriations bills by Congress, the FY 2023 NOFO applications will probably be released during the summer of 2023.

The "HEARTH Act" placed more of the responsibility for measuring outcomes and overseeing performance on the leaders of local CoCs. The FY 2022 NOFO continued to require CoCs to submit data on their system's performance and to place a strong emphasis on performance measures that ensure homelessness is a rare, brief, and one-time experience. As CoC data collection and quality improve, HUD will likely use requested data to establish baselines for measuring improvements in future competitions. Demonstrating reductions in homelessness, the time people experience homelessness, and the effectiveness of programs continue to be emphasized.

The FY2022 NOFO returned to emphasizing system performance, an aspect that was deemphasized in FY2021 to take account of COVID. It is likely this will be continued for FY2023. System performance is likely to include

emphasis on racial equity in homelessness and in emphasizing the roles in planning and service delivery of people with lived experience of homelessness. It is also likely to emphasize using evidence-based practices, which emphasize moving people quickly into housing. Finally, it is likely to emphasize partnering with housing, health, and services agencies to improve all available resources.

The FY2023 NOFO will continue to allow Tribes and Tribally Designated Housing Entities (TDHEs) to apply for funding. HUD is in the process of reviewing its technical policies to ensure that this can be a practical source of funding for these entities.

## TIPS FOR LOCAL SUCCESS

The CoC planning process should focus on the most effective strategies for reducing homelessness. CoCs should monitor performance of grantees, and assist lower performing providers to improve their performance or shift to more effective strategies. Similarly, accessing mainstream resources, generally available for low-income people, is often difficult for people experiencing homelessness. For example, there are numerous barriers for homeless people to access employment services, housing assistance, cash assistance, and treatment services, and due to historical and ongoing structural racism, these barriers are magnified for Black, Indigenous, and other people of color (BIPOC) experiencing homelessness.

Advocates play a crucial role in ensuring that the CoC equitably serves people most in need of assistance and expands access to mainstream resources. For CoCs to be effective, it is important that key stakeholders have a seat at the table. In many communities, the needs of children, BIPOC, LGBTQ people, veterans, people with disabilities, youth, and domestic violence survivors are not always adequately represented. Advocates should work to ensure that they are part of the CoC planning process. By joining their local CoC, advocates can inform and shape a community's priorities in addressing homelessness for current and emerging populations.

Critically, all stakeholders should participate in data collection efforts whenever appropriate and safe and ensure that programs achieve positive and equitable outcomes. Information about the CoC Program and the local CoC coordinator can be found at HUD's Homelessness Resource Exchange website.

## **FOR MORE INFORMATION**

National Alliance to End Homelessness, 202-638-1526, [www.endhomelessness.org](http://www.endhomelessness.org).

HUD Homelessness Resource Exchange, <https://www.hudexchange.info>.

# Housing First

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By Kim Johnson, Public Policy Manager,  
and Alayna Calabro, Senior Policy  
Analyst, NLIHC

**H**omelessness is a crisis in many communities – one that demands urgent action. To end homelessness once and for all, federal, state, and local governments must invest in proven solutions at the scale necessary to address the problem. Housing First is an evidence-based practice backed by multiple, national studies that show it is the most effective approach to ending homelessness for most individuals and families. Under the Housing First model, stable, affordable, and accessible housing is provided to people experiencing homelessness quickly and without prerequisites, and voluntary supportive services are offered to help improve housing stability and well-being.

## PROGRAM SUMMARY

Housing First is not “housing only.” Housing First is a whole-systems model for addressing homelessness that prioritizes access to permanent, stable housing with services when needed. Housing First recognizes that stable housing is a prerequisite for effective psychiatric and substance abuse treatment, for stable employment, and for improving quality of life. Once stably housed, individuals are better able to take advantage of wrap-around services that help support stability, employment, and recovery – goals that are difficult to attain without stable housing. Housing First is a flexible model that can be adapted to address the unique needs in local communities and tailored to the challenges facing individuals. Rapid re-housing (RRH) and permanent supportive housing (PSH) can both utilize the Housing First model. In RRH, individuals and families experiencing homelessness receive assistance identifying, leasing, and moving into new housing quickly and are connected to supportive services if needed. Similarly, PSH provides longer-term housing assistance and voluntary supportive

services, including health care, employment, and treatment services, to ensure people experiencing chronic homelessness can attain long-term housing stability.

Under federal homelessness programs, Continuums of Care (CoCs) decide which programs to fund in their communities. CoCs tend to focus scarce federal resources on high-performing shelter and service providers that are most effective in addressing homelessness. Because programs based on the Housing First model are proven to be effective for most individuals and families, CoCs often prioritize these programs.

## Evidence Supporting Housing First

Research shows that Housing First rapidly ends homelessness, is cost-effective, and improves quality of life and community functioning. Housing First is the most effective approach to ending homelessness for most individuals and families, particularly for people experiencing chronic homelessness, people with substance use disorders, and people with disabilities, including individuals with mental health conditions. This model was first developed for people with serious psychiatric or substance use disorders who had been homeless for long periods of time and was later extended to all homeless populations. Housing First has been credited with helping reduce chronic homelessness by 20% since 2007.

Housing First is supported by the U.S. Department of Veterans Affairs (VA) in its two largest homelessness programs – Supportive Services for Veteran Families (SSVF) and HUD-Veterans Affairs Supportive Housing (HUD-VASH). These programs, which are considered to be the gold standard for homelessness programs both domestically and abroad, have been instrumental in reducing veteran homelessness by 50% over the past decade. Initial results from HUD’s 2022 Point-in-Time (PIT) count point to an 11% decline in homelessness among veterans between 2020 and 2022, the largest drop in



veteran homelessness in more than five years. This drop in veteran homelessness coincides with the return of Housing First practices under the Biden Administration and historic resources provided through the American Rescue Plan.

Housing First programs are twice as effective at ending homelessness, compared to the older, outdated “stairstep” or “linear” approach that Housing First has replaced. The earlier model risked lives and increased costs to communities. The “stairstep” approach set housing as the end goal – requiring participants to first participate in various service programs, abstain from drugs and alcohol, and adhere to a set of behavioral requirements before they could access housing. Far too many people experiencing homelessness were unable to meet the high barriers to set by “stairstep” programs, leaving them to languish in shelters for long periods of time with no clear path to exit homelessness. Because shelters are far more expensive than providing individuals with housing, the “stairstep” approach drove up costs for communities. Communities spent more on emergency health care, corrections, and law enforcement.

Key to the success of Housing First is its emphasis on low-barrier access to permanent, stable housing with supportive services when needed. Access to Housing First programs is not contingent upon minimum income requirements, sobriety, criminal history, successful completion of a treatment program, or participation in supportive services; rather, Housing First recognizes that stable, supportive, accessible housing is fundamental to being able to effectively utilize wrap-around services. The model eschews a “one-size-fits-all” approach to addressing homelessness and instead pairs people and families with the level of financial assistance and supportive services necessary to achieve long-term housing stability.

Several major studies have found that Housing First resulted in large improvements in housing stability. Early evaluations found that homelessness programs that eliminated barriers to service, like Housing First, were more successful in reducing homelessness than

programs where housing and services were contingent on sobriety and progress in treatment. The world’s largest study on Housing First found that individuals participating in Housing First programs rapidly obtained housing and retained their housing at a much higher rate than non-Housing First participants.

In addition to greater housing retention, Housing First can lead to better treatment outcomes and improved quality of life and other outcomes. Multiple studies have shown that participation in supportive housing improves residents’ mental health and their engagement in mental health treatment. Recent studies indicate that Housing First participants are more likely to report improved overall health and reduced usage of alcohol, stimulants, and opiates. Furthermore, Housing First programs are more effective at increasing utilization of home- and community-based services and increasing outreach to and engagement of clients not appropriately served by the public mental health system. Housing First provides a vital option to the many people who are not able to maintain perfect treatment immediately after exiting homelessness and ensures they will not be relegated to long-term homelessness.

The Housing First model reduces unnecessary and preventable costs associated with homelessness. Studies consistently show that Housing First reduces use of more costly resources, such as shelters, inpatient psychiatric hospitals, emergency rooms, and jails and prisons. Supportive housing, for example, effectively ends homelessness for people with mental health disabilities and reduces health care costs for high-need, high-cost users of health care systems. The average cost savings to the public ranges from \$900 to \$29,400 per person per year after entry into a Housing First program. Overall public spending is reduced by nearly as much as is spent on housing.

### **Attempts to Undermine Housing First and Criminalize Homelessness**

Housing First has been proven successful and has a long history of bipartisan support. Under

past Republican and Democratic Administrations, HUD and the U.S. Interagency Council on Homelessness (USICH) have endorsed Housing First as a best practice to ending homelessness and the model has enjoyed bipartisan support from congressional leaders. First incorporated into federal recommendations under the George W. Bush Administration, Housing First was credited with reducing homelessness by 30% between 2005 and 2007. During the Great Recession, implementation of RRH under the Obama Administration helped an estimated 700,000 people at-risk of or experiencing homelessness find stable housing.

Rather than building on these successes, during its tenure the Trump Administration sought to replace Housing First models with programs that would deny people and families experiencing homelessness stable housing if they were unable to maintain treatment or attain perfect sobriety. This shift in policy not only ignored the decades of research, learning, and bipartisan support attesting to the validity of Housing First, but failed to address the underlying, systemic causes of homelessness and housing instability. The Trump Administration focused instead on returning to failed “behavioral modification” strategies, and supported its arguments through false claims about Housing First that relied on manipulated data and misrepresented research.

Former USICH Director Robert Marbut, appointed under the Trump Administration and relieved from his position in February 2021, frequently used misleading and inaccurate data to falsely claim that homelessness has increased as a result of the widespread adoption of Housing First. Marbut inflated the number of people experiencing homelessness by including individuals in RRH and PSH programs in his homelessness count – individuals living in their own apartments or houses and who are, by definition, not homeless. He also falsely claimed that Housing First does not provide supportive services when needed and has drawn false conclusions about the underlying causes of homelessness to support his misguided policies. Rather than Housing First, Marbut advocated for

an approach that would make it more difficult for homeless families and chronically homeless individuals to obtain safe, stable housing. While Marbut touted his approach as “treatment first,” in reality, high-barrier programs that mandate perfect sobriety or treatment as a prerequisite to housing are not nearly as successful at ensuring long-term housing stability. A metaanalysis of existing research found that 65-85% of individuals participating in Housing First programs remained housed in the two years after entering the program, compared to just 23-39% of individuals in programs emphasizing “treatment first.” Even USICH’s own documents support the efficacy of Housing First programs, finding that pairing Housing First with supportive services when needed results in housing retention rates between 75-85% for individuals and 80-90% for families.

Available research on the efficacy of “treatment first” approaches to ending homelessness did not yield promising results. One 2004 study concluded “there is no empirical support for the practice of requiring individuals to participate in psychiatric treatment or attain sobriety before being housed.” Studies have also suggested that requiring “perfect abstinence” as a prerequisite for housing can actually hinder participants in achieving long-term housing stability, recovery, and employment.

There is a growing backlash against people experiencing homelessness and against supporting real solutions to this crisis. Dangerous rhetoric and harmful measures – including those that would criminalize homelessness, impose punitive requirements, and even prevent the development of affordable housing – are gaining traction at the federal, state, and local levels.

### **THE “HOUSING PLUS ACT” WOULD UNDERMINE HOUSING FIRST**

At the federal level, Representative Andy Barr (R-KY) introduced legislation in the 117<sup>th</sup> Congress that would undermine federal investments in proven solutions to homelessness. The “Housing Promotes Livelihood and Ultimate Success (PLUS) Act” (H.R. 6018) would undermine HUD’s

ability to prioritize evidence-based solutions to homelessness by directing HUD to set aside 30% of federal homeless assistance funds for programs that require sobriety, treatment, and/or other supportive services as a precondition to housing assistance for people experiencing homelessness. The bill creates a rigid, arbitrary requirement to fund high-barrier programs, regardless of evidence showing this approach tends to be more expensive and less effective. Such a requirement could force CoCs to defund existing permanent supportive housing programs. Any attempt to divert limited federal resources to outdated, ineffective, and costly strategies will result in fewer people becoming stably housed and undermine access to effective treatment.

#### **DRAFT LEGISLATION FROM THE CICERO INSTITUTE WOULD HARM PEOPLE EXPERIENCING HOMELESSNESS**

Similarly, misguided efforts at the state and local levels to criminalize homelessness, impose punitive requirements, and redirect investments away from long-term solutions – such as those proposed by the Cicero Institute in its harmful draft legislation – are counterproductive and will make it even harder for people to exit homelessness. Criminalizing homelessness also further marginalizes Black, Indigenous and other communities of color, those with mental and physical disabilities, and LGBTQ youth and adults, who are already disproportionately affected by homelessness and mass incarceration. Laws contributing to the involuntary institutionalization of individuals experiencing homelessness have regularly been found to violate the civil rights of individuals with disabilities and any expansion of those laws would expand the harm they cause.

The Cicero Institute draft legislation criminalizes homelessness, punishable by fines, jail time, or both. Criminalizing homelessness is counterproductive, expensive, harmful to marginalized communities, and dehumanizing. Nearly all people experiencing homelessness are not unsheltered by choice, but because they lack access to affordable, accessible housing, physical

and mental health care, or adequate and humane emergency shelter. Arrests, fines, jail time, and conviction or arrest records make it more difficult for individuals experiencing homelessness to access the affordable housing, health services, and employment necessary to exit homelessness. Further, a growing body of research demonstrates that providing affordable housing and voluntary services is more cost-effective than outdated approaches, including criminalization. With limited state and local budgets, elected officials should turn to humane, cost-effective policies, not ineffective measures that waste taxpayer dollars.

The Cicero bill imposes punitive requirements, including time limits, work requirements, forced treatment, and sobriety. These rigid requirements are ineffective, outdated, and dangerous. By failing to prioritize access to affordable housing, this approach ignores the primary driver of homelessness: the severe shortage of housing affordable to the lowest-income and most marginalized people. Forcing people into congregate shelters and advocating for a mandatory, punitive, behavior modification approach is based on the outdated “stairstep” model that failed to rehouse people. Restricting access to shelters to only those individuals that meet strict requirements would put lives at risk. A study conducted in Boston, for example, found that unsheltered individuals experiencing homelessness faced mortality rates three times higher than those residing in shelters.

The harmful draft legislation proposed by the Cicero Institute is not a real solution. Redirecting investments away from long-term solutions to fund short-term crisis responses undermines housing stability and effective treatment. Policymakers should instead invest in proven strategies, like Housing First.

#### **Housing First, Homelessness, and COVID-19**

Access to safe, stable, accessible, and affordable housing is a key determinant of health, a connection that has never been more apparent than throughout the ongoing pandemic. Policies that would actively deny people experiencing homelessness or housing instability access to

housing risk furthering the spread of coronavirus, prolonging the pandemic, and exposing already marginalized people to irreparable harm.

The Centers for Disease Control and Prevention (CDC) enacted a federal moratorium on evictions for nonpayment of rent lasting from September 2020 to August 2021, citing the “historic threat to public health” posed by the virus and noting “eviction moratoria...can be an effective public health measure utilized to prevent the spread of communicable disease.” The CDC further stated that “housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19.”

People experiencing homelessness who contract coronavirus are twice as likely to be hospitalized, two to four times as likely to require critical care, and two to three times as likely to die from the illness as the general population. People who are homeless are more susceptible to severe complications from the virus due to a higher prevalence of underlying health conditions, lack of vaccine access, and the inability to engage in preventative measures recommended by the CDC, including social distancing, regular handwashing, and avoiding high-touch surfaces. The greater risk of severe illness and death for people experiencing homelessness who contract coronavirus makes ensuring low-barrier access to safe, stable, accessible housing both a moral imperative and a public health necessity.

## FORECAST FOR 2023

During his campaign, President Biden committed to pursuing a “comprehensive approach to ending homelessness,” starting with developing a strategy to make housing a right for all people. Housing First’s foundational tenet – providing people experiencing or on the verge of homelessness low-barrier access to affordable housing and supportive services when needed – allows programs to be designed prioritizing the unique needs of individuals and is central to realizing President Biden’s goal. Indeed, President Biden has pledged to ensure the

federal government “commits to a ‘Housing First’ approach to ending homelessness,” including by conducting a comprehensive review of federal housing policies to ensure they incentivize a Housing First approach. Adequately adopting a Housing First approach to ending homelessness requires a major investment in expanding housing vouchers, as well as developing and preserving homes affordable to the lowest-income people.

It is imperative to invest in culturally responsive, client-centered homeless assistance systems, so that people who slip into homelessness can be quickly identified, moved into homes, and engaged in Housing First programs with supportive services if needed. In order to begin addressing the longstanding racial inequities in housing, it is also vital to target resources to historically marginalized communities and organizations embedded in those communities. Targeting resources to those with the greatest need would increase the impact of investments and help build up communities that have faced generations of disinvestment.

In addition to pushing for increased investments in affordable, accessible housing and culturally responsive services, advocates and allies in Congress must be unified in pushing back against counterproductive and dehumanizing efforts to criminalize homelessness, impose punitive requirements, and undermine proven solutions to end homelessness.

## WHAT TO SAY TO LEGISLATORS

Advocates can use NLIHC’s [Housing First resources](#) to educate their Members of Congress about why Housing First is a critical strategy for ending homelessness and urge them to proactively support the model. Having a safe, stable, affordable place to live and the right supports can lead to positive outcomes beyond those provided by services alone. Over two decades of research prove that housing stability, quality of life, and community functioning are consistently higher among participants in Housing First programs.

Advocates should urge their Members of Congress to oppose the “Housing PLUS Act” and any legislation or amendments that would undermine federal investments in proven solutions to homelessness. Advocates should also urge lawmakers to oppose measures seeking to criminalize homelessness and impose rigid requirements, like time limits, work requirements, forced treatment, and sobriety. Moving away from evidence-based approaches to addressing homelessness would deny individuals and families in need of safe, decent, affordable and accessible homes. Requiring treatment or sobriety as a prerequisite to receiving stable housing does not solve homelessness – rather, it can make solving homelessness more difficult by demanding people overcome the challenges of substance abuse or mental illness without the stability and safety of a home. “Treatment first” ignores the systemic issues that allow people to live unhoused and ensures there will always be people who are homeless. Congress and the Biden Administration should continue working together to increase investments in decent, safe, affordable, and accessible rental homes for people with the lowest incomes; work to actively undo the generations of racist policies that have disproportionately exposed Black and Native people to housing instability and homelessness; and continue to pursue Housing First as a proven solution to homelessness.

## RESOURCES

NLIHC’s Housing First webpage: <https://bit.ly/3fWtobo>.



# HUD-Funded Service Coordination Programs: ROSS, Family Self-Sufficiency, and Service Coordinators in Multifamily Housing for Elderly and Disabled

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By Melissa Harris, Director of Government Affairs, American Association of Service Coordinators

**S**ervice coordinators are the foundation of successful affordable housing. They ensure that older adults who reside in the limited number of federally subsidized rental units can thrive in their communities instead of moving to costlier facilities that provide higher levels of care or to inappropriate or sub-standard housing. Service coordinators in family housing understand that putting a roof over a family is just the first step to a journey of economic and personal stability that could break a cycle of generational poverty.

HUD currently has three distinct service coordinator programs, each with its own federally appropriated funding stream:

- Service Coordinators in Multifamily Housing for the Elderly/Disabled.
- The Resident Opportunities and Self-Sufficiency (ROSS) Service Coordinator Program.
- The Family Self-Sufficiency (FSS) Program.

HUD's Office of Public and Indian Housing (PIH) administers the ROSS Service Coordinator and FSS programs. The Service Coordinators in Multifamily Housing for the Elderly/Disabled program funds the work of service coordinators in Section 202 housing and is administered by HUD's Office of Multifamily Housing Programs.

A service coordinator is a social service staff person hired or contracted by a property owner, housing management company, public housing agency (PHA), resident association (RA), or Tribal Housing entity.

In the past, a service coordinator acted as an information and referral resource for families, seniors, and persons with disabilities residing in publicly funded subsidized apartments or other affordable housing environments. However, the role of the service coordinator has evolved to a more hands-on, enhanced level of coordination, motivation, and assistance.

This model represents a proactive approach to service coordination in which the service coordinator reaches out to and engages residents, conducts non-clinical assessments of resident interests and needs, and makes referrals to service providers in the community as necessary and appropriate. The service coordinator's primary role is to coordinate the provision of supportive services and provide access to benefits and community-based resources for low-income residents. Service coordinators also empower residents to remain independent and increase their assets and self-sufficiency by influencing positive behavior changes.

## HISTORY

Service coordination is a growing profession that expanded when Congress created HUD's Service Coordinator Program through Section 808 of the "National Affordable Housing Act of 1990" (also known as the "Cranston-Gonzalez Affordable Housing Act," Public Law 101-625). This law gave HUD the authority to use Section 8 funds to employ service coordinators in Section 202 Multifamily Housing for the Elderly/Disabled. The act also enacted the FSS program.

Service coordination programs received additional authority through the 1992 "Housing and Community Development Act" (HCDA; Public Law 102-550). The HCDA Amendments of 1992 amended Section 808 through Sections

674 and 677 and added Sections 675 and 676. Section 851 of the “American Homeownership and Economic Opportunity Act of 2000” (Public Law 106-569) further amended these acts. These amendments allowed service coordinators to serve low-income elderly and disabled persons living in the vicinity of the development and expanded the program by broadening authority for funding of service coordinators in most HUD-assisted and conventional public housing (PH) developments designated for the elderly and people with disabilities. The “Consolidated Appropriations Act of 2015” authorized voluntary FSS participation for owners of private multifamily projects that have a project-based Section 8 Housing Assistance Payment contract.

As a response to the “Quality Housing and Work Responsibility Act of 1998” (the “Public Housing Reform Act”), ROSS is a redefined and restructured combination of programs funded in prior years: The Tenant Opportunities Program, Economic Development and Supportive Services Program, and Public Housing Service Coordinators Program.

## PROGRAM SUCCESSES

Ninety-three percent of elderly residents with service coordinators continued living independently instead of moving to facilities with higher care levels in 2021. Living independently is significant because it allows residents to continue living in their communities and saves the costs associated with their move to an institutional setting. Most people in federally assisted housing do not have the financial means to support their care and must rely on Medicaid to afford long-term care, assisted living, or nursing homes. Nationally, it costs taxpayers 66% less to serve low-income older adults in affordable housing with a service coordinator than in a nursing home. Further, national research conducted in the past 30 years has chronicled the widely recognized preference by older adults to remain independent and in their own homes and communities for as long as possible.

HUD has invested in a new reporting model called Standards for Success (SfS) that all Multifamily

Service Coordinators and ROSS Service Coordinators began using in 2019. For the first time in program history, HUD has the ability to track outcomes that may be related to service coordinator-led programing and assistance using resident-level data in addition to aggregate data. HUD PIH has created a data dashboard that allows ROSS grantees to track outcomes and compare their programs with others using the SfS data.

National data about service coordination is also currently available from the American Association of Service Coordinators’ AASC Online documentation system, which has shown the benefits of service coordination in terms of providing access to services and supports, increased length of independent living, and improved health outcomes for elderly residents through wellness and healthy habits programs, health status checks, and other services arranged for and brought to the property by the service coordinator. Additionally, the AASC Online system has identified cost savings for residents through their access to needed services, benefits, and supports and for property owners/managers by preventing evictions, intervening faster when tenancy issues arise, and keeping the property “leased up.”

HUD’s Office of Policy Development and Research has evaluated the level of satisfaction among property managers in multifamily housing properties with the provision of service coordination. The report, *Multifamily Property Managers’ Satisfaction with Service Coordination*, was based on a survey of property managers in multifamily developments who have or did not have a service coordinator program in place.

Overall, the report found a high level of satisfaction from property managers regarding the service coordinator program, as well as a strong belief that service coordinators improve the quality of life for residents in their housing properties. The report also describes longer resident occupancies in properties with a service coordinator when compared to properties without the position. Specifically, the length of occupancy in developments with a service coordinator

was 10% longer than at developments without a service coordinator. This increased length of independent living serves to reduce the long-term care costs for this population.

The value of service coordination has been underscored during the coronavirus pandemic. Surveys of service coordinators conducted in 2020 separately by the Joint Center for Housing Studies at Harvard University (JCHS) and Johns Hopkins University Bloomberg School of Public Health found that service coordinators have played an especially critical role in the health and safety of older adults during the pandemic. As trusted leaders in their communities, service coordinators were a source for reliable information, ensured supports were in place when services were disrupted, and facilitated on-site vaccination clinics during COVID-19. As a result of the pandemic, service coordinators have also increased their focus on preventing social isolation and helping residents use the internet and devices to remain connected to their communities and manage chronic conditions through telehealth during this time. A follow-up survey by JCHS informed a 2021 paper published in the *Journal of Gerontological Social Work* that further details the important ongoing role of service coordination in affordable housing settings.

## PROGRAM SUMMARIES

### **Service Coordinators in Multifamily Housing for the Elderly/Disabled and Resident Opportunities and Self-Sufficiency Service Coordinators**

On average, service coordinators assist each of the residents they serve more than 30 times per year. Most of that assistance addresses social determinants of health, including access to meals, transportation and positive social interaction. Service coordinators also regularly help residents understand medical plans and billing, access translation services, and adhere to care plans once they return to the property from hospital, rehab or long-term care stays.

Service coordinators also collaborate with community providers to host regular programs that inform residents about managing chronic

health conditions such as diabetes and Chronic Obstructive Pulmonary Disease (COPD).

Preventive programs are even more common, with service coordinators bringing to the property falls prevention instructors and mobile podiatrists and dentists. They also partner with nursing schools to host blood pressure checks and flu vaccine clinics. Service coordinators reporting through the AASC online case management system organized more than 16,000 wellness programs in 2021.

The service coordinator position is funded to carry out the following activities:

- Assess each elderly resident's needs in Activities of Daily Living and determine their respective service needs.
- Assist residents with obtaining needed community-based services and/or public benefits.
- Motivate residents to adopt self-directed care options that maximize independence and promote wellness.
- Monitor and evaluate the effectiveness of the supportive services provided to residents individually and collectively.
- Identify and network with appropriate community-based supports and services.
- Advocate on behalf of residents individually and collectively to ensure their needs are met.
- Assist residents with establishing and working with RAs/Resident Councils, as requested.
- Assist residents in setting up informal support networks.
- Assist heads of family households with removing barriers to gainful employment and self-sufficiency.
- Assist residents with resolving problems with their tenancy.
- Develop and update a profile of the property through resident capacity and needs assessments to acquire appropriate health,

wellness, education, and other programs for the housing community.

- Develop and acquire appropriate health and wellness programs for the housing community.
- Develop after-school youth, job readiness, literacy, volunteer, and financial management programs for residents and their families.
- Develop health/wellness and other property-wide outcomes to promote improved health conditions among residents as well as increased independence and financial self-sufficiency.
- Perform other functions to eliminate barriers to enable frail and at-risk low-income elderly, people with disabilities, and families to live with dignity and independence.

Eligible applicants for Service Coordinator in Housing for the Elderly and Disabled funds include owners of HUD-assisted multifamily housing, namely developments built with or subsidized by the following programs: Section 202, project-based Section 8, Section 236, and Section 221(d)(3) Below-Market Interest Rate. All housing must be designed or designated for sole occupancy by elderly persons aged 62 and older, or by people with disabilities aged 18 to 61. Prior to FY14, funds were distributed by national competitive grant processes through HUD Notices of Funding Availability (NOFAs). Beginning with FY14, federal appropriations have been insufficient to allow for new grants in the Service Coordinator in Housing for the Elderly and Disabled program. Currently, federal appropriations for this program are distributed by one-year grant renewal/extension procedures.

Although HUD allows service coordinators to be funded through a property's residual receipts funds or to be incorporated into the property's operations budget, most federally assisted properties and PHAs do not have sufficient resources in their operating budgets or are unable to complete a modest rent increase to staff service coordinators.

Eligible applicants for ROSS Service Coordinator funds include PHAs, tribes/tribally designated housing entities, RAs such as resident management corporations, resident councils, and intermediary resident organizations and nonprofit organizations supported by residents and/or PHAs. Funds are distributed by national competitive grant processes through HUD NOFAs.

### **Family Self-Sufficiency**

The FSS program helps Housing Choice Voucher (HCV) holders and residents of public and multifamily housing to build assets, increase their earnings, and achieve other individual goals including homeownership, if desired. FSS supplements stable, affordable housing in two ways: (1) with case management to help families overcome barriers to work and develop individualized skills training and services plans and (2) with escrow accounts that grow as families' earnings rise. The program is voluntary and allows participants up to five years to achieve their goals and "graduate" from the program.

The FSS program is administered through PHAs that elect to participate in FSS by filing an FSS Action Plan with HUD. Housing agencies may apply for funding for FSS coordinator costs as part of an annual competitive grant process. In recent years, HUD has expanded the FSS program to include owners of privately-owned HUD-assisted Project-Based Rental Assistance housing with Section 8 contracts. These owners can voluntarily establish and operate an FSS program at their housing sites.

Each family participating in the FSS program works with an FSS coordinator who assists the family in developing an individual training and services plan and helps the family access work-promoting services in the community, such as résumé building, job search, job counseling, and education and training. The nature of the services varies based on families' needs and local program offerings.

A significant component of the FSS program is the escrow account that serves as both a work incentive and an asset-building tool. Like most families in public or assisted housing,



participants in the FSS program must pay higher rental payments if their incomes increase. FSS participants, however, have an opportunity to obtain a refund of some or all of these increased rent payments. As the rent of an FSS participant increases due to increased earnings, an amount generally equal to the rent increase is deposited into an escrow account monthly. Upon graduation, the participant receives all of the escrowed funds to meet a need they have identified. If the housing agency agrees, the participant may also make an interim withdrawal when needed to meet expenses related to work or other goals specified in the participant's FSS plan. A participant who fails to successfully complete the FSS program loses the funds in his or her escrow account.

Congress has appropriated funds for FSS grants, but private multifamily projects that have a project-based Section 8 Housing Assistance Payment contract are not applicable. However, owners who participate in FSS may now use residual receipts to hire FSS coordinators.

## FUNDING

For FY22, Congress appropriated \$125 million for the Service Coordinators in Multifamily Housing for the Elderly and Disabled grant program. This was level with FY21 funding, which was \$25 million more than the FY20 appropriation. This funding amount allowed for the renewal of existing grants and will result in a new Notice of Funding Opportunity (NOFO) to distribute remaining funds to new grantees. The remaining FY22 funding after covering existing grants is expected to be combined with additional carryover funding from FY21. These new grants will be the first in a decade.

At the time of this guide's writing, the House's FY23 appropriations bill would maintain the \$125 million funding level for grants and appropriate \$31 million for budget-based service coordinators working in PBRA contract sites. Meanwhile, the Senate bill would provide \$170 million for service coordinator grants, the highest funding level in the program's history.

The FSS program saw a modest \$4 million

funding increase in FY22 to \$109 million and that total is expected to rise again. The House and Senate are respectively proposing \$125 million and \$150 million for FSS in FY23. Both chambers have requested level funding of \$35 million for ROSS service coordinators in FY23.

In September 2022, Congressman Adam Smith (D-WA) introduced the Expanding Service Coordinators Act (H.R. 8866), which would authorize \$225 million for Multifamily service coordinators in each fiscal year from 2023-27. It would also provide \$45 million for ROSS coordinators each year for the same time period. The measure, which is expected to be reintroduced in 2023, also includes provisions that would create a \$2,500 set aside for training for each Multifamily service coordinator and make service coordinators eligible for the Public Student Loan Forgiveness program.

## FORECAST FOR 2023

### Service Coordinators in Multifamily Housing for the Elderly and Disabled Grant Program

There continues to be a need for a multifaceted strategy for funding service coordinators that includes maintaining the service coordinator grant programs and increasing the ability for routine staffing of service coordinators from a property's operating budget through modest rent adjustments or through the property's residual receipts. Although statutory authority exists to allow HUD-subsidized properties to fund service coordinators, many senior housing facilities continue to be unable to secure the necessary rent adjustments to accommodate them. Currently, fewer than half (approximately 5,000) of the eligible properties have a service coordinator on staff. There is a critical need for service coordinators in these properties to aid with accessing benefits and supportive social and health/wellness services to maintain independence as well as improve the health outcomes for these low-income elderly tenants.

There is also a need to expand the funding for community-based service coordinators to assist frail older adults and non-elderly people with disabilities in the surrounding community where



the property is located. Even though Section 851 of the “American Homeownership and Economic Opportunity Act of 2000” (Public Law 106-569) granted authority to enable service coordinators to assist residents in the surrounding community, there are insufficient funds to enable service coordinators to effectively assist these residents, especially as the needs of this population are increasing as residents age in place.

Additionally, Section 515 of the “American Housing Act of 1949” (Public Law 81-171) provided preliminary language for the use of service coordinators at rural multifamily housing developments administered by the U.S. Department of Agriculture (USDA). In the 515 program, the service coordinator can be funded through the property’s operations budget. Again, lack of sufficient resources in the operations budgets at these properties has prevented many of them from staffing a service coordinator. If a Section 515 Rural Housing property has a Section 8 contract, they are also eligible to apply for Service Coordinators in Multifamily Housing for the Elderly/Disabled new grant funds, if available, and are eligible for one-year extension funding for existing grants.

### **Resident Opportunities and Self-Sufficiency Service Coordinator Grant Program**

The need for service coordination in PHAs continues to be a critical concern as older adults are becoming the predominant residents of public housing properties. For the past few funding cycles, the Operating and Capital Funds appropriated to PHAs have decreased to the point that funds are insufficient to meet PH operating and repair needs, much less fund a service coordinator. It is imperative that PHA residents have access to the information, assistance, and case management of a service coordinator that would enable them to gain or maintain their independence, improve their health outcomes, and achieve economic self-sufficiency. If a \$45 million funding level could be achieved without any carve-outs for other initiatives, there would be a modest amount available to fund new ROSS Service Coordinators in additional PHAs.

It is also necessary for HUD to consider the impact of refinancing on the ROSS program. As HUD encourages PHAs to take advantage of recapitalization tools that provide operational financial security, it may need to expand the types of properties that are eligible for a ROSS service coordinator. Losing a service coordinator is devastating to properties and it’s important that any refinancing decisions at the ownership level don’t prevent residents from realizing the benefits of service coordination.

### **Family Self-Sufficiency Grant Program**

For the FSS program, the key issue is expansion and making effective use of the program to help families build assets and make progress toward self-sufficiency. There is no limit to the number of families that may be enrolled in FSS, so one key goal for local advocacy is expansion of current programs to serve additional families. For housing agencies without an FSS program, advocates may wish to focus on starting a new FSS program at a multifamily property operated by a nonprofit housing organization.

At the same time, there is a limit to the number of families that can be effectively served with a given number of coordinators. There is no formal caseload standard, but HUD generally uses 50 families per coordinator as a rule of thumb. Caseloads vary dramatically from agency to agency, and in some cases, it may be more important to add FSS coordinator staff to reduce caseloads to manageable levels at the outset and then work to expand the number of enrolled families. Advocates should work collaboratively with local housing agencies to find local in-kind or cash resources to expand the number of FSS program coordinators to serve additional families.

The key federal advocacy issue related to FSS is funding stability, principally for FSS coordinators. Congress should renew and expand funding for FSS coordinators. AASC continues to advocate for a change in the program’s funding restrictions and an increase in funding for FSS coordinators to cover the costs of training, computer equipment, and case management software

for FSS coordinators. It should be noted that shortfalls in Section 8 and PH funding hurt FSS by making it more difficult for housing agencies to rely on HUD funding to cover the costs of escrow deposits for FSS participants.

## WHAT TO SAY TO LEGISLATORS

### **Service Coordinators in Multifamily Housing for the Elderly and Disabled Grant Program**

Advocates are encouraged to contact their Members of Congress with the message that Service Coordinators in Multifamily Housing for the Elderly/Disabled save taxpayer dollars by keeping frail, low-income older adults living independently in cost-effective housing instead of being placed in costly institutional care. They are also playing a vital part in nationwide goals to improve health outcomes and reduce healthcare costs by addressing social determinants of health. Funding for service coordinators remains very limited despite the critical need in eligible properties without a service coordinator on staff.

Members of Congress should be urged to:

- Deploy service coordinators to all federally subsidized housing properties serving older adults. An additional \$100 million for new, three-year HUD multifamily service coordinator grants would be an incremental approach to this long-term goal.
- Explore innovative approaches to placing service coordinators in community settings with the goal of improving wellness outcomes and increasing the number of residents capable of aging in place.
- Recognize the opportunity for service coordinators to be a workforce solution as the nation faces a social worker shortage and a sharp increase in the number of older adults who must age in place because of a severe lack of senior housing.
- Fully fund Section 8, Project Rental Assistance Contracts, other rent subsidies, and project operating funds to permit the staffing of a service coordinator as a routine part of the housing property's operating budget. Just

like the property manager and maintenance person, the service coordinator should be considered essential staff for the operation of affordable housing for the elderly. The service coordinator position not only saves funds for the residents on fixed incomes, but also saves taxpayer dollars by keeping residents in less costly, independent living environments as opposed to assisted living or even more costly nursing home care.

