ADVOCATES' GUIDE 2018

A PRIMER ON FEDERAL AFFORDABLE HOUSING & COMMUNITY DEVELOPMENT PROGRAMS

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NATIONAL LOW INCOME HOUSING COALITION

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Established in 1974 by Cushing N. Dolbeare, the National Low Income Housing Coalition is dedicated solely to achieving socially just public policy that assures people with the lowest incomes in the United States have affordable and decent homes.

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INTRODUCTION

About the *Advocates' Guide*

The Advocates' Guide: An educational primer on federal programs and resources related to affordable housing and community development, is—as the title suggests—a guide to affordable housing. But on many levels it is much more than that. The guide comprises hundreds of pages of useful resources and practical know-how, written by leading experts in the affordable housing and community development fields, with a singular 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 2018 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, all of us can effectively advocate for housing programs with our 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 THIS 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 the *Guide* with your friends and colleagues. The more advocates using this *Guide*, the greater our collective impact will be.

This year's *Advocates' Guide* was published before the enactment of the FY18 spending bills. Therefore, some of the information included reflects the FY17 budget. Updated information is available on our website at: http://nlihc.org/library/guides

A NOTE OF GRATITUDE

The *Advocates' Guide* was compiled with the help of many of our partner organizations. We are deeply grateful to all of the authors for their assistance—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.

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2018 Public Policy Priorities

NLIHC works with members of Congress, the Administration, affordable housing and community development organizations and advocates, and other stakeholders across the nation to ensure that people with the greatest needs – including the lowest income seniors, people with disabilities, families with children, people experiencing homelessness, and others – have a safe, affordable, and accessible place to call home.

Our policy priorities for 2018 include:

- Protecting, expanding and monitoring the implementation of the national Housing Trust Fund;
- Preserving and increasing resources for federal affordable housing programs serving extremely low-income families;
- Ensuring federal disaster recovery efforts are fair and equitable;
- Promoting equitable access to affordable housing; and
- Championing anti-poverty solutions.

PROTECT AND EXPAND THE NATIONAL HOUSING TRUST FUND

The national Housing Trust Fund is the first new housing resource in a generation. It is 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 through the passage of the Housing and Economic Recovery Act of 2008. In 2016, the first $174 million in Housing Trust Fund dollars were allocated to states, and in 2017, another $220 million was allocated. This is an important step, but far more resources are needed. NLIHC leads the Housing Trust Fund Implementation and Policy Group, a coalition of national advocates committed to protecting and expanding this new resource. In 2018, NLIHC will work with stakeholders to build Congressional support to increase funding to the Housing Trust Fund through the housing finance reform, investments in infrastructure, and other legislative opportunities.

PRESERVE AND INCREASE RESOURCES FOR FEDERAL AFFORDABLE HOUSING PROGRAMS

Federal Budgets for HUD and USDA Rural Housing

Despite a proven track record, federal housing programs have been chronically underfunded. Today, just one in five families eligible for federal housing assistance get the help they need. In order to fully address our nation's housing affordability crisis, Congress must significantly increase resources for federal housing programs. NLIHC leads 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 and community development. In 2018, CHCDF will work to lift the low spending caps required by the Budget Control Act of 2011 and prevent across-the-board funding cuts known as sequestration. Since 2011, spending caps have only made it more difficult for extremely low-income seniors, people with disabilities, families with children, and people experiencing homelessness to access safe, decent, and affordable housing by squeezing federal budgets. NLIHC advocates for increased funding for Housing Choice Vouchers, public housing, project-based rental assistance, and the HOME Investment Partnerships program, among many other programs.

Opposing Efforts to Cut Housing Benefits

NLIHC opposes efforts to cut housing benefits by imposing arbitrary work requirements, time limits, and other restrictions. A safe and stable place to call home is the first step to helping people rise out of poverty, and arbitrary restrictions that prevent people from receiving the help that they need will only make it more difficult for them to climb the economic ladder. These so-called 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. NLIHC will continue to educate members of Congress on proven solutions to ending housing poverty.

Expanding and Reforming the Affordable Housing Credit

We also support the expansion and reform of the Low Income Housing Tax Credit to better serve families with the greatest needs.

ENSURE FEDERAL DISASTER RECOVERY EFFORTS ARE FAIR AND EQUITABLE

One of the top priorities after a disaster is making sure that all displaced families have a safe, accessible, and affordable place to live while they get back on their feet. Too often, however, the housing, infrastructure, and mitigation needs of the lowest income people and their communities are overlooked. NLIHC leads the Disaster Housing Recovery Coalition of more than 340 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 that federal disaster recovery efforts reach all impacted households, including the lowest income seniors, people with disabilities, families with children, veterans, people experiencing homelessness, and other at-risk populations who are often the hardest-hit by disasters and have the fewest resources to recover afterwards.

PROMOTE EQUITABLE ACCESS TO AFFORDABLE HOUSING

NLIHC believes in just communities, where all community members have 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

2018 marks the 50th anniversary of the enactment of the Fair Housing Act, barring housing on the basis of race, color, religion, sex, familial status, national origin, or disability and requiring communities take active steps to end racial segregation. NLIHC supports U.S. Department of Housing and Urban Development's (HUD) Affirmatively Furthering Fair Housing rule that helps communities better meet their fair housing obligations and promotes housing choice. NLIHC strongly believes fair housing and civil rights advocates and affordable housing and community development practitioners can find common ground on policies that increase opportunities for underserved people in both high-opportunity areas and through revitalizing urban neighborhoods. NLIHC also supports increasing mobility opportunities through expanded mobility counseling and regional mobility programs, as well as the adoption of HUD Small Area Fair Market Rents (SAFMRs) in certain metropolitan areas that protect current and future tenants.

Achieving Criminal Justice Reform

The United States incarcerates its citizens at a shockingly high rate and nearly one in three Americans has a criminal record. As more formerly incarcerated individuals return to their communities, they face barriers to accessing affordable housing, which is already scarce in the low-income communities to which they return. Because of their criminal records, justice-involved individuals face additional barriers in 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 justice system. By eliminating the barriers to housing and supporting programs that help formerly incarcerated people successfully reintegrate into their communities, people with criminal records can make the most of their second chance. In addition, NLIHC advocates to end the criminalization of homelessness. Nationwide, homeless people are targeted, arrested, and jailed under laws that criminalize homelessness by making illegal those basic acts that are necessary for life. These laws are ineffective, expensive, and often violate homeless persons' civil and human rights.

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 vital safety net programs, including the Supplemental Nutrition Assistance Program (SNAP), Earned Income Tax Credit (EITC), unemployment insurance, Social Security, Medicaid, Medicare, the Children's Health Insurance Program (CHIP), the Affordable Care Act, Supplemental Security Income (SSI), Social Security Disability Income (SSDI) and Temporary Assistance for Needy Families (TANF). Moreover, NLIHC strongly supports efforts to increase the minimum wage and to target federal resources to communities with persistent poverty.

OTHER PRIORITIES

NLIHC monitors and advocates on other issues as well, including:

- Permanent reauthorization of the Protecting Tenants at Foreclosure Act, which expired at the end of 2014.
- Adoption of HUD's final Section 3 rule to ensure that preference for some of the new jobs, training, and contracting opportunities associated with HUD-assisted projects go to low-income people and to the businesses that hire them.
- Greater broadband access in all HUD-assisted housing and community development projects. Internet access and digital literacy are integral to an individual's ability to break out of entrenched poverty.
- Implementation of housing protections in the Violence Against Women Act. This includes language to bar landlords from screening out applicants or evicting tenants on the basis that the renter is or has been a survivor of domestic violence, dating violence, sexual assault, or stalking.
- Implementation of the HEARTH Act, which provided an overhaul of HUD's homeless assistance programs authorized through McKinney-Vento.
- Implementation of HUD's Moving to Work Demonstration and Rental Assistance Demonstration to ensure that future and current public housing residents are not negatively impacted. Congress should also enact legislation to allow RAD to be used to renovate elderly housing and housing for people with disabilities.

A Brief Historical Overview of Affordable Rental Housing

Affordable housing is a broad and complex subject intertwined with many disciplines: finance, economics, politics, and social services, to name a few. In spite of the complexity, advocates can come to an understanding of the essential workings of affordable housing and, in doing so, be prepared to advocate effectively for the programs and policies that can ensure access to decent, affordable housing for the people in need throughout their communities.

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

HISTORY

As with any federal program, federal housing programs grew and changed based on the economic, social, cultural, and political circumstances of the times. The programs and agencies that led to 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, 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.