- Appropriate a minimum of \$10 million to fund a competitive grant for service coordinators in Section 514, 515, and 516 programs under USDA.
- Direct HUD and its regional hub offices to provide necessary budget adjustments and regulatory relief to remove any barriers restricting the staffing of service coordinators through a property's operating budget.

### **Resident Opportunities and Self-Sufficiency Service Coordinator Grant Program**

Advocates are urged to contact their Members of Congress with the message that service coordination in public housing is as critical a need as it is in multifamily housing for the elderly. Residents of PHAs should be afforded access to information, assistance, and linkages to community-based supports and services afforded by a service coordinator to enable them to gain or maintain their independence, improve health and wellness outcomes, and achieve economic self-sufficiency.

Members of Congress should be urged to restore the \$45 million funding level for ROSS Service Coordinator grants without any carve-outs for other programs. This would ensure that existing ROSS grants are maintained and would allow more PHAs to have access to grant funds for service coordinators.

### **Family Self-Sufficiency Coordinators Grant Program**

Advocates should speak to the person in the office of their Member of Congress who deals with housing policy with the message that HUD's FSS program is critical for helping families in

subsidized housing to build assets and make progress toward self-sufficiency and economic independence.

To support FSS, Congress should appropriate additional funding for FSS program coordinators to include training for FSS coordinators as well as needed case management tools and equipment as allowable expenses.

## FOR MORE INFORMATION

American Association of Service Coordinators, 614-848-5958, [www.servicecoordinator.org](http://www.servicecoordinator.org).

HUD's Office of Public and Indian Housing's ROSS website, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/ross/about](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/ross/about).

HUD's Office of Public and Indian Housing's FSS website, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/fss](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fss).

HUD's Office of Multifamily Housing Program's Service Coordinator's website, [https://www.hud.gov/program\\_offices/housing/mfh/scp/scphome](https://www.hud.gov/program_offices/housing/mfh/scp/scphome).

HUD's Service Coordinator in Multifamily Housing Program Resource Guide, <https://bit.ly/2Qf0V2x>.

Family Self Sufficiency Program Guidebook for Owners of Project-Based Section 8 Developments, <https://files.hudexchange.info/resources/documents/FSS-Guidebook-for-Multifamily-Owners.pdf>.

Running ROSS Step-By-Step, <https://www.hudexchange.info/programs/ross/guide/ross-program-requirements-and-expectations/what-are-the-core-functions-of-a-ross-service-coordinator/>.

The HUD report Multifamily Property Managers' Satisfaction with Service Coordination, <http://bit.ly/XoZo5d>.

Joint Center for Housing Studies Report: Service Coordinators Helped Older Adults who live in Publicly Funded Housing Response to COVID-19, <https://www.jchs.harvard.edu/blog/service-coordinators-helped-older-adults-who-live-publicly-funded-housing-respond-covid-19>.

Journal of Gerontological Social Work Paper:

Service Coordination in HUD Housing During the COVID-19 Pandemic: Bridging the Gap, <https://www.jchs.harvard.edu/research-areas/journal-article/service-coordination-hud-housing-during-covid-19-pandemic-bridging>.

Johns Hopkins Bloomberg School of Public Health Report: Impact of COVID-19 on Residents Living in Federally-Assisted Housing, [https://cdn.ymaws.com/www.servicecoordinator.org/resource/resmgr/files/reports/johns\\_hopkins/impact\\_of\\_covid-19\\_on\\_reside.pdf](https://cdn.ymaws.com/www.servicecoordinator.org/resource/resmgr/files/reports/johns_hopkins/impact_of_covid-19_on_reside.pdf).



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# **Chapter 9:**

## COMMUNITY DEVELOPMENT RESOURCES

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# Capital Magnet Fund

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By Mark Kudlowitz, Senior Director of Policy, Local Initiatives Support Corporation

**Administering Agency:** Community Development Financial Institutions (CDFI) Fund at the U.S. Department of the Treasury.

**Year Started:** 2008 (with seven awarded funding rounds to date: fiscal year 2010 and fiscal years 2016 – 2021).

**Number of Persons/Households Served:** Recipients have five years to complete projects after receiving an award. As of September 30, 2021, projects completed by fiscal year 2016-fiscal year 2020 award recipients include: 1) 20,700 affordable rental housing units; 2) 4,200 affordable homeownership units; and 3) five community serving facility projects, such as health care and other community facilities.

**Population Targeted:** Households with income less than 120% area median income (AMI); at least 51% with income less than 80% AMI.

**Funding:** In fiscal year 2021, \$336.4 million was awarded to 59 organizations. These awardees plan to develop more than 41,100 affordable housing homes, including more than 38,700 rental units and more than 2,400 homeownership units. 88 percent of the homeownership projects will be developed for low-income families and 61 percent of the rental units will be developed for very low-income families.

**See Also:** For related information, refer to the *Community Development Financial Institutions Fund* section of this *Guide*.

The Capital Magnet Fund (CMF) provides competitive enterprise-level grants to community development financial institutions (CDFIs) and nonprofit housing developers to finance and develop housing for low- and moderate-income households, as well as community facilities and economic development projects that support housing. CMF grants are used to fund financing tools such as loan loss reserves

or loan guarantees and must be matched at least 10 to 1 with funding from other sources. Moving forward, the Administration should continue to support funding for the CMF under current law, and Congress should preserve the program as the housing finance reform system evolves.

## HISTORY

The CMF was created as part of the “Housing and Economic Recovery Act (HERA) of 2008” to provide flexible public funds to attract private investment into housing projects for low- and moderate-income households. As originally envisioned, the CMF (along with the national Housing Trust Fund, HTF) would have received funding through an assessment on new business of the Government Sponsored Enterprises (GSE) Fannie Mae and Freddie Mac. However, in the fall of 2008, financial losses at the GSEs caused them to be placed in conservatorship and their obligation to contribute to the CMF and to the HTF was suspended. The suspension of contributions of assessments on new business of the GSEs was lifted at the end of 2014; contributions began on January 1, 2015 and have been distributed to the CMF and HTF since March 2016.

The legislation creating the CMF also allowed it to be funded through regular appropriations, which occurred in FY10 with an appropriation of \$80 million to kick off the program. Until the FY16 funding round, the FY10 round was the only funding provided to the CMF. For the FY10 round, the CDFI Fund received applications requesting more than \$1 billion. In October 2010, the CDFI Fund announced the inaugural CMF awardees. Out of 230 applicants, 23 organizations received awards; 13 were nonprofit housing developers, nine were CDFIs, and one was a tribal housing authority. According to the CDFI Fund, the \$80 million appropriation for CMF grants resulted in each \$1 of CMF funding attracting more than \$22 in other capital for affordable housing. Thus, \$80 million in CMF grants created upwards of \$1.8

billion in investment in affordable housing and community facilities, creating more than 13,000 homes.

## PROGRAM SUMMARY

The CMF is administered by the Treasury's CDFI Fund as a competitive grant program to attract private capital for high-performing organizations to develop, preserve, rehabilitate, or purchase housing for low-income families. Unlike other federal programs such as HOME, the CMF is not a block grant to state or local governments or housing authorities.

A minimum of 70% of an awardee's CMF money must be used for housing. One hundred percent of housing project costs must be for units for households with incomes less than 120% of AMI; at least 51% of housing project costs must be for units for households with incomes less than 80% of AMI. If CMF finances rental housing, then at least 20% of the units must be occupied by households with incomes less than 80% of AMI. CMF award recipients normally commit to utilizing the award for deeper income targeting than the minimum standards described. For instance, 97% of all housing units to be developed from the FY21 CMF funding round are for households with incomes less than 80% of AMI. Maximum rent is fixed at 30% of either 120% AMI, 80% AMI, 50% AMI, or 30% AMI, depending on the household's income. For example, if an assisted household has income at 120% AMI, its maximum rent is 30% of 120% AMI. CMF funded housing must meet affordability requirements for at least 10 years.

In order to leverage funds, CMF dollars may be used to provide loan loss reserves, loan guarantees, capitalize a revolving loan fund or an affordable housing fund, or make risk-sharing loans. The CMF can also finance economic development activities or community service facilities, such as daycare centers, workforce development centers, and healthcare clinics, which in conjunction with affordable housing activities implement a concerted strategy to revitalize low-income or underserved rural areas. Eligible recipients are Treasury-certified CDFIs

or nonprofit organizations that include the development or management of affordable housing as at least one of their purposes. Applications for the competitive grants are required to include a detailed description of the types of housing and economic and community revitalization projects for which the entity would use the grant, and the anticipated timeframe in which they intend to use the grant. No institution can be awarded more than 15% of all CMF funds available for grants in a given year, and those receiving grants must commit the funds within two years of the date they were received. All projects funded with CMF awards must be completed within five years.

Prohibited uses include political activities, advocacy, lobbying, counseling services, travel expenses, and endorsement of a particular candidate or party. Each grantee must track its funds by issuing periodic financial and project reports and by fulfilling audit requirements.

## FUNDING

The CMF's funding source was designed to come from a percentage of new business of Fannie Mae and Freddie Mac. Under current law there is to be a 4.2 basis point assessment on each enterprise's new business, with the CMF receiving 35% and the HTF receiving 65%. However, these assessments were previously suspended due to the government conservatorship. In December 2014, the Federal Housing Finance Agency lifted the suspension and the assessment has been collected for the last four calendar years. Sixty days after the close of the calendar year, the Treasury is to distribute funds to the CMF and HTF.

## FORECAST FOR 2023

The Capital Magnet Fund is funded through an annual assessment on the GSE's new business, so the main threat to the program is if, and when, Congress begins GSE reform efforts.

## WHAT TO SAY TO LEGISLATORS

If housing finance reform debate returns in 2023, advocates need to ensure that any subsequent

reforms of the housing finance system include a continued source of funding for the CMF.

## **FOR MORE INFORMATION**

The CDFI Fund, 202-653-0421, [www.cdfifund.gov](http://www.cdfifund.gov).

Local Initiatives Support Corporation, 202 739-9279, <http://www.lisc.org>.

# Community Development Block Grant Program

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** HUD's Office of Community Planning and Development

**Year Started:** 1974

**Population Targeted:** Households with income less than 80% of the area median income (AMI)

**Funding:** Congress appropriated \$3.3 billion in FY23, the same as FY22 but a decline from \$3.475 billion in FY21 and \$3.4 billion in FY20, reverting back to \$3.3 billion in FY19 and FY18.

**See Also:** For related information, refer to the *Consolidated Planning Process* section of this *Guide*.

The Community Development Block Grant (CDBG) program is a federal program intended to strengthen communities by providing funds to improve housing, living environments, and economic opportunities, principally for persons with low- and moderate-income. At least 70% of CDBG funds received by a jurisdiction must be spent to benefit people with low- and moderate-income (less than 80% of the area median income, AMI).

## HISTORY

The CDBG program was established under Title I of the "Housing and Community Development Act of 1974," which combined several existing "categorical" programs, including Urban Renewal and Model Cities, into one block grant. This change was intended to provide greater local flexibility in the use of federal dollars.

## PROGRAM SUMMARY

The primary objective of the CDBG program is to have viable communities by providing funds to improve housing, living environments, and economic opportunities principally for persons with low- and moderate-income. The regulations for entitlement jurisdictions are at [24 CFR Part 570](#), and the states and small cities regulations are at [24 CFR Part 570, Subpart I](#).

## Eligible Activities

CDBG funds can be used for a wide array of activities, including: rehabilitating housing (through loans and grants to homeowners, landlords, nonprofits, and developers); constructing new housing (but only by certain neighborhood-based nonprofits); providing down payment assistance and other help for first-time home buyers; detecting and removing lead-based paint hazards; purchasing land and buildings; constructing or rehabilitating public facilities such as shelters for people experiencing homelessness or domestic violence survivors; making buildings accessible to those who are elderly or disabled; providing public services such as job training, transportation, healthcare, and child care (public services are capped at 15% of a jurisdiction's CDBG funds); building the capacity of nonprofits; rehabilitating commercial or industrial buildings; and making loans or grants to businesses.

## Formula Allocation

The program's emphasis on people with low incomes is reinforced by the formulas that determine how much money local jurisdictions and states receive. The formulas are based on factors heavily weighted by the degree of poverty and indicators of poor housing conditions in a jurisdiction; the more poverty and the worse the housing conditions, the more CDBG a jurisdiction receives. Seventy percent of each annual appropriation is automatically distributed to cities with a population of more than 50,000 and counties with a population of more than 200,000; these are called "entitlement jurisdictions." The remaining 30% goes to states for distribution to small towns and rural counties.

## Beneficiaries

At least 70% of CDBG funds received by a jurisdiction must be spent to benefit people with low and moderate incomes (often referred to as "lower-income"). The remaining 30%



can also benefit people with lower incomes, or it can be used to aid in the prevention or elimination of slums and blight (often used by local governments to justify downtown beautification) or to meet an urgent need such as a hurricane, flood, or earthquake relief. Major hurricane, flood, wildfire, or earthquake needs are generally addressed by special congressional appropriations referred to as CDBG-Disaster Relief (DR) that usually have much less rigorous provisions regarding eligible uses and income targeting. See *Disaster Housing Programs* in Chapter 6.

Low- and moderate-income is defined as household income equal to or less than 80% of AMI, which can be quite high. In FY22, for instance, 80% of the AMI in Chicago was \$83,350. AMI in some jurisdictions is so high (like in the Lowell, MA, metropolitan area where the AMI was \$126,500) that HUD caps the qualifying household income at the national median income, which in FY22 was \$89,44 for a four-person household. However, HUD makes upward adjustments in high-cost areas such as the Boston metropolitan area that had an AMI of \$140,200 in FY22, allowing CDBG to benefit four-person households with income up to \$111,850.

A CDBG activity is counted as benefiting people with low and moderate income if it meets one of four tests:

1. **Housing Benefit.** If funds are spent to improve a single-family home, the home must be occupied by a low- or moderate-income household. In multifamily buildings, at least 51% of the units must be occupied by low- or moderate-income households. In addition, the housing must be affordable, as defined by the jurisdiction. In FY21 (the latest available data) only 24% of CDBG was allocated for some type of housing program, which is typical. Key housing-related uses included 10% for single-unit rehabilitation, 5% for rehabilitation administration, 2.6% for code enforcement, 2.5% for multi-unit rehabilitation, 0.5% for public housing modernization, 0.46% for new construction, 0.43% for acquisition for rehabilitation, 0.22% lead hazard abatement,

0.10% for rehabilitation of other publicly owned residential buildings, and 0.07% for energy efficiency improvements.

2. **Area Benefit.** Some CDBG-eligible projects, such as road and park improvements, can be used by anyone. To judge whether such a project primarily benefits people with lower incomes, HUD looks at a project's "service area." If 51% of the residents in the activity's service area are people with lower income, then HUD assumes people with lower income will benefit. The regulations provide several ways to challenge that assumption. The primary challenge is to show that "the full range of direct effects" of an activity do not benefit people with lower incomes.
3. **Limited Clientele.** A service or facility assisted with CDBG funds must be designed so that at least 51% of its users have lower income. The three most common ways to meet this test are to: (a) limit participation to people with lower income; (b) show that at least 51% of the beneficiaries are lower income; or (c) serve a population that HUD presumes is lower income, including abused children, domestic violence survivors, people with disabilities, illiterate individuals, migrant farm workers, and seniors. Advocates can challenge a presumed benefit claim if an activity does not actually benefit people with lower incomes.
4. **Job Creation or Retention.** If job creation or retention is used to justify spending CDBG money, then at least 51% of the resulting jobs on a full-time-equivalent basis must be filled by or be available to people with lower income. "Available to" means either the job does not require special skills or a particular level of schooling, or the business agrees to hire and train people with lower income. Those with lower income must receive first consideration for the jobs.

## Public Participation

Every jurisdiction must have a public participation plan that describes how the jurisdiction will provide for and encourage involvement by people with lower income. Public

hearings are required at all stages of the CDBG process. Hearings must give residents a chance to indicate community needs, review proposed uses of CDBG funds, and comment on past uses of these funds. There must be adequate public notice to people who are likely to be affected by CDBG-funded projects, and people must have reasonable and timely access to information. Since the creation of the Consolidated Plan (ConPlan) in 1995 (see *Consolidated Planning Process* in Chapter 8), the CDBG public participation process is the statutory basis for and is merged into the ConPlan public participation process. To effectively participate in this process, advocates should get a copy of the draft Annual Action Plan of the ConPlan and the latest Grantee Performance Report (GPR). Many jurisdictions will try to deny the public copies of the GPR but it must be made available. The GPR also goes by the name IDIS Report PR03. It is not part of the larger Consolidated Annual Performance and Evaluation Report (CAPER).

## FUNDING

Congress appropriated \$3.3 billion in FY23, the same as FY22 but a decline from \$3.475 billion in FY21 and \$3.4 billion in FY20, reverting back to \$3.3 billion in FY19 and FY18. Funding for FY17, 16, and 15 was \$3 billion, 25% reductions from FY10's \$3.99 billion.

## TIPS FOR LOCAL SUCCESS

Because only 70% of CDBG funds must benefit people with low or moderate income, and because all funding could benefit people with moderate income, many of the lowest-income households realize little benefit from the program. Locally, people can organize to get 100% of a jurisdiction's CDBG dollars to be used for activities that benefit people with low income and can strive to have more of the dollars used to benefit people with extremely low income (income less than 30% of AMI).

The public participation process can be used to organize and advocate for more CDBG dollars to be used for the types of projects people with low incomes really want in their neighborhoods and

then to monitor how funds are actually spent. To do this, advocates should obtain and study a jurisdiction's Annual Action Plan, which lists how a jurisdiction intends to spend CDBG funds in the upcoming year. Advocates should also obtain the Grantee Performance Report (C04PR03), which should provide a detailed, activity-specific list of how CDBG money was spent the previous year. These documents must be available to the public from the staff in charge of CDBG in local jurisdictions, in departments with various titles such as "Community Development."

## FOR MORE INFORMATION

NLIHC, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

There are two HUD CDBG web platforms. One is the traditional site, [https://www.hud.gov/program\\_offices/comm\\_planning/communitydevelopment](https://www.hud.gov/program_offices/comm_planning/communitydevelopment).

Most CDBG information has migrated to the HUD Exchange site:  
<https://www.hudexchange.info/programs/cdbg>.

The Entitlement Program page is <https://www.hudexchange.info/programs/cdbg-entitlement>,

State Program page is <https://www.hudexchange.info/programs/cdbg-state>.

On both pages, you can find the statute and regulations, FAQs, CPD Notices, and "Explore CDBG," which has a series of online guides (with brief transcripts). There you can find "Basically CDBG Online Training" (which also has PDFs of "Basically CDBG" chapters) and other online tools.

# Opportunity Zones

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By Ed Gramlich, Senior Advisor, NLIHC

**Administering Agency:** Internal Revenue Service (IRS) of the U.S. Department of the Treasury (Treasury)

**Year Enacted:** 2017

**Number of Persons/Households Served:**

There is no information regarding the number of persons or households served because neither IRS nor Treasury require this information to be reported

**Population Targeted:** The statute creating Opportunity Zones and subsequent regulations do not target specific populations, such as low-income people. There are no requirements to hire or train low-income zone residents or to pay living wages, create truly affordable housing, or create or preserve small businesses owned by or serving low-income zone residents. Nor are there protections to prevent displacement of low-income people or existing local small businesses as a result of OZ investments.

The IRS states that the purpose of Opportunity Zones (OZs) is to spur economic growth and job creation in low-income communities while providing capital gains tax breaks to investors.

**See Also:** NLIHC's [\*A Critical Explanation of Opportunity Zones\*](#)

## HISTORY

As early as 2007, former Facebook president and Napster founder Sean Parker conceived the notion of dangling the prospect of reducing or avoiding capital gains taxes to corporations and extremely rich individuals to entice them to fund investments in disinvested low-income communities. Years later he created the Economic Innovation Group (EIG) to promote his idea, which came to be known as Opportunity Zone capital gains tax breaks. OZs were endorsed by Senators Tim Scott (R-SC) and Corey Booker (D-NJ) and inserted as a very small provision in the “Tax Cuts and Jobs Act of 2017,” the massive,

nearly \$2 trillion tax cut legislation signed into law by President Donald Trump that overall primarily benefits corporations and extremely wealthy individuals. The OZ component of the 2017 tax act was not considered and debated through the normal congressional hearing process.

## PROGRAM SUMMARY

An Opportunity Zone is composed of “low-income” census tracts that have a poverty rate of at least 20% and median family income no greater than 80% of the area median income (AMI). A census tract that is not “low-income” may be designated as part of an OZ if it is contiguous to low-income tracts that make up an OZ and it has a median household income that does not exceed 125% of the median income of the contiguous low-income census tracts that form an OZ. Up to 5% of the census tracts may qualify under this exemption. Some census tracts that were low income based on census data several years ago have since experienced significant demographic changes resulting in them no longer being truly low-income and that are often gentrifying.

Governors, the Mayor of the District of Columbia, and the chief executive officers of the five U.S. territories could nominate up to 25% of their total eligible census tracts, along with up to 5% of that 25% that were contiguous non-low-income census tracts. According to the IRS, Treasury designated 8,764 zones that retain their designation for 10 years. Congress later designated each low-income community in Puerto Rico as an OZ.

### What is the Tax Break?

The theory of Opportunity Zones is to provide an “incentive” for an investor to reinvest an unrealized capital gain, which is a gain in the value of an investment (such as a stock) that has not been taxed because the investor has not sold

it yet. The OZ “program” allows an investor to defer (delay) until 2027, the capital gains tax that would otherwise be due when the investment is sold, as long as the amount of the gain is invested in a Qualified Opportunity Fund (QOF). (Taxes on the original capital gain is due no later than December 31, 2026.) In addition, if an investor holds the QOF investment for five years, the basis of their original investment is increased by 10% (meaning they will only owe taxes on 90% of the rolled-over capital gain). If an investment was made by December 31, 2019, and an investor holds it in the QOF for seven years, the basis increases by a further 5% (for a total exclusion of 15% of the gain over the seven-year period). The investor must “realize” (sell the investment) by 2027.

Significantly, an investor can exclude from taxable income until the end of 2047, all of any capital gain accrued from the investment in an Opportunity Fund (not the original gain which was deferred until 2027) held for at least ten years. In other words, after settling their original tax bill in 2027, patient investors in QOFs will face no capital gain tax on their OZ investment until the end of 2047. The OZ capital gain tax break is on top of the usual advantages for capital gains, which have a lower tax rate than the tax rate on regular income, plus the ability to defer capital gain tax until an asset is sold.

### **Aside from Investors, Who Benefits?**

As previously noted, neither the statute nor the final regulations require investments to benefit low-income OZ residents by building truly affordable housing in the OZ, employing low-income OZ residents, or providing affordable capital for OZ small businesses or minority-owned or women-owned businesses. Nor are there protections to prevent the displacement of low-income OZ residents or OZ small businesses as a result of new investments in distressed communities.

Because the entire “Tax Cuts and Jobs Act of 2017” was passed using the Senate budget reconciliation process, a provision in the OZ portion of the bill requiring some reporting was

removed. Consequently, the statute does not have data collection and reporting requirements. Due to opposition from developers and potential investors, the final regulations also fail to require data collection and meaningful reporting.

Therefore, anecdotal evidence is all that is available to assess the outcome of the capital gain tax breaks. Anecdotal evidence from the first three years suggests that extremely wealthy individuals and corporate investors are the beneficiaries. Anecdotes point to luxury hotels and apartments, parking lots, storage facilities, luxury student housing in census tracts next to major universities, and mostly projects long in the works or ready to go before the OZ capital gain tax break existed.

### **Early Warnings**

Red flags were waved by numerous sources in 2018.

In February, 2018, the Brookings Institution wrote:

“The value of the tax subsidy is ultimately dependent on rising property values, rising rents, and higher business profitability. That means a state’s Opportunity Zones could also serve as a subsidy for displacing local residents in favor of higher-income professionals and the businesses that cater to them...With few guardrails that might promote...policies to retain local residents and preserve or expand low- and middle-income housing, it is uncertain whether poor residents will benefit or be kicked out.”

The Dallas Federal Reserve wrote on October 18, 2018:

“Opportunity Funds could potentially direct capital largely to projects in areas already on the verge of gentrifying—places where high returns are most likely. In that eventuality, investors would get a tax break while neighborhoods would simply continue on the path of gentrification, displacing some of the highest-need households from the area.”

The Center on Budget and Policy Priorities (CBPP) wrote on January 11, 2019:



“..it [the law] includes no requirements to ensure that local residents benefit from investments receiving the tax break. Thus, this tax break could amount to a “subsidy for gentrification” in many areas instead of, as intended, for providing housing and jobs for low-income communities.”

“This tax break does *not* include rules or tests requiring its direct beneficiaries to make specific investments that actually produce public benefits or requiring that opportunity zone businesses hire workers from, or provide services to, the local community. If anything, its incentives push in the opposite direction: the tax break is worth the most with respect to investments whose value rises the fastest. As a result, investors will likely select investments — such as luxury hotels rather than affordable housing — based mainly on their expected financial return, not their social impact.”

Toward the end of 2019, Brett Theodos, Senior Fellow at the Urban Institute testified before the Subcommittee on Economic Growth, Tax, and Capital Access of the House Committee on Small Business. He stated OZs “lack any mechanism for community input or control,” and “There are no requirements that new apartments be rented to low- or moderate-income residents; no requirements that federally backed investment occur only when fully private-market financing is unavailable...The federal government has not sufficiently narrowed the eligible uses of this incentive to activities that will directly benefit low- and moderate-income residents or contribute to broader economic development in truly disinvested communities.”

### **An OZ Picture Starts to Emerge in 2019**

As 2019 rolled around, numerous media reported on long-planned, high-end projects located in OZs, sometimes after affluent developers lobbied governors to include their project’s area in a tract that either had not been selected or was not eligible for OZ designation.

The New York Times highlighted: a luxury hotel and opulent restaurant in New Orleans’ already

trendy Warehouse District; a 46-story luxury apartment tower in a Houston neighborhood already occupied by projects aimed at the affluent; a luxury office tower in Miami’s Design District where commercial real estate prices had nearly tripled in the last decade, and which developers had already planned 12 residential towers and large-scale retail and commercial spaces; a 35-story tower in downtown Portland, OR with a Ritz-Carlton hotel, condominiums, and office space; and, a self-storage center in Connecticut (and another in San Antonio reported by the San Antonio Express-News).

*ProPublica* published a series of articles.

In Florida, billionaire Wayne Huizenga Jr. had long planned to build luxury apartment towers, Marina Village, adjacent to the existing Rybovich superyacht marina on the West Palm Beach, FL waterfront. The census tract of the planned Marina Village was not originally picked to be a part of an OZ but was included after lobbying by Mr. Huizenga. Not included were three other low-income and racially diverse tracts identified by city leaders that were attractive areas for growth, rebounding from significant blight, and well positioned for new investment.

In Maryland, years before OZs, Sangamore Development, owned by Under Armor CEO Kevin Plank, started quietly spending \$100 million buying waterfront properties in a mostly vacant, isolated area cut off from downtown Baltimore by I-95. The intent was to move Under Armor’s headquarters there and develop the area dubbed Port Covington with offices, a hotel, apartments, and shopping — all geared to millennials. Prior to gaining OZ designation, Port Covington already had \$660 million in tax increment financing, a Brownfields tax credit, and \$233 million from Goldman Sachs. Did it need more tax breaks to be viable?

The Port Covington tract, which includes a gentrified corner, was too wealthy to be an OZ. It couldn’t even meet the test to be included as a contiguous, non-low-income tract. Due to intensive lobbying with the governor and to a mapping error, Port Covington is now in an OZ.



Missed Opportunity: The West Baltimore Opportunity Zones Story in HUD's April 2022 issue of *Cityscape*, claims that Port Covington is garnering 65% of all of Baltimore's OZ capital, while less than 5% is deployed or expected to be deployed to deeply distressed neighborhoods.

According to a November 15, 2022 article in the *Baltimore Banner*, a newly installed development team took over as lead developers and investors in May 2022, owning about 80% of the area's real estate, revising the master plan, and renaming the area "Baltimore Peninsula." Kevin Plank's Sagamore Ventures and Goldman Sachs, still owns 50 acres where Under Armour is building its headquarters but has reduced its plans due to declining Under Armour sales and company scandals.

The first two residential buildings, anticipated to open in March 2022, will have more than 400 units between them; 20% of the units are to be "below market rate" (whether they will be affordable to low-income households is not apparent). Three residential buildings are nearing completion.

In Michigan, Quicken Loans founder and Cleveland Cavaliers owner, Dan Gilbert, had spent the past decade buying 100 buildings in downtown Detroit. Three areas of downtown Detroit with Gilbert holdings were selected as OZs, two of which critics assert are significantly wealthier than the surrounding area. One of the tracts sought by Gilbert was not initially included but eventually added after lobbying, even though it did not meet the poverty criteria. These census tracts already included Gilbert-owned office space with high-end tenants including Microsoft, JP Morgan, and Quicken Loans. A boutique hotel sits in another Gilbert property that is now in one of the OZs.

## THE OZ PICTURE COMES INTO FOCUS 2020-2022

The Urban Institute's "An Early Assessment of Opportunity Zones for Equitable Development Projects" set out to assess how OZs were working as a community development tool for mission-oriented entities that have a purpose of helping

people in poverty with quality jobs, affordable housing, and community amenities like grocery stores. The report lists several challenges faced by mission-oriented actors: Many mission-oriented actors struggled to access capital from wealthy individuals and corporations with capital gains. In addition, many mission-oriented projects yield below-market returns that most OZ investors appeared unwilling to accept. A further challenge was that mission-driven sponsors want to develop a community asset with a lifetime greater than the ten-year period an OZ investor has to hold an investment, but OZ investors usually do not want to tie up investments that long.

### Kresge Foundation Model and Trepidations about OZs

An example of a mission-oriented investor discussed above has been the Kresge Foundation, which announced in March 2019 that it was committed to providing \$22 million in investments to two goal-aligned investment managers, Arctaris and Community Capital Management, which agreed to covenants committing them to develop affordable housing, create living wage jobs, prohibit displacement, and form community advisory boards.

Unfortunately, as early as June 2019, the Kresge Foundation signed on to a letter from the U.S. Impact Investment Alliance which states, "...this transformative tax break could leave residents and communities vulnerable to displacement. These residents understandably fear losing their voice in defining their economic futures. Meanwhile, there is no guarantee capital will flow to the most distressed neighborhoods, or to the projects that are best for those who work and live there."

In 2021 Aaron Seybert, managing director of social investments at the Kresge Foundation remarked:

"We have always and continue to want this incentive to succeed, but we continue to have trepidations about that. Those fears have only grown as we hear directly from people in communities who say the incentive is causing more harm

than good...OZ doesn't require measurement, accountability or tracking of any impact beyond dollars in; it rewards appreciation regardless of social impact. If millions go into a community, but they're invested into liquor stores, storage units, and condominiums that price people out of housing opportunity, are the people who live there any better off? OZ is just the latest example of policymakers and investors doing something *to* low-income communities rather than *with* them."

Mr. Seybert concluded:

"In short, I trust our community partners who have been investing in low-income communities far longer than OZ has been around. The majority tell me it's not working for them, and, in some cases, it's making their work harder. The news-friendly bright spots are a tiny fraction of capital flowing through this incentive. I'm not interested in continuing to evaluate OZ by anecdote when there are likely billions in investments we will never know about. We can no longer put lipstick on the proverbial pig. We need full transparency into OZ, we need some level of local accountability for the capital invested, and we need better evidence that the tool can deliver against community needs at scale. Without these, I don't think the incentive should continue to exist at all."

**Testimony Before the Oversight Subcommittee of the House Ways and Means Committee, November 16, 2021**

**BRETT THEODOS, SENIOR FELLOW AT THE URBAN INSTITUTE**

In his [testimony](#), Mr. Theodos stated "In the years since Opportunity Zones' inception, it has become increasingly clear that their structure is preferenced against operating businesses, against smaller and rural projects, and against the types of mission-aligned projects that could deliver maximum community benefit."

- He found that the OZs structure disadvantages high social impact projects in several ways:
- The tax exemption on OZ projects is structured to provide the largest financial benefits to projects that provide the highest

returns, rather than reward investors willing to support projects with large social impacts.

- The ten-year time horizon of most OZ investments is not long enough for many beneficial projects, such as affordable housing, health care centers, or schools.
- For investors, the OZ incentive is a shallow subsidy, and the permanent exclusion of gains is speculative. However, disinvested rural and urban OZs often require a deeper subsidy than OZs can provide. It is unlikely that OZ financing alone can spur the small business growth or types of development needed to promote sizable job creation or equitable growth.

Mr. Theodos' testimony included a footnote from an April 12, 2021 paper by Patrick Kennedy and Harrison Wheeler, *Neighborhood-Level Investment from U.S. Opportunity Zone Program: Early Evidence*. They found that OZ investments are highly concentrated in a relatively small number of census tracts, 84% of designated OZ tracts in their sample received zero OZ investment. Among tracts designated as OZs, investors favored neighborhoods with higher income, educational attainment, home values, declining shares of non-white residents, and pre-existing population and income growth.

**DAVID WESSEL, DIRECTOR OF THE HUTCHINS CENTER ON FISCAL AND MONETARY POLICY, SENIOR FELLOW IN ECONOMIC STUDIES, BROOKINGS INSTITUTION**

In his [testimony](#), Mr. Wessel stated "Nothing in law or regulation requires OZ investors to put their money into those [OZ] census tracts that really need the money or into projects that will benefit the people who live in the zones. The available evidence and my reporting suggest that the bulk of the money is going to real estate projects that would have been done otherwise or projects that will not do much to improve the lives of the low-income residents of the zones. Proponents and drafters of the Opportunity Zone legislation were so determined to make the tax break attractive to wealthy investors and so allergic to oversight from Washington

that they avoided the guardrails and oversight that might have directed more money to places and people most in need of private investment. They also underestimated the cleverness and aggressiveness of the huge industry of accountants, lawyers, wealth advisers and real estate fund managers who find every possible way to exploit the tax code to save their clients' money. I fear that when we finally get all the data, we will learn that Opportunity Zones did more to cut taxes for the wealthy than to improve the lives of people who live in the zones."

### **Cityscape Article**

"Missed Opportunity: The West Baltimore Opportunity Zones Story" in HUD's April, 2022 issue of *Cityscape* reinforces earlier critiques. The paper presents the findings from 76 interviews regarding OZ investments in the West Baltimore OZ Cluster (WBOZC), a grouping of 11 highly disadvantaged census tracts representing 44,000 residents. In sum, the paper finds that OZs are failing at oversight and community engagement, and they are not changing development outcomes. The interviews reveal a locality doing its best with a tax policy poorly designed to stimulate development in distressed communities.

Participant interviews reveal a locality doing its best with a tax policy poorly designed to stimulate development in distressed communities. OZs are failing West Baltimore because they are a weak incentive for capital gains investors who want market-rate returns, and they fail to support or incentivize community development entities, community developers, small businesses, nonprofits, and institutions already operating in and around distressed neighborhoods. A developer of a project in the WBOZC that expects OZ financing noted, "the potential for unintended consequences is massive. One, all the development may just be concentrated on areas that don't need it. [Or] two, it isn't... but [OZs lead] to development that causes displacement."

Three years after the 2017 tax act authorized OZs, no OZ capital had been committed in the

WBOZC. The authors state, "Little capital is flowing into deeply distressed neighborhoods... Three projects meet the stated intent of OZ policy but represent less than 5% of total OZ equity deployed or expected to be deployed in Baltimore." Thirteen study participants expressed a general concern that OZ's primary purpose is tax relief for the wealthy.

"OZs are opaque and undemocratic. OZs offer no planning mechanisms for communities to prevent harmful investment." The authors write that planning mechanisms help build trust with communities and are necessary to stimulate positive development in distressed communities, especially those with long histories of race-based disinvestment and skepticism of outside investors. A manager commented, "[OZs have] laid bare just how far we have moved away from transparency in economic development ... parasitic development is happening, and the feds should not be incentivizing that."

"OZ investment funds typically seek double-digit internal rates of return (IRR) between 10 and 16 percent, whereas projects in Baltimore's distressed tracts are more likely to generate IRRs no higher than 3–6 percent while also being considered higher risk investments... Mission-driven funds willing to accept lower returns have either been unable to raise OZ equity or unable to deploy it in truly distressed census tracts. This is partially because low-income census tracts are not expected to appreciate." A small developer working in West Baltimore noted that "Our bottom-line concerns social outcomes; outside OZ investors are looking for large financial returns."

OZs suffer from design flaws that make investment in distressed neighborhoods unlikely. "Gentrified neighborhoods or neighborhoods already experiencing capital investment, were also selected [to be OZs]. Selection criteria allowed some non-low-income tracts contiguous to low-income tracts to qualify. Some OZ selections were made using outdated data and where distress was not defined properly. For example, numerous college campuses, including the University of Maryland, were eligible for

selection because students are considered low-income.” Participants in the study felt that the inclusion of downtown and Port Covington made it difficult for distressed neighborhoods to compete successfully for OZ capital.

OZs were failing to address a historically racialized hurdle to development in distressed neighborhoods, the “appraisal gap.” In Baltimore, historic banking practices, such as redlining, drove down land values in targeted neighborhoods for decades. In brief, some OZ proposals do not obtain sufficient capital because the appraisal industry assesses properties in minority neighborhoods at values lower than those projected by investors and developers.

## RECOMMENDATIONS FROM EXPERTS

For all of the following, Treasury should take the initiative, and Congress should act if Treasury cannot (due to legal reasons) or will not.

OZs required a more accurate definition of distress, the removal of contiguous tracts, and/or a deeper incentive for truly distressed areas.

- Treasury should require QOFs to provide basic transaction data and report it: where are OZ funds going and how much is going to each OZ, what types of projects are developed, and who benefits (by various categories).
- An agency such as the Community Development Financial Institution (CDFI) Fund should have administrative authority over OZs to provide oversight of QOFs and to collect, aggregate, and share data with the public.
- Provide larger OZ capital gain tax breaks for projects in the most economically depressed communities. The current one-size-fits-all approach will tend to direct money to places already attractive to investors.
- Target the size of OZ capital gain tax breaks to investments with the greatest impacts. OZ capital gain tax breaks could be based, for example, on the number of quality jobs created by an OZ investment.
- Limit the type of eligible projects, prohibiting projects such as self-storage facilities, luxury hotels and housing, or upscale shopping districts. And, for real estate investments, which are the bulk of OZ projects, create a limited set of eligible uses. For instance, only allow real estate transactions involving an operating business that is owner-occupied, or commercial and industrial real estate in tracts with high vacancy rates, or housing sold or rented at below-market prices.
- Require a rigorous certification process to qualify as a Qualified Opportunity Fund (QOF). Currently, a QOF does not have to assert that it is helping low-income people or communities. Require QOFs to demonstrate an intention to invest in projects that provide genuine community benefit, and to adhere to disclosure and reporting requirements and community engagement processes.
- Support mission-driven QOFs that are accountable to the community by giving preferential treatment to CDFI-controlled and other mission-driven vehicles.
- Provide better investment support for small businesses.
- Redesignate and remove OZs based on the most current Census data to avoid designating tracts that seemed “low-income” due to out-of-date Census data but had improved demographically and were experiencing economic gains. Phase out the OZ capital tax gain break in these tracts for any projects not yet initiated. OZ designation should be subject to public comment before becoming final.
- Remove all contiguous tracts, those that did not meet the low-income threshold but were eligible because they bordered low-income tracts.
- Restrict the OZ capital gain tax break to a project that demonstrates, “but for” the additional aid of the OZ capital gain tax break, the project cannot succeed with private market resources alone.



- Provide grants to support community education, engagement, and technical assistance regarding OZs.

## CONGRESSIONAL EFFORTS, 2022 AND PAST

### Efforts in 2022

On April 7, 2022, Senator Corey Booker (D-NJ), an original champion of OZs, introduced a bill, “Opportunity Zones Transparency, Extension, and Improvement Act” ([S.4065](#)). Six other senators are co-sponsors. Representative Ron Kind (D-WI) introduce an identical bill ([H.R. 7467](#)) with seven cosponsors. The bill would: reinstate reporting requirements, including the number of and types of jobs created by OZ projects and information about OZ investors such as name and description of the investment; impose penalties for failing to report; terminate designated zones if their median family income is greater than 130% of the national median; allow states to replace those high-income OZs with high-need communities, or those with a poverty rate of 30% or higher; allow zero population census tracts to be eligible for OZs if they are formerly industrial areas that contain a brownfield site determined by EPA; extend the OZ temporary deferral period for qualifying capital gain through 2028; and create a fund to provide technical assistance to underserved communities, which can be suballocate to local governments and nonprofits. No further action was taken in the 117<sup>th</sup> Congress.

Representative Lloyd Doggett (D-TX) floated “The Opportunity Zone Reform Act of 2021,” cosponsored by 13 progressive Members of Congress and several labor unions. It would: create an annual certification requirement for Qualified Opportunity Funds (QOF); sunset OZs that had a poverty rate of less than 20% or in a non-metro area with a median income greater than 80% of the statewide area median income; sunset non-low-income census tracts contiguous to low-income tracts; clarify Treasury rules, such as requiring 90% of an investment to be made in the OZ to meet the “substantially all” test. The statute requires this, but Treasury’s rule allows

as little as 40%; require at least one full-time job (paying prevailing wages and paid leave time) to be created for every \$35,000 in capital gains tax relief; ensure no further tax breaks after 2028; and require QOFs to report information to Treasury, which would make the information available to the public. Failure to report would result in a \$10,000 penalty per month. A bill was never formally introduced.

### Past Efforts

As early as June 2018, Senator Corey Booker (D-NJ), an original champion of OZs, [wrote to Treasury](#) urging stronger regulations to ensure low-income communities benefit from OZs. Senator Booker followed that up on April 7, 2019, sponsoring [S.1344](#), which would strengthen OZ reporting requirements and specifically require Treasury to collect data on QOFs and their impact on low-income communities.

Various bills proposing to modify OZs were introduced by Democrats in 2019: Senator Ron Wyden (D-OR) introduced [S. 2787](#), and Representatives James Clyburn (D-SC) and Henry Johnson (D-GA), introduced [H.R. 5042](#) and [H.R. 4999](#), respectively. Overall, these bills would: establish annual reporting requirements; prohibit investments in private planes, sports stadiums, self-storage facilities, parking facilities, and luxury rental properties; eliminate and terminate OZ designations of contiguous communities that are not low-income; disqualify a census tract that had a median family income greater than 120% of the national median income; disqualify rental property unless 50% or more of the units are both rent-restricted (following the Low Income Housing Tax Credit rules) and occupied by individuals whose income is 50% or less of area median income (AMI); disqualify rental housing unless 20% of the units were occupied by households with income no greater than 30% of AMI or 200% of the poverty line.

Representative Rashida Tlaib (D-MI) introduced [H.R. 5252](#) to eliminate OZs.

In 2021, Representative Michelle Steele (R-CA) introduced [H.R.4608](#), which would create additional OZ designations every ten years, and



Representative Jim Hagedorn (R-MN) introduced [H.R. 4147](#), which would create an estimated 950 additional OZs.

Ultimately, no bills modifying OZs passed.

## FUNDING

The Opportunity Zones capital gain tax break is not funded through federal appropriations; it is a “tax expenditure,” resulting in the federal government losing tax revenue. The Joint Committee on Taxation estimates that OZ tax expenditures will total \$8.2 billion between 2020 and 2024.

## FORECAST FOR 2023

Senator Ron Wyden (D-OR), Chair of the Senate Finance Committee sent [letters](#) to seven investment entities on January 13, 2022 demanding information to determine whether they are abusing OZs. Previously, on December 20, 2021, nine Democrats on the U.S. House of Representatives’ Ways and Means Subcommittee on Oversight sent a [letter](#) asking Treasury to consider three changes to OZ requirements: implement a rigorous certification process for QPOs, allocate a dedicated agency staff to oversee OZs, and require transaction reporting separate from tax forms.

## FOR MORE INFORMATION

NLIHC’s [\*A Critical Explanation of Opportunity Zones\*](#).

The IRS Opportunity Zones webpage, <https://bit.ly/3GXNEle>.

The Center on Budget and Policy Priorities, <https://bit.ly/3rQKny1>.

The Urban Institute, <https://urbn.is/2kLVlWX>.

The Brookings Institution, <https://brook.gs/3H2sUsO>.

ProPublica, <https://bit.ly/344Ewg6>.

HUD’s April 2022 issue of [\*Cityscape\*](#).

# Community Development Financial Institutions Fund

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By Olivia Barrow, Policy Manager, Low Income Investment Fund

**Administering Agency:** U.S. Department of the Treasury

**Year Started:** 1994

**Funding:** \$295 million in FY 2022; \$324 million in FY 2023

**See Also:** For related information, refer to the *Capital Magnet Fund* section of this guide.

The Community Development Financial Institutions (CDFI) Fund comprises seven programs designed to expand the capacity of financial institutions to provide credit, capital, and financial services to underserved populations and communities.

## HISTORY

The CDFI Fund was created by the “Riegle Community Development Banking and Financial Institutions Act of 1994.”

## OVERVIEW

CDFIs are specialized private sector financial institutions that serve economically disadvantaged communities and consumers. As of December 2022, there were more than 1,300 CDFIs according to the CDFI Fund. CDFIs assume different forms, including banks (143), credit unions (472), depository institutions (177), loan funds (569), and venture capital funds (15). CDFI customers include small business owners, nonprofits, affordable housing developers, and low-income individuals. 84% of CDFI customers are low-income persons, 60% are borrowers of color, and 50% are women. CDFIs operate in all 50 states and the District of Columbia.

United by a primary mission of community development, CDFIs work where conventional financial institutions do not by providing

financial services coupled with financial education and technical assistance to help alleviate poverty for economically disadvantaged people and communities. CDFIs offer innovative financing that banks would not typically offer. CDFIs also provide basic financial services to people who are unbanked, offering alternatives to predatory lenders. CDFIs implement capital-led strategies to fight poverty and to tackle economic infrastructure issues such as quality affordable housing, job creation, wealth building, financial literacy and education, community facility financing, and small business development and training.

## PROGRAM SUMMARIES

The CDFI Fund operates eight primary programs designed to both build the capacity of CDFIs and increase private investment in distressed communities nationwide. These programs are: the CDFI program, the Native Initiatives program, the Bank Enterprise Award program, the New Markets Tax Credit program, the Capital Magnet Fund (CMF) program, the Healthy Food Financing Initiative, the CDFI Bond Guarantee program, and the Small Dollar Loan Program. In addition to these seven primary programs, the CDFI Fund has administered pandemic-related programs to support CDFIs, including the Rapid Response Program in 2021 and the Equitable Recovery Program which closed for applications in September 2022. The CDFI Fund is the largest single source of funding for CDFIs and plays an important role in attracting and securing non-federal funds for CDFIs.

The CDFI Fund is unique among federal programs because it aims to strengthen institutions rather than fund specific projects. CDFIs match the federal investment from the CDFI Fund multiple times over with private money, using these funds to help revitalize communities through investment in affordable housing, small businesses, and community

facilities and by providing retail financial services to low-income populations.

### **CDFI Program**

The CDFI Program has two components: Financial Assistance (FA) and Technical Assistance (TA). Through these two components, the CDFI Program provides loans and grants to CDFIs to support their capitalization and capacity building, enhancing their ability to create community development opportunities in underserved markets. CDFIs compete for federal support based on their business plans, market analyses, and performance goals.

FA awards are for established, certified CDFIs and may be used for economic development, affordable housing, and community development financial services. FA awards must be matched at least one-to-one with non-federal funds. TA awards are for startup or existing CDFIs and are used to build capacity to serve a target market through the acquisition of goods and services such as consulting services, technology purchases, and staff or board training. The FY22 funding level for this program was \$173.3 million and the funding level for FY23 is \$196 million.

### **Native Initiatives Program**

The CDFI Fund's Native Initiatives are designed to overcome identified barriers to financial services in Native communities (including Native American, Native Alaskan, and Native Hawaiian populations). Through TA and FA, the CDFI Fund seeks to foster the development of new Native CDFIs and strengthen the capacity of existing Native CDFIs. Financial education and asset building programs, such as matched savings accounts, are particularly important to Native communities.

Though founded in 1994, the first TA grants were not made until 2002 after a comprehensive study of the capital and credit needs of Native communities had been performed. FA followed in 2004. The CDFI Fund continues to collaborate with tribal governments and tribal community organizations through ongoing research and analysis that informs the recommendations for Native CDFIs. The FY22 funding level for the

Native Initiatives program was \$21.5 million and the funding level for FY23 is \$25 million.

### **Bank Enterprise Award Program**

The Bank Enterprise Award (BEA) program was created in 1994 to support Federal Deposit Insurance Corporation (FDIC)-insured financial institutions around the country dedicated to financing and supporting community and economic development activities. The BEA program complements the community development activities of insured depository institutions (i.e., banks and thrifts) by providing financial incentives to expand investments in CDFIs and to increase lending, investment, and service activities within economically distressed communities. Providing monetary awards for increasing community development activities leverages the fund's dollars and puts more capital to work in distressed communities. The FY22 funding level for the BEA program was \$35 million and the funding level for FY23 is \$35 million.

### **New Markets Tax Credit Program**

Congress established the New Markets Tax Credit (NMTC) program as part of the "Community Renewal Tax Relief Act of 2001" to encourage investments in low-income communities that traditionally lack access to capital for developing small businesses and revitalizing neighborhoods. The NMTC provides financial institutions, corporations, and other investors with a tax credit for investing in a Community Development Entity (CDE). The investor takes a tax credit over a seven year period equal to 39% of the original amount invested. CDEs are domestic partnerships or corporations that are intermediaries that use capital derived from the tax credits to make loans to or investments in businesses and projects in low-income communities. A low-income community is one with census tracts that have a poverty rate of at least 20% or that have a median family income less than 80% of the area median income (AMI).

The NMTC program is administered by the CDFI Fund which allocates tax credit authority, the amount of investment for which investors

can claim a tax credit, to CDEs that apply for and obtain allocations. To date, the CDFI Fund has made 1,461 allocation awards totaling \$71 billion in NMTC allocations, which has leveraged nearly \$500 billion in private investment. Since its inception, the NMTC Program has created or retained 938,000 jobs, financed more than 10,800 businesses, supported the construction of 76.9 million square feet of manufacturing space, 118.3 million square feet of office space, and 77.1 million square feet of retail space.

In December 2020, Congress enacted a five-year extension of the NMTC program with an annual allocation of \$5 billion. This will provide \$25 billion in new NMTC authority between 2021-2025, the largest extension the program has received since it was created in 2000.

### **Capital Magnet Fund Program**

(See the *Capital Magnet Fund Program* section of this *Guide*).

The Capital Magnet Fund (CMF) was created through the “Housing and Economic Recovery Act of 2008.” Through the CMF, the CDFI Fund provides competitively awarded grants to CDFIs and qualified nonprofit housing organizations. CMF awards can be used to finance housing for low- and moderate-income households as well as related economic development activities and community service facilities. Awardees utilize financing tools such as loan loss reserves, loan funds, risk-sharing loans, and loan guarantees to produce eligible activities with aggregate costs at least 10 times the size of the award amount.

A minimum of 70% of an awardee’s CMF money must be used for housing. One hundred percent of housing-eligible project costs must be for units for households with income below 120% of the AMI; at least 51% of housing eligible project costs must be for units for households with income below 80% of AMI. If CMF finances rental housing, then at least 20% of the units must be occupied by households with income below 80% of AMI. Maximum rent is fixed at 30% of either 120% AMI, 80% AMI, 50% AMI, or 30% AMI, depending on the household’s income. For example, if an assisted household

has income at 120% AMI, their maximum rent is 30% of 120% AMI. Assisted housing must meet the above affordability requirements for at least 10 years.

As with the national Housing Trust Fund (HTF), funding for the CMF is intended to be provided in part by Fannie Mae and Freddie Mac. Because Fannie Mae and Freddie Mac went into conservatorship soon after the authorizing statute creating those programs became law and the collection of the contributions was suspended, in FY10 the Administration requested, and Congress approved, an initial appropriation of \$80 million to capitalize the CMF. Two hundred and thirty CDFIs and nonprofit housing organizations applied, requesting more than \$1 billion. Twenty-three awards were made, which leveraged at least \$1.6 billion for the financing of housing within underserved communities and helped put underserved neighborhoods on the path to recovery and revitalization. There have been no further appropriated funds for the CMF.

The suspension of contributions of assessments on new business of Fannie Mae and Freddie Mac was lifted at the end of 2014 and contributions began January 1, 2015. The FY 2016 CMF round awarded \$91.5 million; the FY 2017 round awarded \$119.5 million; the FY 2018 round awarded \$142.9 million; the FY 2019 round awarded \$130.9 million; and the FY20 round awarded \$175.35 million. These awards totaled more than \$565 million to CDFIs and qualified organizations, and awardees anticipate more than \$18.6 billion in total leverage – significantly more than the minimum of \$5.65 billion required in public and private leverage.

The FY 2021 awards were the most recent round and totaled \$336.4 million, reflecting the largest CMF award round to date and 23% increase in the number of awardees compared to the FY20 round. 146 organizations applied for the FY 2021 round, requesting more than \$991.8 million in CMF awards. Awardees plan to:

- Develop nearly 41,000 affordable housing units, including more than 38,700 rental

units and more than 2,400 homeownership units. 97% of all housing units will be developed for low-income families.

- Leverage nearly \$9.8 billion in public and private investment, more than 79% from the private sector.

### **CDFI Healthy Foods Financing Initiative**

The CDFI Healthy Food Financing Initiative, launched in 2011 as part of the multi-agency Healthy Food Financing Initiative (HFFI), provides grants to CDFIs focused on developing solutions for increasing access to affordable healthy foods in low-income communities. The HFFI is an interagency initiative involving the Treasury, the U.S. Department of Agriculture, and the U.S. Department of Health and Human Services. HFFI represents the federal government's first coordinated step to eliminate "food deserts" by promoting a wide range of interventions that expand the supply of and demand for nutritious foods, including increasing the distribution of agricultural products, developing and equipping grocery stores, and strengthening producer-to-consumer relationships. The FY22 funding level for the Healthy Food Financing Initiative was \$23 million and the funding level for FY23 is \$24 million.

### **CDFI Bond Guarantee Program**

Enacted through the "Small Business Jobs Act of 2010," Treasury may issue up to \$1 billion each year in fully guaranteed bonds to support CDFI lending and investment. Long-term, patient capital such as this is difficult for CDFIs to obtain. The program experienced regulatory delays related to making it cost-neutral to the federal government. To date, the CDFI fund has guaranteed more than \$2 billion in bond loans. The Bond Guarantee Program is funded at \$500 million in FY23.

Authorized uses of the loans financed may include a variety of financial activities, such as: supporting commercial facilities that promote revitalization, community stability, and job creation/retention; community facilities; the provision of basic financial services; housing that is principally affordable to low-income people;

businesses that provide jobs for low-income people or are owned by low-income people; and community or economic development in low-income or underserved rural areas. Since the bonds have a minimum size of \$100 million that is larger than most CDFIs can readily invest, groups of CDFIs can put in joint applications.

### **SMALL DOLLAR LOAN PROGRAM**

Enacted through the "Small Business Jobs Act of 2010," the Small Dollar Loan Program is intended to expand consumer access to financial institutions by providing alternatives to high-cost, small dollar lending. The program provides unbanked and underbanked populations a safe alternative to payday lenders and helps build credit, access affordable capital, and allow greater access into the financial system.

The Small Dollar Loan Program provides grants to CDFIs to support two types of eligible activities: Grants for Loan Loss Reserves to cover the losses associated with starting a new small dollar loan program or expanding an existing small dollar loan program, and Grants for Technical Assistance to support technology, staff support, and other activities to establish and maintain a small dollar loan program. Awards cannot exceed \$2,500 per loan; must be repaid in installments; cannot have prepayment penalties; must have payments that are reported to at least one of the consumer credit reporting agencies; and must be underwritten to consider the consumer's ability to repay.

The first round of funding under the Small Dollar Loan Program was awarded in 2021. The program awarded more than \$10.8 million in grants to 52 CDFIs in the FY2021 round. The FY22 round awarded \$11.4 million to 66 CDFIs.

Congress appropriated \$8.5 million to the Small Dollar Loan Program in FY22 and \$9 million for the program in FY23.

### **RAPID RESPONSE PROGRAM**

Enacted in the "Consolidated Appropriations Act of 2021," Congress authorized the CDFI Fund to deploy \$1.25 billion in grants to deliver



immediate assistance in communities impacted by the COVID-19 pandemic. The CDFI Fund developed the CDFI Rapid Response Program (CDFI RRP) to quickly deploy capital to Certified CDFIs through a streamlined application and review process. Grant funds will be used to support eligible activities including financial products, financial services, development services, certain operational activities, and to enable CDFIs to build capital reserves and loan-loss reserves. In 2021, 863 certified CDFIs were awarded CDFI RRP grants totaling \$1.25 billion.

## EQUITABLE RECOVERY PROGRAM

Enacted in the “Consolidated Appropriations Act of 2021,” Congress authorized the CDFI Fund to deploy \$1.75 billion in grants to CDFIs to respond to the economic impacts of the COVID-19 pandemic. The CDFI Fund launched the Equitable Recovery Program (ERP) in 2022 to expand lending, grant making, and investment activity in low- or moderate-income communities and to borrowers, including minorities, that have significant unmet capital or financial service needs and were disproportionately impacted by the COVID-19 pandemic. The CDFI Fund is expected to announce ERP awards in 2023.

## FUNDING

The appropriation for the CDFI Fund in FY22 was \$295 million. The Administration’s FY23 budget requested \$331 million, a \$36 million increase from the FY22 enacted level. Congress enacted \$324 million for the CDFI Fund in FY23.

Applications for CDFI Fund awards consistently exceed the supply of funds. Since 1996, applicants to the CDFI Program have requested more than four times the amount awarded. The CDFI Fund received 199 applications for the 2021 round of the NMTC Program, representing \$14.7 billion in NMTCs; three times the available funding.

In response to the COVID-19 pandemic, Congress enacted \$12 billion in new funding for CDFIs and minority depository institutions (MDIs), including \$9 billion for a new emergency capital investment program (ECIP) in MDIs and CDFIs that are

depository institutions, as well as \$3 billion in grants for CDFIs. Of the \$3 billion in grants, \$1.25 billion was deployed through the CDFI Rapid Response Program in 2021. Of the remaining \$1.75 billion, Congress set-aside \$1.2 billion for minority lending institutions, a new term referring to “those CDFIs that predominantly serve minority communities and are either MDIs or meet other standards for accountability to minority populations as determined by the CDFI Fund.” The CDFI Fund launched the Equitable Recovery Program in 2022 to deploy this \$1.2 billion to qualified CDFIs serving communities disproportionately impacted by the COVID-19 pandemic, and separately requested comments on proposed designation criteria for the new Minority Lending Institution definition.

## FORECAST FOR 2023

The \$324 million appropriation to the CDFI Fund in FY 2023 reflects a \$29 million increase in funding over FY 2022 yet falls \$7 million short of the Biden-Harris Administration’s FY 2023 budget request and does not yet meet the Administration’s stated commitment to double the funding for the CDFI Fund. The CDFI industry is requesting at least \$1 billion for the CDFI Fund.

Throughout 2023, the CDFI Fund will continue to deploy the remaining stimulus grants enacted through COVID-19 relief legislation, including through the new Equitable Recovery Program.

## WHAT TO SAY TO LEGISLATORS

Throughout the pandemic and into the recovery, CDFIs have demonstrated capacity and expertise to meet the needs of borrowers and communities left behind by traditional financial institutions. CDFIs made more than \$34 billion in Paycheck Protection Program (PPP) loans to low- and moderate-income borrowers, far exceeding the \$15 billion that Congress set aside for CDFIs within the program. CDFIs design innovative below-market products that banks would not offer, providing homeownership and financial opportunities to underserved individuals and communities, including communities of color who have historically been denied access

to critical financial products and services. Advocates play an active role in helping to communicate the positive role of CDFIs in low-wealth markets.

Advocates should contact Members of Congress, especially members of the Senate and House Financial Services and General Government Appropriations Subcommittees, to encourage enactment of \$1 billion for the CDFI Fund in FY24 and an extension of the CDFI Bond Guarantee Program to help meet the demand for financial services and capital in low-income communities.

## **FOR MORE INFORMATION**

The CDFI Fund, 202-653-0300,  
<https://www.cdfifund.gov/Pages/default.aspx>.

CDFI Coalition, 202-393-5225, [www.cdfi.org](http://www.cdfi.org).

Opportunity Finance Network, 215-923-4754,  
[www.ofn.org](http://www.ofn.org).

Housing Partnership Network, 617-720-1999,  
<http://www.housingpartnership.net>.



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# **Chapter 10:** COVID-19-ERA PROGRAMS

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# Federal Eviction Protections during the COVID-19 Pandemic

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By Alayna Calabro, Senior Policy Analyst, NLIHC

**H**ousing instability and homelessness have enormous consequences for individuals, their communities, and our nation's public health. Evictions put lives at risk and strain our already overstretched public health systems. Families evicted from their homes and forced to double or triple up with other families face greater challenges in practicing social distancing. This challenge is heightened for people experiencing homelessness – whether in shelters or encampments – who find it impossible to self-quarantine. People who are homeless and contract coronavirus are twice as likely to be hospitalized, two to four times as likely to require critical care, and two to three times as likely to die than the general public.

Recognizing that eviction moratoriums – like quarantine, isolation, and social distancing – are effective public health measures to prevent the spread of coronavirus, the federal government issued two temporary moratoriums on evictions for nonpayment of rent during the COVID-19 pandemic. The federal eviction protections enacted through the “Coronavirus Aid, Relief, and Economic Security (CARES) Act” and then by the Centers for Disease Control and Prevention (CDC) were supplemented by a patchwork of state and local moratoriums implemented by governors and local officials. The federal eviction moratoriums were also paired with emergency rental assistance, and the combination helped millions of renters remain stably housed.

Eviction moratoriums proved to be an essential public health measure. Research conducted on the efficacy of state, local, and federal eviction moratoriums provide evidence that such moratoriums are effective at reducing both eviction filings and COVID-19 transmission and fatalities. Researchers estimate the CDC eviction moratorium alone prevented at least

1.55 million eviction filings nationwide, and state and local eviction protections prevented an additional 900,000 eviction filings throughout the country. Nationally, researchers found that expired eviction moratoriums led to an additional 433,700 cases of COVID-19 and 10,700 associated deaths. The risk of infection increases substantially when people are evicted or forced to live doubled-up with another household, but people who are evicted are not the only ones at risk – spillover transmission amplified by evictions also places the broader community at increased risk of infection.

## “CARES ACT” EVICTION AND FORECLOSURE MORATORIUM

The “Coronavirus Aid, Relief, and Economic Security (CARES) Act” ([Pub. L. No. 116-136](#)), enacted March 27, 2020 instituted a 120-day federal eviction moratorium for tenants in certain rental properties with federal assistance or a federally-backed mortgage. The moratorium prohibited owners of covered properties from filing new evictions against tenants for nonpayment of rent and charging additional fees related to nonpayment. Under the CARES Act moratorium, housing providers were required to provide tenants a 30-day notice to evict for nonpayment, which could not be given until after the 120-day moratorium period ended on July 24, 2020.

The moratorium enacted in CARES Act Section 4024(b) covered most residents of federally subsidized housing programs, including those supported by HUD, USDA, or Treasury (Low Income Housing Tax Credit developments). The moratorium also extended to renters living in single-family and multifamily properties financed by federally backed mortgages, such as those financed through Fannie Mae, Freddie Mac, HUD, or other federal agencies.

Additionally, the CARES Act instituted a moratorium on foreclosures for federally backed mortgages. Landlords of federally backed multifamily properties could request up to 90 days of forbearance, during which they were prohibited from evicting any tenants for nonpayment of rent.

The CARES Act offered renters eviction protections broader in scope than the measures enacted by the Federal Housing Finance Agency (FHFA) and the Federal Housing Administration (FHA) in response to the pandemic. FHFA, the regulator that oversees federally backed mortgages, enacted a moratorium on some evictions and single-family foreclosures with loans backed by Fannie Mae or Freddie Mac. The FHA also enacted a foreclosure and eviction moratorium for homeowners with FHA-insured single-family mortgages covered under the CARES Act.

As part of the Biden Administration's all-of-government approach to reduce evictions, the White House [announced](#) in June 2021 that HUD and other federal agencies will continue to enforce the CARES Act's 30-day notice to vacate requirement. Housing providers of federally backed and federally assisted properties must provide tenants with a 30-day notice to vacate in accordance with the CARES Act. Federally supported properties include all multifamily and single-family homes that have an FHFA-insured mortgage, Fannie Mae or Freddie Mac securitized mortgage, or a federal housing subsidy.

HUD published an [interim final rule](#) in the *Federal Register* on October 7, 2021, that requires providers of public housing and project-based rental assistance (PBRA) to provide tenants facing eviction for nonpayment of rent with a 30-day notice that includes information about the availability of federal emergency rental assistance (ERA). Currently, the CARES Act requires a 30-day notice prior to eviction, but it does not require the notice to provide information about ERA. The interim final rule is not limited to the current pandemic. Rather, whenever funding is available to assist tenants with nonpayment of rent during a national emergency, HUD may

determine that tenants must be provided with adequate notice and time to secure that funding.

NLIHC and the National Housing Law Project, along with affordable housing and tenants' rights organizations, [called on HUD](#) to use its authority to act more comprehensively to prevent evictions by amending the interim final rule. The rule improperly limits the CARES Act's 30-day notice requirement to only public housing and PBRA tenants, when the requirement applies to all HUD tenants, including Housing Choice Voucher participants. Additionally, the interim final rule creates a sunset date for the 30-day notice requirement – the end of a presidentially-declared disaster – where no such time limit exists under the CARES Act.

### **Shortcomings of the CARES Act Moratorium**

While the moratorium provided many renters an important short-term reprieve, it did not prevent people from accruing housing debt. Congress did not enact emergency rental assistance until December 2020. Additionally, the limited CARES Act moratorium covered only 30% of renters nationwide, leaving many low-income households at risk of losing their homes during the pandemic.

Our country's complicated housing finance system made it difficult for renters to know if they were protected under the CARES Act, allowing some landlords to continue evicting tenants despite the moratorium. NLIHC created a searchable database and interactive map to allow some renters to determine whether their home was covered by the CARES Act moratorium. The federal eviction moratorium, however, lacked compliance and enforcement mechanisms, resulting in families losing their homes through evictions that violated the CARES Act.

Advocates urged Congress and federal agencies to enact a national, uniform moratorium on eviction and foreclosures for nonpayment of rent – alongside emergency rental assistance – to protect renters and homeowners and keep them stably housed.

## CDC FEDERAL EVICTION MORATORIUM

The CDC took unprecedented action on September 1, 2020 by issuing a temporary national moratorium on most evictions for nonpayment of rent to help prevent the spread of coronavirus. Citing the historic threat to public health posed by coronavirus, the CDC declared that an eviction moratorium would help to ensure that people are able to practice social distancing and comply with stay-at-home orders. The CDC eviction moratorium followed the expiration of many state and federal orders, including the CARES Act.

Effective September 4, the order declared a national moratorium on residential evictions for eligible renters for nonpayment of rent and nonpayment of other fees or charges until December 31, 2020. Any evictions for nonpayment of rent that may have been initiated before September 4, 2020, and had not been completed, were subject to the moratorium. Because renters remained responsible for paying any back rent and fees accumulated during the moratorium, Congress provided more than \$46 billion in emergency rental assistance in COVID-19 relief packages. Together, the combination of an eviction moratorium and emergency rental assistance kept millions of people stably housed.

To qualify for the protections, an individual was required to 1) be a “tenant, lessee, or resident of a residential property” and 2) provide a signed declaration to their landlord stating that they:

- Have “used best efforts to obtain all available government assistance for rent or housing;”
- Expect to earn no more than \$99,000 annually in 2020-2021 (or no more than \$198,000 jointly), or were not required to report income in 2019 to the IRS, or received an Economic Impact Payment;
- Are unable to pay rent in full or make full housing payments due to loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical costs;

- Are making their best efforts to make timely partial payments as close to the full rental/housing payment as possible;
- Would likely become homeless, need to live in a shelter, or need to move in with another person (aka live doubled-up) because they have no other housing options;
- Understand they will still need to pay rent at the end of the moratorium; and
- Understand that any false/misleading statements may result in criminal and civil actions.

The order applied to every state and territory with reported cases of coronavirus and to all standard rental housing, including mobile homes or land in a mobile home park.

In issuing the order, the CDC cited section 361 of the “Public Health Service Act” (42 USC § 264 and a regulation pursuant to the act, 42 C.F.R. 70.2), which grants the Secretary of Health and Human Services broad authority to enact measures to prevent the spread of disease. Landlords, property owners, and housing industry groups, however, filed numerous legal challenges against the CDC eviction moratorium in federal, state, and local courts, often arguing that the CDC did not have the authority to issue the order. These lawsuits contributed to legal uncertainty about the order, resulting in varying interpretations in court and uneven application and protections for renters.

The emergency COVID-19 relief legislation enacted by Congress in December 2020 extended the CDC eviction moratorium through January 31, 2021. President Biden extended it three additional times through March, June, and July. On July 29, the Biden Administration announced the CDC could not extend the moratorium due to a Supreme Court decision on June 29 that upheld the moratorium but declared the CDC could not grant an extension without congressional authorization. A measure to extend the moratorium failed to garner the support needed to pass the House of Representatives, and the eviction moratorium expired on July 31, 2021.

NLIHC urged President Biden to use his authority to extend the eviction moratorium and, in the meantime, to take all other possible actions to reduce evictions. Representative Cori Bush (D-MO) and other members of the Congressional Progressive Caucus staged rallies outside of the Capitol building to demand an extension of the moratorium and, along with NLIHC, Speaker of the House Nancy Pelosi (D-CA) and Representative Maxine Waters (D-CA), demanded that the Biden Administration use every authority to extend eviction moratorium protections for renters. As a result of the extraordinary dedication of congressional champions and housing and homelessness advocates across the country, the CDC announced on August 3 a limited eviction moratorium through October 3. The new moratorium covered renters living in communities experiencing a substantial or high level of COVID-19 transmission, an estimated 90% of all renters.

The federal eviction moratorium continued to face legal challenges. One day after the CDC announced the new limited moratorium, the Alabama and Georgia Associations of Realtors, backed by the National Association of Realtors, again petitioned the federal district court in D.C. to overturn it. The Supreme Court ruled on August 26 to end the temporary stay on a lower court ruling seeking to overturn the CDC eviction moratorium. In doing so, the Supreme Court invalidated the eviction moratorium, eliminating vital protections that kept millions of households in their homes during the pandemic.

### **Shortcomings of the CDC Eviction Moratorium**

The federal eviction moratorium extended vital protections to renters at risk of eviction during the pandemic, helping to keep stably housed millions of people who otherwise would have been evicted. The CDC order, however, had significant shortcomings that prevented renters from making full use of the moratorium's protections.

To receive protection under the CDC order, renters had to know about the moratorium and take affirmative steps to be protected. As a result,

far too many eligible renters, especially those with the lowest incomes who may not have access to legal aid attorneys, internet, or printers, and other marginalized people such as immigrants, seniors, and people with disabilities, were wrongfully evicted from their home.

The CDC issued in October 2021 a Frequently Asked Questions (FAQ) document that created loopholes in the moratorium's protections, undermining the intent of the order by eroding protections for renters and making it more difficult for struggling renters to remain stably housed. The FAQ stated, contrary to the original order, that landlords may challenge tenant declarations and initiate eviction proceedings at any time, as long as physical executions are not executed. Allowing landlords to challenge renters' declarative statements created new opportunities for landlord intimidation and further shifted the burden to struggling renters who must gather paperwork to prove they need assistance to stay housed during the pandemic. Permitting landlords to initiate eviction proceedings – even when covered renters cannot be evicted until the moratorium ends – served no purpose other than to mislead, pressure, scare, or intimidate renters into leaving sooner.

While the CDC order imposed criminal penalties on landlords who violated the moratorium, no entity or persons were enforcing the order and there was no mechanism for renters to file complaints against landlords who violated the order. As a result, the criminal penalties in the order did not deter improper evictions and landlords continued to evict renters in violation of the moratorium without consequence. There were numerous cases where landlords evicted renters from their homes, even though renters provided their landlords with a signed declarative statement.

The CDC moratorium was a public health necessity, providing stability to millions of people who would have lost their homes. NLIHC and advocates across the country urged the CDC to extend, strengthen, and enforce the order's protections. The CDC could have addressed the eviction moratorium's shortcomings by



making the protections automatic and universal, rescinding its FAQ document that weakened the moratorium's protections, establishing a hotline number that renters could use to file complaints against landlords who violate the moratorium, and directing the U.S. Department of Justice to enforce the order.

## A NEED FOR LONG-TERM SOLUTIONS

The eviction moratoriums passed during the global pandemic demonstrated the power that federal, state, and local governments have in protecting citizens during a public health emergency and economic crisis. The eviction moratoriums were necessary in halting the spread of COVID-19, and lawmakers should consider implementing eviction moratoriums alongside emergency rental assistance in their jurisdictions when responding to future public health emergencies and natural disasters.

Eviction moratoriums, however, offer only a temporary solution for our nation's affordable housing crisis. The power imbalance between renters and landlords puts renters at greater risk of housing instability, harassment, and homelessness, and it fuels racial inequity. Federal, state, and local governments must enact long-term, sustainable solutions that promote housing stability and prevent homelessness. The Biden Administration and Congress should take action to strengthen and enforce renter protections.

## FOR MORE INFORMATION

National Housing Law Project (NHLP) Summary and Analysis of Federal CARES Act Eviction Moratorium, <https://bit.ly/39yMwXk>.

CDC Order: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, <https://bit.ly/2VEDJv2>.

NLIHC's National Eviction Moratorium resource page, <https://bit.ly/3mULNUx>.

NLIHC and NHLP, Overview of CDC Eviction Moratorium, <https://bit.ly/3g8x1H7>.

NLIHC and NHLP, National Eviction Moratorium: FAQ for Renters, <https://bit.ly/2JHG99n>.

For more information on the state and local renter protections enacted in response to the COVID-19 pandemic, visit NLIHC's State and Local Tenant Protections Database, <https://tinyurl.com/53wxx55y>.