In 1937, the U.S. Housing Act sought to address the housing needs of low income people through public housing. The nation's housing stock at this time was of very poor quality in many parts of the country. Inadequate housing conditions such as the lack of hot running water or dilapidation were commonplace for poor families. Public housing was a significant improvement for those who had access to it. At the same time, the post-World War II migration from urban areas to the suburbs meant declining cities. Federal programs were developed to improve urban infrastructure and to clear "blight." This often meant wholesale destruction of neighborhoods and housing, albeit often low-quality housing, lived in by immigrants and people of color.

In 1965, Congress elevated housing to a cabinet-level agency of the federal government, creating HUD, which succeeded its predecessors, the National Housing Agency and the Housing and Home Finance Agency, respectively.

HUD is not the only federal agency to have begun housing programs in response to the problems of the Great Depression. The U.S. Department of Agriculture (USDA) sought to address the poor housing conditions of farmers and other rural people through the 1935 creation of the Resettlement Administration, a predecessor to USDA's Rural Development. USDA's rural rental and homeownership programs improved both housing access and housing quality for the rural poor.

The cost of operating public housing soon eclipsed the revenue brought in from resident rents, a reality endemic to any program that seeks to provide housing or other goods or services to people whose incomes are not great enough to afford the prices offered in the marketplace. In the 1960s, HUD began providing subsidies to public housing agencies (PHAs) that would help make up the difference between revenue from rents and the cost of adequately maintaining the 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 for rent. The original figure was 25% of 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.

Beginning in the late 1950s and continuing into the 1960s, Congress created a number of 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. However, once the contracts forged by HUD and private owners expired, or owners decided to pay their subsidized mortgages early, those affordable units could be lost from the stock.

The Civil Rights Acts of 1964 and 1968 included housing provisions that were intended to prevent discrimination against members of protected classes in private or public housing. Different presidential 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 it 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 illness, and a decline in housing and other support for low income people resulted in the 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 to them.

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 Affordable Housing 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 receive. 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, the 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, have only further strained efforts to adequately fund programs.

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' response 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 in order 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 in order to finance housing development or preservation. These funding sources can be of federal, state, or local origin, and can also include private lending and grants or donations. Some developers include market-rate housing options within a development in order to generate revenue that will 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 that 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 can 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.

In spite of these challenges, affordable housing developers succeed every day, building, rehabilitating, and preserving the quality housing low income people need 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 35 units of housing affordable and available for every 100 extremely low income Americans. Federal housing assistance only serves one quarter of those who qualify for it. 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 every 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. The majority of 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

Just as the Great Depression caused lawmakers to consider an expanded role for government in the provision and financing of housing, the Great Recession of 2008 and the ensuing slow recovery have inspired advocates, lawmakers, and the general public to take interest in the housing and other needs of lower income people, and to reconsider the role of government in housing, particularly in homeowner-owned housing.

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 working poor families. And after decades of a clear over-investment in homeownership, the housing market collapse, and the growth of a gaping divide between the resources and future prospects of the highest and lowest income people, it is clearly time for federal housing policy to be rebalanced in favor of addressing the greatest housing needs.

Those who wish to see an end to homelessness must be unyielding in their advocacy for rental housing that is affordable to the lowest income people. Over the eight 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 the 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.

FOR MORE INFORMATION

- HUD Historical Background, http://1.usa.gov/11P11P2
- NLIHC's *Changing Priorities: The Federal Government and Housing Assistance, 1976-2007*, http://nlihc.org/sites/default/files/Changing-Priorities-Report_August-2002.pdf
- NLIHC's *Affordable Housing is Nowhere to be Found for Millions*, http://nlihc.org/sites/default/files/Housing-Spotlight_Volume-5_Issue-1.pdf
- National Housing Trust Fund, www.nhtf.org
- The Housing Trust Fund Project of the Center for Community Change, http://housingtrustfundproject.org/
- National Housing Preservation Database http://www.preservationdatabase.org/

The National Need for Affordable Housing

By Dan Emmanuel, National Low Income Housing Coalition Senior Research Analyst; and Andrew Aurand, National Low Income Housing Coalition Vice President for Research

The United States faces a shortage of affordable rental housing. The shortage is most severe for extremely low income (ELI) households whose incomes are at or below the poverty guideline or 30% of their area's median income (AMI), whichever is higher. Only 7.5 million affordable rental homes exist for the nation's 11.2 million ELI renter households, assuming they should spend no more than 30% of their income on housing costs.[1] Not all of these 7.5 million homes, however, are available. Nearly 3.5 million of them are occupied by higher income households. As a result, fewer than 4 million rental homes are affordable and available for ELI renters, leaving a shortage of 7.3 million. In other words, only 35 affordable and available rental homes exist for every 100 ELI renter households.

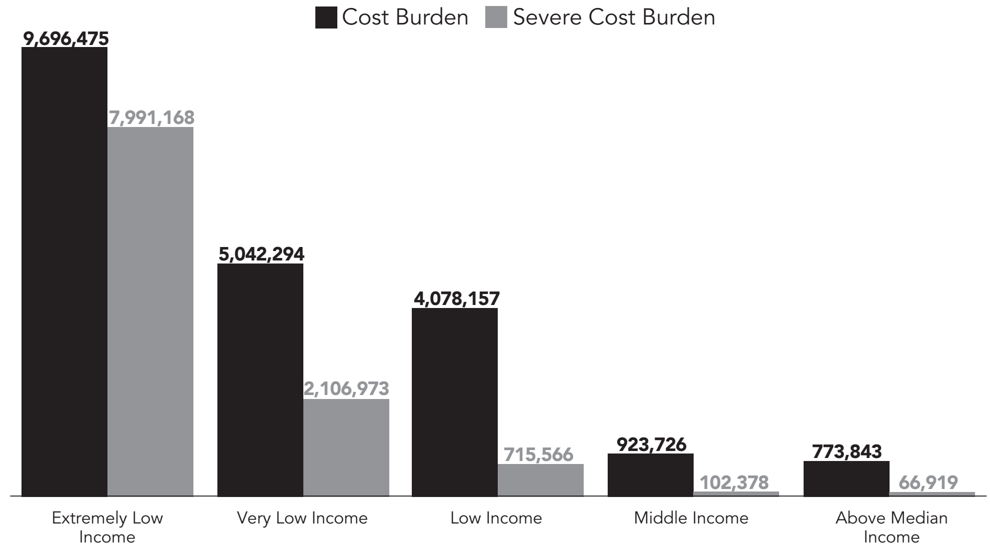
In light of the significant shortage of affordable and available housing, 86% of ELI renter households spend more than 30% of their income on housing, making them cost burdened by their housing; and 71% spend more than half of their income on housing, making them severely cost burdened. ELI households account for more cost burdened and severely cost burdened renter households than any other income group (Figure 1). The 8 million severely cost burdened ELI renter households account for nearly 73% of all severely cost burdened renter households in the U.S.

The most vulnerable ELI renters, including people with disabilities relying on Supplemental Security Income (SSI) and minimum wage workers, face the greatest burdens. A 2014 study, for example, found that one-bedroom rents exceeded 100% of an individual's monthly SSI income in 161 housing markets across 33 states.[2] And in only 12 counties nationwide can a full-time worker at minimum wage afford a modest one-bedroom apartment.[3]

Low-wage employment 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 $21.21 in order to afford a modest two-bedroom rental home without spending more than 30% of his or her income on housing, or $17.14 for a modest one-bedroom apartment. These wages are far higher than the federal minimum wage and higher than wages paid by many of the fastest growing occupations (Figure 2).

The negative impact of severe housing cost burdens

FIGURE 1: RENTER HOUSEHOLDS WITH COST BURDEN BY INCOME GROUP, 2016



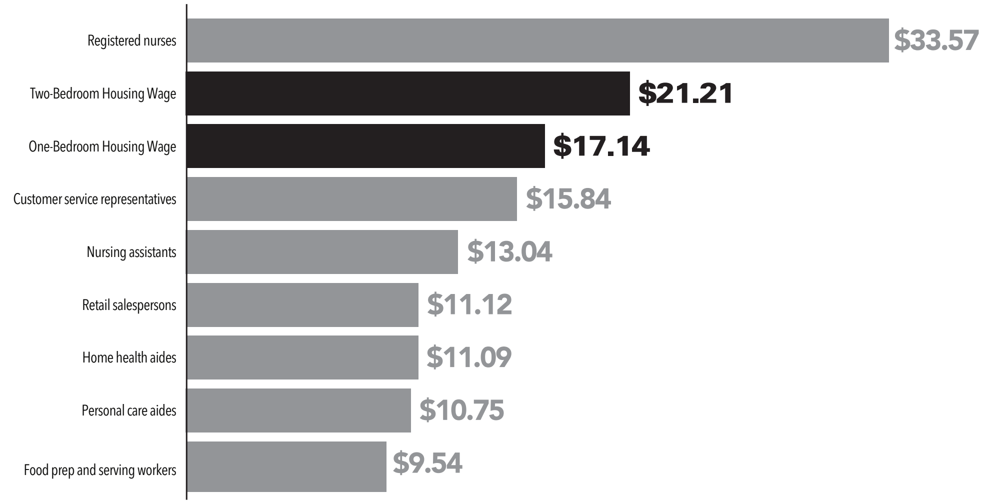
Source: NLIHC tabulations of 2016 ACS PUMS data.

1 Unless otherwise noted, figures are based on NLIHC analysis of 2016 ACS PUMS data.

2 Technical Assistance Collaborative. (2015). *Priced out in 2014*. Boston, MA: Author. Retrieved from http://www.tacinc.org/media/52012/Priced Out in 2014.pdf

3 National Low Income Housing Coalition. (2017). *Out of Reach 2017: The High Cost of Housing*. Washington, DC: Author. Retrieved from http://nlihc.org/sites/default/files/oor/OOR_2017.pdf.

FIGURE 2: HOUSING WAGE AND MEDIAN WAGES FOR OCCUPATIONS WITH HIGHEST PROJECTED GROWTH



Source: NLIHC calculation of Housing Wage; Employment Projections Program, BLS; May 2016 National Occupational Employment and Wage Estimates, Occupational Employment Statistics, BLS; adjusted to 2017 dollars.

on low income family members' mental and physical health is well documented, particularly due to increased stress from housing instability and fewer resources for food and health care.[4] Severely cost burdened ELI households are one financial emergency away from eviction. More than 1 million ELI households missed at least 1 rental payment in 2013 and more than 900,000 had felt the threat of eviction.[5]

Poor households with children who are severely cost burdened spend 75% less on healthcare and 40% less on food than similarly poor households who are not cost burdened; and poor seniors who are severely cost burdened spend 62% less on healthcare.[6] These households forego healthy food and delay healthcare or medications in order to pay the rent.

Many SSI recipients and seniors with mobility impairments need housing with accessible features like zero-step entrances, wider hallways and door frames to accommodate wheelchairs, single-floor living, levered handles on doors and faucets, and electrical controls reachable from a wheelchair. Only 1% of homes have all of these elements.[7] The growing population of seniors with disabilities will worsen the shortage of accessible housing in the coming years.

ELI households face enormous barriers in obtaining affordable and accessible housing. The data clearly show that they have the greatest housing needs relative to all other income groups. Addressing their needs should be the highest national housing priority.

4 Maqbool, N., Viveiros, J. and Ault, M. (2015). *The impacts of affordable housing on health: A research summary*. Washington, DC: Center for Housing Policy. Retrieved from http://media.wix.com/ugd/19cfbe_d31c27e13a99486e984e2b6fa3002067.pdf.

5 Joint Center for Housing Studies of Harvard University. (2016). *The state of the nation's housing 2016*. Cambridge, MA: Author. Retrieved from http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs_2016_state_of_the_nations_housing_lowres.pdf

6 Joint Center for Housing Studies of Harvard University. (2017). *The state of the nation's housing 2017*. Cambridge, MA: Author. Retrieved from http://www.jchs.harvard.edu/research/state_nations_housing.

7 Joint Center for Housing Studies of Harvard University. (2016). *Projections and implications for housing a growing population: Older households 2015-2035*. Cambridge, MA: Author. Retrieved from http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/harvard_jchs_housing_growing_population_execsum.pdf

Income Targeting and Expenditures for Major Housing Programs

HOUSING PROGRAM	INCOME TARGETING REQUIREMENTS	NATIONAL ANNUAL FUNDING
Public Housing	At least 40% of units are for households with income less than 30% of AMI, with the remainder for households earning up to 80% of AMI.	$6.4 billion (FY17 HUD appropriation)
Housing Choice Vouchers	At least 75% of vouchers are for households with income less than 30% of AMI, with the remainder for households earning up to 80% of AMI.	$20.1 billion (FY17 HUD appropriation)
Project-Based Rental Assistance	At least 40% of units are for households with income less than 30% of AMI, with the remainder for households earning up to 50% of AMI.	$10.8 billion (FY17 HUD appropriation)
Section 202 and Section 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.	$684 million (FY17 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 5 HOME-assisted units are in a building, then 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.	$950 million (FY17 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 billion (FY17 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).	$2.4 billion (FY17 HUD appropriation)
Housing Opportunities for Persons with AIDS	All housing is for households with income less than 80% of AMI.	$356 million (FY17 HUD appropriation)
Low Income Housing Tax Credit	All units are for households with income less than 50% or 60% of AMI (depends on if developer chooses 20% units at 50% AMI or 40% units at 60% AMI).	$10.1 billion (FY18 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.	$369 million (2016 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, 80% of AMI plus $5,500. Households in substandard housing are given first priority.	$35 million (FY17 USDA appropriation)

HOUSING PROGRAM	INCOME TARGETING REQUIREMENTS	NATIONAL ANNUAL FUNDING
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 earning less than 50% of AMI.	$1.4 billion (FY17 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.	$219 million in 2017

Note: From the beginning of FY16 through January 19, 2018, all programs operated under a Continuing Resolution (CR).

AMI: area median income

Extremely low income: income less than 30% of AMI or less than the federal poverty line

Very low income: income less than 50% of AMI

Low income: income less than 80% of AMI

National Low Income Housing Coalition, January 2018

Housing as a Human Right

By Eric Tars, Senior Attorney,National Law Center on Homelessness & Poverty

Polling indicates that three-quarters of Americans believe that adequate housing is a human right, and two-thirds believe that government programs need to be expanded to ensure this right. But the massive cutbacks to federal housing funding in the early 1980s have never been restored, which has resulted in our current crisis of homelessness. Today only one out of four income-eligible renters receives assistance—far from a rights-based approach. Beginning in 2012, due to well-organized advocacy, the U.S. Interagency Council on Homelessness (USICH), the U.S. Departments of Justice (DOJ), and HUD have all taken enforcement actions and adopted human rights language against the criminalization of homelessness. At the state level, there is a trend of homeless bills of rights, and locally, a number of municipalities have passed resolutions declaring their belief in housing as a human right.

Many in the housing advocacy world believe that housing should be a right for all, but are not as vocal or insistent as the issue demands. Now, faced with the prospect of more cuts to already inadequate housing programs at the federal, state, and local levels, housing advocates can use the international human rights framework—which deems housing a basic human right—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 affordable and public housing, homelessness, and the foreclosure crisis, often providing detailed recommendations for federal- and local-level policy reforms. In 2018, advocates must work to consolidate these gains and push for action to accompany the rhetoric.

HISTORY

In his 1944 State of the Union address, 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. The U.S. also ratified the Convention Against Torture in 1994, protecting individuals from torture and other cruel, inhuman and degrading treatment, including the criminalization of homelessness.

More recently, there were hints that the U.S. might have interest in revitalizing the human right to housing. In 2010, President Obama stated that it is "simply unacceptable for individuals, children, families, and our nation's veterans to be faced with homelessness in this country." In March 2011, the U.S. made commitments to the U.N. Human Rights Council to "reduce homelessness," "reinforce safeguards to protect the rights" of homeless people, and continue efforts to ensure access to affordable housing for all. In 2015, the U.S. government supported, in part, a recommendation from the Human Rights Council 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 millions of people in the country."

In October 2016, the U.S. signed onto the New Urban Agenda, the outcome report of the U.N. Habitat III conference. The signatories "commit 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 Agenda also stated "we commit to combat homelessness as well as to combat and eliminate its criminalization through dedicated policies and targeted active inclusion strategies, such as comprehensive, inclusive, and sustainable housing first programmes."

As of the writing of this chapter, USICH, DOJ, and HUD all currently address criminalization of homelessness as a human rights issue on their websites and have implemented recommendations of human rights bodies. This is a result of advocacy related to visits by U.N. human rights monitors and reviews by human rights bodies in Geneva. The DOJ filed a statement of interest brief arguing criminalization of homelessness violates the 8th Amendment and human rights standards, and HUD provided up to two points on their funding applications to Continuums of Care that demonstrated steps they were taking to end and prevent criminalization. Homeless people on the streets of America are sleeping safer today because of international human rights advocacy, but much more remains to be done to ensure the human right to adequate housing is a reality for all.