# The Role of FEMA in COVID-19 Response

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By Alayna Calabro, Senior Policy Analyst, and Noah Patton, Senior Policy Analyst, NLIHC

**T**he coronavirus pandemic was largely uncharted territory for our country's disaster response and recovery system. In the lead up to the crisis, FEMA's planned-for role in the COVID-19 response was to supply logistical expertise to the Department of Health and Human Services (HHS), the lead agency for pandemic response. As the pandemic spread, first prompting then-President Trump's National Emergency Declaration and subsequent Major Disaster Declarations for all 50 states, the District of Columbia, and five territories, FEMA was given a larger role in the COVID-19 response.

As a result of the national emergency declaration for COVID-19, FEMA activated its Public Assistance (PA) Grant Program to aid state, territorial, tribal, and local governments and certain private non-profit organizations as they worked to quickly respond to the pandemic. During past disasters, FEMA generally has not provided PA funding for emergency sheltering in non-congregate environments, which are locations where each individual or household has living space that offers some level of privacy, such as hotels, motels, or dormitories. For the pandemic, however, FEMA determined that certain non-congregate sheltering costs were reimbursable under the PA program to protect public health and save lives.

In the first few years of the pandemic, state, local, and non-profit organizations were able to use FEMA PA funds in tandem with other federal and state funding streams to move individuals experiencing homelessness living in congregate settings – either in shelters or encampments – who had been exposed to COVID-19 or were medically at-risk into hotel rooms and other non-congregate shelters to quarantine. Given the heavy usage and strain on the shelter system, the program allowed many areas experiencing

COVID-19 spikes to slow the spread of the disease among individuals experiencing homelessness.

## COVID-19 NATIONAL EMERGENCY DECLARATION AND MAJOR DISASTER DECLARATIONS

On March 13, 2020, then-President Donald Trump issued an Emergency Declaration under Section 501(b) of the “Robert T. Stafford Disaster Relief and Emergency Assistance Act,” 42 U.S.C. 5121-5207 (the “Stafford Act”), making available critical resources from FEMA to help address public health needs in states and localities. The 501(b) declaration allows state, territorial, tribal, and local government entities and certain private non-profit organizations to apply for reimbursement under FEMA PA Category B (emergency protective measures).

This was the first time a national disaster has been declared under this section. Unlike other Disaster Declarations, this national declaration does not require a request from a governor or tribal government to be issued. The president need only determine that the emergency exists. In the case of the pandemic, the disaster was defined by the spread of an infectious disease, which is recognized as an area of federal primary responsibility.

Typically, when a major disaster occurs, the state or territorial governor or a tribal government will demonstrate to the White House that the disaster exceeds the ability of their jurisdiction and request a Major Disaster Declaration under Section 401 of the “Stafford Act.” A Major Disaster Declaration permits the activation of the full suite of FEMA's assistance programs. This assistance must be specified in the request made by the state's governor. FEMA will then approve the forms of specified aid the federal government is willing to provide.

President Trump declared major disasters for all 50 states, five territories, the District of Columbia, and the Seminole Tribe of Florida.

President Biden later approved the major disaster declaration requests of several tribal governments for the COVID-19 pandemic, further expanding the type of government assistance available.

Despite many governors requesting the activation of FEMA Individual Assistance (IA), which provides financial assistance to eligible households after disasters, all Major Disaster Declarations made in connection with the COVID-19 pandemic authorized public assistance grants alone. The president, FEMA, and Congress also authorized select forms of Individual Assistance, including FEMA's Crisis Counseling Program, the Lost Wages Assistance (LWA) Program, and COVID-19 Funeral Assistance. For more information about FEMA's disaster housing assistance programs, see *Disaster Housing Programs* in chapter 6 of this *Advocates' Guide*.

See the Congressional Research Service's [report](#) for more information on federal emergency and major disaster declarations and authorized assistance for the COVID-19 pandemic.

## FEMA PUBLIC ASSISTANCE: NON-CONGREGATE SHELTERING

The FEMA PA program provides resources to allow communities to respond quickly to and recover from major disasters or emergencies. Given the lack of structural damage and debris caused by a pandemic, PA Category B: Emergency Protective Measures resources were widely used during the crisis. Under Category B, state and local governments can receive reimbursement for eligible emergency protective measures taken to respond to the COVID-19 pandemic. According to the [FEMA PA Program and Policy Guide \(PAPPG\)](#), emergency protective measures include “activities taken to eliminate or reduce an immediate threat to life, public health or safety, or significant damage to improved public or private property in a cost-effective manner.” Such measures include personal protective equipment, certain types of logistical and administrative costs, and “evacuation and sheltering.”

It is well-established that during pandemics congregate sheltering poses a severe risk to

individuals experiencing homelessness and people with disabilities, who are more likely to have pre-existing medical conditions. People experiencing homelessness and people with disabilities living in congregate settings were among those individuals hardest hit by the pandemic, suffering from high rates of severe illness and death from coronavirus.

Recognizing that non-congregate sheltering may be necessary to protect public health and save lives, FEMA applied its statutory flexibility during the pandemic to offer reimbursements for non-congregate medical sheltering costs under the PA program. The term “medical sheltering” is meant to address the specific needs directly resulting from the public health emergency. For purposes of eligibility under the COVID-19 declarations, FEMA approved reimbursement for some non-congregate sheltering for health and medical-related needs, such as isolation and quarantine resulting from the public health emergency.

All non-congregate sheltering was required to be approved by the FEMA Regional Administrator for such costs to be reimbursed. FEMA funding through the PA program typically covers 75% of eligible costs, leaving governments and nonprofits to cover the remaining 25%. President Biden signed an [executive order](#) on January 21, 2021 directing FEMA to provide 100% reimbursement for the cost of approved non-congregate sheltering in hotel and motels across the country through September 2021, including for people experiencing homelessness and residents of congregate living facilities. President Biden extended his directive allowing 100% reimbursement three additional times, through [December 31, 2021](#), [April 1, 2022](#), and [July 1, 2022](#). FEMA [announced](#) that President Biden's [directive](#) allows FEMA to fully cover the costs of moving certain individuals experiencing homelessness into hotels and motels and apply full funding retroactively. State and local governments received 100% reimbursement for all approved non-congregate sheltering costs they have incurred since the start of the pandemic in January 2020 to July 1, 2022. Read [NLIHC's memorandum](#) to learn more about the changes

to the federal cost-share for approved non-congregate sheltering expenses for the COVID-19 pandemic.

The target populations for FEMA-funded non-congregate sheltering were 1) individuals that tested positive for COVID-19 that did not require hospitalization but needed isolation, 2) people who had been exposed to COVID-19 and needed isolation, or 3) high-risk individuals that needed social distancing as a precautionary measure. To be eligible for FEMA reimbursement, the CDC or state/local public health officials must have required the non-congregate sheltering through an official order, or it must have otherwise been done at the direction of health officials. To learn more, see NLIHC's comprehensive [toolkit](#) on FEMA's role in COVID-19 response.

## **NON-CONGREGATE SHELTERING CHALLENGES AND POLICY RECOMMENDATIONS**

Homeless service providers and community leaders worked tirelessly to use FEMA PA funds to address the urgent health and housing needs of people experiencing homelessness and others living in congregate settings during the pandemic, often encountering multiple challenges and employing various strategies to overcome these hurdles. While some of these challenges reflected the unprecedented nature of using federal funds for this purpose, others mirrored persistent barriers to using FEMA resources seen in past disasters.

State and local officials and homeless service providers reported challenges related to FEMA's narrow eligibility criteria for non-congregate sheltering reimbursement, the agency's lack of clear guidance and transparency, and the federal cost-share requirement, among others. FEMA limited reimbursements for Category B expenses to only cover individuals experiencing homelessness that had been exposed to or tested positive for COVID-19 or were medically at-risk of severe complications. This narrow eligibility criteria prevented individuals from accessing much-needed FEMA resources, further straining our nation's overstretched homeless services

systems, and creating significant administrative burden on the part of municipalities and states tracking FEMA-eligible non-congregate shelter residents. NLIHC urged Congress and the White House to expand eligibility for FEMA non-congregate sheltering reimbursements to all individuals experiencing homelessness to ensure that everyone has access to safe, non-congregate shelter during the pandemic, and to lower the administrative burden on municipalities and states when submitting reimbursement requests.

During the pandemic, homeless shelter and service providers often lacked critical information needed from FEMA to plan and interface with the PA program, such as application processes and expiration dates. While FEMA issued additional guidance on non-congregate sheltering as the pandemic progressed, state and local officials continued to report challenges in accessing clear guidance on basic program rules. These included ambiguity regarding eligibility for non-congregate sheltering, whether the direct conversion of hotels into long-term non-congregate shelter could be reimbursed under the PA program, the extent to which administrative costs accrued running non-congregate shelter programs were eligible for reimbursement, and whether RVs or manufactured housing units fit with the definition of non-congregate shelter. NLIHC requested that FEMA issue broad, clarifying guidance on non-congregate sheltering to enable states and localities to better utilize the program and make information on program approvals and denials easily accessible online. Full transparency would have enabled housing and homeless service providers to utilize the PA program to the most effective extent possible and help policymakers and service providers better understand FEMA's role in providing non-congregate shelter.

Until mid-December 2020, FEMA required state and local officials to request extensions for non-congregate sheltering reimbursement in short, 30- to 60-day increments. Time extension requests required substantial information gathering, reporting, and local or state level public health declarations from public health officials, constituting a substantial administrative

lift for multiple sectors of state and local government – which were already under stress from the ongoing pandemic. Additionally, FEMA often refrained from granting extension requests until the last moment, creating confusion and concern among non-congregate shelter residents and advocates that the agency would abruptly stop reimbursing hotel rooms. Despite the ongoing public health emergency, some states and municipalities started to phase out their programs under the assumption that FEMA would stop reimbursing hotel rooms, forcing officials to abruptly shut down hotels before they had the opportunity to move residents into permanent housing.

NLIHC urged policymakers to announce that non-congregate sheltering would continue to be approved under the PA Program through six months after the expiration of the Department of Health and Human Service’s COVID-19 Emergency Declaration. This would have enabled state and local officials to continue offering these critical programs needed to prevent and respond to outbreaks among people experiencing homelessness and ensure non-congregate shelter residents could transition to permanent housing solutions when the programs eventually ended. In December 2020, FEMA announced that the agency would approve reimbursement for non-congregate sheltering for the “duration of the [COVID-19] emergency.” The policy change, announced in an [internal memo](#) sent to FEMA Regional Administrators, did not specify when the approval for non-congregate sheltering reimbursement would expire. The memo stated that FEMA will direct its Regional Administrators to provide a 30-day notice of termination when the agency determines the need for non-congregate sheltering no longer exists. There will be an option for recipients to continue receiving funding for 30 days after the program ends. While the agency waived the requirement that recipients request and receive approval every 30 days, recipients are still required to send reporting data to FEMA every 30 days. NLIHC also urged FEMA to activate the [Disaster Housing Assistance Program \(DHAP\)](#), which plays a critical role in providing safe, decent, and

affordable homes to individuals with the greatest needs after a disaster by providing longer-term rental assistance and wrap-around services. DHAP could be used to help transition individuals residing in FEMA-funded non-congregate shelters into permanent housing when the programs eventually end.

The federal-cost share requirement placed significant strain on state and local budgets already depleted from COVID-19 response, resulting in some areas being unable to take advantage of this critical program. In many cash-strapped communities, the resources needed to keep people experiencing homelessness safe during the public health emergency exceeded the response and funding capabilities of state and local governments. NLIHC and the NLIHC-led Disaster Housing Recovery Coalition [urged](#) FEMA to fully cover the costs to move individuals experiencing homelessness and living in congregate settings or encampments to safer living spaces in hotels and motels. In a major win for individuals who are homeless, advocates, and state and local officials, President Biden [directed](#) FEMA to cover 100% of these costs.

For additional information on steps FEMA could have taken to address the urgent housing needs of people experiencing homelessness during the pandemic, see the NLIHC-led Disaster Housing Recovery Coalition’s (DHRC) [memorandum](#) to President Biden’s FEMA transition team.

## FORECAST FOR 2023

While the national emergency declaration activated FEMA’s PA program and created opportunities for collaboration and funding at all levels of government, ensuring that these resources reached individuals with the greatest needs required concerted effort and advocacy at the local, state, and national levels. Utilizing FEMA funds to address the urgent health and housing needs of people experiencing homelessness and others living in congregate settings during the pandemic represents an unprecedented use of federal funds.

Advocates should make note of the best practices and lessons learned from the COVID-19



pandemic to apply to the later stages of this pandemic and future disasters. Such best practices include, among others, collaborating with public health officials to ensure the broadest eligibility for FEMA resources and coordinating with emergency managers and elected officials to ensure that the needs of people experiencing homelessness are included in the scope of their disaster planning. For more information, see NLIHC's [guidance](#) on working with FEMA to fund non-congregate shelter and our [brief report](#) on challenges, best practices, and policy recommendations to improve FEMA programs to house people experiencing homelessness in non-congregate shelters. See NLIHC's [memorandum](#) to learn more about the FEMA policy changes enacted by the Biden Administration and key recommendations for advocates seeking to ensure their states and localities take advantage of this federal funding opportunity.

In past disasters, FEMA has often interpreted current law to deny assistance to people who were experiencing homelessness prior to a disaster. During the COVID-19 pandemic, however, FEMA interpreted the law much more broadly, determining that people who were homeless prior to the disaster are eligible for non-congregate sheltering. This demonstrates that FEMA can interpret the law much more broadly to serve people experiencing homelessness during other major disasters. In future disasters, advocates should urge FEMA to use the same creativity and broad eligibility utilized during this pandemic to ensure that people experiencing homelessness can access needed resources.

## FOR MORE INFORMATION

FEMA COVID-19 Public Assistance Guidance Documents: <https://bit.ly/39S5l85>.

FEMA Public Assistance Program and Policy Guide: <https://bit.ly/3nGHdMh>.

NLIHC Toolkit, "Working with FEMA to Address COVID-19 Housing and Homelessness Needs:" <https://bit.ly/3m1PcjT>.

NLIHC Guidance, "Working with FEMA to Fund

Non-Congregate Shelter During COVID-19:" <https://bit.ly/2UZmiVu>.

NLIHC Brief Report, "Housing is Healthcare: Challenges, Best Practices, and Policy Recommendations to Improve FEMA Programs to House People Experiencing Homelessness in Non-Congregate Shelters During the Pandemic:" <https://bit.ly/2UZ97E8>.

NLIHC Memorandum, "FEMA Non-Congregate Sheltering During the COVID-19 Pandemic: Policy Changes and New Opportunity to Address the Needs of People Experiencing Homelessness:" <https://bit.ly/3kU4WH5>.

NLIHC's DHRC Pandemic and Disaster Recovery Recommendations to President Biden: <https://bit.ly/37aJlUh>.

NLIHC, *Advocates Guide, Disaster Housing Programs*, Chapter 6.



# COVID-19 Relief Legislation

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By Alayna Calabro, Senior Policy Analyst, NLIHC

Congress enacted three major bills to provide essential resources and protections to address the health and housing needs of America's lowest-income renters and people experiencing homelessness during the COVID-19 pandemic: the "Coronavirus Aid, Relief, and Economic Security (CARES) Act" enacted in March 2020, additional relief enacted through the "Consolidated Appropriations Act" in December 2020, and the "American Rescue Plan" enacted in March 2021. The legislation provides urgently needed COVID-19 relief resources to help prevent millions of low-income people from losing their homes during the pandemic and provide cities and states with the resources they need to help people experiencing homelessness be safely housed during and after the pandemic.

## "CARES ACT"

Overall, the "CARES Act" provided more than \$12 billion in funding for HUD programs, including: \$4 billion for Emergency Solutions Grants-CARES (ESG-CV) for homelessness assistance, \$5 billion in Community Development Block Grants-CARES (CDBG-CV), \$1.25 billion for the Housing Choice Voucher program, \$1 billion for project-based rental assistance, \$685 million for public housing, \$300 million for tribal nations, \$65 million for Housing for Persons with AIDS, \$50 million for Section 202 Housing for the Elderly, and \$15 million for Section 811 Housing for Persons with Disabilities.

ESG-CV funds were provided to help prevent and respond to outbreaks among sheltered and unsheltered people experiencing homelessness. The funds could be used for eviction prevention assistance, including rapid rehousing, housing counseling, and rental deposit assistance to help mitigate the adverse impacts of the pandemic.

Of the \$5 billion provided for CDBG-CV, \$2 billion was allocated to states and units of local

governments that received an allocation under the FY20 formula. Another \$1 billion went directly to states and insular areas based on public health needs, the risk of transmission, the number of coronavirus cases, and economic and housing market disruptions. The remaining \$2 billion were allocated to states and units of local government based on the prevalence and risk of COVID-19 and related economic and housing disruptions resulting from coronavirus. Some jurisdictions used CDBG-CV funds to provide emergency rental assistance.

Congress provided in the legislation a \$150 billion Coronavirus Relief Fund (CRF) for state, tribal, and local governments to help broadly cover any "necessary expenditures incurred due to the public health emergency" created by COVID-19. Many cities and states used these funds to provide emergency rental assistance.

In addition to resources, the bill instituted a temporary moratorium on evictions for residents of federally subsidized apartments, including those supported by HUD or the U.S. Departments of Agriculture (USDA) or Treasury.

## "CONSOLIDATED APPROPRIATIONS ACT OF 2021"

Congressional leaders reached a deal on an emergency COVID-19 relief bill in December 2020, the "Consolidated Appropriations Act of 2021," that included \$25 billion in emergency rental assistance and an extension of the federal eviction moratorium issued by the Centers for Disease Control and Prevention (CDC) through January 31. President Biden further extended the federal eviction moratorium three additional times through March, June, and July.

The "Consolidated Appropriations Act" established a \$25 billion emergency rental assistance (ERA) program administered by the U.S. Department of the Treasury. At least 90% of the funds must be used to provide financial assistance, including back and forward rent and

utility payments, and other housing expenses. Assistance can be provided for up to 15 months. Funds must be used for households with incomes below 80% of area median income (AMI), and states and localities must prioritize households below 50% of AMI or those who are unemployed and have been unemployed for 90-days.

The bill also extended the deadline from December 30, 2020 to December 31, 2021 for funds provided by Congress in the “CARES Act” through the Coronavirus Relief Fund (CRF).

## “AMERICAN RESCUE PLAN ACT”

Congress enacted and President Biden signed into law the “American Rescue Plan Act” (ARP) in March 2021. The legislation includes nearly \$50 billion in essential housing and homelessness assistance, including over \$27 billion for rental assistance and \$5 billion in new funding for states and cities to provide housing stability for tens of thousands of people experiencing homelessness.

The relief package includes:

- \$27.4 billion for rental housing assistance, including \$21.55 billion for emergency rental assistance (ERA), \$750 million for tribal housing needs, \$100 million for rural housing, and \$5 billion in emergency housing vouchers.
- \$5 billion to assist people experiencing homelessness with immediate and longer-term assistance through HUD’s HOME Investment Partnerships Program (HOME-ARP).
- \$9.96 billion for homeowner assistance.
- \$120 million for housing counseling and fair housing.
- \$5 billion in utility and water assistance.
- \$1,400 individual stimulus checks.
- \$350 billion in Coronavirus State and Local Fiscal Recovery Funds, which can be used for affordable housing.

- Other critical resources for states, communities, and people.

## LONG-TERM SOLUTIONS

The COVID-19 pandemic and its economic fallout underscore the need for a stronger housing safety net in the U.S. To address a housing crisis that pre-dated the pandemic, was exacerbated by its disruptions, and will continue to persist after COVID-19 resources are depleted, Congress must increase investments in long-term solutions to the underlying shortage of affordable, accessible homes and improve renter protections for the lowest-income people. NLIHC launched the HoUSed campaign in March 2021 to advance anti-racist policies and achieve the large-scale, sustained investments and reforms necessary to ensure renters with the lowest incomes have an affordable and accessible place to call home. The HoUSed campaign advocates for four solutions to America’s housing crisis:

1. Bridge the gap between incomes and housing costs by expanding rental assistance to every eligible household.
2. Expand and preserve the supply of rental homes affordable and accessible to people with the lowest incomes.
3. Provide emergency rental assistance to households in crisis by creating a national housing stabilization fund.
4. Strengthen and enforce renter protections.

For more information about long-term solutions to the housing crisis, see *HoUSed Campaign* in Chapter 2 of this *Advocates’ Guide*.

## FOR MORE INFORMATION

The “Coronavirus Aid, Relief, and Economic Security (CARES) Act” (Pub. L. No. 116-136), <https://bit.ly/36HqwrX>.

NLIHC’s Analysis of the “CARES Act,” <https://bit.ly/2JODPxe>.

The “Consolidated Appropriations Act of 2021” (Pub. L. No. 116-260), <https://www.congress.gov/bill/116th-congress/house-bill/133>.

NLIHC's Fact Sheet on the December 2020  
COVID-19 Relief Package, <https://bit.ly/30BCn6H>.

The "American Rescue Plan Act of 2021" (Pub. L.  
No: 117-2), <https://bit.ly/30BD8wz>.

NLIHC's Fact Sheet on the "American Rescue Plan  
Act," <https://bit.ly/2PMf08b>.

NLIHC's HoUSed Campaign, <https://nlihc.org/housed>.

# Homeless Assistance, Coronavirus (Homeless Assistance-CV)

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By Steve Berg, National Alliance to End Homelessness

**Administering Agency:** HUD's Office of Community Planning and Development (CPD)

**Population Targeted:** Households that are homeless or at immediate risk of homelessness

**Funding:** \$4 billion CARES Act, \$5 billion in the American Rescue Plan Act of 2021

HUD's regular Homeless Assistance programs provide more than \$3 billion annually to fund state and local government and nonprofit agencies to do outreach to people who are homeless, keep them safe, and help them move into housing. Because of the danger posed by COVID-19 to people who are homeless, Congress has provided additional emergency funding for this purpose.

## THE "CARES ACT" AND THE "AMERICAN RESCUE PLAN ACT"

The "CARES Act" provided \$4 billion for homeless assistance through the Emergency Solutions Grants – CV program. The "American Rescue Plan Act" added an additional \$5 billion through HUD's HOME program, largely for purchasing and renovating buildings that can become housing for homeless people. This funding goes to state and local government, which can subgrant to other government agencies or to nonprofit organizations. It can pay for capital and operating costs of emergency shelters, and services (including outreach) to people who are homeless, as well as temporary rental assistance to move people into permanent housing. It can also pay for homelessness prevention, for people in immediate danger of homelessness.

All the money has been allocated, and nearly all the government grantees have funding agreements in place with HUD including a plan for using the funding. Substantial amounts of the funding, however, have not yet been spent.

A challenge for HUD and for communities is to ensure that people are getting the help they need if they are homeless. Many communities have used ESG-CV to rent empty hotel rooms in order to avoid overcrowded congregate shelters or street encampments and are using ARP HOME money to purchase and convert them into permanent housing.

Some communities have used ESG-CV funding for eviction prevention. The much larger fund for Emergency Rental Assistance is better suited to that, and many leaders including the Alliance recommend that communities use the ESG-CV funding for people who are already homeless.

## FORECAST FOR 2023

Communities will continue to have this funding available, but HUD has the authority to recapture and redistribute ESG-CV funds if a community is making no progress. HOME Homelessness funds must be obligated by 2025 and expended by 2030.

## FOR MORE INFORMATION

NLIHC, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

NAEH, [www.endhomelessness.org](http://www.endhomelessness.org).

Summary of relevant provisions in House Build Back Better legislation: <https://endhomelessness.org/legislation/summary/>.

The Framework for an Equitable COVID-19 Homeless Response, <https://housingequityframework.org/>, including help for communities on using "CARES Act" funding.

# Treasury Emergency Rental Assistance Program

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By Alayna Calabro, Senior Policy Analyst, and Sophie Siebach-Glover, Research Analyst, NLIHC

In response to the COVID-19 pandemic, Congress established an [Emergency Rental Assistance \(ERA\) program](#) administered by the U.S. Department of the Treasury to distribute critically needed emergency rent and utility assistance to millions of households at risk of losing their homes during of the pandemic. Congress appropriated an historic \$46.5 billion for the Treasury ERA program, including \$25 billion through the “[Consolidated Appropriations Act of 2021](#)” (ERA1) and \$21.6 billion through the “[American Rescue Plan Act of 2021](#)” (ERA2). As the first tranche of ERA funds comes to an end, grantees have disbursed of \$31 billion to renter households in need. However, ERA has highlighted the extreme need among low-income renters and the importance of creating a sustained emergency rental assistance program for households that face a financial shock putting them at-risk of housing instability.-

## FEDERAL ENACTMENT AND IMPLEMENTATION OF EMERGENCY RENTAL ASSISTANCE

In April 2020, after passage of the “CARES Act,” NLIHC launched and led a national campaign for “Rent Relief Now.” The campaign, comprised of over 2,300 organizations from across the country, called for a national moratorium on evictions for nonpayment of rent, and sufficient emergency rental assistance funds to assist low-income tenants and small landlords.

By the end of 2020, renters had accrued an estimated [\\$50 billion](#) in rent and utility arrears. In December 2020, Congress passed an initial \$25 billion (ERA1) in the “Consolidated Appropriations Act of 2021.” The ability of state and localities to distribute critical ERA funds was hindered early on by [harmful guidance](#)

released by the Trump Administration on its last day in office, January 19, 2021. The Trump Administration’s FAQ created unnecessary barriers by requiring applicants to document hardship beyond self-attestation; requiring grantees to wait 21 days after conducting outreach to the landlord or utility provider before providing assistance directly to the renter; and suggesting that 10% of funds were to be used for both housing stability services and administrative fees. These restrictions increased application times, discouraged eligible households from seeking assistance, and prevented states and localities from spending resources in a timely, equitable manner.

After President Biden was sworn into office on January 20, 2021, NLIHC urged the new Administration to rescind the Trump-era guidance and issue new guidance to help state and local grantees distribute ERA to the millions of households at risk of losing their homes. Treasury rescinded the Trump Administration’s harmful FAQ and released a new [FAQ in February 2021](#) that directly addressed the [significant flaws](#) in the previous Administration’s guidance. The revised guidance clarified that renters may self-attest to meeting most eligibility criteria, including COVID-related hardships, income, housing stability, and the amount of back rent owed; shortened the timeframe from 21 days to as little as 10 days before ERA could be provided directly to tenants when landlords refuse to participate in the program or are unresponsive; and clarified that home Internet costs and legal assistance for renters facing eviction are eligible uses of ERA.

Congress appropriated an additional \$21.6 billion for ERA in March 2021 through the American Rescue Plan, establishing ERA2. Guidance for ERA2 addressed several of the ongoing challenges of ERA1. Treasury’s revised guidance required program administrators distributing ERA2 to provide assistance directly



to renters if landlords refuse to participate or are unresponsive and allowed ERA2 programs to offer direct-to-tenant assistance first and immediately, rather than requiring programs to conduct outreach to landlords beforehand, as was the case for ERA1. The FAQ also expanded eligibility criteria to include renters who experienced a financial hardship *during* COVID-19, rather than *as a result of* COVID-19. The updated FAQ also encouraged grantees to avoid establishing burdensome documentation requirements that would reduce participation, and allowed programs to verify eligibility based on readily available information, such as the average income of the neighborhood in which renters live.

The improved guidance expanded renter protections by prohibiting landlords from evicting tenants for nonpayment while ERA payments are being made on the tenant's behalf; prohibited ERA2 programs from denying aid to eligible households solely because they live in federally assisted housing, noting that failure to provide ERA may violate civil rights laws; and increased access for people experiencing homelessness by reinforcing that ERA can be used for moving expenses, security deposits, future rents and utilities, and the costs of transitional hotel or motel stays.

Treasury has continued to make improvements and revisions to their guidance throughout 2021, issuing revised FAQs on August 25 to support state and local governments in expediting the distribution of ERA. The revised guidance provides even more explicit permission for ERA grantees to rely on self-attestations without further documentation to demonstrate every aspect of a household's eligibility for ERA, including financial hardship, risk of homelessness or housing instability, and income. Treasury issued revised guidance in July 2022 to provide further information on documentation and eligibility requirements for housing stability services, the applicability of source-of-income laws, and the permissibility of job and employment requirements, among other provisions.

The statute establishing the ERA2 program provides that a grantee may use its ERA2 funds that are unobligated as of October 1, 2022, for "other affordable rental housing and eviction prevention purposes, as defined by the Secretary, serving very low-income families." In order to use funds for these purposes, a grantee must have obligated at least 75% of the total ERA2 funds allocated to it for rental and utility assistance, housing stability services, and administrative costs. Treasury's guidance defines "eligible affordable rental housing purposes" as expenses for the construction, rehabilitation, or preservation of affordable housing projects and the operation of affordable housing projects that were constructed, rehabilitated, or preserved using ERA2 funds. Affordable rental housing projects must serve very low-income (VLI) families earning at or below 50% of area median income (AMI) and must remain affordable for a minimum of 20 years. Treasury defines "eviction prevention purposes" in the same manner as housing stability services. Services provided with funds made available for eviction prevention purposes must serve very low-income families.

## PROGRAM PROGRESS

### Spending

Treasury's improvements to ERA guidance resulted in real-time changes and improvements to ERA programs. After a slow start to disbursing funds, many programs were able to accelerate their spending after the first several months of implementation. Through the end of June 2022, nearly \$21 billion of ERA1 and \$11 billion of ERA2 was spent on financial assistance to households, housing stability services, and administrative expenses. This is nearly 84% of the \$25 billion available under ERA1 and 51% of the \$21.5 billion available under ERA2. The ERA program has served over 5.3 million households between January 2021 and June 2022.

Nationally, ERA1 spending rapidly increased each month between April and September 2021, with significant increases occurring between July 2021 and September 2021. Between October 2021 and June 2022, ERA1 spending

declined and then plateaued as more programs transitioned to spending their ERA2 funds. ERA2 funds were made available in April 2021, and after a slow start, fund disbursement rapidly increased between October 2021 and November 2021. Over \$1 billion of ERA2 was spent each month between November 2021 and April 2022. In May and June 2022, spending tapered slightly and fell just below \$1 billion.

Spending data through June 2022 reveals continued variability in spending rates across states. After aggregating the spending of all grantees within each state, six states and the District of Columbia had disbursed over 80% of total ERA funds allocated on assistance to households by June 2022. Conversely, seven states had spent less than 30% of their total ERA allocation.

### **Reallocation of Funds**

In late 2021, Treasury began the process of reallocating ERA1 funds from slow-spending grantees to fast-spending grantees, as required by statute. To avoid having funds reallocated, grantees were required to meet a 30% expenditure ratio by September 30, 2021. Treasury calculated the expenditure ratio by dividing the amount grantees had distributed on assistance to households by 90% of the grantee's allocation, considering any funds reallocated. Any grantee which did not meet this threshold was considered to have excess funds subject to reallocation. Grantees falling below the 30% threshold were also required to reach a 40% expenditure ratio based on expenditures through November 2021.

After March 31, 2022, Treasury reallocated a portion of unobligated ERA1 funds from grantees, leaving grantees with the amount of ERA1 funds they had spent in their strongest quarter. After June 30, 2022, Treasury determined if additional recapture of unobligated funds were necessary to ensure ERA1 funds were distributed by the statutory deadline.

Like ERA1, Treasury was statutorily required to reallocate ERA2 funds. Under ERA2, grantees were again required to meet an increasing

expenditure benchmark to avoid having funds reallocated. The expenditure ratio for ERA2 was based on funds disbursed for financial assistance and housing stability services. Treasury reallocated funds quarterly through 2022 based on an expenditure ratio that increased by 20% each quarter. ERA2 funds, which is disbursed in tranches, could only be reallocated if it had not yet been disbursed to grantees.

Between 2021 and 2022, Treasury reallocated around \$3.6 billion in ERA funds from state, local, territorial, and tribal grantees. In early 2023, Treasury reallocated an additional \$690 million in ERA2 funds bringing the total amount reallocated to just under \$4.4 billion as of January 2023. The vast majority—\$4.3 billion—was reallocated from state, local, and territorial grantees. Nearly 64% of these funds were voluntarily reallocated either to another eligible grantee within the same state or to a national pool if another grantee could not be identified (e.g., there were no other grantees within the state). Due to the large proportion of voluntarily reallocated funds, over 60% of funds remained in the same state. Reallocated funds remaining in the same state likely helped correct the initial allocation formula, which gave a disproportionate amount of funding to state grantees compared to local grantees. However, the large amount of reallocated funds remaining in the same state may have prevented disparities between states from being addressed. Considering what grantees have received so far in both ERA1 and ERA2 reallocations, the grantees that have received the most additional funds are: the State of California (\$539.9million), the State of New York (\$397.6million), the State of New Jersey (\$234.2million), the State of Texas (\$204.8million), and Indianapolis, Indiana (\$98.1 million).

Grantees were statutorily required to obligate their initial ERA1 allocation by September 30, 2022. Grantees have until 2025 to obligate their initial ERA2 allocation. Grantees had until the end of 2022 to distribute any reallocated ERA1 funds.

## Equitable Distribution

Spending is just one measure of performance. Program administrators were tasked with the dual responsibility of getting out the funds quickly and to those who needed it the most. Initial research conducted by the Office of Evaluation Sciences suggests that from January 2021 to June 2022 ERA programs served a high share of renters with extremely low incomes—defined as incomes less than or equal to 30% of the area median income—as well as a high share of Black renters. By using data from the American Community Survey, Household Pulse Survey, and the Current Population Survey, researchers were able to create a demographic profile of renters that were likely eligible for ERA. Only 36% of eligible renters in the Office of Evaluation Sciences’ profile had extremely low incomes, while 64% of renters served had extremely low incomes. Additionally, Black renters made up only 23% of profiled renters eligible for ERA but made up 46% of all ERA recipients. However, the ERA program may have underserved Asian renter households and, in some states, Latino renter households. Additional research should explore challenges administrators faced in reaching these households.

## PROGRAM IMPLEMENTATION FEATURES

Since the beginning of ERA, NLIHC has closely tracked how ERA programs are being implemented nationwide. As of November 2022, NLIHC identified 514 Treasury ERA programs set up by states, localities, territories, and tribal governments. In April 2021, only 27% of ERA programs explicitly allowed for self-attestation—instead of asking for source documentation—for some eligibility criteria. By November 2022, nearly 62% of programs explicitly allowed for at least one form of self-attestation. The most common form of self-attestation used was for COVID hardships, with 51% of programs allowing applicants to self-attest to that eligibility criteria. Similarly, the share of programs explicitly allowing payments to be

made directly to tenants increased from 15% in April 2021 to 35% by November 2022.

In addition to self-attestation, programs utilized other income verification flexibilities. Over one in four programs used categorical eligibility to verify an applicant’s income eligibility. Categorical eligibility allowed programs to rely on an eligibility determination letter from any local, state, or federal government assistance program (e.g., SNAP, TANF, WIC, Medicaid, Housing Choice Voucher) to verify income eligibility. Nearly 6% of programs utilized fact-specific proxy to verify an applicant’s income eligibility. Fact-specific proxy allowed grantees to use a reasonable proxy, such as an average income in a neighborhood, in conjunction with self-attestation, to determine household incomes.

Treasury also allowed ERA programs to use funds for “other housing expenses” such as relocation assistance and hotel or motel stays. Over 1 in 2 programs used funds for at least one allowable activity related to other housing expenses with the most programs covering internet costs (28% of programs), relocation expenses (27% of programs) and late fees (22% of programs).

An increasing number of programs are no longer accepting new applications. As of November 10, 2022, nearly 37% of programs paused accepting new applications. Most programs cited limited remaining funds as their reason for no longer accepting new applications. Some of these programs may re-open if they receive additional funds through reallocation, although programs may opt to use those funds to assist existing applicants. Another 14% of programs have closed, leaving approximately half of ERA programs still accepting applicants and disbursing funds.

## MOVING FORWARD

Over the last two years, more than 500 state and local jurisdictions have established Treasury ERA programs using federal dollars, many of them starting from scratch. At the same time, NLIHC’s partners successfully advocated for the

passage of more than 150 new federal, state, and local tenant protections since January 2021. The unprecedented investment in emergency rental assistance, coupled with new local, state, and federal tenant protections, prevented at least 1.36 million formal evictions in 2021 alone. Given the success of ERA and renter protections in preventing housing instability, efforts should be made to preserve the newly created ERA infrastructure and new federal funding should be made available to continue this critical component of the housing safety net.

States and localities must act quickly to protect the progress that has been made, address the possible loss of ERA, and invest in long-term housing solutions. Most communities are grappling with how to sustain ERA programming, infrastructure, and partnerships without federal ERA funding. More action is needed to preserve the gains made in creating an infrastructure to provide emergency assistance and prevent evictions. Congress should build on the successes and lessons learned from Treasury's ERA program to establish and fund a permanent emergency rental assistance program to help stabilize households experiencing economic shocks before they face instability and homelessness.