ISSUE SUMMARY

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 adequate housing, whether through devoting resources to public housing and vouchers, by creating incentives for 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 the right to counsel to enforce those protections, by ensuring habitable conditions through housing codes and inspections, or by other means. Contrary to our current framework which 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.

France, Scotland, South Africa, and other countries have adopted a right to housing in their constitutions or legislation, leading to improved housing conditions. In Scotland, the Homeless 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 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 the right to housing is upheld. Although challenges remain in its implementation, in general, Scotland's homelessness is a brief, rare, and non-recurring phenomenon.

FORECAST FOR 2018

The current U.S. Administration and Congress pose some potential threats both to the enjoyment of the right to adequate housing by Americans, and to the acceptance of a rights-based approach to housing. Issues to watch for include proposals to cut non-defense spending every year, which directly conflicts with a rights-based approach and would be devastating to affordable housing programs including Section 8 vouchers, public housing, and project-based rental assistance (which need to increase every year just to keep pace with inflation); welfare reform-type changes such as work requirements and time limits to all anti-poverty programs, which again undermine the ability to access needed housing as a right; and block granting of more funds (which can make it easier to use anti-poverty funding for other purposes).

It is precisely in this time of ongoing economic hardship that a rights-based approach to budgeting and policy decisions would help generate the will to protect people's basic human dignity first, rather than relegating it to the status of an optional policy. National Law Center on Homelessness & Poverty, together with many other housing and homelessness organizations (including NLIHC), launched the Housing Not Handcuffs Campaign in 2016, linking local and national advocacy against criminalization of homelessness and for housing.

One potential opportunity to address federal agencies within the human rights context may come in the planned review of the U.S. by the U.N. Committee on the Elimination of Racial Discrimination. As of the time of this writing, the U.S. is overdue in submitting its report to the Committee, but it may do so at any time, initiating a year-long process where advocates can engage to highlight housing issues in the context of racial discrimination.

At the state level, Rhode Island, Illinois, and Connecticut have all passed Homeless Bills of Rights; and California, Colorado, Delaware, Florida, Oregon, Pennsylvania, and Hawaii are all likely to consider similar legislation in 2018.

Locally, advocates in many cities are working to pass right to housing resolutions or directly implement the right to housing. Advocates in Eugene, OR, have successfully used human rights framing to create political will for a safe camping area for homeless persons. Groups such as the Chicago Anti-Eviction Campaign are organizing eviction and foreclosure defenses, and using a state law allowing nonprofits to take over and rehabilitate vacant properties to draw attention to and directly implement the human right to housing.

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 can start with a non-binding resolution stating that their locality recognizes housing as a human right in the context of the ongoing economic and foreclosure crisis, such as that passed by the Madison, WI, city council and the surrounding Dane County Board of Supervisors in November 2011, which later served as a basis for an $8 million investment in affordable housing. Advocates can also hold local government accountable to human rights standards by creating an annual Human Right to Housing Report Card. Using international mechanisms and the domestic process around them—such as the review by the Committee on the Elimination of Racial Discrimination 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 their constituents say "Housing is a human right," and to call for policies to support it as such, because this helps us to change the normative framework for all of the housing issues we work on. That said, there are also times when it is more strategic not to utilize the language of human rights per se, but to emphasize or advocate for the underlying programs or policies that would help to better guarantee the right in practice.

For the situations where it is appropriate to frame the broader case on housing as a human right, tying the concept to the United States' origins and acceptance of these rights in Roosevelt's "Second Bill of Rights," the polling data above, and showing the affirmations of this language by USICH, HUD, and the DOJ all emphasize it as a homegrown idea rather than one imposed from abroad. On a somewhat converse point, however, using the recommendations made by human rights monitors can also reinforce advocates' messages by lending them international legitimacy.

Both the American Bar Association and the International Association of Official Human Rights Agencies (the association of state and local human rights commissions) 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 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 Law Center on Homelessness & Poverty, 202-638-2535, email@nlchp.org, www.nlchp.org

Chapter 2:
ADVOCACY RESOURCES

How Laws Are Made

The lawmaking process can be initiated in either chamber of the 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 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, from the Government Printing Office (GPO), describes 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 giving 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, 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 many cases, a simple majority (51 of 100) passes the bill. In more recent years, however, the Senate has needed 60 votes to overcome a threat of a filibuster.
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

How a Senate Bill Becomes a Law, from the U.S. Senate: http://1.usa.gov/151DcBm

The Legislative Process, from the U.S. House of Representatives: http://1.usa.gov/151Dfx7

The Federal Budget and Appropriations Process

By Sarah Mickelson, Senior Director of Public Policy, National Low Income Housing Coalition

Funding the federal government is a two-part process that occurs annually. First, a federal budget resolution is passed, 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 during the prior FY, 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, mandatory, and tax.

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 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 that is 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, 2017 could be an exception if Congress uses 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 potential tax that could 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 prior to 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.

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 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. Because this is a resolution, 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 fiscal year, it must provide funding for the period after the FY fiscal year 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 fiscal year, 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 17 days in October 2013 and three days in January 2018.

APPROPRIATION 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, and Related Agencies (T-HUD) Subcommittee and the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies 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 T-HUD 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 T-HUD and Agriculture bills. Once these bills are passed by Congress, they are signed into law by the president.

FORECAST FOR 2018

In February 2018, Congress reached an agreement to lift the low spending caps that were put in place under the Budget Control Act of 2011 (BCA) for Fiscal Years 2018 and 2019. The low spending caps have made it difficult for Congress to fund domestic programs, including affordable housing and community development, at the levels necessary.

At the time this goes to print, Congress must decide how to divvy up the additional funding available for their FY 2018 spending bills, and it will then turn its attention to beginning the appropriations process for FY19. NLIHC strongly advocates for the highest allocation possible for affordable housing and community development programs at HUD and USDA.

NLIHC strongly opposes the president's FY19 budget request, which proposed cutting housing benefits by slashing federal investments in affordable housing and increasing rents and imposing harmful work requirements on families who receive federal housing assistance. In his FY19 budget request, the president proposed drastic cuts to HUD and USDA rural housing programs that would result in the loss of at least 200,000 Housing Choice Vouchers, the elimination of the national Housing Trust Fund, the elimination of funding to repair – and deep cuts operational funding for – public housing, and the elimination of flexible resources used by state and local governments to address their pressing housing and community development needs, among other harmful cuts. The president's proposal to cut housing benefits would only make it harder for families to live in stable housing, undermining their ability to live with dignity and climb the economic ladder

WHAT TO SAY TO LEGISLATORS

- Advocates should weigh in with the administration and Congress on the importance of ending sequestration altogether and the importance of strong housing funding.
- Advocates should urge their Members of Congress to provide robust funding for HUD and USDA affordable housing 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 have already resulted in the loss of affordable housing opportunities in their states and districts. In order to prevent further loss of HUD and USDA rural housing units, Congress needs to end sequestration. At the time this goes to print, it is unknown whether Congress has agreed to lift the low spending caps for the current FY.

FOR MORE INFORMATION

NLIHC, 202-662-1530, www.nlihc.org/issues/budget

Coalition on Human Needs, 202-223-2532, www.chn.org/issues/budget

Center on Budget and Policy Priorities, 202-408-1080, http://bit.ly/151BQ9K

FY18 Budget Chart

FOR SELECTED HUD AND USDA PROGRAMS (AS OF THIS PRINTING)

HUD PROGRAMS *(set asides italicized) (In millions)*	**FY16 ENACTED**	**FY17 ENACTED**	**FY18 PRESIDENT**	**FY18 HOUSE**	**FY18 SENATE**	**FY18 ENACTED****
Tenant Based Rental Assistance	**19,629**	**20,292**	**19,318**	**20,487**	**21,365**	
Contract Renewals	*17,681*	*18,355*	*17,584*	*18,710*	*19,370*	
Tenant Protection Vouchers	*130*	*110*	*60*	*60*	*75*	
Administrative Fees	*1,650*	*1,650*	*1,550*	*1,550*	*1,725*	
Section 811 Mainstream Vouchers	*107*	*120*	*107*	*150*	*130*	
Veterans Affairs Supportive Housing Vouchers	*60*	*40*	*0*	*577**	*40*	
Tribal Veterans Affairs Supportive Housing Vouchers	*0*	*7*	*7*	*7*	*5*	
Family Unification	*0*	*10*	*0*	*0*	*20*	
Public Housing Capital Fund	**1,900**	**1,942**	**628**	**1,850**	**1,945**	
Emergency/Disaster Grants	*22*	*22*	*20*	*20*	*22*	
Jobs-Plus Pilot	*15*	*15*	*10*	*15*	*15*	
Public Housing Operating Fund	**4,500**	**4,400**	**3,900**	**4,400**	**4,500**	
Choice Neighborhoods Initiative	**125**	**138**	**0**	**20**	**50**	
Family Self Sufficiency	**75**	**75**	**75**	**75**	**75**	
Native American Housing Block Grants	**650**	**654**	**600**	**654**	**655**	
Native Hawaiian Housing Block Grants	**0**	**2**	**0**	**0**	**1**	
Hsg. Opportunities for Persons with AIDS	**335**	**356**	**330**	**356**	**330**	
Community Development Fund	**3,060**	**3,060**	**0**	**2,960**	**3,060**	
CDBG Formula Grants	*3,000*	*3,000*	*0*	*2,900*	*3,000*	
HOME Investment Partnerships Program	**950**	**950**	**0**	**850**	**950**	
Self-Help Homeownership Opportunity Program	**10**	**10**	**0**	**10**	**10**	
Homeless Assistance Grants	**2,250**	**2,383**	**2,250**	**2,383**	**2,456**	
Rental Assistance Demonstration	**0**	**0**	**0**	**0**	**4**	
Project-Based Rental Assistance	**10,620**	**10,816**	**10,351**	**11,082**	**11,507**	
Housing for the Elderly (202)	**433**	**502**	**510**	**573**	**573**	
Housing for Persons with Disabilities (811)	**151**	**146**	**121**	**147**	**147**	
Housing Counseling Assistance	**47**	**55**	**47**	**50**	**47**	
Policy Development & Research	**85**	**89**	**85**	**85**	**85**	
Fair Housing and Equal Opportunity	**65**	**65**	**65**	**65**	**65**	
Fair Housing Assistance Program	*24*	*24*	*24*	*24*	*TBD*	
Fair Housing Initiatives Program	*40*	*39*	*39*	*39*	*TBD*	
Healthy Homes & Lead Hazard Control	**110**	**145**	**130**	**130**	**160**	

USDA PROGRAMS *(set asides italicized) (In millions)*	**FY16 ENACTED**	**FY17 ENACTED**	**FY18 PRESIDENT**	**FY18 HOUSE**	**FY18 SENATE**	**FY18 ENACTED****
Section 514 Farm Labor Housing Loans	**24**	**24**	**0**	**15**	**24**	
Section 516 Farm Labor Housing Grants	**8**	**8**	**0**	**6**	**8**	
Combined 514/516 Subsidy	*23*	*23*	*0*	*10*	*14.7*	
Section 515 Rental Housing Direct	**28**	**35**	**0**	**28**	**35**	
515 Subsidy	*8*	*10*	*0*	*7*	*9*	
Section 521 Rental Assistance	**1,390**	**1,405**	**1,345**	**1,345**	**1,345**	
Multifamily Preservation & Revitalization	**37**	**41**	**20**	**35**	**41**	
Preservation Demonstration	*22*	*22*	*0*	*15*	*22*	
Section 542 Vouchers	*15*	*18*	*20*	*20*	*19*	

*The House FY18 bill calls for separate accounting of previously funded VASH vouchers. This amount does not reflect any new VASH vouchers.

**The FY18 budget was not enacted before this document's publication.

Introduction to the Federal Regulatory Process

By Ed Gramlich, Senior Advisor,
National Low Income Housing Coalition

When Congress changes an existing law or creates a new one, federal agencies such as HUD must usually implement the changes or the new law by modifying an existing regulation or by creating a new one. In addition, federal agencies can 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 of the 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 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, such as HUD, the power to write rules to interpret laws and enforce them. 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 Office of Information and Regulatory Affairs (OIRA), which has up to 90 days to review their consistency with Executive Order 12866. 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" 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 on 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 present 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 rules must state a date when they will go into effect, generally 30 or 60 days in the future. However, before the final regulations do go into effect, they are sent to the Congressional subcommittee responsible for the subject matter, as well as to the Government Accountability Office (GAO), to ensure that the rules meet, but do not overstep, Congressional intent. It is not unusual for more than a year to pass between publication of a proposed rule and final implementation.

Other Regulatory Options. In addition to proposed and final rules, the regulatory process can occasionally include:

- Advanced Notice of Proposed Rulemaking. HUD can ask for information from the public to help it think about issues before developing proposed regulations.
- Interim Final Rules. HUD can issue regulations that are to be followed as if they are final, yet ask for continued public comment on some parts of the rules. Subsequent final rules can include changes based on any additional public comment.

- 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*.
- Petition for Rulemaking. This is a process by 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.
- Informal Meetings. HUD has the authority to gather information from people by using informal hearings or other forms of oral presentations. The transcript or minutes of such meetings will be on file in the Rules Docket.

The Role of Congress. Before HUD can publish a rule for comment or publish an interim rule, HUD must submit the rule to HUD's Congressional authorizing committees for a review period of 15 calendar days (which does not depend on Congress being in session).

The Congressional Review Act (CRA) requires all federal agencies to submit final rules to Congress and the 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 – 60 days that the Senate is in session. More information about the Congressional Review Act is at: http://bit.ly/2jc6UQy.

HOW TO FIND PROPOSED AND FINAL REGULATIONS IN THE FEDERAL REGISTER

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

- The current day's *Federal Register* and links to browse back issues are at: http://1.usa.gov/YlVw4v
- 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: www.regulations.gov, which also provides all rules open for comment and enables electronic submission of comments.

HOW TO READ THE FEDERAL REGISTER

There are standard features in the *Federal Register* for both proposed and final rules. 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 there will be:

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

FOR FURTHER INFORMATION CONTACT: The name of a major 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 begin at this heading. Key words are presented here.

Then 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 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

It is best to submit comments electronically. In the "Search for" box at www.regulations.gov, enter either the Docket number or the RIN number. That will take you to the rule page. On the right is "Comment Now." Rather than type comments in the "Comment" box, it is probably best to use the "Upload File(s)" option below the Comment box to upload a PDF of your comments. To view all submitted comments click on "Open Docket Folder."

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 appeared 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.

THE CODE OF FEDERAL REGULATIONS

All final rules published in the Federal Register are eventually "codified," collected and placed in the CFR. 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 2017 are available at: http://bit.ly/2qb7i5f

There are 50 "titles" in the CFR, 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 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

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

Lobbying: Individual and 501(c)(3) Organizations

By Joey Lindstrom, National Low Income Housing Coalition, Manager for Field Organizing

Lobbying is the most direct form of advocacy. Many people think there is a mystique to lobbying, but it is simply the act of meeting with a government official or their staff to talk about an issue that concerns you and that you would like addressed. The most common type of lobbying is contact with Members of Congress or their staff, but housing advocacy should not be limited only to legislators. It is often important to lobby the White House or officials at HUD and other agencies. Lobbying the White House can be especially important leading up to the President's budget proposal each year, setting the tone for budget work to come in the House and Senate.

Whether meeting with members of Congress or officials of the Administration, 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 lobby. The perspective you can provide on the housing situation in your local area is extremely valuable. Indeed, you are the expert on what is happening in your district or state and you are a resource to officials in DC.

It is helpful to remember that the most effective advocacy requires positive relationships, usually with staff members in congressional and administrative offices. Sometimes officials may seem to be staunch opponents, but simply must be educated on housing issues before they can become allies. It can be a gradual process. Expose officials and their staff to the issues of homelessness and affordable housing by inviting them to your events, or to tour your agency or a housing development. Keep in mind that even those offices who support affordable housing issues and legislation still need to hear from you so that it remains a top priority on their agenda. Legislative allies are more likely to continue their support when they think it gets noticed, so make sure to offer your thanks and find ways to keep them engaged.

There are several important initial factors to consider when you lobby. Determine the proper target of your advocacy efforts. 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. Also think about whether you are lobbying on behalf of yourself or on behalf of an organization. This can determine not only the type of message you present, but also whether there is necessary record keeping for your lobbying activity.

EFFECTIVE MEETINGS

If you have never lobbied before, it may help to think of the visit as a twenty-minute conversation in which you will share your insight and positions on affordable housing policy. Consider your meeting an opportunity to build working relationships with decision makers and to educate them on the importance of your local work.