Before the pandemic, NLIHC's multisector Opportunity Starts at Home (OSAH) campaign worked to build bipartisan support for and introduce legislation to establish a pilot emergency rental assistance program. OSAH worked closely with a bipartisan group of senators – Michael Bennet (D-CO), Rob Portman (R-OH), Sherrod Brown (D-OH), and Todd Young (R-IN) – to craft the Emergency Assistance Fund proposed in the “Eviction Crisis Act” (S.2182), introduced first in 2019 and reintroduced in 2021. The “Eviction Crisis Act” and the “Stable Families Act” (H.R.8327), the House companion bill introduced by Representative Ritchie Torres (D-NY), would establish a new, national Emergency Assistance Fund to help ensure that extremely low-income renters have access to emergency assistance to cover the gap between income and housing costs in the event of a

financial crisis. Since its first introduction in 2019 and after Congress approved \$46 billion in ERA during the pandemic, congressional sponsors have strengthened the legislation by redesigning it as a permanent program rather than a pilot program, and incorporated lessons learned and best practices from the Treasury ERA program.

Despite Congress providing ERA, many renters faced difficulties accessing assistance. Some renters were not aware of the availability of emergency rental assistance, while others had to navigate overly burdensome documentation requirements or try to work around their landlord's refusal to accept emergency assistance funds. Providing funding directly to tenants helped decrease these barriers and sped up the delivery of assistance to the lowest-income households, while modeling a new way of delivering assistance not typically seen in other housing assistance programs. Future iterations of emergency rental assistance, including the Emergency Assistance Fund proposed in the “Eviction Crisis Act” and “Stable Families Act,” should provide such direct-to-tenant assistance to ensure the fast and equitable distribution of funding.

NLIHC released a report, *Emergency Rental Assistance: A Blueprint for a Permanent Program*, in November 2022 that examines the implementation of Treasury's ERA program by state and local organizations to identify best practices and provide a blueprint that could be used to establish a permanent ERA program.

In addition to establishing a permanent ERA program, Congress must ensure long-term affordability for the lowest-income renters through universal vouchers, preserve and increase the supply of housing affordable to renters with the lowest incomes, and enact robust and permanent tenant protections at the state, local, and federal levels.

## FOR MORE INFORMATION

Treasury's ERA Program webpage: <https://bit.ly/3TTTZnH>.

NLIHC ERA Dashboard: <https://bit.ly/3gfgmWy>.

NLIHC ERA Resource Hub: <https://bit.ly/3TFcNXp>.

NLIHC ERA Spending Tracking: <https://bit.ly/3EzJukR>.

NLIHC Report, *Emergency Rental Assistance: A Blueprint for a Permanent Program*: <https://bit.ly/3gibG2w>.



# Emergency Housing Voucher Program

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By Steve Berg, National Alliance to End Homelessness

**Administering Agency:** HUD's Office of Public and Indian Housing (PIH) in consultation with Office of Community Planning and Development (CPD)

**Population Targeted:** Households that are homeless or at risk of homelessness

**Funding:** \$5 billion in the "American Rescue Plan Act of 2021"

HUD's Housing Choice Voucher program has for decades been funded only enough to meet the needs of about one quarter of eligible households, frustrating attempts to reduce homelessness. The "American Rescue Plan Act" provides \$5 billion for additional vouchers for people who are homeless or at risk of homelessness. Communities need to ensure coordination between housing authorities and homelessness systems to ensure an impact on homelessness. These relationships will be important when more vouchers are provided in the future.

## THE EHV PROGRAM AND THE "AMERICAN RESCUE PLAN ACT"

The "American Rescue Plan Act" added an additional \$5 billion for tenant-based rental assistance through HUD's Housing Choice Voucher program. The new resource is called the Emergency Housing Voucher program. Eligible people are homeless or at risk of homelessness, including people trying to escape domestic violence. HUD has required that PHAs receiving these vouchers coordinate with their local Continuums of Care to determine which households should receive the vouchers and mechanisms for ensuring these households have access to additional services.

## FORECAST FOR 2023

If targeted properly, the resources are enough to substantially reduce homelessness for people with severe disabilities and/or among domestic violence survivors in many communities.

## FOR MORE INFORMATION

NLIHC, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

NAEH, [www.endhomelessness.org](http://www.endhomelessness.org).

The Framework for an Equitable COVID-19 Homeless Response, <https://housingequityframework.org/>, including help for communities on using vouchers.

HUD landing page for EHV: <https://www.hud.gov/EHV>.

# Coronavirus State and Local Fiscal Recovery Funds (SLFRF) Program

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By Alayna Calabro, Senior Policy Analyst, NLIHC

**T**he [Coronavirus State and Local Fiscal Recovery Funds \(SLFRF\) Program](#), established through the “American Rescue Plan Act of 2021” and administered by the U.S. Department of the Treasury, provides state, local, territorial, and tribal governments resources to respond to the COVID-19 pandemic and its economic impacts and to build stronger, more equitable foundations for the future. States and localities across the country are successfully using the \$350 billion made available through the program to keep families housed, tackle the growing homelessness crisis, and develop affordable housing to address the root causes of housing instability and homelessness.

## OVERVIEW OF THE SLFRF PROGRAM

The SLFRF program provides flexibility for governments to meet local needs within four distinct eligible use categories: 1) replacing lost public sector revenue; 2) addressing public health and economic impacts of the pandemic; 3) providing premium pay for essential workers; and 4) investing in water, sewer, and broadband infrastructure.

Congress allocated SLFRF to tens of thousands of eligible state, local, territorial, and tribal governments, including [\\$195.3 billion](#) to states and the District of Columbia, [\\$65.1 billion](#) to counties, [\\$45.6 billion](#) to metropolitan cities, [\\$20 billion](#) to tribal governments, [\\$4.5 billion](#) to U.S. territories, and [\\$19.5 billion](#) to non-entitlement units of local government.

Under the SLFRF program, funds must be used for costs incurred on or after March 3, 2021. Funds must be obligated by December 31, 2024, and expended by December 31, 2026.

## ELIGIBLE AFFORDABLE HOUSING ACTIVITIES

Treasury released an [interim final rule](#) governing the implementation of the SLFRF program that allowed funds to be used to develop affordable housing for “populations, households, or geographic areas disproportionately impacted by the pandemic.” To support states and localities in leveraging these funds for affordable housing, NLIHC weighed in on Treasury’s interim final rule through a [public comment](#) submitted in June 2021 and a follow-up [letter](#) sent in September 2021. NLIHC urged Treasury to issue clear guidance on how communities can use SLFRF to meet the housing needs of people with the lowest incomes.

Treasury published in January 2022 a [final rule](#) on the SLFRF program, which addressed many of NLIHC’s concerns and recommendations outlined in our public comment and follow-up letter. The final rule expanded the set of eligible uses for SLFRF and the households and communities eligible for SLFRF programs and services. The final rule also provided further clarity on eligible affordable housing projects.

Treasury and the U.S. Department of Housing and Urban Development partnered to create the [Affordable Housing How-To Guide](#) to support recipients in implementing their funds for affordable housing. The guide provides a summary of relevant SLFRF guidance and information on ways recipients can combine different sources of federal funds.

Treasury’s final rule outlines a non-exhaustive list of eligible households and uses. Treasury’s final rule presumes certain populations and households are “impacted” and “disproportionately impacted” by the pandemic and are therefore eligible for services that respond to the impacts they have experienced. While most affordable housing and homelessness

services outlined in the final rule are available in all impacted communities, states and localities can target additional resources to the lowest-income households considered to be disproportionately impacted by the pandemic.

The final rule recognizes that the pandemic caused broad-based impacts that affected many communities, households, small businesses, and nonprofit organizations. Treasury presumes the following households and communities are “impacted” by the pandemic:

- Low- or moderate-income households and communities (those with incomes below 300% of the Federal Poverty Guidelines; FPG or 65% of the area median income; AMI).
- Households that experienced unemployment or increased food or housing insecurity.
- Households that qualify for the national Housing Trust Fund (HTF) and Home Investment Partnerships Program (HOME).
- Households that qualify for the Children’s Health Insurance Program, Childcare Subsidies through the CCDF Program, or Medicaid.

“Impacted” households and communities are eligible for the following housing-related services through SLFRF:

- Rent, mortgage, and utility assistance.
- Housing stability services, such as housing counseling, legal aid, and eviction diversion programs.
- Services for people experiencing homelessness, including rapid rehousing and non-congregate shelter.
- Development, rehabilitation, and preservation of affordable homes for low-income households.
- Permanent supportive housing.

Treasury’s final rule acknowledges that the pandemic caused disproportionate impacts in certain communities, including in low-income and underserved communities. Treasury presumes the following households and

communities are “disproportionately impacted” by the pandemic:

- Low-income households and communities (those with incomes below 185% of FPG or 40% of AMI).
- Households residing in Qualified Census Tracts.
- Households that qualify for certain federal programs, including Section 8 Vouchers and the Low-Income Home Energy Assistance Program (LIHEAP).
- Households receiving services provided by tribal governments.
- Households residing in the U.S. territories or receiving services from territorial governments.

“Disproportionately impacted” households and communities are eligible for the following additional housing-related services through SLFRF:

- Housing vouchers.
- Relocation assistance.
- Improvements to vacant and abandoned properties to address the negative impacts of the pandemic on disproportionately impacted households or communities, including for the purpose of conversion to affordable housing.

## NLIHC’S TRACKING OF SLFRF HOUSING INVESTMENTS

In March 2022, NLIHC began to systematically track SLFRF investments allocated for housing in the 50 states, the District of Columbia, and Puerto Rico, as well as in 60 localities, including the 10 cities or counties receiving the most Local Fiscal Recovery Fund dollars and the largest city or county in every state receiving funds (to account for geographic diversity). These 112 jurisdictions account for 64% of all SLFRF dollars awarded nationally.

NLIHC tracked data on SLFRF allocated and appropriated for housing based on publicly available information from (1) 2021 Fiscal Recovery Plan Reports, (2) state and local

legislation and executive actions, and (3) news articles. In October 2022, NLIHC updated the SLFRF database for the 50 states, District of Columbia, and Puerto Rico based on 2022 Recovery Plan Performance Reports that recipients from states, territories, and metropolitan cities and counties with a population that exceeds 250,000 residents were required to submit to Treasury in the summer of 2022.

As of April 2022, 54 of the 112 jurisdictions (48%) in our sample had allocated more than \$13.5 billion for housing activities. Based on our updated tracking in October 2022, 53% of the jurisdictions tracked in our sample – including 67% of all states and over 44% of the selected cities and counties – had allocated approximately \$16.1 billion of SLFRF for housing investments.

States and localities have allocated these funds towards various housing activities, with the most funds going towards affordable housing development. As of October 2022, the jurisdictions in our sample had allocated approximately \$6.3 billion for affordable housing acquisition, development, rehabilitation, and preservation. States and localities had allocated approximately \$4.3 billion for short-term assistance to households such as rental and utility assistance, legal aid, and housing stability services. As of October 2022, approximately \$3.6 billion had been allocated for homelessness prevention and services, including for street outreach, rapid rehousing, permanent supportive housing, and other activities to address homelessness. The jurisdictions in our sample also allocated approximately \$1.5 billion for energy efficiency and weatherization, home repairs, lead paint remediation, and other housing-related programs. Finally, states and localities allocated over \$101 million to improve housing administration and internal capacity, strengthen data or technology infrastructure, and ensure systematic data collection and impact evaluation.

NLIHC released a report, *State and Local Fiscal Recovery Funds: Initial Trends in Housing Investments*, in June 2022. The report documents

how states and localities in our sample are using SLFRF to invest in affordable housing and homelessness prevention and services. It highlights project examples under each of the major program categories we identified: housing development, homelessness services, short-term aid to households, and other housing-related uses. Additionally, the report provides recommendations for how advocates and elected officials can leverage the SLFRF program to meet urgent housing needs in their communities.

NLIHC created a [webpage](#) that makes available to the public data from NLIHC’s [SLFRF database](#) and includes an interactive map identifying housing investments. A searchable table details the various SLFRF-funded housing programs, highlights total funding allocated for housing, and describes the target populations served with this historic infusion of federal funds.

NLIHC updated our report and database in October 2022 based on our additional tracking of the 50 states, District of Columbia, and Puerto Rico.

## FOR MORE INFORMATION

Treasury’s SLFRF program webpage: <https://bit.ly/3TsI0x1>.

Treasury & HUD “Affordable Housing How-To Guide:” <https://bit.ly/3hIf8nn>.

NLIHC SLFRF program webpage: <https://bit.ly/3aQgQj4>.

NLIHC SLFRF Dashboard: <https://bit.ly/SLFRF-database>.

NLIHC SLFRF Report: <https://bit.ly/3tpC0eg>.

# End Rental Arrears to Stop Evictions (ERASE)

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By Sarah Gallagher, Senior Project Director, NLIHC

## PROJECT SUMMARY

End Rental Arrears to Stop Evictions (ERASE), a project led and coordinated by NLIHC, was designed to ensure that the \$46.5 billion in emergency rental assistance enacted by Congress reached the lowest-income and most marginalized renters it was intended to help. ERASE sought to eliminate rental indebtedness caused by the pandemic and to prevent evictions by tracking and analyzing emergency rental assistance utilization; documenting and sharing best practices and toolkits; influencing and shaping program design at federal, state, and local levels; developing key partnerships for outreach and education; and assessing the remaining needs to inform advocacy for long-term investments to end housing instability and homelessness in the United States.

The coalition plans to continue to leverage the success of ERASE to advance and sustain permanent solutions that prevent evictions, ensure housing stability, and end homelessness. The second phase of the ERASE project will focus on supporting partners in developing and implementing strategies that result in the creation of permanent state and local emergency rental assistance programs and state and local tenant protections that ensure the lowest-income households most at risk of eviction, and people experiencing homelessness, have access to assistance to avoid eviction and stay stably housed.

## BACKGROUND

Throughout 2020 and early 2021, NLIHC led a national campaign for rent relief now. The successful campaign resulted in Congress providing a historic \$46.5 billion in Emergency Rental Assistance (ERA) to states, localities,

tribes, and territories. The appropriation of ERA, however, did not guarantee that meaningful help would reach the people who needed it the most: history shows that positive legislation for low-income people is not the same thing as truly delivering needed aid. NLIHC had two implementation-concerns related to ERA. First, the U.S. Treasury Department was in charge of administering the program and had little experience and expertise with rental aid; second, the ultimate provision of aid was diffuse - over 700 state and local agencies implemented more than 500 state and local ERA programs, many with their own sets of rules and procedures added on by state legislatures or city councils that sometimes restricted the use of funds to the people most in need. To address these concerns, NLIHC engaged in national, state, and local advocacy, research, communications, tracking and outreach to ensure that ERA funds reached the renters most in need.

According to the latest reporting data from the Department of Treasury, as of June 2022, more than \$31.8 billion in emergency rental assistance had been disbursed through more than 6.3 million payments to landlords and households. Just as COVID 19 disproportionately impacted low-income communities of color, early demographic data show that our collective efforts to ensure emergency rental assistance reaches households most in need has been successful. Two-thirds of households receiving assistance had extremely low incomes, 43% identified as Black and 20% identified as Latino(a). This success is due, in large part, to NLIHC and the ERASE cohort's work in supporting programs to increase use of flexibilities that ensure the most marginalized have access to assistance, and in NLIHC's partnership with the White House and Department of Treasury in improving and implementing needed guidance.

NLIHC's work with state and local partners has



resulted in more than 150 new federal, state, and local tenant protections passed or implemented since 2021, resulting in increased housing stability for millions of renter households. Early research also indicates that the unprecedented investment in rental assistance, coupled with first time local, state, and federal tenant protections, prevented millions of renter households from being evicted. Eviction Lab research finds that government interventions resulted in 1.36 million eviction cases being prevented in 2021. They note: “The federal government intervened in the eviction crisis in a serious and unprecedented way... and data show that that intervention has paid off.”

As the federal ERA dollars wind down, we know that funding will not be sustained at the level provided through ERA moving forward, placing this new housing infrastructure at risk. States and localities must act quickly to sustain the progress that has been made, bridge the gap created by the potential loss of ERA, and invest in long-term housing solutions.

## ERASE CAMPAIGN ACTIVITIES

NLIHC worked both directly as well as through our state and local partners to support – and learn from – the implementation of ERA in states and localities around the country. These efforts were planned, coordinated, and managed by the End Rental Arrears to Stop Evictions (ERASE) project. The ERASE project undertook several advocacy, research, and education efforts over the last two years in order to ensure ERA served the lowest income and most marginalized renters across the country.

The project facilitated bi-weekly State and Local Partner Implementation Calls that brought together program administrators and state and local advocates to discuss the implementation of the three pieces of legislation creating ERA: the “2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act,” the “Consolidated Appropriations Act of 2021,” and the “American Rescue Plan Act of 2021.” NLIHC also held weekly National Calls that featured national speakers, administration staff, Members of

Congress, and members of state and local programs to share the latest information on Treasury guidance and innovations in the field.

The project provided grant funding and technical assistance to 38 state and local partners through an “ERASE Cohort” and facilitated bi-weekly working group meetings during which members could engage in peer-to-peer learning. Through its ERA Program Dashboard, the ERASE project also tracked and shared information about programs and key design and implementation features that enabled them to serve the lowest-income and most marginalized renters in need of housing assistance.

In the past two years, the ERASE project and its partners released more than 21 reports highlighting the state of emergency rental assistance, emergent best practices, and program recommendations. These reports contain frameworks, program examples, and case studies that may be useful in designing or adapting ERA programs in the future. Information from these reports were recently consolidated into “Emergency Rental Assistance: A Blueprint for a Permanent Program,” which provides recommendations for how to model future permanent ERA programs so they meet the needs of the lowest income renters. The recommendations include:

- Establishing and funding a permanent emergency rental assistance program.
- Exploring the use of innovative models like direct-to-tenant payments to support renters.

While a permanent ERA program is one part of a needed housing safety net to end homelessness and alleviate housing insecurity among the lowest income renters, Congress must also:

- Ensure long-term affordability for the lowest-income renters through universal vouchers.
- Preserve and increase the supply of housing affordable to the lowest-income renters.
- Enact robust and permanent tenant protections at the state, local, and federal levels.

## ERASE FRAMEWORK

From the beginning, the ERASE project worked with state partners, local jurisdictions, and ERA program administrators to ensure that local ERA programs were visible, accessible, and preventive. These three goals formed a framework for generating program improvements that would ensure that the lowest-income and most marginalized renters were able to find and access ERA in time to prevent their evictions. Over time, the ERASE project and its partners developed recommendations for each part of the visible-accessible-preventive framework – recommendations that will help future permanent ERA programs successfully meet the housing stability needs of the lowest-income renters:

1. Visible: Emergency rental assistance programs should adopt creative strategies to overcome problems with ERA visibility. These strategies include innovative outreach, marketing, and targeting activities that were utilized by communities during the pandemic to ensure assistance reached BIPOC households and those at the greatest risk of homelessness. Strategies include
  - Engaging trusted community-based organizations (CBOs) for outreach and marketing.
  - Conducting outreach to landlords.
  - Using data to target outreach and engagement.
  - Distributing program information at critical points of intervention and directly to renters.
  - Providing ERA outreach at eviction court.
2. Accessible: It is imperative that households most in need can quickly and easily access emergency rental assistance during an economic crisis. Successful strategies state and local programs can utilize to ensure a streamlined, accessible and low barrier ERA application process include:
  - Ensuring adequate staff capacity, infrastructure, and partnerships to

process applications and distribute funds equitably and efficiently.

- Prioritizing households to advance equity in assistance.
  - Minimizing burdensome documentation barriers.
  - Utilizing direct-to-tenant assistance.
  - Streamlining application processing through the use of bulk payments to landlords and utility companies.
  - Providing housing navigation services to assist with applications.
  - Ensuring language access and provide translation services for non-English speakers.
  - Ensuring access for people with disabilities.
3. Preventive: ERA programs should insure holistic, responsive interventions at all intersection points, including state and local courts, to reduce evictions, housing displacement, and homelessness. Program administrators, community members, and ERASE Cohort members have played crucial roles in establishing and supporting programs that braided financial assistance available under the ERA program with other supportive housing services to prevent evictions. Best practices for future programs include:
    - Using ERA to pay for prospective rent and other housing services.
    - Using ERA to fund housing counseling and housing navigation services.
    - Integrating ERA with landlord-tenant mediation programs.
    - Supporting coordination between courts and ERA programs to prevent evictions.
    - Establishing and enforcing ERA-related tenant protections at the state and local levels.
    - Setting up eviction diversion and prevention programs.
    - Utilizing ERA to prevent and end homelessness

## SUSTAINING ERA PROGRAMS AND CREATING NEW TENANT PROTECTIONS

Over the last two years NLIHC has learned that successful ERA programs 1) ensure access to financial rental assistance, 2) pass and enforce tenant protections such as right to counsel, just cause, and source of income protections, and 3) develop and support the partnerships and infrastructure necessary for efficient and equitable ERA implementation and a holistic approach to long term housing stability for tenants.

Given the success of this multi-pronged approach, 24 cohort members in 2023 will develop and implement strategies that will result in the creation of permanent state and local emergency rental assistance programs and tenant protections that will prevent evictions and promote housing stability. Cohort members will also work with NLIHC and state and local partners to advocate for federal emergency rental assistance legislation and develop the state and local infrastructure to deploy these resources once they are in place. Cohort members will center race equity as well as the participation of people with lived expertise, BIPOC, and other marginalized communities in the development and implementation of their goals, advocacy strategies, and local partnerships.

Grantees working on sustaining and creating permanent emergency rental assistance programs will assess what worked best in supporting low-income tenants and in preventing evictions and homelessness; assess the scale of financial assistance needed for emergency rental assistance moving forward as well as the best mechanisms for getting that assistance to low-income renters in need; leverage federal, state, and local funding to sustain ERA and advocate for states/localities to use ample State and Local Fiscal Recovery Funds (SLFRF) for this purpose' and engage and make the case to federal policymakers on the need for a permanent ERA program.

Cohort members working on advancing tenant protections will enact and enforce state and local tenant protections that prevent evictions and promote long-term housing stability; work with community stakeholders and tenant groups to develop model legislation packages; work with NLIHC to advocate for federal tenant protections and resources to ensure long-term housing stability; and assess the impact of tenant protections on preventing evictions and increasing housing stability.

Cohort members will utilize a collaborative approach and engage cross sector partners to advocate for permanent resources and enact, enforce, and analyze tenant protections., and develop the infrastructure necessary to disburse funding to low-income and marginalized renters.

## FOR MORE INFORMATION

“Emergency Rental Assistance Program Monthly Compliance Report: June 1-30, 2022,” U.S. Department of the Treasury, August 10, 2022, <https://home.treasury.gov/system/files/136/June-2022-ERA-Monthly-Data.xlsx>.

“More than 3.2 Million Households Received ERA Assistance in 2021; Nearly Two-Thirds Had Extremely Low Incomes,” National Low Income Housing Coalition, Feb 28 2022, <https://nlihc.org/resource/more-32-million-households-received-era-assistance-2021-nearly-two-thirds-had-extremely>.

“ERASE State and Local Tenant Protections Database,” National Low Income Housing Coalition, accessed November 30, 2022, <https://nlihc.org/tenant-protections>.

Hepburn, P. et al. “Preliminary Analysis: Eviction Filing Patterns in 2021,” Eviction Lab Updates, Eviction Lab, March 8, 2022, <https://evictionlab.org/us-eviction-filing-patterns-2021/>.

The “Coronavirus Aid, Relief, and Economic Security (CARES) Act” (Pub. L. No. 116-136), <https://www.congress.gov/bill/116th-congress/house-bill/748>.

The “Consolidated Appropriations Act of 2021” (Pub. L. No. 116-260), <https://www.congress.gov/bill/116th-congress/house-bill/133>.

The “American Rescue Plan Act of 2021” (Pub. L. No: 117-2), <https://www.congress.gov/bill/117th-congress/house-bill/1319/text>.

“NLIHC COVID-19 Rental Assistance Database,” National Low Income Housing Coalition, accessed November 28, 2022, <https://bit.ly/RA-database>.

“Emergency Rental Assistance: A Blueprint for a Permanent Program,” National Low Income Housing Coalition, November 2022, <https://nlihc.org/sites/default/files/2022-ERA-Blueprint.pdf>.





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# Chapter 11:

## ABOUT NLIHC

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# Make a Difference: Ways to Engage with and Support the National Low Income Housing Coalition

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By Brooke Schipporeit, Manager of Field Organizing, NLIHC, and Steve Moore Sanchez, Development Coordinator, NLIHC

**N**LIHC provides many opportunities for advocates at the local, state, and national levels to stay informed on affordable housing and homelessness issues, to engage in coalition building and federal affordable housing advocacy, and to support NLIHC's work. Advocates are involved in NLIHC's work at varying degrees depending on their interests and capacity. Read on to learn about how you can engage with and support NLIHC's work.

## STAY INFORMED: EMAIL UPDATES AND PUBLICATIONS

The best way to stay informed about NLIHC and federal housing policy is to [subscribe to NLIHC emails](#). Subscribers receive NLIHC's weekly newsletters *Memo to Members and Partners* and *The Connection*, important federal updates and calls to action, and NLIHC publications and event info. *Memo to Members and Partners* kicks off the week breaking down relevant federal legislation and administrative actions, summarizing the latest research from NLIHC and other institutions, and highlighting its partners' activities at the state and local levels, and *The Connection* provides a recap of key updates from NLIHC at the end of the week. Other urgent updates are sent as needed.

In addition to the *Advocates' Guide*, NLIHC puts out several publications each year, including some of the most well-respected and widely cited research in the housing field and key tools for advocates. *Tenant Talk* is a biannual publication that was created to engage low-income renters in advocacy on housing policy issues that affects their lives. The resident-led Editorial Board of *Tenant Talk* approves the selection of each

issue's theme and offers essential input into the publication, ensuring that the magazine addresses the concerns and reflects the experiences of those most directly affected by affordable housing policies. Themes for recent editions of *Tenant Talk* have included: emergency rental assistance, disability justice, election engagement, racial justice, public housing, gentrification, and the housing obstacles that returning citizens face. Each issue also spotlights renters' perspectives related to that issue's theme.

NLIHC's signature annual research reports are *Out of Reach* and *The Gap*. The *Out of Reach* report documents the intersection of wages and housing costs by calculating the hourly "housing wage" a renter must earn to afford a modest rental home in each community in the United States. *The Gap* calculates housing shortages and cost burdens for low-income renters, documenting the stark disparities between the needs of renter households and the number of units that are affordable and available to them, as well as housing cost burdens, at each income level. Advocates use these reports to educate their policymakers and local media about the impact of the affordable housing crisis in their communities. NLIHC's research team also produces specialized analyses of other topics as needed such as housing preservation, disaster recovery, and emergency rental assistance distribution. Research reports contain extensive local data, and NLIHC provides annually updated Congressional District Profiles with detailed affordability statistics at the district, state, and regional levels.

## ENGAGE: CALLS, WEBINARS, AND WORKING GROUP MEETINGS

NLIHC's national calls, webinars, and working group meetings create space for housing and

homelessness partners across the country to come together, gain insight into the latest happenings on Capitol Hill, learn from each other's experiences, and develop shared solutions. NLIHC's current recurring calls and working groups include:

- **Policy Advisory Committee (NLIHC members only):** NLIHC members are invited to join NLIHC's Policy Advisory Committee, a quarterly virtual listening session where NLIHC members can weigh in on issues related to NLIHC's policy priorities. The voices and perspectives offered by NLIHC members during Policy Advisory Committee meetings will be taken into consideration as NLIHC formulates and works towards achieving its policy priorities. [Join the Policy Advisory Committee meetings quarterly on Wednesdays at 4-5 pm ET.](#)
- **National HoUsed Campaign Call for Universal, Stable, Affordable Homes:** Twice a month, hundreds of advocates across the country join NLIHC's HoUsed campaign call. Focused on long-term solutions to the housing crisis, the HoUsed campaign advances anti-racist policies and large-scale, sustained investments and reforms necessary to ensure that renters with the lowest incomes have an affordable place to call home. The call features affordable housing champions from Congress and the executive branch, in-depth legislative updates and research briefings from NLIHC staff and other organizations, and field updates from NLIHC's state and local partners. [Join the national HoUsed call every other Monday at 2:30-4 pm ET.](#)
- **Homelessness and Housing First webinars:** NLIHC, the National Alliance to End Homelessness, and the Center on Budget and Policy Priorities are hosting a free webinar series monthly in 2023 on proven solutions to ending homelessness. Decades of research prove that Housing First is the most effective approach for ending homelessness, however, some misguided policymakers are responding to America's housing and homelessness crisis by advancing dangerous rhetoric and harmful, dehumanizing measures. During this webinar series, thousands of advocates nationwide will come together each month to learn about emerging threats and how to work together to advance the anti-racist long-term solutions needed. [Join the Homelessness and Housing First webinars monthly on Mondays at 2:30-4 pm ET.](#)
- **Tenant Talk Live:** Geared towards low-income renters and community leaders, Tenant Talk Live provides opportunities for tenants to connect with NLIHC and each other, to share their experiences, and to engage in federal advocacy. Each session of Tenant Talk Live features presentations on a different topic that affects the lives of low-income renters, offers tenant leaders the chance to offer their own perspectives on policy issues, and mobilizes participants to take action. [Join Tenant Talk Live webinars on the first Monday of every month at 6-7pm ET.](#)
- **Disaster Housing Recovery Coalition (DHRC) Working Group:** A group of over 850 local, state, and national organizations working in disaster recovery and housing, the Disaster Housing Recovery Coalition (DHRC) works to ensure that all disaster survivors—especially people with the lowest incomes—receive the assistance they need to fully recover. NLIHC hosts weekly DHRC calls to hear updates from DHRC members on disaster recovery efforts taking place throughout the country, share best practices, and stay up to date on the latest federal changes to the disaster recovery response framework. Working group conversations identify and guide federal policy reform needed to improve FEMA's disaster homelessness and housing recovery efforts. [Join the DHRC working group every Tuesday at 2-3pm ET.](#)
- **Puerto Rico Working Group:** The Puerto Rico working group started meeting when Hurricanes Irma and Maria devastated the island and has continued meeting through the recent earthquakes, pandemic, and additional hurricanes. This working group is facilitated

by the DHRC, but it is led by advocates and organizations working in Puerto Rico. Email Noah Patton at [npatton@nlihc.org](mailto:npatton@nlihc.org) and Sidney Betancourt at [sbetancourt@nlihc.org](mailto:sbetancourt@nlihc.org) to join the Puerto Rico Working Group.

## **ENGAGE AND ADVOCATE: ANNUAL POLICY FORUM AND CAPITOL HILL DAY**

The annual NLIHC Housing Policy Forum and Capitol Hill Day convenes affordable housing advocates, thought leaders, policy experts, researchers, housing providers, low-income renters, and elected officials to explore the latest in affordable housing policy and the housing justice movement. The forum creates space for attendees to build relationships, interact with prominent national figures, and learn more about NLIHC's work. NLIHC's Policy Forum also features the recipients of NLIHC's annual Organizing Awards, which recognize two NLIHC member organizations that achieved significant affordable housing victories in the preceding year. The event concludes with NLIHC's annual Capitol Hill Day, which provides the opportunity for attendees to meet directly with their congressional offices and advocate for federal policies to support the lowest-income renters.

The NLIHC 2023 Housing Policy Forum will be held in Washington, DC, on March 20-23. Email the NLIHC Field Team with questions at: [outreach@nlihc.org](mailto:outreach@nlihc.org).

Advocating for federal affordable housing policies does not stop after Capitol Hill Day. For the latest actions you can take to advance affordable housing solutions, be sure to check out NLIHC's Legislative Action Center at: [www.nlihc.org/take-action](http://www.nlihc.org/take-action)

## **SUPPORT: BECOME A MEMBER OF NLIHC**

A great way to demonstrate your commitment to ensuring that people with the lowest incomes in the United States have quality, affordable, accessible homes in communities of their choice is to become a member of NLIHC. NLIHC's

power to influence policy is rooted in the active engagement of its members. Anyone can be an NLIHC member, and the annual membership dues are suggested amounts meaning you can join at any amount that works for you. NLIHC's broad and diverse membership base includes low-income renters; professionals who work in the housing and homelessness field; direct service and other nonprofit organizations; tenant associations; state, local, and tribal housing advocacy organizations; community development corporations; housing authorities; and everyday individuals who believe in NLIHC's mission and want to support its work.

### **Why NLIHC Members Are Crucial**

NLIHC's more than 1,000 members provide invaluable support to NLIHC's work, both financially and through participation in advocacy and feedback. The membership contributions from each individual and organization, no matter how large or small, are important sources of revenue for NLIHC. Members provide invaluable feedback about the housing issues that low-income renters and people experiencing homelessness face every day in cities, towns, and rural areas across the country. NLIHC members' on-the-ground experiences inform NLIHC's policy priorities, and members are consulted before NLIHC takes a position on certain issues. Most importantly, NLIHC members are advocates—the people NLIHC counts on to mobilize their networks, build relationships with elected officials, speak with local media, and reach out to Members of Congress about the affordable housing needs of low-income people in their communities. NLIHC's geographically wide and sizeable membership base brings true power to its federal advocacy efforts.

### **Membership Benefits**

Many NLIHC members value the opportunity to be identified publicly with the affordable housing movement and to participate in a nationwide network of dedicated advocates. In addition, NLIHC members receive:



- The opportunity to weigh in on issues related to NLIHC’s policy priorities through the members-only Policy Advisory Committee.
- Discounted rates to NLIHC’s annual Housing Policy Forum and Leadership Awards Reception.
- Free or discounted access to NLIHC’s research publications like *Out of Reach: The High Cost of Housing* and *The Gap: A Shortage of Affordable Homes*, educational resources like the *Advocates’ Guide*, informational and capacity-building webinars, and tenant resources like the *Tenant Talk* publication.
- Consultations with NLIHC staff on how to most effectively use NLIHC research data.
- Prioritization from NLIHC staff in engagement and support.

### Become a Member Today

Joining NLIHC is easy. Annual membership rates are flexible and are listed out by membership type. Membership dues are suggested amounts meaning you can join at any amount that is affordable to you. Join at: [www.nlihc.org/membership](http://www.nlihc.org/membership)

Learn more about membership by contacting the NLIHC Field Team at: [outreach@nlihc.org](mailto:outreach@nlihc.org)

## SUPPORT: DONATE TO NLIHC

NLIHC is unique in that it solely focuses on the housing needs of extremely low-income people, including those who are experiencing homelessness. It represents no segment of the housing or affordable housing industry; rather, it advocates for proven housing solutions that support the lowest-income individuals and families, grounded in the findings of our research reports and our members’ input. As a nonprofit organization that accepts no government funding of any kind, it relies on our partners to support us in our work to pursue solutions to housing poverty and homelessness. Contributions to NLIHC directly support our research, education, organizing, policy analysis and advocacy efforts. The financial support NLIHC receives through donations is crucial for achieving its mission.

### What Can You Donate to NLIHC?

A contribution at any level makes a difference. You can support our work by making an end-of-year gift, a general contribution, or a donation in honor of our annual Housing Leadership Awards recipients. NLIHC also accepts donations of stocks and participates in the [Amazon Smile](#) donation program.

Your contributions are critical to helping NLIHC end housing poverty and homelessness in America. Individual donations to NLIHC are tax deductible.

### Your Support Makes a Difference

The generosity of our donors makes it possible for NLIHC staff to produce and distribute our acclaimed weekly e-newsletter *Memo to Members and Partners*, conduct and publish important research like that presented in *Out of Reach* and *The Gap*, and produce valuable publications like *Tenant Talk* and the *Advocates’ Guide*. Your contributions subsidize discounted membership rates and scholarships for low-income renters who otherwise would not be able to attend our annual Policy Forum. Donations support our efforts to make policymakers and the general public aware of our nation’s affordable housing crisis and to enact much-needed solutions; to work with Members of Congress on both sides of the aisle and with each Administration on policies to address homelessness and the shortage of affordable housing; to conduct our annual Housing Policy Forum and Capitol Hill Day; to ensure the success of the national Housing Trust Fund and build support for increased funding to the program; to pursue large-scale, sustained investments and anti-racist policies through the HoUSed campaign; to prevent evictions and ensure that federal aid keeps the lowest-income renters stably housed through the ERASE Project; to coordinate the and the *Our Homes, Our Votes* nonpartisan candidate and voter engagement project; to lead the *Opportunity Starts at Home* multi-sector affordable housing campaign; to work for equitable and comprehensive disaster housing recovery for those most in need; to ensure that fair housing laws are enforced; and

to keep our members informed about the federal budget and appropriations, changing federal regulations, policy developments, and much more. Each contribution makes a meaningful difference. Please donate to NLIHC today at [www.nlihc.org/donate](http://www.nlihc.org/donate).

Contact Steve Moore Sanchez at [smooresanchez@nlihc.org](mailto:smooresanchez@nlihc.org) or Benja Reilly at [breilly@nlihc.org](mailto:breilly@nlihc.org) for donation questions or assistance.

# NLIHC Resources

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In addition to the *Advocates' Guide*, NLIHC offers many other resources for advocates, policymakers, students, and others providing information on the most relevant housing and housing-related programs and issues. Here are ways to get the most out of your relationship with NLIHC.

## FIELD

Your first point of contact at NLIHC is your Housing Advocacy Organizer. Housing Advocacy Organizers are NLIHC members' best direct resource for questions regarding federal policy or NLIHC membership. The organizers also mobilize advocates from NLIHC's field when there is a federal housing issue that needs attention. NLIHC's Housing Advocacy Organizers are assigned specific states. Find the contact information for your state's Housing Advocacy Organizer at [nlihc.org/sites/default/files/NLIHC\\_Field-Team-Map.pdf](https://nlihc.org/sites/default/files/NLIHC_Field-Team-Map.pdf) or e-mail [outreach@nlihc.org](mailto:outreach@nlihc.org).