A face-to-face meeting is often the most effective way to get your voice heard. Given the busy schedule of most officials, they may ask you to meet with a staff person who handles housing issues. Very often, staffers can spend more time delving into your concerns than an elected official would be able to devote, so getting to know influential staff people and building relationships with them is crucial.

Scheduling a meeting. Call the office you hope to meet with to request an appointment well in advance of your visit. Usually you will want to call about 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, offices do not like to assign specific staff to meetings more than one week in advance because they like to remain flexible as committee hearings and floor votes are being scheduled.

If you are setting up a local meeting, locate the contact information for your member of Congress' district office or for the local field office of the administrative agency. If you are planning to visit Washington, DC, contact the member's Capitol Hill office or the appropriate federal agency. (For contact information for key Members of Congress and offices of the Administration, see *Congressional*

Advocacy and Key Housing Committees and *Federal Administrative Advocacy*.)

When you call, identify yourself as a constituent to the person who answers the phone. Many offices give priority to arranging meetings for constituents because time of Members and their staff is limited. Ask first to schedule a meeting with the official. If the scheduler indicates that he or she will not be available, ask to meet with the relevant staff person which will most often be the legislative assistant who covers housing issues.

When scheduling the appointment, be sure to tell the office where you are from in the district or state, the organization you represent, the purpose of the meeting, 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 is information that can often be sent closer to the date of the meeting. Some offices may ask you to email or fill out a web form to request the meeting rather than give the information over the phone.

Call the office the week prior to the meeting to confirm. If you are meeting with a specific staff person, email them the week prior to confirm the meeting date and time, to reiterate the purpose of the meeting, and to send relevant information for them to review in advance.

Crafting your agenda. Developing a well-planned agenda for your meeting will help you maximize your time. Set an agenda based on how much time you have, usually no more than 20 or 30 minutes. If you will be lobbying in a group, decide who will lead the meeting and what roles everyone will play.

Before you set the agenda, it is useful to research the office's past positions and statements on housing issues. You can review roll call votes on key affordable housing bills at http://thomas.gov to find out how a member of Congress has voted on housing legislation. If you need help, don't hesitate to contact the NLIHC Housing Advocacy Organizer for your state, which you can find at http://nlihc.org/takeaction/field.

Logistics of the meeting. Make sure you know the building address and room number where your meeting is being held. Arrive early, as security can be tight at federal offices, especially those on Capitol Hill. If there are congressional hearings at the same time as your meeting, the lines to enter the buildings can be very long and you can end up waiting 15 minutes or more to enter. Do not bring items that may trigger a security concern and delay your entry into a building. The House and Senate office buildings are large and it takes time to navigate to the office where your meeting will be held. Have the name of the person with whom you are meeting readily available.

Conducting your meeting. At your meeting, take the time to introduce each attendee and their unique expertise or role in local work. Start the meeting by offering thanks to the official for an action they have taken to support affordable housing, or by highlighting a specific area of interest that you might share. If you are meeting with a regular ally of affordable housing efforts, acknowledge past support at the beginning of the meeting. 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 congressional or administrative offices over time, they may eventually shift their positions favorably.

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 that they have a deep understanding of the problem. Make sure, however, not to spend too much time on these first portions of the meeting so that you have time to substantively discuss your particular issue of concern. Including personal stories and experiences within your message can often get your point across in a more compelling fashion.

Move into the main portion of the meeting by giving a brief description of the top two or three specific housing issues you want to discuss. Try to present the issues positively, as solvable problems. In deciding how to frame your message, research the background of the official you are meeting with to gain insight regarding their professional interests and personal concerns, memberships, affiliations, and Congressional committee assignments. These roles and interests are often listed on their website. This information may help you gauge how your concerns fit in with their priorities.

When discussing these issues, do not feel like you must know everything about the topic. If you are asked a question you cannot sufficiently answer, indicate that you will follow up with more information. Offering to provide further detail and answers is an excellent way to continue being in touch 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 agenda since you will have limited time to discuss your main points. Be sure to make the meeting conversational; you want to learn the perspective of the official in addition to making your points.

Have a specific "ask" on the housing issues you raise; for example, suggest that a member of Congress sponsor, co-sponsor, or oppose a bill. Decide on a concrete action you would like to see taken as a step in resolving the local affordable housing challenges you have presented. Explain how your ask fits within the official's priorities. The office will agree to this ask, decline, or say they need time to consider. If they decline, ask how else they might be willing to address the issues you have raised. Suggest ways that you or your organization can be helpful in achieving the end goal of solving the housing challenge.

Before closing the meeting it is important to try to get an answer on your ask regarding specific legislation or policy changes, even if the answer is "maybe" or "no." Make a follow-up plan based on this response; you will often want to present further information or recruit additional voices. If at the end of your meeting the official or staff person seems to be leaning against your position, keep the door open for future discussion. Agree to check in with staff after an appropriate amount of time to find out if there is a final decision or to support other next steps. In closing the meeting, be sure to express thanks for their time and interest in the topics they raised.

Leave behind written materials. It is useful to have information to leave with the official or staffer for further review and reference it 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, which show rental housing affordability data by congressional district and state; and other NLIHC research reports which can be found at http://nlihc.org/library. Be sure to bring information on the United for Homes campaign and the national Housing Trust Fund.

Follow up 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 information that you agreed to provide. Monitor action on your issues and asks over the coming months and contact the official or staff member to encourage them to act during key moments, or to thank them for taking action. If the issue that you lobbied on is being tracked by your statewide affordable housing coalition or NLIHC, it is helpful to report the results of the meeting to them. If aware of your meeting, statewide coalitions and NLIHC can build on your lobbying efforts and keep you informed as issues move forward.

CONGRESSIONAL RECESS

Throughout the year, Congress goes on recess, and Senators and Representatives leave Washington for their home districts. Members spend this time meeting with constituents and conducting other in-district work. Recess provides advocates with a great opportunity to interact with Members of Congress face-to-face, without having to travel to Washington, DC. Take advantage of recesses by scheduling meetings with your Senators and Representative.

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 Members to participate.

It is important to note that Members of Congress cannot officially introduce or co-sponsor legislation during recess, and because Congress is not in session, there are no votes on legislation during this time. It is therefore especially important to follow up on any meetings held during recess once Congress resumes session, especially if commitments were made regarding legislation.

To find out when the House is scheduled to go on recess, visit http://house.gov/legislative. To find out when the Senate is scheduled to go on recess, visit http://bit.ly/2lwx2rC.

SENDING EMAILS

Email is now the most common way to communicate with Members of Congress and their staff. Many congressional staff people prefer emails because they can be easily labeled, archived and tallied. Make sure to present your affordable housing concern concisely and specifically, and to reference specific bills when possible. In general, it is best to reach out to a specific staff person in a congressional office, because emails to a general inbox may not be correctly forwarded according to your issue area. Remember, congressional offices can receive upwards of 50,000 emails each month, so it is key to make contact with a specific housing staffer. 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 and they will provide that information.

MAKING PHONE CALLS

Calls can be especially effective if a staff person receives several calls on the same topic within a few days of each other, so you may want to encourage others in your district or state to call at the same time you do. 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 relevant bills. The days before a key vote or hearing are an especially effective time to call.

WRITING LETTERS

Because of extensive security screening that delays delivery, letters are a decreasingly effective tool for letting Members of Congress and other decision makers know how you feel about issues. 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]
ATTN: Housing Staffer
United State Senate
Washington, DC 20510

House of Representatives

The Honorable [full name]
ATTN: Housing Staffer
United State House of Representatives
Washington, DC 20515

To find out the phone number for your member of Congress, visit NLIHC's congressional directory at http://cqrcengage.com/nlihc/lookup, or call the U.S. Capitol Switchboard at 202-224-3121.

ADDITIONAL WAYS TO ENGAGE ELECTED OFFICIALS

Visits, letters, and calls are not the only effective ways to communicate your priorities to officials. Other ways to engage them include:

- Inviting an official to speak at your annual meeting or conference;
- Tweeting at them or commenting on their Facebook posts can be effective because many legislators are increasingly focused on cultivating an active presence on social media;
- Organizing a tour of agencies or housing developments and featuring real people telling their success stories;
- Holding a public event and inviting an official to speak;
- Getting media coverage on your issues. Organize a tour for a local reporter or set up a press conference on your issue. Call in to radio talk shows or write letters to the editor of your local paper. Call your newspaper's editorial page editor and set up a meeting to discuss the possibility of the paper's support for your issue. If you succeed in generating press, be sure to forward the coverage to housing staffers for your members of Congress; and
- Eliciting the support of potential allies who are influential with officials, like your city council, mayor, local businesses, unions, or religious leaders.