## TENANT TALK

*Tenant Talk* is NLIHC's periodic newsletter geared toward low-income renters and their allies. *Tenant Talk* provides NLIHC's low-income resident members and others with updates about the policies affecting them, ways to take action and get involved, tips for effective organizing, local tenant victories, and other resources. *Tenant Talk* is distributed through email and mail. To be added to the mailing list and to view past issues of *Tenant Talk*, visit [www.nlihc.org/explore-issues/publications-research/tenant-talk](https://www.nlihc.org/explore-issues/publications-research/tenant-talk).

## OUR HOMES, OUR VOTES

Our Homes, Our Votes is a non-partisan campaign to register, educate, and mobilize more low-income renters in elections. Our Homes, Our Votes provides tools and training to make it simple for affordable housing advocates to be involved in voting. Renters, especially low-income renters, are underrepresented among voters. To ensure low-income housing interests

are a priority for policy makers, it is critical that organizations engage renters, who make up a large and growing electorate. More information can be found at <https://www.ourhomes-ourvotes.org/>

## POLICY

NLIHC's policy team tracks, analyzes, and advocates for NLIHC's policy priorities. The policy team updates fact sheets on NLIHC's policy initiatives and priority legislation on a monthly basis. NLIHC's policy priorities can be found at <https://nlihc.org/explore-issues/policy-priorities>.

NLIHC also convenes a Policy Advisory Committee, comprised of NLIHC members and members of the Board of Directors. The Policy Advisory Committee informs NLIHC's policy agenda. Committee information is available online at <https://nlihc.org/take-action/policy-engagement>.

## RESEARCH

NLIHC's research team publishes research on housing-related topics throughout the year. Access the latest research and reports at <https://nlihc.org/explore-issues/publications-research/research>.

## THE GAP

NLIHC's annual research publication *The Gap* documents the shortage of housing for extremely low-income renter households. For the nation, each state, and the 50 largest metropolitan areas, this yearly report estimates the deficit/surplus of rental homes, cost burdens (households spending more than 30% of their income on housing), and severe cost burdens (households spending more than 50% of their income on housing) for extremely low-income, very low-income and low-income renter households. The report documents the number of additional affordable and available rental homes that are needed for the lowest-income renters. *The Gap* is available on NLIHC's website at <https://reports.nlihc.org/gap>.

## OUT OF REACH

NLIHC's annual research publication, *Out of Reach*, offers a side-by-side comparison of wages and rents for every county, metropolitan area [Metropolitan Statistical Area or HUD Metro Fair Market Rent (FMR) Area], combined state nonmetropolitan area, and state in the United States. Advocates across the country use the data in this report to show the lack of housing affordability in their communities for low and minimum wage workers, and other low-income households. For each jurisdiction, the report calculates the Housing Wage, which is the hourly wage a full-time worker must earn to afford a rental home priced at the area's FMR, based on the generally accepted affordability standard of paying no more than 30% of income for housing costs. The Housing Wage is available for a range of apartment sizes. *Out of Reach* is available on NLIHC's website at [www.nlihc.org/oor](http://www.nlihc.org/oor). The Housing Wage for metropolitan area ZIP codes is also available online.

## STATE HOUSING PROFILES

NLIHC's State Housing Profiles illustrate the housing needs of low-income renter households for each state in the country. The profiles include visual representations of housing affordability issues as well as key facts about housing in each state. The profiles can be found at <https://nlihc.org/housing-needs-by-state> by selecting the state and then clicking on the Resources tab.

### Congressional District Housing Profiles

NLIHC's Congressional District Housing Profiles offer a snapshot of housing needs for each congressional district in the country. Each profile pulls data from a variety of sources and illuminates several dimensions of housing affordability for renter households in each district, the surrounding area, and the state. The profiles can be found at <https://nlihc.org/housing-needs-by-state> by selecting the state and then clicking on the Resources tab.

## Treasury Emergency Rental Assistance (ERA) Programs Database

NLIHC provides up-to-date information on Treasury ERA programs through its Treasury ERA Programs Database at <https://nlihc.org/rental-assistance>. This database only includes programs that are part of the federal Treasury ERA program; a more extensive database of emergency rental assistance programs can be found at <https://bit.ly/3HBqfGM>. NLIHC also tracks the rollout and implementation of Treasury ERA programs. Visit the ERA Dashboard at <https://nlihc.org/era-dashboard> for more information on key program features that enable programs to equitably serve the lowest-income households. The ERA Dashboard also reports on spending progress for the \$46.55 billion available for emergency rental assistance, based on NLIHC's more detailed ERA Spending Tracking at <https://bit.ly/3371FB3>. NLIHC's ERA Resource Hub at <https://nlihc.org/resource-hub> provides examples from the field to help programs implement practices for an equitable distribution of assistance.

## National Housing Preservation Database

NLIHC and the Public and Affordable Housing Research Corporation maintain an online database of nearly all federally assisted multifamily housing in the country. It includes information on properties subsidized by HUD, the USDA, and the Treasury Department. Advocates can use this database to get a clear picture of the subsidized stock of housing in their community and to identify properties that might be at risk of being lost from the affordable housing stock. The National Housing Preservation Database (NHPD) is the only de-duplicated, geo-coded, extractable, national inventory of federally subsidized properties which links all of a property's subsidies to its main address. The database can be found at [www.preservationdatabase.org](http://www.preservationdatabase.org). Users can also access "Preservation Profiles" on the NHPD website, which provide national and state-level snapshots of preservation needs. The Preservation Profiles are available at <https://preservationdatabase.org/reports/preservation-profiles/>.

For more information on the database, visit [www.preservationdatabase.org](http://www.preservationdatabase.org) or email [aaurand@nlihc.org](mailto:aaurand@nlihc.org) or [kmcelwain@housingcenter.com](mailto:kmcelwain@housingcenter.com).

## CONTACT YOUR ELECTED OFFICIALS

To find contact information for your federal elected officials, there are numerous template emails and factsheets that can be found on NLIHC's Legislative Action Center at [www.nlihc.org/take-action](http://www.nlihc.org/take-action). Most pieces of legislation include emails that advocates can modify and send directly through the NLIHC website. If you want to look up the contact information for your Member of Congress, visit <https://www.congress.gov/contact-us>, then enter your address in the search box.

## NLIHC STATE AND TRIBAL PARTNERS

NLIHC maintains close ties with our State and Tribal Partners, housing and homeless advocacy organizations who serve statewide, regional, or tribal areas. To find a list of State and Tribal Partners and for information on becoming a State or Tribal Partner, visit [www.nlihc.org/explore-issues/projects/campaigns/state-partner-project](http://www.nlihc.org/explore-issues/projects/campaigns/state-partner-project) or email [outreach@nlihc.org](mailto:outreach@nlihc.org).

## ANNUAL HOUSING POLICY FORUM

NLIHC hosts a forum every spring in Washington, DC. The forum offers federal housing policy plenary sessions and keynote speakers, as well as a Capitol Hill Day, during which advocates have the opportunity to meet with Members of Congress and their staff. For more information, visit [www.nlihc.org](http://www.nlihc.org).

## NLIHC ON SOCIAL MEDIA

Facebook: Like NLIHC on Facebook and get instant updates on the latest housing news and information at <https://www.facebook.com/NLIHCDC/>.

Twitter: Follow @NLIHC on Twitter for daily updates at <https://twitter.com/NLIHC?lang=en>.

Instagram: Follow @nlihc on Instagram for quick snapshots of information at <https://www.instagram.com/nlihc/?hl=en>.

Blog: NLIHC's blog, *On the Home Front*, features news and analysis from our staff, guest posts from state and national partners, and opinions on the latest developments in housing policy. Join the discussion at [www.hfront.org](http://www.hfront.org).



# NLIHC State and Tribal Partners

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**N**LIHC works closely with state and tribal partners in each state or region of the country. NLIHC offers unique support for these partners, such as regular forums for networking and knowledge-sharing. State partners are housing and homelessness advocacy organizations that serve whole states or regions within a state, engage in state and federal housing advocacy, and have their own networks to mobilize in pursuit of NLIHC's policy priorities. NLIHC's affiliation with tribal partners is a new endeavor to expand NLIHC collaboration on affordable housing advocacy with tribal communities across the country. Tribal partners are nonprofit organizations that serve members of tribes in particular geographic regions, that prioritize increasing affordable housing for the lowest-income renters, and that seek to end homelessness.

Currently, NLIHC has one tribal partner and 67 state partners operating in 45 states and the District of Columbia. Please become a member or an active advocate with the partner organizations where you live, as well as NLIHC, to strengthen state and national advocacy for more affordable housing.

## **Tribal Partner - Northern Plains**

United Native American Housing Association

[www.unaha.org](http://www.unaha.org)

406-676-8449

## **Alabama**

Low Income Housing Coalition of Alabama (c/o Collaborative Solutions)

205-939-0411

[www.lihca.org](http://www.lihca.org)

Alabama Arise

334-832-9060

[www.alarise.org](http://www.alarise.org)

## **Alaska**

Alaska Coalition on Housing and Homelessness

907-523-0660

[www.alaskahousing-homeless.org](http://www.alaskahousing-homeless.org)

## **Arizona**

Arizona Housing Coalition

602-340-9393

[www.azhousingcoalition.org](http://www.azhousingcoalition.org)

## **Arkansas**

Arkansas Coalition of Housing and Neighborhood Growth for Empowerment

501-217-2492

[www.achange.org](http://www.achange.org)

Housing Arkansas

501-410-0113

## **California**

California Coalition for Rural Housing

916-443-4448

[www.calruralhousing.org](http://www.calruralhousing.org)

California Housing Partnership Corporation

415-433-6804

[www.chpc.net](http://www.chpc.net)

Housing California

916-447-0503

[www.housingca.org](http://www.housingca.org)

Non-Profit Housing Association of Northern California

415-989-8160

[www.nonprofithousing.org](http://www.nonprofithousing.org)

Southern California Association of Nonprofit Housing

213-480-1249

[www.scanph.org](http://www.scanph.org)

## **Colorado**

Colorado Coalition for the Homeless  
303-293-2217  
[www.coloradocoalition.org](http://www.coloradocoalition.org)

Housing Colorado  
303-863-0123  
[www.housingcolorado.org](http://www.housingcolorado.org)

## **Connecticut**

Partnerships for Strong Communities  
860-244-0066  
[www.pschoosing.org](http://www.pschoosing.org)

## **Delaware**

Housing Alliance Delaware  
302-654-0126  
[www.housingalliancede.org](http://www.housingalliancede.org)

## **District of Columbia**

Coalition for Nonprofit Housing & Economic  
Development  
202-745-0902  
[www.cnhed.org](http://www.cnhed.org)

## **Florida**

Florida Housing Coalition, Inc.  
850-878-4219  
[www.flhousing.org](http://www.flhousing.org)

## **Florida Supportive Housing Coalition [www.fshc.org](http://www.fshc.org)Georgia**

Georgia Advancing Communities Together, Inc.  
(Georgia ACT)  
404-586-0740  
[www.georgiaact.org](http://www.georgiaact.org)

## **Hawai'i**

Hawai'i Appleseed Center for Law & Economic  
Justice

808-587-7605  
[www.hiappleseed.org](http://www.hiappleseed.org)

## **Illinois**

Housing Action Illinois  
312-939-6074  
[www.housingactionil.org](http://www.housingactionil.org)

## **Indiana**

Prosperity Indiana  
317-222-1221  
[www.prosperityindiana.org](http://www.prosperityindiana.org)

## **Iowa**

Iowa Housing Partnership  
515-333-2537  
<http://www.iowahousingpartnership.org/>

## **Kansas**

Kansas Statewide Homeless Coalition  
785-813-2769  
[www.kshomeless.com](http://www.kshomeless.com)

## **Kentucky**

Homeless and Housing Coalition of Kentucky  
502-223-1834  
[www.hhck.org](http://www.hhck.org)

## **Louisiana**

Housing Louisiana  
504-224-8300  
<http://www.housinglouisiana.org>

## **Maine**

Maine Affordable Housing Coalition  
207-245-3341  
[www.mainehousingcoalition.org](http://www.mainehousingcoalition.org)

## **Maryland**

Maryland Affordable Housing Coalition  
443-758-6270  
[www.mdahc.org](http://www.mdahc.org)  
Community Development Network of Maryland  
<http://www.communitydevelopmentmd.org>  
443-756-7819

## **Massachusetts**

Citizens' Housing and Planning Association  
617-742-0820  
[www.chapa.org](http://www.chapa.org)

## **Michigan**

Community Economic Development Association  
of Michigan  
517-485-3588  
[www.cedamichigan.org](http://www.cedamichigan.org)

Michigan Coalition Against Homelessness  
517-485-6536  
[www.mihomeless.org](http://www.mihomeless.org)

## **Minnesota**

Minnesota Coalition for the Homeless  
651-645-7332  
[www.mnhomelesscoalition.org](http://www.mnhomelesscoalition.org)

Minnesota Housing Partnership  
651-649-1710  
[www.mhponline.org](http://www.mhponline.org)

## **Mississippi**

Mississippi Center for Justice  
601-352-2269  
[www.mscenterforjustice.org](http://www.mscenterforjustice.org)

## **Missouri**

Empower Missouri  
573-416-0760  
[www.empowermissouri.org](http://www.empowermissouri.org)

## **Nebraska**

Nebraska Housing Developers Association  
402-435-0315  
[www.housingdevelopers.org](http://www.housingdevelopers.org)

## **Nevada**

Nevada Housing Coalition  
775-571-3412  
[www.nvhousingcoalition.org](http://www.nvhousingcoalition.org)

## **New Hampshire**

Housing Action NH  
603-828-5916  
[www.housingactionnh.org](http://www.housingactionnh.org)

## **New Jersey**

Housing and Community Development Network  
of New Jersey  
609-393-3752  
[www.hcdnnj.org](http://www.hcdnnj.org)

## **New Mexico**

New Mexico Coalition to End Homelessness  
505-982-9000  
[www.nmceh.org](http://www.nmceh.org)

## **New York**

Coalition for the Homeless  
212-776-2000  
[www.coalitionforthehomeless.org](http://www.coalitionforthehomeless.org)

Neighborhood Preservation Coalition of New York  
State  
518-432-6757  
[www.npcnys.org](http://www.npcnys.org)

New York Housing Conference  
212-697-1640  
[www.thenyh.org](http://www.thenyh.org)

New York State Rural Housing Coalition  
518-458-8696  
[www.ruralhousing.org](http://www.ruralhousing.org)

Supportive Housing Network of New York  
646-619-9640  
[www.shnny.org](http://www.shnny.org)

Tenants & Neighbors  
212-608-4320  
[www.tandn.org](http://www.tandn.org)

## **North Carolina**

North Carolina Coalition to End Homelessness  
919-755-4393  
[www.ncceh.org](http://www.ncceh.org)

North Carolina Housing Coalition  
919-881-0707  
[www.nchousing.org](http://www.nchousing.org)

## **North Dakota**

North Dakota Coalition for Homeless People  
701-428-2481  
[www.jointhemission.org](http://www.jointhemission.org)

## **Ohio**

Coalition on Homelessness and Housing in Ohio  
614-280-1984  
[www.cohhio.org](http://www.cohhio.org)

## **Oklahoma**

Oklahoma Coalition for Affordable Housing  
405-418-6224  
[www.affordablehousingcoalition.org](http://www.affordablehousingcoalition.org)

## **Oregon**

Oregon Housing Alliance c/o Neighborhood Partnerships  
503-226-3001  
[www.oregonhousingalliance.org](http://www.oregonhousingalliance.org)

Housing Oregon  
503-475-6056  
[www.housingoregon.org](http://www.housingoregon.org)

## **Pennsylvania**

Housing Alliance of Pennsylvania  
215-576-7044  
[www.housingalliancepa.org](http://www.housingalliancepa.org)

## **Rhode Island**

Housing Network of Rhode Island  
401-721-5680  
[www.housingnetworkri.org](http://www.housingnetworkri.org)

Rhode Island Coalition to End Homelessness  
401-721-5685  
[www.rihomeless.org](http://www.rihomeless.org)

## **South Carolina**

Affordable Housing Coalition of South Carolina  
803-808-2980  
[www.affordablehousingsc.org](http://www.affordablehousingsc.org)

## **Texas**

Texas Association of Community Development Corporations (TACDC)  
512-916-0508  
[www.tacdc.org](http://www.tacdc.org)

Texas Homeless Network  
512-482-8270  
[www.thn.org](http://www.thn.org)

Texas Housers (Texas Low Income Housing Information Service)  
512-477-8910  
[www.texashousers.net](http://www.texashousers.net)

## **Utah**

Utah Housing Coalition  
801-364-0077  
[www.utahhousing.org](http://www.utahhousing.org)

## **Vermont**

Vermont Affordable Housing Coalition  
802-660-9484  
[www.vtaffordablehousing.org](http://www.vtaffordablehousing.org)

## **Virginia**

Virginia Housing Alliance  
804-840-8185  
[www.vahousingalliance.org](http://www.vahousingalliance.org)

## **Washington**

Washington Low Income Housing Alliance  
206-442-9455  
[www.wliha.org](http://www.wliha.org)

## **West Virginia**

West Virginia Coalition to End Homelessness  
304-842-9522  
[www.wvceh.org](http://www.wvceh.org)

## **Wisconsin**

Wisconsin Partnership for Housing Development, Inc.  
608-258-5560  
[www.wphd.org](http://www.wphd.org)





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# Appendices

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# List of Abbreviated Statutory References

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Section 3, “Housing and Urban Development Act of 1968,” 12 U.S.C. 1701u, economic opportunities for low- and very low-income persons.

Section 8, “United States Housing Act of 1937,” 42 U.S.C. 1437f, low-income rental housing assistance.

Section 9, “United States Housing Act of 1937,” 42 U.S.C. 1437g, funding for public housing.

Section 18, “United States Housing Act of 1937,” 42 U.S.C. 1437p, demolition and disposition of public housing.

Section 34, “United States Housing Act of 1937,” 42 U.S.C. 1437z-6, Resident Opportunity and Self-Sufficiency (ROSS) Service Coordinators Program.

Section 42, Internal Revenue Code of 1986, 26 U.S.C. 42, low-income housing tax credit.

Section 104(d), Title I, “Housing and Community Development Act of 1974,” 42 U.S.C. 5304(d), anti-displacement provisions for Community Development Block Grants (CDBGs) and Home Investment Partnerships.

Section 108, “Housing and Community Development Act of 1974,” 42 U.S.C. 5308, CDBG loan guarantees.

Section 202, “Housing Act of 1959,” 12 U.S.C. 1701q, housing for the elderly.

Section 203, “National Housing Act,” 12 U.S.C. 1709, single-family mortgage insurance.

Section 203k, “National Housing Act,” 12 U.S.C. 1709(k), single-family mortgage insurance for rehabilitation.

Section 207, “National Housing Act,” 12 U.S.C. 1713, multifamily mortgage insurance.

Section 221, “National Housing Act,” 12 U.S.C. 1715, multifamily mortgage insurance.

Section 221(d)(3), “National Housing Act,” 12 U.S.C. 1715(d)(3), below-market interest rate rental housing mortgage insurance.

Section 221(d)(4), “National Housing Act,” 12 U.S.C. 1715(d)(4), mortgage insurance refinancing.

Section 221(g)(4), “National Housing Act,” 12 U.S.C. 1715(g)(4), assignment of mortgages to HUD.

Section 223(a)(7), “National Housing Act,” 12 U.S.C. 1715n(a)(7), insurance for refinancing.

Section 223(d), “National Housing Act,” 12 U.S.C. 1715n(d), insurance for multifamily operating loss loans.

Section 223(f), “National Housing Act,” 12 U.S.C. 1715n(f), mortgage insurance for multifamily refinancing.

Section 231, “National Housing Act,” 12 U.S.C. 1715v, mortgage insurance for elderly and handicapped rental housing.

Section 235, “National Housing Act,” 12 U.S.C. 1715z, home mortgage interest reduction payments.

Section 236, “National Housing Act,” 12 U.S.C. 1715z-1, rental and cooperative housing interest reduction payments.

Section 241, “National Housing Act,” 12 U.S.C. 1715z-6, multifamily supplemental loans.

Section 502, “Housing Act of 1949,” 42 U.S.C. 1472, rural, direct, and guaranteed single-family housing loans.

Section 504, “Housing Act of 1949,” 42 U.S.C. 1474, rural, very low-income home repair loans and grants.

Section 504, “Rehabilitation Act of 1973,” 29 U.S.C. 794, prohibits disability discrimination, requires accessibility standards.

Section 514, “Housing Act of 1949,” 42 U.S.C. 1484, farm labor housing loans.

Section 515, “Housing Act of 1949,” 42 U.S.C. 1485, rural rental and cooperative housing.

Section 516, “Housing Act of 1949,” 42 U.S.C.

1486, farm labor housing grants.

Section 521, “Housing Act of 1949,” 42 U.S.C. 1490a, rural rental assistance.

Section 533, “Housing Act of 1949,” 42 U.S.C. 1490m, rural housing preservation grants.

Section 538, “Housing Act of 1949,” 42 U.S.C. 1490p-2, guaranteed rural rental housing loans.

Section 811, “Cranston-Gonzalez National Affordable Housing Act,” 42 U.S.C. 8013, supportive housing for persons with disabilities.

Section 1338, “Federal Housing Enterprises Financial Safety and Soundness Act of 1992,” 12 U.S.C. 4568, Housing Trust Fund program.

Division M, “Consolidated Appropriations Act of 2021,” P.L. 116-260, Coronavirus supplemental appropriations.

Subtitle B, Title III, “American Rescue Plan Act,” P.L. 117-2, 135 Stat. 4, Housing Provisions.

Subtitle B, Title IV, “McKinney-Vento Homeless Assistance Act,” 42 U.S.C. 11371-11378, Emergency Solutions Grant program.

Subtitle C, Title IV, “McKinney-Vento Homeless Assistance Act,” 42 U.S.C. 11381-11389, Continuum of Care program.

Subtitle D, Title VIII, “Cranston-Gonzalez National Affordable Housing Act,” 42 U.S.C. 12901, AIDS Housing Opportunity Act and Housing Opportunities for Persons With AIDS (HOPWA) program.

Title V, “McKinney-Vento Homeless Assistance Act,” 42 U.S.C. 11411-11412, excess federal properties available to assist the homeless.

Title XII, “Coronavirus Aid, Relief, and Economic Security Act,” P.L. 116-136, 134 Stat. 281, additional housing and homelessness resources to help communities respond to the coronavirus pandemic.

## FOR MORE INFORMATION

HUD’s list of programs frequently identified by statute: [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/fair\\_housing\\_and\\_related\\_law](https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law).

# Select List of Major Housing and Housing-Related Laws

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“Age Discrimination Act of 1975,” P.L. 101-336.

“AIDS Housing Opportunity Act” (Housing Opportunities for Persons with AIDS), title VIII, subtitle D of the “Cranston-Gonzalez National Affordable Housing Act,” P.L. 101-625, 104 Stat. 4079.

“Americans with Disabilities Act of 1990,” P.L. 110-325.

“American Rescue Plan Act,” P.L. 117-2.

“American Recovery and Reinvestment Act of 2009,” P.L. 111-5, 123 Stat. 115.

“Civil Rights Act of 1964,” P.L. 88-352, 78 Stat. 241.

“Coronavirus Aid, Relief, and Economic Security Act,” P.L. 116-136, 134 Stat. 281

“Fair Housing Act,” title VIII, “Civil Rights Act of 1968,” P.L. 90-284, 82 Stat. 81.

“Cranston-Gonzalez National Affordable Housing Act,” P.L. 101-625, 104 Stat. 4079.

“Department of Housing and Urban Development Act,” P.L. 89-117, 79 Stat. 667.

“Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,” P.L. 111-203, 124 Stat. 1376.

“Emergency Low-Income Housing Preservation Act of 1987” (ELIHPA), P.L. 100-242, 101 Stat. 1877.

“Frank Melville Supportive Housing Investment Act of 2010,” P.L. 111-374.

“HOME Investment Partnerships Act,” title II, “Cranston-Gonzalez National Affordable Housing Act,” P.L. 101-625, 104 Stat. 4079.

“Home Mortgage Disclosure Act,” P.L. 94-200, 89 Stat. 1125.

“Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009,” Division B.

“Helping Families Save Their Homes Act of

2009,” P.L. 111-222, 123 Stat. 1633.

“Housing Act of 1949,” P.L. 81-171, 63 Stat. 413.

“Housing Act of 1959,” P.L. 86-372, 73 Stat. 654.

“Housing and Community Development Act of 1974,” P.L. 93-383, 88 Stat. 633.

“Housing and Community Development Act of 1987,” P.L. 100-242, 101 Stat. 1815.

“Housing and Community Development Act of 1992,” P.L. 102-550, 106 Stat. 3672.

“Housing and Economic Recovery Act of 2008,” P.L. 110-289, 122 Stat. 2654.

“Housing and Urban Development Act of 1965,” P.L. 89-117, 79 Stat. 451.

“Housing and Urban Development Act of 1968,” P.L. 90-448, 82 Stat. 476.

“Housing and Urban Development Reform Act of 1989,” P.L. 101-235, 103 Stat. 1987.

“Housing and Urban-Rural Recovery Act of 1983,” P.L. 98-181, 97 Stat. 1153.

“Housing Opportunity Through Modernization Act of 2016,” P.L. 114-201, 130 Stat. 782.

“Lead-Based Paint Poisoning Prevention Act,” P.L. 91-695, 84 Stat. 2078.

“Low Income Housing Preservation and Resident Homeownership Act of 1990,” P.L. 101-625, 104 Stat. 4249.

“Multifamily Assistance and Housing Reform and Affordability Act of 1997,” P.L. 105-65, 111 Stat. 1384.

“Multifamily Housing Property Disposition Reform Act of 1994,” P.L. 103-233, 108 Stat. 342.

“National Housing Act,” P.L. 73-479, 48 Stat. 1246.

National Housing Trust Fund, §1338 to the “Federal Housing Enterprises Financial Safety and Soundness Act of 1992,” P.L. 102-550,



as amended by §1131 of the “Housing and Economic Recovery Act of 2008,” P.L. 110-289, 122 Stat. 2654.

“Protecting Tenants at Foreclosure Act,” Division A, title VII, “Helping Families Save Their Homes Act of 2009,” P.L. 111-22, 123 Stat. 1633.

“Quality Housing and Work Responsibility Act of 1998,” P.L. 105-276, 112 Stat. 2461.

“Rehabilitation Act of 1973,” P.L. 93-112, 87 Stat. 355.

Section 202 “Supportive Housing for the Elderly Act of 2010,” P.L. 111-372, 124 Stat. 4077.

“Stafford Disaster Relief and Emergency Assistance Act,” P.L. 100-707, 102 Stat. 4689.

“Stewart B. McKinney Homeless Assistance Act,” P.L. 100-77, 101 Stat. 482.

Supportive Housing for Persons with Disabilities, Section 811, “Cranston-Gonzalez National Affordable Housing Act,” P.L. 101-625, 104 Stat. 4079.

“Uniform Relocation Act,” P.L. 91-644, 84 Stat. 1895.

“United States Housing Act of 1937,” P.L. 75-412, 50 Stat. 888.

“Violence Against Women Act,” P.L. 109-162, 119 Stat. 2960.

“Violence Against Women Reauthorization Act of 2013,” P.L. 113-4, 127 Stat. 54.

“Violence Against Women Reauthorization Act of 2022,” enacted as part of the “Consolidated Appropriations Act of 2022,” P.L. 117-103 Stat. 840.

## FOR MORE INFORMATION

Key HUD Statutes: [https://www.hud.gov/sites/documents/LEGS\\_CHRON\\_JUNE2014.PDF](https://www.hud.gov/sites/documents/LEGS_CHRON_JUNE2014.PDF).

# Glossary

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**ADVANCE APPROPRIATION.** Budget authority or appropriation that becomes available in one or more fiscal years after the fiscal year for which the appropriation was enacted. For example, an advance appropriation in the “FY19 Appropriations Act” would become available for programs in FY20 or beyond. The amount is not included in the budget totals of the year for which the appropriation act is enacted but rather in those for the fiscal year in which the amount will become available for obligation.

**AFFORDABLE HOUSING.** Housing that costs an owner or renter no more than 30% of household income.

**AMORTIZE.** Decrease an amount gradually or in installments, especially in order to write off an expenditure or liquidate a debt.

**AFFORDABLE HOUSING PROGRAM (AHP).** A program of the Federal Home Loan Bank system, AHP provides subsidized cash advances to member institutions to permit them to make below-market loans for eligible housing activities.

**ANNUAL ADJUSTMENT FACTOR.** The mechanism for adjusting rents in certain types of Section 8-assisted properties, including Section 8 New Construction/Substantial Rehab. HUD publishes annual percentage factors by unit type and region.

**“ANTI-DEFICIENCY ACT.”** A federal law forbidding federal employees from spending money or incurring obligations that have not been provided for in an appropriation.

**APPROPRIATION.** A provision of law providing budget authority that enables an agency to incur obligations and to make payments out of the U.S. Department of the Treasury for specified purposes. Non-entitlement programs are funded through annual appropriations.

**AREA MEDIAN INCOME (AMI).** The midpoint in the income distribution within a specific geographic area. By definition, 50% of households, families, or individuals earn less

than the median income, and 50% earn more. HUD calculates family AMI levels for different communities annually, with adjustments for family size. AMI is used to determine the eligibility of applicants for both federally and locally funded housing programs.

**ASSISTED HOUSING.** Housing where the monthly costs to the tenant are subsidized by federal or other programs.

**AUTHORIZATION.** Legislation that establishes or continues operation of a federal program or agency either indefinitely or for a specific period of time, or that sanctions a particular type of obligation or expenditure within a program.

**BELOW MARKET INTEREST RATE (BMIR).** See Section 221(d)(3) BMIR.

**BLOCK GRANTS.** Grants made by the federal government on a formula basis, usually to a state or local government.

**BORROWING AUTHORITY.** The authority to incur indebtedness for which the federal government is liable, which is granted in advance of the provision of appropriations to repay such debts. Borrowing authority may take the form of authority to borrow from the Treasury or authority to borrow from the public by means of the sale of federal agency obligations. Borrowing authority is not an appropriation since it provides a federal agency only with the authority to incur a debt, and not the authority to make payments from Treasury under the debt. Appropriations are required to liquidate the borrowing authority.

**BROOKE RULE.** Federal housing policy that limits a tenant’s contribution to rent in public housing and under the Section 8 program to 30% of income. This amount is considered to be the maximum that one should have to pay for rent without becoming ‘burdened.’ The rule is based on an amendment sponsored by then Senator Edward Brooke (R-MA) to the public housing program in 1971. The original Brooke amendment limited tenant contributions to 25%.

The limit was increased from 25% to 30% in 1981.

**BUDGET AUTHORITY.** The legal authority to enter into obligations that will result in immediate or future outlays of federal funds. Budget authority is provided in appropriations acts.

**“BUDGET ENFORCEMENT ACT” (BEA).** An expired 1990 act of Congress credited in part with creating a budget surplus by establishing limits on discretionary spending, maximum deficit amounts, pay-as-you-go rules for revenue and direct spending, new credit budgeting procedures, and other changes in budget practices. Congress has debated the re-establishment of pay-as-you-go rules and whether such rules should apply to both spending and taxation or only to spending.

**BUDGET RESOLUTION.** A concurrent resolution passed by both houses of Congress that does not require the signature of the president. The budget resolution sets forth various budget totals and functional allocations and may include reconciliation instructions to specific House or Senate committees.

**COLONIAS.** The rural, mostly unincorporated communities located in California, Arizona, New Mexico, and Texas along the U.S.-Mexico border. *Colonias* are characterized by high poverty rates and substandard living conditions and are defined primarily by what they lack, such as potable drinking water, water and wastewater systems, paved streets, and standard mortgage financing.

**COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO).** A federally defined type of nonprofit housing provider that must receive a minimum of 15% of all federal HOME Investment Partnership Funds.

**COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG).** The annual formula grants administered by HUD that are distributed to states, cities with populations of 50,000 or more and counties with populations of 200,000 or more. CDBG funds are to be used for housing and community development activities, principally benefiting

low- and moderate-income people. The CDBG program is authorized by Title I of the “Housing and Community Development Act of 1974.”

**COMMUNITY DEVELOPMENT CORPORATIONS (CDCs).** Nonprofit, community-based organizations that work to revitalize the neighborhoods in which they are located by building and rehabilitating housing, providing services, developing community facilities, and promoting or undertaking economic development.

**COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION (CDFI).** A specialized financial institution that works in market niches that have not been adequately served by traditional financial institutions. CDFIs provide a wide range of financial products and services, including mortgage financing, commercial loans, financing for community facilities, and financial services needed by low-income households. Some CDFIs also provide technical assistance. To be certified as a CDFI by the CDFI Fund of Treasury, an institution must engage in community development, serve a targeted population, provide financing, have community representatives on its board, and be a non-governmental organization.

**“COMMUNITY REINVESTMENT ACT” (CRA).** The act prohibits lending institutions from discriminating against low- and moderate-income and minority neighborhoods. CRA also imposes an affirmative obligation on banks to serve these communities. Banks must proactively assess community needs, conduct marketing and outreach campaigns in all communities, and consult with community stakeholders in developing financing options for affordable housing and economic development activities. CRA has formal mechanisms for banks and regulators to seriously consider community needs and input. Community members can comment at any time on a bank’s CRA performance in a formal or informal manner. When federal agencies conduct CRA examinations of banks’ lending, investing, and service activities in low- and moderate-income communities, federal agencies are required

to consider the comments of members of the public concerning bank performance. Likewise, federal agencies are required to consider public comments when deciding whether to approve a bank's application to merge or open and relocate branches.

**CONGRESSIONAL BUDGET OFFICE (CBO).** An organization created by Congress that provides staff assistance to Congress on the federal budget.

**CONSOLIDATED PLAN (ConPlan).** The ConPlan merges into one process and one document all the planning and application requirements of four HUD block grants: Community Development Block Grants (CDBG), HOME Investment Partnerships, Emergency Solutions Grants (ESG), and Housing Opportunities for Persons With AIDS (HOPWA) grants.

**CONTINUING RESOLUTION (CR).** A spending bill that provides funds for government operations for a short period of time until Congress and the president agree on an appropriations bill.

**"Coronavirus Aid, Relief, and Economic Security Act (CARES Act)."** A Federal relief bill passed in March 2020 in response to the coronavirus pandemic. The "CARES Act" provided roughly \$2 trillion in assistance to individuals, businesses, state and local governments, healthcare systems, and safety net programs.

**Coronavirus Relief Funds (CRF).** Emergency funds passed in the "CARES Act" providing \$150 billion to state, local, territorial, and tribal governments to address coronavirus-related needs.

**CREDIT UNION.** A nonprofit financial institution typically formed by employees of a company, labor union, or religious group and operated as a cooperative. Credit unions may offer a full range of financial services and pay higher rates on deposits and charge lower rates on loans than commercial banks. Federally chartered credit unions are regulated and insured by the National Credit Union Administration.

**DISCRETIONARY SPENDING.** Budget authority, other than for entitlements, and ensuing

outlays provided in annual appropriations acts. The Budget Resolution sets limits or caps on discretionary budget authority and outlays.

**EARMARKS.** Appropriations that are dedicated for a specific, particular purpose. The funding of the Community Development Fund typically has earmarks as part of the Economic Development Initiative.

**"EMERGENCY LOW-INCOME HOUSING PRESERVATION ACT" (ELIHPA).** The 1987 statute authorizing the original federal program to preserve federally assisted multifamily housing. The program was active from 1987 to 1992.

**ENHANCED VOUCHERS.** The tenant-based Section 8 assistance provided to eligible residents when owners prepay their subsidized mortgages or opt out of project-based Section 8 contracts. Rents are set at market comparable levels, instead of the regular voucher payment standard, as long as the tenant elects to remain in the housing.

**ENTITLEMENT JURISDICTION.** Under the Community Development Block Grant (CDBG), cities with populations of 50,000 or more and counties with populations of 200,000 or more are 'entitled' to receive funding under the program.

**ENTITLEMENTS.** Entitlements are benefits available to people if they meet a certain set of criteria. Entitlement programs, such as Social Security, are not constrained by the appropriations process.

**EXIT TAX.** The taxes paid on the recapture of depreciation and other deductions experienced upon sale of a property. In some affordable housing transactions, sellers may face a significant exit tax even when they do not receive net cash at sale.

**EXPIRING USE RESTRICTIONS.** The low- and moderate-income affordability requirements associated with subsidized mortgages under Section 221(d)3 BMIR and Section 236, which terminate when the mortgage is prepaid.

**EXTREMELY LOW INCOME (ELI).** A household income below 30% of area median income (AMI), as defined by HUD.

FAIR MARKET RENTS (FMR). HUD's estimate of the actual market rent for a modest apartment in the conventional marketplace. FMRs include utility costs (except for telephones). Every year, HUD develops and publishes FMRs for every MSA and apartment type. FMRs are currently established at the 40th percentile rent, the top of the range that renters pay for 40% of the apartments being surveyed, with the exception of some high-cost jurisdictions, where it is set at the 50th percentile.