FOR MORE INFORMATION

- National Low Income Housing Coalition, 202-662-1530, www.nlihc.org
- Contact NLIHC's Field Team by visiting nlihc.org/takeaction/field and finding the Housing Advocacy Organizer for your state.

For contact information for key members of Congress and offices of the Administration, see *Congressional Advocacy and Key Housing Committees* and *Federal Administrative Advocacy*.

Lobbying as an Individual

The undeniable benefit of lobbying in an official capacity on behalf of an organization or coalition is that the broad reach of the group's membership, clients, and staff deepens the impact of your message. By contrast, a benefit of lobbying as an individual is that it can free you to discuss issues you care about in a more personal manner without concern for any potential limitations placed by a board of directors or organizational policy. 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 perspective.

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. This is most effectively achieved by doing in-person meetings, but phone calls and emails can be influential as well.

Lobbying as a 501(c)(3) Organization

Contrary to what many nonprofits believe, 501(c)(3) organizations are legally allowed to lobby in support of their organization's charitable mission. The Internal Revenue Service (IRS) defines lobbying as activities to influence legislation. Electoral activities that support specific candidates or political parties are forbidden, and nonprofits can never endorse or assist any candidate for public office. The amount of lobbying an organization can do depends on how the organization chooses to measure its lobbying activity. There are two options to 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 automatically applies unless the organization elects to come under the 501(h) expenditure test. The default insubstantial part test requires that a 501(c)(3)'s lobbying activity be an "insubstantial" part of its overall activities. Unfortunately, the IRS and courts have been reluctant to define the line that divides substantial from insubstantial. Most lawyers agree that if up to 5% of an organization's total activities are lobbying, then the organization is generally safe. The insubstantial part test is an activity-based test that tracks both activity that the organization spends money on, 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. There are no clear definitions of lobbying under the insubstantial part test.

501(H) EXPENDITURE TEST

Fortunately, there is an alternative test that provides much 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 choice 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 actually costs the organization money (i.e., expenditures); therefore, 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).

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;" generally this is 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: 20% of the first $5,000,000 + 15% of the next $500,000 + 5% of the remaining.

There is a $1 million yearly cap on an organization's overall lobbying limit. 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.

There are two types of lobbying under the 501(h) expenditure test, direct lobbying and grassroots lobbying. 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 have the ability to influence legislation.

Grassroots lobbying is communicating with the general public in a way that refers to specific legislation and that takes a position on the legislation and calls for action. A call to action contains one 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 tear-off postcard or email link that can be used to send a message directly to legislators; or (4) listing those voting undecided or opposed to specific legislation. Identifying legislators as sponsors of legislation is not considered a call to action.

The 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 lobbying, 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; and
- 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, rather nuanced provisions: refers to and includes the organization's position on the legislation; asks the public to contact legislators about the legislation; and appears on the media source within two weeks of a vote by either legislative chamber, not including subcommittee votes.

Lobbying Exceptions. There are some specific exceptions for activities that otherwise might appear to be lobbying under the 501(h) expenditure test. It is not lobbying to:

- 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 an organization's website and to all members of the legislative body considering the proposal;
- Respond to a written request for testimony or assistance at the request of the head of a government body such as a legislative committee chair);
- 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;
- 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 express a view on specific legislation but do not have a call to action are also not considered lobbying; and
- Litigate and attempt to influence administrative (regulatory) decisions or the enforcement of existing laws and executive orders.

Record Keeping. A 501(c)(3) organization, when it is measuring its lobbying under the insubstantial part test or the 501(h) expenditure test, is required to reasonably track its lobbying in a way sufficient to show that it has not exceeded its lobbying limits. There are three costs that 501(h)-electing organizations must count toward their lobbying limits:

- 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; and
- 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).

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.

FOR MORE INFORMATION

Alliance for Justice: AFJ publishes a detailed, 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 AFJ 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. AFJ also publishes guides on related topics, such as influencing public policy through social media, and offers workshops and technical assistance for nonprofit organizations.

Alliance for Justice, 202-822-6070, www.afj.org

Congressional Advocacy and Key Housing Committees

By Elayne Weiss, Senior Policy Analyst, National Low Income Housing Coalition

Lobbying Congress is a direct way to advocate for the issues and programs that are important to you. Members of Congress are accountable to constituents of a certain region, and each individual or organization should be able to connect with their senators and representatives through a fairly simple process. As a constituent, you have the right to lobby the members who represent you; as a housing advocate, you should exercise this right.

CONTACT YOUR MEMBER OF CONGRESS

To find out the contact information for your member of Congress, visit NLIHC's Congressional directory at http://capwiz.com/nlihc/dbq/officials, or call the U.S. Capitol Switchboard at 202-224-3121.

MEETING WITH YOUR MEMBER OF CONGRESS

Scheduling a meeting, crafting your agenda, developing the appropriate materials to take with you, determining your "ask" or "asks" ahead of time, making sure your meeting does not veer away from the subject at hand, and following up afterward, are all crucial elements to holding effective meetings with members of Congress.

For more tips on how to lobby effectively, see *Lobbying: Individual and 501(c)(3) Organizations*.

KEY CONGRESSIONAL COMMITTEES

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

- House of Representatives Committee on Financial Services
- House of Representatives Committee on Appropriations
- House of Representatives Committee on Ways and Means
- Senate Committee on Banking, Housing and Urban Affairs
- Senate Committee on Appropriations
- Senate Committee on Finance

See below for details on these key committees as of February 1, 2017. For all committees, members are listed in order of seniority. Those who sit on key housing subcommittees are marked with an asterisk (*).

HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES

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 relating to HUD, the Federal Reserve Bank, the Federal Deposit Insurance Corporation, the government-sponsored enterprises including the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), and international development and finance agencies such as the World Bank and the International Monetary Fund.

The committee also ensures 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, and government-sponsored insurance programs such as the Federal Housing Administration (FHA) and the National Flood Insurance Program, and community development, including Empowerment Zones.

Majority Members (Republicans)

- Jeb Hensarling (TX), *Chair*
- Peter King (NY)
- Ed Royce* (CA)
- Frank Lucas (OK)
- Patrick McHenry (NC)
- Steve Pearce* (NM)
- Bill Posey* (FL)
- Blaine Luetkemeyer* (MO)
- Bill Huizenga (MI)
- Sean Duffy* (WI), *Housing and Insurance Subcommittee Chair*
- Steve Stivers* (OH)
- Randy Hultgren* (IL)
- Dennis Ross* (FL)
- Robert Pittenger (NC)
- Ann Wagner (MO)
- Andy Barr (KY)
- Keith Rothfus* (PA)
- Luke Messer (IN)
- Scott Tipton (CO)
- Roger Williams (TX)
- Bruce Poliquin (ME)
- Mia Love (UT)
- French Hill (AR)
- Tom Emmer (MN)
- Lee Zeldin* (NY)
- Dave Trott* (MI)
- Barry Loudermilk (GA)
- Alexander Mooney (WV)
- Thomas MacArthur* (NJ)
- Warren Davidson (OH)
- Ted Budd* (NC)
- David Kustoff (TN)
- Claudia Tenny (NY)
- Trey Hollingsworth (IN)

Minority Members (Democrats)

- Maxine Waters (CA), *Ranking Member*
- Carolyn Maloney (NY)
- Nydia Velázquez* (NY)
- Brad Sherman* (CA)
- Gregory Meeks (NY)
- Michael Capuano* (MA)
- William "Lacy" Clay, Jr.* (MO)
- Stephen Lynch* (MA)
- David Scott (GA)
- Al Green (TX)
- Emanuel Cleaver (MO), *Subcommittee Ranking Member*
- Gwen Moore (WI)
- Keith Ellison (MN)
- Ed Perlmutter (CO)
- James Himes (CT)
- Bill Foster (IL)
- Daniel Kildee* (MI)
- John Delaney* (MD)
- Kyrsten Sinema (AZ)
- Joyce Beatty* (OH)
- Denny Heck (WA)
- Juan Vargas (CA)
- Josh Gottheimer (NJ)
- Vicente Gonzalez (TX)
- Charlie Crist (FL)
- Ruben Kihuen* (NV)

* Those who sit on key housing subcommittees are marked with an asterisk.

HOUSE OF REPRESENTATIVES COMMITTEE ON APPROPRIATIONS

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, among other agencies.