FANNIE MAE (FEDERAL NATIONAL MORTGAGE ASSOCIATION). A federally chartered government-sponsored enterprise that purchases mortgages from originators to facilitate new mortgage lending. Similar to Freddie Mac.

FARMERS HOME ADMINISTRATION (FmHA). The former name of the Rural Housing Service.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC). The federal agency established in 1933 that guarantees (within limits) funds on deposits in member banks and thrift institution, and that performs other functions such as making loans to or buying assets from member institutions to facilitate mergers or prevent failures.

FEDERAL HOUSING ADMINISTRATION (FHA). A part of HUD that insures lenders against loss on residential mortgages. It was founded in 1934 to execute the provisions of the "National Housing Act" in response to the Great Depression.

FEDERAL HOUSING FINANCE AGENCY (FHFA). Created in 2008 to take over the functions of the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB). OFHEO was the regulator for Freddie Mac and Fannie Mae, and the FHFB regulated the Federal Home Loan Banks.

FEDERAL HOUSING FINANCE BOARD (FHFB). Federal agency created by Congress in 1989 to assume oversight of the Federal Home Loan Bank System from the dismantled Federal Home Loan Bank Board. The FHFB was merged into the Federal Housing Finance Agency (FHFA) in 2008. The FHFA also regulates Freddie Mac and Fannie Mae.

FEDERAL RESERVE BOARD (FRB). The governing board of the Federal Reserve System. Its seven members are appointed by the president, subject to Senate confirmation, and serve 14-year terms. The board establishes Federal Reserve System policies on such key matters as reserve requirements and other bank regulations, sets the discount rates, and tightens or loosens the availability of credit in the economy.

FEDERAL RESERVE SYSTEM. The system established by the "Federal Reserve Act of 1913" to regulate the U.S. monetary and banking systems. The Federal Reserve System ('the Fed') consists of 12 regional Federal Reserve Banks, their 24 branches, and all national and state banks that are part of the system. National banks are stockholders of the Federal Reserve Bank in their region. The Federal Reserve System's main functions are to regulate the national money supply, set reserve requirements for member banks, supervise the printing of currency at the mint, act as clearinghouse for the transfer of funds throughout the banking system, and examine member banks' compliance with Federal Reserve regulations.

FINANCIAL INSTITUTION. An institution that collects funds from the public to place in financial assets such as stocks, bonds, money market instruments, bank deposits, or loans. Depository institutions (banks, savings and loans, saving banks, credit unions) pay interest on deposits and invest the deposit money, mostly in loans. Non-depository institutions (insurance companies, pension plans) collect money by selling insurance policies or receiving employer contributions and pay it out for legitimate claims or for retirement benefits. Increasingly, many institutions are performing both depository and non-depository functions.

FISCAL YEAR (FY). The accounting period for the federal government. The fiscal year for the federal government begins on October 1 and ends the next September 30. It is designated by the calendar year in which it ends; for example, FY16 began on October 1, 2015, and ends on September 30, 2016.



**FLEXIBLE SUBSIDY.** A direct HUD loan or grant for rehabilitation or operating losses, available to eligible owners of certain HUD-subsidized properties. Owners must continue to operate the project as low- and moderate-income housing for the original mortgage term. Not currently active.

**FORECLOSURE.** The process by which a mortgage holder who has not made timely payments of principal and interest on a mortgage loses title to the home. The holder of the mortgage, whether it is a bank, a savings and loan, or an individual, uses the foreclosure process to satisfy the mortgage debt either by obtaining the proceeds from the sale of the property at foreclosure or taking the title to the property and selling it at a later date. Foreclosure processes vary from state to state and can be either judicial or non-judicial.

**FORMULA ALLOCATION.** The method by which certain programs distribute appropriated funds to state and local governments. The parameters for the formula are established by statute and are generally based on demographics (poverty) and housing conditions (overcrowding) in the jurisdiction. CDBG and HOME are formula allocation programs.

**FREDDIE MAC (FEDERAL HOME LOAN MORTGAGE CORPORATION).** A federally chartered government-sponsored enterprise that purchases mortgages from originators to facilitate new mortgage lending. Similar to Fannie Mae.

**“FREEDOM OF INFORMATION ACT” (FOIA).** The law providing for a means of public access to documents from HUD or other federal agencies.

**GOVERNMENT ACCOUNTABILITY OFFICE (GAO).** Formerly known as the General Accounting Office, the GAO is a congressional agency that monitors the programs and expenditures of the federal government.

**GINNIE MAE (GOVERNMENT NATIONAL MORTGAGE ASSOCIATION).** An agency of HUD, Ginnie Mae guarantees payment on mortgage-backed securities, which represent pools of residential mortgages insured or guaranteed by the Federal Housing Administration (FHA), the Veterans Administration, or the Rural Housing

Service (RHS).

**GOVERNMENT SPONSORED ENTERPRISE (GSE).** An enterprise established by the federal government but privately owned and operated. Fannie Mae and Freddie Mac are GSEs, as are the Federal Home Loan Banks.

**GUARANTEED LOAN.** A loan in which a private lender is assured repayment by the federal government of part or all of the principal, interest, or both, in the event of a default by the borrower.

**HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME).** Administered by HUD’s Office of Community Planning and Development, this program provides formula grants to states and localities (see also PARTICIPATING JURISDICTIONS) to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing for rent or homeownership, or to provide direct rental assistance to low-income people. The HOME program is authorized by Title II of the 1990 “Cranston-Gonzalez National Affordable Housing Act.”

**“HOME MORTGAGE DISCLOSURE ACT” (HMDA).** Created in 1975, HMDA requires most financial institutions that make mortgage loans, home improvement loans, or home refinance loans to collect and disclose information about their lending practices.

**“HOMELESS EMERGENCY ASSISTANCE AND RAPID TRANSITION TO HOUSING (HEARTH) Act of 2009.”** This law revises the McKinney-Vento Homeless Assistance Grant programs and provides communities with new resources and better tools to prevent and end homelessness. The legislation increases priority on homeless families with children, significantly increases resources to prevent homelessness, provides incentives for developing permanent supportive housing, and creates new tools to address homelessness in rural areas.

**HOUSING ASSISTANCE PAYMENTS (HAP).** HAP is the payment made according to a HAP contract between HUD and an owner to provide Section 8 rental assistance. The term applies to both the Housing Choice Voucher (HCV) Program and Section 8 Project-Based Rental Assistance

Program. The local voucher program is administered by a public housing agency (PHA), whereas a Section 8 contract administrator makes payments in the Multifamily Housing Programs.

**HOUSING BONDS.** Bonds that are generally issued by states and secured by mortgages on homes or rental properties. Although homeowner housing financed by bonds are typically targeted to families or individuals with incomes below the median for the area or the state, rental housing is targeted to lower income families or individuals.

**HOUSING CHOICE VOUCHERS (HCV).** Also known as Section 8 or Section 8 vouchers, this is a rental assistance program funded by HUD. The program helps some families, primarily extremely low-income (ELI) families, rent private housing. Families pay a percentage of their monthly adjusted income toward monthly rent and utilities (generally not more than 30%); the balance of the rent to the owner is paid with the federal subsidy.

**HOUSING COSTS.** Essentially, they are the costs of occupying housing. Calculated on a monthly basis, housing costs for renters include items such as contract rent, utilities, property insurance, and mobile home park fees. For homeowners, monthly housing costs include monthly payments for all mortgages or installment loans or contracts, as well as real estate taxes, property insurance, utilities, and homeowner association, cooperative, condominium, or manufactured housing park fees. Utilities include electricity, gas, fuels, water, sewage disposal, garbage, and trash collection.

**HOUSING FINANCE AGENCY (HFA).** The state agency responsible for allocating and administering federal Low-Income Housing Tax Credits (LIHTC) as well as other federal and state housing financing sources.

**HOUSING FIRST.** A proven model for addressing homelessness that prioritizes access to permanent, stable housing as a prerequisite for effective psychiatric and substance abuse treatment and for improving quality of life.

**HOUSING STARTS.** An indicator of residential

construction activity, housing starts represent the start of construction of a house or apartment building, which means the digging of the foundation. Other measures of construction activity include housing permits, housing completions, and new home sales.

**HOUSING TRUST FUNDS.** Distinct funds, usually established by state or local governments that receive ongoing public revenues that can only be spent on affordable housing initiatives, including new construction, preservation of existing housing, emergency repairs, homeless shelters, and housing-related services.

**HUD INSPECTOR GENERAL.** The HUD official appointed by the president who is responsible for conducting audits and investigations of HUD's programs and operations.

**INCLUSIONARY ZONING.** A requirement or incentive to reserve a specific percentage of units in new residential developments for moderate income households.

**INDEPENDENT AGENCY.** An agency of the United States government that is created by an act of Congress and is independent of the executive departments. The Securities and Exchange Commission is an example of an independent agency.

**LEVERAGING.** The maximization of the effects of federal assistance for a project by obtaining additional project funding from non-federal sources.

**“LOW-INCOME HOUSING PRESERVATION AND RESIDENT HOMEOWNERSHIP ACT” (LIHPRHA).** The 1990 statute prohibiting the sale of older HUD-assisted properties for market rate use, compensating the owners with financial incentives. The program was active from 1990 to 1996.

**LOW-INCOME HOUSING TAX CREDITS (LIHTC).** Enacted by Congress in 1986 to provide the private market with an incentive to invest in affordable rental housing. Federal housing tax credits are awarded to developers of qualified projects. Developers then sell these credits to investors to raise capital (equity) for their

projects, which reduces the debt that the developer would otherwise have to borrow. Because the debt is lower, a tax credit property can in turn offer lower, more affordable rents. Provided the property maintains compliance with the program requirements, investors receive a dollar-for-dollar credit against their federal tax liability each year throughout a period of 10 years. The amount of the annual credit is based on the amount invested in the affordable housing.

**LOW INCOME.** As applied to most housing programs, household income below 80% of metropolitan area median, as defined by HUD, is classified as low income. See also **EXTREMELY LOW INCOME (ELI)**, **VERY LOW INCOME (VLI)**.

**MARK-TO-MARKET.** HUD program that reduces above-market rents to market levels at certain HUD-insured properties that have project-based Section 8 contracts. Existing debt is restructured so that the property may continue to be financially viable with the reduced Section 8 rents.

**MARK-UP-TO-MARKET.** A federal program to adjust rents on Section 8 assisted housing up to the market rate.

**METROPOLITAN STATISTICAL AREA (MSA).** The basic census unit for defining urban areas and rental markets.

**MORTGAGE INTEREST DEDUCTION.** The federal tax deduction for mortgage interest paid in a taxable year. Interest on a mortgage to acquire, construct, or substantially improve a residence is deductible for indebtedness of up to \$1 million.

**MORTGAGE.** The debt instrument by which the borrower (mortgagor) gives the lender (mortgagee) a lien on the property as security for the repayment of a loan. The borrower has use of the property, and the lien is removed when the obligation is fully paid.

**MOVING TO WORK (MTW).** A demonstration program for public housing agencies (PHAs) that provides them with enormous flexibility from most HUD statutory and regulatory requirements. The flexibilities, regarding key programmatic features such as rent affordability and income

targeting requirements, can impact residents in both the public housing and Housing Choice Voucher (HCV) Programs. Authorized in 1996, the demonstration program continues even though it has not been evaluated on a broad scale.

**“MULTIFAMILY ASSISTED HOUSING REFORM AND AFFORDABILITY ACT” (MAHRA).** The 1997 statute authorizing the Mark-to-Market program and renewals of expiring Section 8 contracts.

**MULTIFAMILY.** A building with five or more residential units.

**NON-ELDERLY DISABLED (NED) VOUCHERS.** Since 1997, Housing Choice Vouchers (HCVs) have been awarded under different special purpose voucher program types to serve non-elderly persons with disabilities (NED). NED HCVs enable non-elderly disabled families to lease affordable private housing of their choice. NED vouchers also assist persons with disabilities who often face difficulties in locating suitable and accessible housing on the private market.

**NEW CONSTRUCTION/SUBSTANTIAL REHAB.** A form of project-based Section 8 assistance used in the original development and financing of some multifamily housing. Projects could be both insured and uninsured (with conventional or state/local bond financing). These contracts were long-term (20-40 years). Active from 1976 to 1985.

**NOTICE OF FUNDING AVAILABILITY (NOFA).** A notice by a federal agency, including HUD, used to inform potential applicants that program funding is available.

**OFFICE OF AFFORDABLE HOUSING PRESERVATION.** Formerly the Office of Multifamily Housing Assistance Restructuring (OMHAR), HUD established this office to oversee the continuation of the Mark-to-Market program and provide assistance in the oversight and preservation of a wide spectrum of affordable housing programs.

**OUTLAYS.** Payments made (usually through the issuance of checks or disbursement of cash) to liquidate obligations. Outlays during a fiscal year (FY) may be for payment of obligations incurred

in the previous year or in the same year.

**PARTICIPATING JURISDICTION (PJ).** A HUD-recognized entity that is an eligible recipient of HOME funding.

**PAY-AS-YOU-GO or PAYGO.** A requirement that Congress offset the costs of tax cuts or increases in entitlement spending with increased revenue or savings elsewhere in the budget.

**PAYMENT STANDARD.** Payment standards are used to calculate the housing assistance payment (HAP) that a public housing agency (PHA) pays to an owner on behalf of a family leasing a unit. Each PHA has latitude in establishing its schedule of payment standard amounts by bedroom size. The range of possible payment standard amounts is based on HUD's published fair market rent (FMR) for the area in which the PHA has jurisdiction. A PHA may set its payment standard amounts from 90% to 110% of the published FMRs and may set them higher or lower with HUD approval.

**PERFORMANCE FUNDING SYSTEM.** Developed by HUD to analyze costs of operating public housing developments, used as the basis for calculating the need for operating subsidies.

**PERMANENT SUPPORTIVE HOUSING.** Decent, safe, and affordable permanent community-based housing targeted to vulnerable very low-income (VLI) households with serious and long term disabilities that is linked with an array of voluntary and flexible services to support successful tenancies.

**PREPAYMENT PENALTY.** A fee that may be levied for repayment of a loan before it falls due.

**PROJECT-BASED VOUCHERS (PBVs).** A component of a public housing agency's (PHAs) housing choice voucher program. A PHA can attach up to 20% of its voucher assistance to specific housing units if the owner agrees to either rehabilitate or construct the units, or the owner agrees to set-aside a portion of the units in an existing development for lower income families. In general, no more than 25% of the units in a property can be subsidized with PBVs.

**RENTAL ASSISTANCE DEMONSTRATION (RAD).**

Congress authorized RAD as part of its FY12 and FY15 HUD appropriations bills. There are two RAD components. The first component allows HUD to approve the conversion of up to 185,000 public housing and moderate rehabilitation (Mod Rehab) units into either project-based Section 8 rental assistance (PBRA) contracts or project-based vouchers (PBVs) by September 30, 2018. The second component allows an unlimited number of units in three smaller programs administered by HUD's Office of Multifamily Housing Programs to convert tenant protection vouchers to PBVs or PBRAs. There is no deadline for the three second component programs – Rent Supplement (Rent Supp), Rental Assistance Program (RAP), and Mod Rehab.

**REAL ESTATE ASSESSMENT CENTER (REAC).** The office within HUD responsible for assessing the condition of HUD's portfolio, both public housing and private, HUD-assisted multifamily housing. REAC oversees physical inspections and analysis of the financial soundness of all HUD housing, and REAC scores reflect physical and financial condition.

**REAL ESTATE INVESTMENT TRUST (REIT).** A business trust or corporation that combines the capital of many investors to acquire or finance real estate, which may include assisted housing. Cash flow generated by the properties is distributed to investors in the form of stock dividends. The REIT can also provide an attractive tax deferral mechanism by enabling investors to exchange their partnership shares for interests in the REIT, a nontaxable transfer.

**"REAL ESTATE SETTLEMENT PROCEDURES ACT" (RESPA).** A statute that prohibits kickbacks and referral fees that unnecessarily increase the costs of certain settlement services in connection with real estate transactions and provides for disclosures in connection with such transactions. HUD enforces RESPA.

**RECONCILIATION BILL.** A bill containing changes in law recommended by House or Senate committees pursuant to reconciliation instructions in a budget resolution.

**RENT SUPPLEMENT (Rent Supp).** An older HUD



project-based rental subsidy program used for some Section 221(d)(3) and Section 236 properties. The subsidy contract is coterminous with the mortgage. Most rent supplement contracts in HUD-insured projects were converted to Section 8 in the 1970s.

**RESIDUAL RECEIPTS.** Cash accounts maintained under joint control of the owner and HUD [or Housing Finance Agency (HFA)] into which is deposited all surplus cash generated in excess of the allowable limited dividend or profit. The disposition of residual receipts at the end of the Section 8 contract and/or mortgage is governed by the Regulatory Agreement.

**RIGHT OF FIRST REFUSAL.** The right of first refusal means the right to match the terms and conditions of a third-party offer to purchase a property, within a specified time period.

**RURAL DEVELOPMENT (RD).** A mission area of the U.S. Department of Agriculture (USDA), RD administers grant and loan programs to promote and support housing, public facilities and services such as water and sewer systems, health clinics, emergency service facilities, and electric and telephone service in rural communities. RD also promotes economic development by supporting loans to businesses and provides technical assistance to help agricultural producers and cooperatives.

**RURAL HOUSING SERVICE (RHS).** An agency of the U.S. Department of Agriculture's (USDA) Rural Development (RD), RHS is responsible for administering a number of rural housing and community facilities programs, such as providing loans and grants for single-family homes, apartments for low-income people, housing for farm workers, child care centers, fire and police stations, hospitals, libraries, nursing homes, and schools.

**RURAL.** As used in this Guide, areas that are not urbanized. The Census Bureau defines an urbanized area as "an incorporated place and adjacent densely settled (1.6 or more people per acre) surrounding area that together have a minimum population of 50,000." The Census Bureau defines rural as an area with a population

of less than 2,500. The U.S. Department of Agriculture (USDA) definition of rural has several factors, including population: under 20,000 in non-metro areas, under 10,000 in metro areas, or under 35,000 if the area was at one time defined as rural but the populations has grown (a "grandfathered" area).

**SAVINGS AND LOAN ASSOCIATION (S&L).** A depository financial institution, federally or state chartered, that obtains the bulk of its deposits from consumers and holds the majority of its assets as home mortgage loans. In 1989, responding to a massive wave of insolvencies caused by mismanagement, corruption, and economic factors, Congress passed a savings and loan "bailout bill" that revamped the regulatory structure of the industry under a newly created agency, the Office of Thrift Supervision.

**SAVINGS BANK.** A depository financial institution that primarily accepts consumer deposits and makes home mortgage loans. Historically, savings banks were of the mutual (depositor-owned) form and chartered in only 16 states; the majority of savings banks were located in the New England states, New York, and New Jersey.

**SECONDARY MARKET.** The term secondary market refers to the market in which loans and other financial instruments are bought and sold. Fannie Mae (the Federal National Mortgage Association) and Freddie Mac (the Federal Home Loan Mortgage Corporation), for example, operate in the secondary market because they do not deal directly with the borrower, but instead purchase loans from lenders.

**SECTION 202.** A HUD program created in 1959 to provide direct government loans or grants to nonprofits to develop housing for the elderly and handicapped. Currently, the program provides capital grants and project rental assistance contracts.

**SECTION 221(d)(3) BELOW MARKET INTEREST RATES (BMIR).** A HUD program under which the federal government provided direct loans at a BMIR (3%) and Federal Housing Administration (FHA) mortgage insurance to private developers of low and moderate-income housing. Active



from 1963 to 1970.

SECTION 236. A program under which HUD provided interest subsidies (known as Interest Reduction Payments or IRP subsidies) and mortgage insurance to private developers of low- and moderate-income housing. The interest subsidy effectively reduced the interest rate on the loan to 1%. Active from 1968 to 1975.

SECTION 514 LOANS AND SECTION 516 GRANTS. Administered by USDA RD's Rural Housing Service (RHS) and may be used to buy, build, improve or repair housing for farm laborers. Authorized by the "Housing Act of 1949."

SECTION 515 RURAL RENTAL HOUSING PROGRAM. Provides funds for loans made by USDA RD's Rural Housing Service (RHS) to nonprofit, for profit, cooperatives, and public entities for the construction of rental or cooperative housing in rural areas for families, elderly persons, persons with disabilities, or for congregate living facilities. Authorized by the "Housing Act of 1949."

SECTION 533 HOUSING PRESERVATION GRANT PROGRAM (HPG). This program, administered by USDA RD's Rural Housing Service (RHS), provides grants to promote preservation of Section 515 properties. Authorized by the "Housing Act of 1949."

SECTION 538 RENTAL HOUSING LOAN GUARANTEES. U.S. Department of Agriculture's (USDA) Rural Development (RD) Rural Housing Service (RHS) may guarantee loans made by private lenders for the development of affordable rural rental housing. This program serves a higher income population than that served by the Section 515 program. Authorized the "Housing Act of 1949."

SECTION 8 PROJECT-BASED RENTAL ASSISTANCE (PBRA). Administered by HUD's Office of Multifamily Housing, Section 8 PBRA takes the form of a contract between HUD and building owners who agree to provide housing to eligible tenants in exchange for long-term subsidies. Project-Based Assistance limits tenant contributions to 30% of the household's adjusted

income. Assistance may be provided to some or all of the units in a project occupied by eligible tenants. Assistance is attached to the unit and stays with the unit after the tenant moves.

SECTION 8 PROJECT-BASED VOUCHERS (PBV). Public housing agencies (PHAs) are allowed to use up to 20% of their housing choice voucher funding allocation to project base, or tie, vouchers to a property. PHAs may contract with property owners to project base vouchers to up to 25% of the units in a property. These vouchers remain with the project even if the assisted tenant moves. The effect is similar to the project-based section 8 program in that the place-based funding helps preserve the affordability of the units. One difference between the two programs is the mobility feature of the project-based voucher program that allows a tenant to move with continued assistance in the form of a housing choice voucher. This program is administered by HUD's Office of Public and Indian Housing (PIH) and local PHAs.

SECTION 8 VOUCHERS. Administered by HUD's Office of Public and Indian Housing (PIH) and local public housing agencies (PHAs), housing choice vouchers (HCVs) are allocated to individual households, providing a rent subsidy that generally limits tenant contribution to rent to 30% of adjusted household income. PHAs can attach a limited number of their housing choice vouchers to individual units, thereby 'project basing' them. See Section 8 project-based vouchers (PBVs).

SECTION 811. The Section 811 Supportive Housing for Persons with Disabilities is a federal program that assists the lowest income people with the most significant and long-term disabilities to live independently in the community by providing affordable housing linked with voluntary services and supports. The program provides funds to nonprofit organizations to develop rental housing, with supportive services, for very low-income (VLI) adults with disabilities, and it provides rent subsidies for the projects to help make them affordable. Two new approaches to creating integrated permanent supportive housing were

recently introduced: the Modernized Capital Advance/Project Rental Assistance Contract (PRAC) multi-family option and the Project Rental Assistance (PRA) option. Both options require that properties receiving Section 811 assistance limit the total number of units with permanent supportive housing use restrictions to 25% or less. Congress directed that all FY12, FY13, and FY14 funding for new Section 811 units be provided solely through the PRA option.

**SEVERE HOUSING PROBLEMS.** As used by HUD in defining priorities, severe housing problems are homelessness, displacement, housing cost burden above 50% of income, and occupancy of housing with serious physical problems. Data on severe housing problems drawn from the American Housing Survey measures only cost burden and physical problems.

**SINGLE-FAMILY.** A single-family property is a residential property with fewer than five units.

**“STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT” (STAFFORD ACT, P.L. 100-707).** Provides a systemic means of supplying federal natural disaster assistance to state and local governments. The act establishes the presidential declaration process for major emergencies, provides for the implementation of disaster assistance, and sets forth the various disaster assistance programs.

**“STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT.”** Enacted in July 1987, the “McKinney Act,” P.L. 100-77, established distinct assistance programs for the growing numbers of homeless persons. Recognizing the variety of causes of homelessness, the original “McKinney Act” authorized 20 programs offering a multitude of services, including emergency food and shelter, transitional and permanent housing, education, job training, mental health care, primary health care services, substance abuse treatment, and veterans’ assistance services. The act was renamed the “McKinney-Vento Homeless Assistance Act” in 2000 to reflect the late Representative Bruce Vento’s (D-MN) work to improve housing for the poor and homeless. The act was revised in 2002 and again in 2009.

See “Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009.”

**TAX CREDIT.** A provision of the tax code that specifies an amount by which a taxpayer’s taxes will be reduced in return for some specific behavior or action.

**TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF).** Provides block grants to states administered under the “Personal Responsibility and Work Opportunity Reconciliation Act of 1996,” which established a new welfare system. The TANF block grant replaced Aid to Families with Dependent Children (AFDC). The chief feature of TANF was the abolition of a federal entitlement to cash assistance.

**THRIFT.** See SAVINGS AND LOAN ASSOCIATION (S&L).

**VERY LOW INCOME (VLI).** A household with income is at or below 50% of area median income (AMI), as defined by HUD.

**VOUCHER.** A government payment to, or on behalf of, a household to be used solely to pay a portion of the household’s housing costs in the private market. Vouchers are considered tenant-based assistance because they are not typically connected to a particular property or unit (although they may be ‘project based’ in some cases) but are issued to a tenant.

**WORST CASE HOUSING PROBLEMS.**

Unsubsidized very low-income renter households with severe housing problems. HUD is required to submit a periodic report to Congress on worst case housing problems.

# Advocates' Guide Authors

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## MICHAEL ANDERSON

Michael Anderson is Director of the Housing Justice Team at Community Change. For more than 35 years, Community Change has operated the Housing Trust Fund Project as a strategic hub for state and local housing trust fund campaigns and a clearinghouse for information on housing trust funds. The Project provides strategic and technical assistance to organizations, agencies, and elected officials working to create or implement these funds. The Housing Justice Team also builds power to advance housing policy at the state level by organizing networks of residents of affordable housing and others with lived experience of housing injustice. Currently, the Housing Justice Team is working with partners to grow networks in California, Louisiana, Oregon, and Washington State.

## ANDREW AURAND

Andrew Aurand is Senior Vice President for Research at NLIHC, where he leads the research team in documenting the housing needs of low-income renters in annual publications like *The Gap* and *Out of Reach*, conducts additional research that informs housing policy related to extremely low-income renters, and co-manages the National Housing Preservation Database. Prior to joining NLIHC, Andrew was a faculty member in the Department of Urban and Regional Planning at Florida State University, where he taught housing policy and research methods and completed research on the impact of comprehensive planning on the supply of affordable housing. He holds a master's degree in social work and a PhD in public policy from the University of Pittsburgh.

## PEGGY BAILEY

Peggy Bailey is Vice President for Housing and Income Security at the Center on Budget and Policy Priorities. She oversees the Center's work to protect and expand access to affordable

housing, improve state-based Temporary Assistance for Needy Families (TANF) and child support programs, and expand employment opportunities to housing and cash assistance recipients. Throughout her career, she has helped build connections between the housing policy community and those working to improve health, nutrition, child welfare, and other systems of care amid a growing recognition that access to stable, affordable housing is a necessary foundation enabling people with low incomes to meet other basic needs and make progress towards achieving their hopes and dreams. Peggy's work centers on identifying the ways racism and discrimination in housing policy have resulted in disinvestment in communities of color and created disparate outcomes for people from marginalized groups. Prior to re-joining the Center in 2022, Peggy served in the Biden-Harris Administration as Senior Advisor on rental assistance to U.S. Department of Housing and Urban Development Secretary Marcia L. Fudge. She holds a BA in government from the University of Notre Dame and a master's degree in public administration from the University of Texas at Dallas.

## TRISTIA BAUMAN

As a senior attorney with the National Homelessness Law Center, Tristia Bauman combines litigation, legal education, and legislative advocacy strategies to prevent and end homelessness. Her work focuses combating the criminalization of homelessness and advocating for laws that protect the civil and human rights of homeless people. Tristia also conducts legal trainings around the country, writes reports and other publications related to housing, and serves as a legal resource for homeless advocates. Tristia holds a JD from the University of Washington School of Law and began her law career at Legal Services of Greater Miami, Inc. as a housing attorney working with low-income tenants in federally subsidized housing. She later served for

several years as an assistant public defender in Florida's Miami-Dade County.

## **SPENCER BELL**

Hailing from Sarasota, Florida, Spencer Bell is a policy analyst with the National Coalition for Homeless Veterans (NCHV). Before joining NCHV, Spencer managed a district office for a member of the U.S. House of Representatives and later served as a legislative aide on Capitol Hill, managing work related to many different federal departments and committees, including the House Committee on Veterans' Affairs, as well as analyzing legislation and developing appropriations forecasts for several issue advocacy firms and political campaigns. He holds a BA in political science from the University of Florida and is currently pursuing a graduate degree in political science at Virginia Tech.

## **RUSTY BENNETT**

Russell "Rusty" Bennett is founding director of Collaborative Solutions. He has more than 20 years of experience in nonprofit organizations and government and an extensive background working with U.S. Department of Housing and Urban Development (HUD) programs, including the Housing Opportunities for Persons with AIDS (HOPWA) program and Supplemental Nutrition Assistance Program (SNAP). In addition to serving as a liaison with HUD's Office of HIV/AIDS Housing (OHH), Rusty is currently executive director of the Low Income Housing Coalition of Alabama and executive director of the Professional Association of Social Workers in HIV & AIDS, following the appointment of Collaborative Solutions as management agent for the two organizations. He is also principal investigator on Collaborative Solution's research/evaluation projects, including the Professional Association of Social Workers in HIV & AIDS's initiative "Age Positively," for which he leads the HIV and Aging Task Force, serves as faculty for the HIV & Aging curriculum, and chairs the national conference. Along with PhD and LGSW degrees, he holds a certification in diversity, equity, and inclusion in the workplace from the University of South Florida.

## **STEVEN R. BERG**

Steve Berg is Chief Policy Officer at the National Alliance to End Homelessness. In his role overseeing the policy-related work of the Alliance, he works to end homelessness by promoting effective public policies and local practices regarding housing, employment, and human services. He came to the Alliance from the Center on Budget and Policy Priorities (CBPP), where he worked on state-level welfare reform and employment. Before joining CBPP, he spent 14 years as a legal services attorney in California and Connecticut, working on housing, government benefits, employment, and family integrity issues. His background includes nonprofit management and staff training and development.

## **SIDNEY BETANCOURT**

Sidney Betancourt is a housing advocacy organizer on the NLIHC field team, where she works to expand NLIHC membership and engage advocates on federal policy priorities to advance the Coalition's mission. Before joining NLIHC, Sidney was the 2020-2021 Congressional Hispanic Caucus Institute (CHCI) housing graduate fellow. During her time as a fellow, Sidney worked with the U.S. Interagency Council on Homelessness on legislative research aimed at preparing the agency for a governance restructure. She spent the last half of her fellowship with the House Committee on Financial Services' Subcommittee for Housing, Community Development and Insurance. As a committee fellow, Sidney supported staff in drafting important legislation related to public housing, infrastructure, and homelessness. Sidney is a graduate of the University of Nevada, Las Vegas, where she earned a bachelor's degree and an MSW. During her field placement as a social work student, she worked at a homeless outreach agency in downtown Las Vegas, collaborating with a legal aid agency to quash unjust warrants for individuals experiencing homelessness.



## VICTORIA BOURRET

Tori Bourret is NLIHC's Senior Project Coordinator for the End Rental Arrears to Stop Evictions (ERASE) Project. Before joining NLIHC, Tori served as communications and project manager at the Housing Alliance of Pennsylvania, a state partner of NLIHC, providing management and outreach assistance for policy campaigns and specialized projects and managing all communications, including social media, the organization's newsletter, and the website. She also served two terms in the AmeriCorps, one with AmeriCorps NCCC in Denver, Colorado and the other with Public Allies in Delaware. Tori holds a BA in women's studies and psychology from the University of Delaware and an MSW from the University of Pennsylvania.

## JEN BUTLER

Jen Butler is Vice President of Media Relations and Communications at NLIHC. In this role, she is responsible for ensuring effective media and communications efforts in support of the Coalition's mission, vision, goals, and objectives. Jen's past work in marketing and communications has included management of a diverse portfolio of campaigns for both local and national brands in the entertainment, media, and non-profit sectors. Jen is a graduate of Georgia State University, where she earned a BA in journalism with a concentration in public and political communications.

## ALAYNA CALABRO

Alayna Calabro is Senior Policy Analyst at NLIHC, where she works to identify, analyze, and advocate for federal policies that addresses the urgent needs facing low-income renters and people experiencing homelessness. Alayna previously worked at NLIHC as a field intern while completing her graduate studies. As a case manager intern with Catholic Charities, Alayna witnessed the detrimental effects of housing instability on her clients' well-being and became interested in the broader systems that impact access to safe and affordable housing. She holds an MSW degree with a concentration

in community action and social policy from the University of Maryland and a BA in English and psychology from the University of Notre Dame.

## MICHAEL CALHOUN

Mike Calhoun has over 30 years of experience working to expand sustainable and affordable housing. He has worked collaboratively with the nation's lenders and others in the mortgage finance system to broaden the range of responsible mortgage products for working families. For the past 15 years, he has served as president of the Center for Responsible Lending (CRL), helping secure safe mortgage requirements to prevent a recurrence of the patterns and behaviors that led to the 2008 housing crash and recession. Before joining CRL, he led home lending programs and compliance at Self-Help, one of the nation's largest community development lenders. He has served as an advisor to housing developers providing low-cost rental housing for seniors and families and has worked to protect homeowners facing foreclosure due to predatory loans. He also worked for several years as a legal aid attorney, including as lead counsel in one of the first environmental justice cases, successfully preventing the destruction of a 100-year-old Black community to make way for the construction of a planned freeway. He serves on numerous boards and financial advisory groups, including as a member of the Board of the Leadership Conference on Civil and Human Rights and as a member and chair of the Federal Reserve Board Consumer Advisory Committee. Mike holds a BA in economics with honors from Duke University and a JD from the University of North Carolina at Chapel Hill.

## COURTNEY COOPERMAN

Courtney Cooperman is a housing advocacy organizer on the NLIHC field team. Before joining NLIHC, Courtney was an Eisendrath Legislative Assistant at the Religious Action Center of Reform Judaism (RAC), the social justice arm of the Reform Jewish Movement. With a policy portfolio that included housing, nutrition, labor, and other economic justice issues, Courtney



spearheaded the RAC's advocacy on COVID-19 relief and recovery legislation. She also wrote blog posts and social media content, created resources for advocates, supported grassroots lobbying, and launched virtual programming to teach high school students about social justice. Courtney graduated Phi Beta Kappa from Stanford University, where she received a BA in political science, with a minor in Spanish and interdisciplinary honors in Ethics in Society. Courtney also served on the board of Heart and Home Collaborative, a seasonal shelter for women experiencing homelessness in the greater Palo Alto area.

## **LINDA COUCH**

Linda Couch is Vice President of Housing Policy for LeadingAge, an organization of more than 5,300 mission-driven organizations representing the full continuum of aging services. Linda oversees LeadingAge's affordable housing policy work, which is focused on expanding and preserving affordable housing options for very low-income seniors, connecting senior housing to health services, and ensuring affordable senior housing communities have the resources and tools necessary to respond to the COVID-19 pandemic. After spending 12 years with NLIHC, Linda rejoined LeadingAge in 2016 to identify and advocate for solutions to the unprecedented affordable housing challenges faced by older adults. Linda has a special interest in the federal budget and appropriations processes and has testified before House and Senate committees. She received her undergraduate degree in philosophy from the George Washington University and a Master of Public Affairs degree from the University of Connecticut.

## **LINDSAY DUVAL**

Lindsay Duvall is a senior housing advocacy organizer at NLIHC. In this position, Lindsay helps the field team engage advocates on federal policy priorities to advance the Coalition's mission and expand NLIHC membership. She has an extensive background in emergency and affordable housing programs, having worked for eight years with NLIHC member Hudson River

Housing in Poughkeepsie, New York. As manager of advocacy and community engagement, she crafted outreach strategies, developed partnerships, managed resident leadership initiatives, supported communications projects, and expanded the agency's advocacy work. Prior to this role, Lindsay worked on outreach and volunteer mobilization with the Oregon Food Bank. She holds a bachelor's degree in architecture from the University of Cincinnati and a master's degree in educational leadership and policy from Portland State University.

## **DAN EMMANUEL**

Dan Emmanuel is a senior research analyst with NLIHC. He has worked in a range of housing and community development contexts since 2008 with a particular focus on program evaluation and community needs assessment. Dan earned a BA in philosophy and psychology from the College of William & Mary and an MSW with a concentration in community and organization practice from Saint Louis University.

## **EMMA FOLEY**

Emma Foley is a research analyst with NLIHC, where she has tracked and monitored the rollout of COVID-19 emergency rental assistance programs. Emma first became passionate about equitable housing policy following several years working with organizations that advocate for affordable, accessible, and fair housing in Charlotte, Poughkeepsie, and New Orleans. She also served as an AmeriCorps member at a disaster recovery organization and worked at a social science research firm evaluating the efficacy of social programs. Emma received a BA in urban studies from Vassar College and a Master of Public Policy degree from Duke University's Sanford School of Public Policy, where she concentrated in social policy.

## **DEBBIE FOX**

Debbie Fox is Deputy Director of Policy and Practice at the National Network Against Domestic Violence (NNEDV), where she leads national domestic violence-related housing policy and

provides technical assistance and training to NNEDV's coalition membership and as part of the Domestic Violence Housing and Technical Assistance Consortium. Debbie has more than 20 years of experience in the field, especially in the areas of fundraising, organizational development, nonprofit administration, and domestic violence population-specific housing and economic justice programming. Before joining NNEDV, she shared community leadership in the systems planning and implementation process for the domestic violence system in Portland, Oregon, working with all 13 domestic violence victim service providers to create a coordinated entry process for survivors to access housing, shelter, and eviction prevention and shelter diversion programs.

## SARAH GALLAGHER

Sarah Gallagher is Senior Project Director of NLIHC's End Rental Arrears to Stop Evictions (ERASE) project. In this role, Sarah works with NLIHC staff and state and local partners to support efforts to ensure that emergency rental assistance reaches the lowest-income and most marginalized renters. Sarah has more than 25 years of experience advancing innovative, equitable housing and social service policies and programs at the local, state, and national levels, with special expertise in health and housing collaborations, cross-systems data matching, interagency collaboration, homeless programs, and reentry processes. Before joining NLIHC, Sarah was the eastern region managing director of CSH, overseeing training, lending, technical assistance, and systems change work throughout Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, the District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida. Sarah also served as director of strategic initiatives at CSH and director of the organization's Connecticut program. Additionally, Sarah served as the first executive director of Journey Home, the local planning body for the Capitol Region Ten Year Plan to End Homelessness; as the executive director for discharge planning at the New York City Department of Correction, where she

oversaw the discharge planning programs on Rikers Island and worked with city agencies to overcome barriers people face when leaving jail; and as a housing case manager in Boston. Sarah holds a master's degree in urban policy and management from the New School and a BA in sociology from the University of Connecticut.

## KODY GLAZER

Kody Glazer is Legal Director of the Florida Housing Coalition. He is an expert on inclusionary housing policies, community land trusts, fair housing, land use, environmental law, and the law as it relates to housing. He plays a lead role in the Coalition's advocacy efforts at all levels of government and has expertise in drafting state legislation and local housing ordinances and policies. Kody provides technical assistance to local governments and community-based organizations on a variety of issues relating to affordable housing development. He is also a co-author of the Coalition's *Accessory Dwelling Unit Guidebook*. Prior to joining the Florida Housing Coalition, Kody clerked for the National Fair Housing Alliance on issues related to fair housing and equitable opportunity.

## AYANA DILDAY GONZALEZ

Ayana Dilday Gonzalez is Senior Consultant at the Technical Assistance Collaborative, Inc (TAC). She has over 15 years of experience developing policies and practices related to affordable housing development and permanent supportive housing (PSH). She has worked in private and public sector affordable housing development and in public sector health and human services. Ayana is an expert in the design, financing, implementation, and evaluation of publicly funded PSH programs, and she provides training and facilitation for housing providers, service agencies, and state and local governments on the financing, development, and operation of PSH. She works with Continuums of Care (CoCs) and CoC-funded programs to maximize opportunities to prevent and end homelessness, and she is a technical assistance provider for the U.S. Department of Housing and Urban Development (HUD) Youth Homelessness Demonstration

Program. She is the co-chair of TAC's Racial Equity Committee, helping to lead the agency's efforts to recognize and identify the impacts of racial and social inequity and offer effective solutions that eliminate disparities. Before TAC, Ayana worked for the Commonwealth of Massachusetts on its statewide Supportive Housing Working Group, the HUD 811 Project Rental Assistance program, the National Housing Trust Fund program, and the Balance of State Continuum of Care.

## **SARAH GOODWIN**

Sarah Goodwin is a policy analyst at the National Center for Healthy Housing (NCHH), where she supports the organization's policy- and capacity-building work and manages the National Safe and Healthy Housing Coalition. She previously served NCHH as a policy intern, helping establish and run the "Find It, Fix It, Fund It" lead elimination action drive and its associated workgroups. She holds a BA in interdisciplinary studies: communications, legal institutions, economics, and government from American University.

## **ED GRAMLICH**

Ed Gramlich is Senior Adviser at NLIHC. After joining the Coalition in 2005, Ed spent his first two years staffing NLIHC's RegWatch Project, an endeavor to expand the Coalition's capacity to monitor federal regulatory and administrative actions, with a focus on preserving the affordable housing stock, both public and assisted. Between 2007 and 2010, he was NLIHC's director of outreach. Since 2010, he has served as senior advisor, overseeing the Coalition's efforts related to affordable housing regulations and providing expertise on regulations related to the national Housing Trust Fund and Affirmatively Furthering Fair Housing. Before joining NLIHC, he worked for 26 years at the Center for Community Change (CCC), where his primary responsibility was providing technical assistance about CDBG to low-income, community-based groups. While at CCC, Ed also devoted considerable time to providing technical assistance to groups concerned about the negative impacts of UDAGs

in their communities. Ed holds a BS and an MBA from Washington University.

## **JIM GRAY**

Jim Gray has been a senior fellow at the Lincoln Institute of Land Policy since 2020, leading the Underserved Mortgage Markets Coalition and the Innovations in Manufactured Homes (I'm HOME) program. From 2015 through 2020, Jim helped create and lead the Duty to Serve (DTS) program at the Federal Housing Finance Agency, which is the regulator of Fannie Mae and Freddie Mac. DTS requires Fannie and Freddie to strategically enhance their support for manufactured housing, rural housing, and affordable housing preservation to better serve very low-, low-, and moderate-income people. Before working at FHFA, Jim managed the Center for Excellence in Affordable Housing for NCB Capital Impact (now Capital Impact Partners), a national community development financial institution (CDFI). Among other things, Jim contributed to building a nationwide robust Shared Equity Homeownership sector to help address the racial wealth gap. Jim also worked in the Clinton Administration as special assistant to Federal Housing Administration Commissioners Nicolas Retsinas and Bill Apgar. Jim attended Little Rock Central High School, Hendrix College, and Vanderbilt Law School.

## **GROUNDLED SOLUTIONS NETWORK**

Grounded Solutions Network supports strong communities from the ground up by furthering housing solutions with lasting affordability and inclusionary housing policies to advance racial and economic equity. Grounded Solutions is a national nonprofit membership organization of over 260 community land trusts, nonprofits, inclusionary housing government programs, and allies located in 46 states, Washington D.C., and Puerto Rico, all supporting the creation and preservation of housing with lasting affordability. The Network provides its members and the broader field with training, technical assistance, policy and program design, resources, research, and advocacy. Grounded Solutions champions

evidence-based policies and strategies that work and promotes housing solutions that will stay affordable for generations so communities can stabilize and strengthen their foundations for good.

## MEGAN HABERLE

Megan Haberle is Senior Director of Policy at the National Community Reinvestment Coalition (NCRC). Before joining NCRC, Megan worked at the NAACP Legal Defense Fund (LDF), where she was a senior policy counsel leading LDF's economic justice policy work. Her portfolio at LDF included fair housing, environmental justice, community development, equitable infrastructure, and other aspects of a fair economy. Previously, Megan worked at the Poverty & Race Research Action Council (PRRAC) for nine years, serving as PRRAC's deputy director from 2018-2021 and as director of housing policy from 2017-2018. At PRRAC, she led work on policy design and advocacy, public education, and community-based technical assistance, striving to reform and harness government programs in the interest of civil rights, with a focus on advancing fair housing and environmental justice. She has spoken and published widely on those issues. She also served as the editor of PRRAC's quarterly journal, *Poverty & Race*. Before coming to PRRAC, Megan worked at The Opportunity Agenda, a social justice policy and communications lab, as economic opportunity fellow and associate counsel. Her work there focused primarily on equitable economic recovery policies, including fair housing, housing finance reform, and the application of civil rights law to infrastructure investments. She has also worked in private litigation practice in New York. Megan is a graduate of Columbia Law School, where she was an executive editor of the *Columbia Journal of Environmental Law*, and Swarthmore College, where she received her BA in sociology/anthropology.

## BIANCA HANNON

Bianca Hannon joined Collaborative Solutions in 2021 and has been instrumental in advancing

the administrative and programmatic work of the Professional Association of Social Workers in HIV/AIDS. She assists in the planning and execution of the National Conference on Social Work and HIV/AIDS, focusing primarily on fund development and programming. Her prior experience includes two years of street outreach and case management, during which she helped people who are homeless and living with HIV find emergency housing and gainful employment. Bianca also has experience conducting research and collecting qualitative data to inform practice and creating programs for and working with minority populations. Bianca holds a master's degree in social work from Kennesaw State University and a certification for diversity, equity, and inclusion in the workplace from the University of South Florida.

## MELISSA HARRIS

Melissa Harris serves as government affairs director for the American Association of Service Coordinators, where she leads the organization's legislative and regulatory advocacy efforts at the state and federal levels. She also promotes recommended standards of practice for service coordinators and provides technical assistance and training on service coordination fundamentals and policies.

## CRISTY HAUSER

Cristy Hauser is Housing Policy Director at the National Housing Research Center. Before joining the Center, she worked at the North Carolina General Assembly for three legislative sessions, receiving an award of appreciation for public service. She began her advocacy work as a CSW fellow for WomenNC in Raleigh, North Carolina, where she advocated for the health rights of women who are incarcerated at the local and state levels. Later, she directed and coordinated operations to help elect more than 20 public officials in Virginia over three election cycles. While working in local elections, she also helped advocate for affordable housing in Virginia's Fairfax County. She is motivated to strengthen the housing counseling industry to help underserved



communities, communities of color, the elderly, and low- and moderate-income individuals. She holds a BA in political science from Meredith College and a master's degree in public management from Johns Hopkins University.

## DAVID JACOBS

David Jacobs is chief scientist at the National Center for Healthy Housing. He also serves as director of the U.S. Collaborating Center for Research and Training on Housing Related Disease and Injury for the Pan American Health Organization/World Health Organization (PAHO WHO) and is an adjunct associate professor at the University of Illinois at Chicago School of Public Health and faculty associate at the Johns Hopkins Bloomberg School of Public Health. He is one of the nation's foremost authorities on childhood lead poisoning prevention and was principal author of the President's Task Force Report on the subject in 2000 and the Healthy Homes Report to Congress in 1999. He has testified before Congress and other legislative bodies and has authored or coauthored many peer-reviewed publications. Dr. Jacobs is the former director of the Office of Lead Hazard Control and Healthy Homes at the U.S. Department of Housing and Urban Development, where he was responsible for program evaluations, grants, contracts, public education, enforcement, regulation, and policy related to lead and healthy homes. His current work includes research on asthma, international healthy housing guidelines, lead poisoning prevention, and green sustainable building design. Dr. Jacobs is a Certified Industrial Hygienist® and holds degrees in political science, environmental health, technology, and science policy, as well as a doctorate in environmental engineering.

## KIM JOHNSON

Kim Johnson is Public Policy Manager at NLIHC, where she is responsible for identifying, analyzing, and advocating for federal policy and regulatory activities related to NLIHC's policy priorities. Her work at the Coalition focuses on the housing protections included in the "Violence

Against Women Act," criminal justice reform, and evictions. Before joining NLIHC in 2019, Kim earned her master's degree in public policy from George Washington University. During her graduate program, she interned with Stewards of Affordable Housing for the Future and with the U.S. Senate Committee on Health, Education, Labor, and Pensions. She also held a fellowship with the National Network to End Domestic Violence. Before graduate school, Kim resided in Harrisonburg, Virginia, working as an advocate for survivors of sexual and domestic violence. In 2014, she served on an advisory committee to the Obama Administration's White House Task Force to Protect Students from Sexual Assault. She received her BS in psychology and an MA in psychological sciences from James Madison University.

## MIKE KOPROWSKI

Mike Koprowski is the national campaign director of NLIHC's *Opportunity Starts at Home* campaign. Before joining NLIHC, Mike served as executive director of Opportunity Dallas, an organization focused on building local coalitions to promote greater economic mobility by tackling concentrated poverty and segregation through housing policy. Prior to his time with Opportunity Dallas, Mike was chief of transformation and innovation in the Dallas school system, where he led the development and execution of the district's Public School Choice initiative, which focused on socioeconomic school integration. Earlier in his career, he served in the U.S. Air Force as chief of intelligence for an F-15E fighter squadron while it was deployed to Afghanistan. He holds degrees from the University of Notre Dame, Duke University, and Harvard University.

## MARK KUDLOWITZ

Mark Kudlowitz is Senior Policy Director at Local Initiatives Support Coalition (LISC), where he advocates for federal policies that support the organization's national priorities, including affordable housing, rural development, community development financial institutions, and sustainable development. Before joining LISC, Mark was policy director



of the U.S. Department of Housing and Urban Development's Office of Multifamily Housing Programs and worked for more than seven years at the Community Development Financial Institutions Fund at the U.S. Department of the Treasury. Mark also managed affordable housing and community development programs at the District of Columbia's Department of Housing and Community Development and held multiple positions at the Housing Assistance Council, a national rural affordable housing organization. Mark earned his BA from the University of Florida and a master's degree from the University of Michigan.

## **SHERRY LERCH**

Sherry Lerch is a human services consultant with the Technical Assistance Collaborative, Inc (TAC). She has more than 40 years of experience working in the behavioral health system at both the county and state levels. In her role at TAC, she provides technical assistance to community organizations and state/local governments on services and supports that meet the needs of individuals with mental health, substance use, and co-occurring disorders; justice system involvement; or who are without homes. She also provides technical assistance relating to holistic care for individuals with high risks/high needs; *Olmstead* compliance; inter-agency and cross-systems approaches; and effective strategies for garnering local adoption of best and promising practices. Her areas of expertise include systems assessment, strategic planning, stakeholder engagement, group facilitation, program development, and financing strategies. Examples of her work include conducting systems' assessments and developing recommendations to address gaps in services to incorporate into *Olmstead* Plans for Massachusetts, Mississippi, Nebraska, and North Carolina that contributed to the preventable institutionalization and incarceration of individuals with behavioral health disorders in Washington State; coordination work with state agencies and counties on the development and implementation of an array of crisis intervention services and funding strategies; and facilitating

an analysis of housing support services that involved identifying and engaging partner agencies needed to address gaps and barriers in Arizona, Kentucky, Massachusetts, Oregon, Virginia, and Washington State.

## **MARCELLA MAQUIRE**

Marcella Maguire is Director of Health Systems Integration at the Corporation of Supportive Housing (CSH). Her work focuses on the intersection of the housing and healthcare sectors in the financing, policy, and implementation of systems and programs. She has been engaged with efforts in multiple states regarding the use of Medicaid and health policy levers to build equity in communities and address community needs. Prior to joining CSH, Marcella worked for 17 years for the City of Philadelphia leading efforts to integrate behavioral health, managed care, and affordable and supportive housing systems. She holds a PhD in clinical psychology.

## **MONICA MCLAUGHLIN**

Monica McLaughlin is Director of Public Policy at the National Network to End Domestic Violence (NNEDV), where she works to improve federal legislation and increase resources to address and prevent domestic violence. She leads and co-chairs various national coalitions, educates members of Congress, implements grassroots strategies, and engages various government agencies to ensure that addressing domestic violence is a national priority. Monica has led national appropriations efforts to secure record federal investments in programs that address domestic violence and sexual assault. Monica also directs NNEDV's housing policy work, which has resulted in achievements such as leading successful efforts to secure life-saving housing protections in the "Violence Against Women Act of 2013"; advocating for domestic violence survivors' access to housing and homelessness resources in the "McKinney-Vento Reauthorization Act of 2009"; and drafting housing protections for immigrant survivors in the Senate-passed bill S. 744. Building on her housing policy work, Monica leads NNEDV's

Collaborative Approaches to Housing for Survivors, a multi-agency technical assistance consortium designed to improve survivors' access to safe, affordable housing.

## LILY MILWIT

Lily Milwit is the Housing Not Handcuffs attorney at the National Homelessness Law Center, where she focuses on ending the criminalization of homelessness through policy advocacy, impact litigation, messaging, and coalition-building. While in law school, she was a student attorney with the Georgetown Juvenile Justice Clinic, president of If/When/How: Lawyering for Reproductive Justice, and a board member for Law Students for Justice in Palestine, Georgetown Youth Advocates, and the Georgetown chapter of the National Lawyers Guild. Lily has previously worked with Lawyers for Children, the Poverty & Race Research Action Council, the National Partnership for Women & Families, Equal Justice Under Law, and Bread for the City. She received her JD from Georgetown University Law Center in 2021 and is a graduate of Tulane University.

## STEVE MOORE SANCHEZ

Steve Moore Sanchez is Development Coordinator at NLIHC, where he draws on his extensive background in fundraising and public policy to ensure the Coalition secures the necessary resources to support its mission. Prior to joining NLIHC, he served as a writer for development at the Center on Budget and Policy Priorities, where he crafted proposals, reports, donor communications, and other materials on the organization's work to strengthen housing, health, nutrition, and other essential programs. Steve also gained experience planning and coordinating fundraising efforts for Prosperity Now, Farmworker Justice, and the Washington Office on Latin America.

## NATIONAL PRESERVATION WORKING GROUP

The National Preservation Working Group (PWG) is a diverse coalition of national advocacy organizations, housing owners, developers,

tenant associations, and state and local housing agencies dedicated to the preservation of multifamily housing for low-income families. The PWG serves as a trusted and unified voice of housing organizations and is known for advancing practical, actionable solutions. Members of PWG come together to advance solutions that tackle big challenges through advocacy around resources and legislation that can support the preservation of affordable housing.

## SAMIRA NAZEM

Samira Nazem is a principal court management consultant at the National Center for State Courts (NCSC) overseeing the Eviction Diversion Initiative, which supports state and local courts in designing, implementing, and evaluating eviction diversion programs and related court reform efforts. Before joining NCSC, Samira served as the associate director of Programs and Advocacy at the Chicago Bar Foundation (CBF), where she led the CBF's advocacy efforts with the courts to adopt policies that promote access to justice and to expand the range of available self-help, legal aid, and *pro bono* resources. In that role, she helped design and implement an eviction diversion program and court-based rental assistance program in the Circuit Court of Cook County. Samira began her legal career working in legal aid as an eviction defense attorney and is passionate about improving the administration of justice in eviction court. A proud native of Omaha, Nebraska, Samira now lives in Chicago with her husband and two daughters.

## SHEILA OWENS

As Vice President of External Communications for the Council of Federal Home Loan Banks, Sheila Owens oversees national strategy for media outreach and public affairs through the development, integration, and implementation of communications activities that support the strategic direction and position of the Council. Before joining the Council, she served as Vice President of Communications and Marketing at the National Association of Insurance and Financial Advisors

(NAIFA) in Falls Church, Virginia. Sheila has also held positions at organizations including the Newspaper Association of America, the Freedom Forum/Newseum, Airports Council International, and Gannett Company/*USA Today*.

## NOAH PATTON

Noah Patton is a senior policy analyst with NLIHC. Before he joined the Coalition, Noah worked at the Homeless Persons Representation Project, Inc. (HPRP), helping to advocate for policies to expand public benefit programs and protecting Housing Choice Voucher holders. After working as a campaign and state house staffer in Maryland, Noah received a JD from the University of Baltimore School of Law. While in law school, Noah was involved in coordinating Legal Observers of the National Lawyers Guild to protect the legal rights of Baltimore-area political protestors and served as a Kellogg's Law Fellow at the NAACP Office of the General Counsel, working on transit equity and educational policy. Noah received his BA in political science from McDaniel College in Westminster, Maryland. He has been a member of the Maryland Bar since 2018.

## JOHN POLLOCK

John Pollock is a staff attorney for the Public Justice Center who has served since 2009 as coordinator of the National Coalition for the Civil Right to Counsel (NCCRC). The NCCRC works in 41 states at the state and local levels to establish the right to counsel for low-income individuals in civil cases involving basic human needs such as child custody, housing, safety, mental health, and civil incarceration. He is the recipient of the 2018 Innovations Award from the National Legal Aid and Defender Association (NLADA). Previously, John worked as the enforcement director for the Central Alabama Fair Housing Center and as a law fellow/consultant at the Southern Poverty Law Center. He graduated from Northeastern University School of Law, where he was a recipient of a Public Interest Law Scholarship (PILS). He is the author of many law review articles, including "Appointment of Counsel for

Civil Litigants: A Judicial Path to Ensuring the Fair and Ethical Administration of Justice" (*Court Review*, 56.1 2020).

## GABRIELLE ROSS

Gabby Ross is a housing advocacy organizer with NLIHC. Gabby previously served as a housing stability specialist for a property management company in Washington, D.C., where she helped residents apply for emergency rental assistance. Gabby also worked as a housing specialist at N Street Village for the Patricia Handy Place for Women shelter in Washington, D.C., where she worked alongside case managers and community partners to find safe and affordable housing for women to help them exit homelessness successfully. Gabby graduated from Howard University in 2019 with a BA in political science and a minor in community development.

## JAIMIE ROSS

Jaimie Ross is former President and CEO of the Florida Housing Coalition. Her work includes all forms of legislative and administrative advocacy and education related to the planning and financing of affordable housing. Jaimie also served as Affordable Housing Director at 1000 Friends of Florida, a statewide nonprofit smart growth organization, from 1991 to 2015. Before her tenure at 1000 Friends of Florida, Jaimie was a land use and real property lawyer representing for-profit and nonprofit developers and financial institutions. She founded the Florida Community Land Trust Institute in January 2000 and the Center for Racial Equity in 2021. Nationally, Jaimie served as an executive officer on the Founding Board of Grounded Solutions Network and on the boards of the Innovative Housing Institute and the National Low Income Housing Coalition. She is a nationally recognized expert in avoiding and overcoming the NIMBY syndrome. Jaimie is a past chair of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar and a former Fannie Mae Foundation James A. Johnson Community Fellow.

## **SARAH SAADIAN**

Sarah is Senior Vice President for Public Policy and Field Organizing at NLIHC, where she oversees NLIHC's broad congressional portfolio and field mobilization efforts. Sarah previously worked with Enterprise Community Partners as a senior analyst, focusing on appropriations for federal housing and community development programs. Before joining Enterprise, Sarah served as policy counsel at Rapoza Associates, working largely on rural development issues. While a legislative and policy analyst at the National Community Reinvestment Coalition, Sarah's portfolio included expanding access to mortgage and small business credit. Sarah graduated from the University of Connecticut School of Law after receiving her bachelor's degree from the University of Virginia. She has been a member of the Virginia State Bar since 2009.

## **BROOKE SCHIPPOREIT**

Brooke Schipporeit is Manager of Field Organizing at NLIHC. Previously, Brooke spent years supporting state and local coalitions in their efforts to achieve solutions to housing poverty. She worked as an MSW intern with the Housing Alliance of Pennsylvania, informing and mobilizing coalition members to advance equitable housing policy. She also worked as Philadelphia's regional housing coordinator for the Self-Determination Housing Project of Pennsylvania, focusing on expanding affordable and accessible housing options for people with disabilities and older adults. Before her career in affordable housing, Brooke worked in direct services in Nebraska for both the Head Start program and a domestic violence shelter. She earned a Master of Social Work degree from the University of Pennsylvania and a Bachelor of Science degree in social work from Nebraska Wesleyan University.

## **SOPHIE SIEBACH-GLOVER**

Sophie Siebach-Glover is a research analyst with NLIHC. She first joined NLIHC as a field intern during her graduate studies. She has previous

experience serving as a research assistant at the University of Maryland, a permanent supportive housing team member at Miriam's Kitchen in Washington, D.C., and a community school director at United Way of Salt Lake. Sophie holds a BA in history and education, inquiry, and justice from Georgetown University. She received a master's degree in public policy and a Master of Social Work degree from the University of Maryland, where she concentrated on social policy and community action.

## **JOSH SILVER**

Josh Silver is a senior advisor at the National Community Reinvestment Coalition (NCRC) and has more than 25 years of experience in the housing and community development field. In his present role at NCRC, he produces white papers on the "Community Reinvestment Act" and fair lending policy and serves as an expert, providing advice and resources internally and externally. Formerly, he served as vice president of research and policy at NCRC for 19 years. Before joining NCRC, he worked as a development manager engaged in fundraising and research at Manna, Inc., a housing nonprofit developer and counseling agency serving the District of Columbia, and at the Urban Institute. Josh holds a master's degree in public affairs from the Lyndon Johnson School of Public Affairs at the University of Texas in Austin and a bachelor's degree in economics from Columbia University.

## **LISA SLOANE**

Lisa Sloane manages complex consulting projects for state and federal government agencies at the Technical Assistance Collaborative, Inc (TAC). She has nearly 40 years of experience working with federal, state, and local governments, as well as nonprofit agencies, to address the supportive housing needs of people with disabilities and individuals and families experiencing homelessness. Lisa has worked with the states of Virginia, Massachusetts, Oregon, Louisiana, and Maryland to develop and implement permanent supportive housing programs for people with disabilities and people experienc-



ing homelessness. In Massachusetts, she played a key role in the development of innovative cross-disability housing programs, including a housing locator system, a state housing bond fund, and a state home modification loan program. She is an expert in the area of fair housing. Before joining TAC, Lisa was principal of Sloane Associates, a woman-owned business that provided affordable housing and human services consultation, specializing in the development of housing programs and policies for persons with disabilities, including those experiencing homelessness.

## JORGE ANDRES SOTO

Jorge Andres Soto is Associate Vice President of Advocacy and Government Affairs at the National Fair Housing Alliance (NFHA), where he is responsible for advancing NFHA's public policy priorities and directing the organization's federal and congressional advocacy. Through local and national coalition-building, Jorge designs strategies to advocate for policies that help protect individuals from housing discrimination, strengthen access to justice for victims of housing discrimination, and remove obstacles to housing opportunity. He leads NFHA's efforts on issues concerning the federal budget and appropriations, housing and housing-related legislation, and executive nominations. He also staffs the Fair Housing Task Force of the Leadership Conference on Civil and Human Rights, which NFHA co-chairs with the NAACP Legal Defense Fund.

## MITRIA SPOTSER

Mitria Spotser is a consultant at the Center for Responsible Lending. She previously served as Director of Housing Policy at the Consumer Federation of America and as a member of the consumer advisory councils for JP Morgan Chase, Rocket Mortgage, Wells Fargo, Bank of America, and Freddie Mac. Mitria also previously served as Senior Director of Advocacy and Counsel at the Credit Union National Association; senior counsel on the House Financial Services Committee for Chairwoman Maxine Waters; Vice President of Federal Policy

and Senior Counsel at the Center for Responsible Lending; Director of Legislative and Policy Advocacy at the National Community Reinvestment Coalition; Director of Government Affairs for the DC Housing Finance Agency; and Legislative Director and Acting Committee Director for the Committee on Economic Development for the Council of the District of Columbia.

As a noted expert in issues involving affordable housing, economic development, consumer protection, access to credit and capital, housing finance, and oversight of financial institutions, Mitria and her work have appeared on *CNBC*, *MSNBC*, *Bloomberg News*, *NPR* and *C-SPAN*. She has also published in law journals, law reviews, and editorial publications and has testified before both the U.S. House of Representatives and the U.S. Senate. In 2014, Mitria appeared on the cover of *Housing Wire Magazine* as a "Woman of Influence" in recognition of her development of the affordable housing compromise in the bipartisan Corker-Warner housing finance reform legislation.

## LIZ STEWART

Liz Stewart has 19 years of experience helping develop policies and practices related to affordable housing development and permanent supportive housing (PSH). She has helped supportive housing and services agencies navigate local and federal regulations and restrictions in order to access resources to support PSH. She has extensive knowledge of federal and state programs used to finance housing and services for low-income and vulnerable populations, including the HOME Investment Partnerships Program (HOME), the Housing Opportunities for Persons with AIDS (HOPWA) Program, the Housing Choice Voucher Program, the 811 PRA Program, and the Continuum of Care (CoC) Program. Liz is an expert on underwriting and evaluating financial feasibility for mixed-finance housing developments, including the use of Section 202, Community Development Block Grants, HOME, and the Low-Income Housing Tax Credit (LIHTC).



## OLIVIA BARROW STRAUSS

Olivia Barrow Strauss is the policy manager at the Low Income Investment Fund (LIIF), where she helps lead the organization's strategic influence agenda. Olivia develops and advocates for public policies that increase access to capital and expand resources for affordable housing and community development projects. Prior to joining LIIF in 2019, she worked as a senior policy analyst at Enterprise Community Partners and helped lead the organization's affordable housing and community development tax credit advocacy efforts. She received a bachelor's degree in public policy and a master's degree in public administration from The George Washington University.

## LESLIE STRAUSS

Leslie Strauss is a senior policy analyst with the Housing Assistance Council (HAC), where she has worked since 1991. She is responsible for a variety of policy and information activities, including editing the HAC News. Leslie holds a law degree and practiced real estate law for several years before joining HAC. She serves on the board of the National Rural Housing Coalition.

## ERIC TARS

Eric Tars serves as legal director with the National Law Center on Homelessness & Poverty. Before joining the Law Center, Eric was a fellow with Global Rights' U.S. Racial Discrimination Program and consulted with Columbia University Law School's Human Rights Institute and the U.S. Human Rights Network. He currently serves on the Board of the U.S. Human Rights Network, as an adjunct professor at Drexel University's Kline School of Law, and as a field supervisor for the Howard University School of Social Work. Eric received his JD as a global law scholar from the Georgetown University Law Center and his BA in political science from Haverford College. He also studied international human rights at the Institute for European Studies, Vienna, and at the University of Vienna.

## KIMBERLY VERMEER

Kimberly Vermeer is an interdisciplinary sustainability practitioner, author, and podcaster, with a special focus on multifamily affordable housing. Through her company, Urban Habitat Initiatives Inc., she consults with affordable housing developers to advance sustainability and climate resilience in their development projects and organizations. Committed to equity in sustainability and to delivering the benefits of green building to vulnerable populations, she works with teams to incorporate a full range of sustainability and climate resilience strategies into their projects and guides the LEED and Enterprise Green Communities certification process. In her podcast, *Green in Action*, Kim shares stories of the people and organizations that are leading the transformation of the affordable housing sector through sustainable design and development strategies, and through the podcast she helps expand a community of practitioners and advocates. Kim is co-author, with Walker Wells, of the recently published book *Blueprint for Greening Affordable Housing, Revised Edition*. She is also an experienced educator and has developed and facilitated many professional education and peer-learning events. Her background includes housing finance, policy, and development. She was a Peace Corps volunteer in the Kingdom of Tonga.

## ANTHONY WALTERS

Tony Walters is from Tahlequah, Oklahoma, and is a member of the Cherokee Nation. He spent 12 years in Washington, D.C. and the last six years as Executive Director of the National American Indian Housing Council. Before joining NAIHC, Tony worked in both the legislative and executive branches of government. He served as staff director and chief counsel to Montana Senator Jon Tester for the Senate Committee on Indian Affairs. Prior to that, he worked as a policy advisor in the U.S. Department of the Interior's (Interior) Office of the Assistant Secretary – Indian Affairs. Tony has worked on a wide range of tribal issues, including energy and economic development, law enforcement, tribal lands issues,

and Interior's Land Buy-Back Program. He has a strong background in advocacy and Indian law and policy, including the development of legislative strategies. His education includes a Bachelor of Science in Neuroscience from the Massachusetts Institute of Technology and a JD from the Oklahoma University College of Law.

## OLIVIA WEIN

Olivia Wein has been an attorney at the National Consumer Law Center (NCLC) for more than 20 years. NCLC is a non-profit focused on using consumer law to promote economic security for low-income and other disadvantaged people. Olivia focuses on policies and programs that protect low-income consumers' access to essential utility services, including energy, water, and telecom. She works on the federal Low-Income Home Energy Assistance Program (LIHEAP), Weatherization, Lifeline, the Affordable Connectivity Program, and the Low-Income Household Water Affordability Program, and she intervenes in federal and state utility commission proceedings in matters affecting low-income utility consumer programs and protections. She is co-author of the fifth edition of NCLC's manual *Access to Utility Service* and co-author of *The Rights of Utility Consumers*. Olivia serves on the board of the Universal Service Administrative Company and the advisory board for the National Energy and Utility Affordability Coalition. She also serves on the Federal Communication Commission's Consumer Advisory Committee.

## RUTH ANNE WHITE

Ruth White is one of the nation's leading experts on the nexus between housing policy and child welfare. She is co-founder and executive director of the National Center for Housing and Child Welfare and former director of housing and homelessness for the Child Welfare League of America (CWLA). At the Child Welfare League, she co-edited a landmark issue of the League's journal, *Child Welfare*, documenting the extent to which children are needlessly held in foster care because their parents lack decent housing. Through her advocacy, more than \$100 million in

new funding for the Family Unification Program has been made available for families and youth in child welfare since 2009. Prior to working at CWLA, Ruth managed the front-door family shelter and redesigned the homeless coordinated entry system in Columbus, Ohio, reducing shelter entries by over 60%. She is also certified as an assisted housing manager. Ruth has a Master of Science degree in social administration from Case Western Reserve University and a Bachelor of Science degree in social work from Ohio State University. She is currently a Furfey Scholar, doctoral candidate, and professor of social work at the Catholic University of America.

## CHANTELLE WILKINSON

Chantelle Wilkinson is the national campaign manager of the *Opportunity Starts at Home* campaign at NLIHC. Before joining the Coalition, she worked as a budget analyst for the New York State legislature, assisting with the enactment of housing and transportation policies. In 2016, she worked on the Breathing Lights Campaign with the Center for Women in Government and Civil Society. The campaign highlighted the issues of dilapidated vacant housing in the capital region of New York State and spurred collaboration between people and organizations from many sectors, including artists, community organizations, neighborhood ambassadors, project administrators, and government officials. Chantelle received her BA in political science with minors in Latin American/Caribbean studies and Spanish and her MA in public administration from the Rockefeller College of Public Affairs and Policy at the University at Albany.

## RENEE M. WILLIS

Renee M. Willis is NLIHC's Senior Vice President for Racial Equity, Diversity, and Inclusion. In this role, Renee works to ensure that NLIHC's commitment to racial equity, diversity, and inclusion is woven through its culture, policies, programs, and practices. She also leads NLIHC's intensified engagement of renters with low-incomes and people with lived-experience with homelessness and housing instability. From

2015 to 2021, Renee served as NLIHC's vice president for field and communications. In 2020, she served as a fellow with the Shriver Center's Racial Justice Institute and joined a network of advocates working on race equity issues across the country. Renee has more than 20 years of experience in affordable housing, including establishing and leading successful community- and region-wide initiatives. She has extensive experience in strategic planning, financial management, marketing, organizational development, staff management, and program operations. Renee previously served as housing services chief with Arlington County, Virginia; administrator of the Office of Landlord-Tenant Affairs for Montgomery County, Maryland; and as advocate and manager for the Public Justice Center's Tenant Advocacy Project. Renee earned dual Bachelor of Arts degrees in English and Spanish from the University of Maryland. She also holds a certificate in public management from George Washington University.

## **ALICIA WOODSBY**

Alicia Woodsby is a senior associate at the Technical Assistance Collaborative, Inc (TAC). She has 17 years of experience leading statewide public policy initiatives; building statewide coalitions and cross-system and cross-sector partnerships; developing housing and services solutions for vulnerable and complex populations; and working to scale best practices. She provides technical assistance (TA) to states, nonprofits, local community mental health agencies, and Continuums of Care on health, behavioral health, and housing integration strategies; data sharing; estimating needs for housing resources; supportive housing capacity-building; strategies to reduce homelessness; serving high-cost/high-need populations; homelessness prevention; racial equity strategies; and partnering with people with lived experience. She served on the team for a national Centers for Medicare and Medicaid Services (CMS) learning collaborative focused on leveraging Medicaid and other federal resources to serve individuals with substance use disorders (SUDs) experiencing homelessness, and she has contributed to national policy briefs and planning

guides. She has conducted multiple presentations on mental health policy, housing, and homelessness at the state level and nationally. Prior to joining TAC, Alicia was the executive director of the Partnership for Strong Communities, the state-wide policy, advocacy, and backbone organization for the collective impact effort to end homelessness in Connecticut. At the Partnership, she led the statewide Reaching Home campaign, which played a major role in Connecticut's being named the first state to end chronic homelessness among veterans and the second to meet the federal definition of ending veteran homelessness, while reducing chronic homelessness among all populations by more than 60%. These efforts resulted in a substantial increase in the state's stock of supportive and affordable housing and a streamlined system for addressing the long-term homelessness of people with disabilities. During her time as Public Policy Director for the National Alliance on Mental Illness in Connecticut, she led a statewide mental health advocacy coalition, taking the lead on issues related to Medicaid, medication access, mental health parity, housing, and the decriminalization of serious mental illness.

## **GREG ZAGORSKI**

Greg Zagorski is a senior homeownership policy specialist with the National Council of State Housing Agencies, where he focuses on issues related to affordable homeownership and housing finance. Prior to joining NCSHA in 2012, Greg worked as a legislative assistant for Senator Joe Lieberman (I-CT), advising the Senator on housing and other economic issues. He holds a bachelor's degree in political science and history from the University of Connecticut and a master's degree from George Washington University.























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