Majority Members (Republicans)

- Rodney Frelinghuysen (NJ), *Chair*
- Harold Rogers (KY)
- Robert Aderholt (AL)
- Kay Granger (TX)
- Michael Simpson (ID)
- John Abney Culberson* (TX)
- John R. Carter (TX)
- Ken Calvert (CA)
- Tom Cole (OK)
- Mario Diaz-Balart* (FL), *Subcommittee Chair*
- Charles Dent* (PA)
- Tom Graves* (GA)
- Kevin Yoder (KS)
- Steve Womack (AR)
- Jeff Fortenberry (NE)
- Tom Rooney (FL)
- Chuck Fleischmann (TN)
- Jaime Herrera Beutler (WA)
- David Joyce* (OH)
- David Valadao* (CA)
- Andy Harris (MD)
- Martha Roby (AL)
- Mark Amodei (NV)
- Chris Stewart (UT)
- David Young* (IA)
- Evan Jenkins (WV)
- Steven Palazzo (MS)
- Dan Newhouse (WA)
- John Moolenaar (MI)
- Scott Taylor (VA)

Minority Members (Democrats)

- Nita Lowey (NY), *Ranking Member*
- Marcy Kaptur (OH)
- Peter Visclosky (IN)
- José Serrano (NY)
- Rosa DeLauro (CT)
- David Price* (NC), *Subcommittee Ranking Member*
- Lucille Roybal-Allard (CA)
- Sanford Bishop, Jr. (GA)
- Barbara Lee (CA)
- Betty McCollum (MN)
- Tim Ryan (OH)
- C.A. Dutch Ruppersberger (MD)
- Debbie Wasserman Schultz (FL)
- Henry Cuellar (TX)
- Chellie Pingree (ME)
- Mike Quigley* (IL)
- Derek Kilmer (WA)
- Matt Cartwright (PA)
- Grace Meng (NY)
- Mark Pocan (WI)
- Katherine Clark* (MA)
- Pete Aguilar* (CA)

* Those who sit on key housing subcommittees are marked with an asterisk.

HOUSE OF REPRESENTATIVES COMMITTEE ON WAYS AND MEANS

http://waysandmeans.house.gov

The Committee on Ways and Means is the chief tax writing committee in the House of Representatives.

Majority Members (Republicans)

- Kevin Brady (TX), *Chair*
- Sam Johnson (TX)
- Devin Nunes (CA)
- Dave Reichert (WA)
- Peter J. Roskam (IL)
- Vern Buchanan (FL)
- Adrian Smith (NE)
- Lynn Jenkins (KS)
- Erik Paulsen (MN)
- Kenny Marchant (TX)
- Diane Black (TN)
- Tom Reed (NY)
- Mike Kelly (PA)
- James Renacci (OH)
- Patrick Meehan (PA)
- Kristi Noem (SD)
- George Holding (NC)
- Jason Smith (MO)
- Tom Rice (SC)
- David Schweikert (AZ)
- Jackie Walorski (IN)
- Carlos Curbelo (FL)

Minority Members (Democrats)

- Richard Neal (MA), *Ranking Member*
- Sander Levin (MI)
- John Lewis (GA)
- Lloyd Doggett (TX)
- Mike Thompson (CA)
- John Larson (CT)
- Earl Blumenauer (OR)
- Ron Kind (WI)
- Bill Pascrell Jr. (NJ)
- Joseph Crowley (NY)
- Danny Davis (IL)
- Linda Sánchez (CA)
- Brian Higgins (NY)
- Terri Sewell (AL)
- Suzan DelBene (WA)

SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

http://banking.senate.gov/public

The Senate Committee on Banking, Housing and Urban Affairs oversees legislation, petitions, and other matters relating 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 urban mass transit systems and 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 Indian housing issues.

Majority Members (Republicans)

- Michael Crapo (ID), *Chair*
- Richard Shelby* (AL)
- Bob Corker (TN)
- Patrick Toomey (PA)

* Those who sit on key housing subcommittees are marked with an asterisk.

- Dean Heller* (NV)
- Tim Scott* (SC), *Subcommittee Chair*
- Ben Sasse (NE)
- Tom Cotton (AR)
- Mike Rounds* (SD)
- David Perdue (GA)
- Thom Tillis* (NC)
- John Kennedy* (LA)
- Jerry Moran (KS)

Minority Members (Democrats)

- Sherrod Brown (OH), *Ranking Member*
- Jack Reed* (RI)
- Robert Menendez* (NJ), *Subcommittee Ranking Member*
- Jon Tester (MT)
- Mark R. Warner (VA)
- Elizabeth Warren (MA)
- Heidi Heitkamp* (ND)
- Joe Donnelly (IN)
- Brian Schatz* (HI)
- Chris Van Hollen* (MD)
- Catherine Cortez Masto (NV)
- Doug Jones (AL)

SENATE COMMITTEE ON APPROPRIATIONS

http://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.

Majority Members (Republicans)

- Thad Cochran (MS) *Chair*
- Mitch McConnell (KY)
- Richard Shelby* (AL)
- Lamar Alexander* (TN)
- Susan Collins* (ME), *Subcommittee Chair*
- Lisa Murkowski (AK)
- Lindsey Graham* (SC)
- Roy Blunt* (MO)
- Jerry Moran (KS)
- John Hoeven* (ND)
- John Boozman* (AR)
- Shelley Moore Capito* (WV)
- Bill Cassidy (LA)
- James Lankford (OK)
- Steve Daines* (MT)
- John Kennedy (LA)
- Marco Rubio (FL)

Minority Members (Democrats)

- Patrick Leahy (VT), *Ranking Member*
- Patty Murray* (WA)
- Dianne Feinstein* (CA)
- Richard Durbin* (IL)
- Jack Reed* (RI), *Subcommittee Ranking Member*
- Jon Tester (MT)
- Tom Udall (NM)
- Jeanne Shaheen (NH)
- Jeff Merkley (OR)
- Chris Coons* (DE)
- Brian Schatz* (HI)
- Tammy Baldwin (WI)
- Christopher Murphy* (CT)
- Joe Manchin* (WV)
- Chris Van Hollen (MD)

SENATE COMMITTEE ON FINANCE

www.finance.senate.gov

The Senate Committee on Finance oversees matters generally relating to taxation and other revenue measures, such as health programs under the Social Security Act, including Medicare, Medicaid, and the Children's Health Insurance Program, Temporary

* Those who sit on key housing subcommittees are marked with an asterisk.

Assistance to Needy Families, and other health and human services programs financed by a specific tax or trust fund.

Majority Members (Republicans)

- Orrin Hatch (UT), *Chair*
- Chuck Grassley (IA)
- Mike Crapo (ID)
- Pat Roberts (KS)
- Michael B. Enzi (WY)
- John Cornyn (TX)
- John Thune (SD)
- Richard Burr (NC)
- Johnny Isakson (GA)
- Rob Portman (OH)
- Patrick Toomey (PA)
- Dean Heller (NV)
- Tim Scott (SC)
- Bill Cassidy (LA)

Minority Members (Democrats)

- Ron Wyden (OR), *Ranking Member*
- Debbie Stabenow (MI)
- Maria Cantwell (WA)
- Bill Nelson (FL)
- Robert Menendez (NJ)
- Thomas Carper (DE)
- Benjamin Cardin (MD)
- Sherrod Brown (OH)
- Michael Bennet (CO)
- Robert Casey, Jr. (PA)
- Mark Warner (VA)
- Claire McCaskill (MO)
- Sheldon Whitehouse (RI)

* Those who sit on key housing subcommittees are marked with an asterisk.

Federal Administrative Advocacy

Not 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.
- Litigating against federal agencies and officials.

Those activities are not considered lobbying by the IRS; therefore, 501(c)(3) organizations are free to engage in them without limit so long as the intent is not to influence legislation. For nonprofits interested in housing advocacy, engaging federal agencies through the regulatory process falls entirely outside definitions of lobbying.

Numerous federal agencies contribute to the development and implementation of our nation's housing policy. There are seven key divisions of the federal government that 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 that are 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
- The Department of Housing and Urban Development (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 it has multiple councils and offices that touch upon the issue of affordable housing. While President Barack Obama's Administration had focused on housing and urban policy to a greater extent than recent previous administrations, the Trump administration has largely failed to promote policies that support affordable housing, and instead has proposed deep cuts to HUD's budget and increasing rents on low income families receiving federal housing assistance.

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, increasing investment in innovative community solutions that demonstrate results, and developing 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 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, Healthy Homes and Lead Hazard Control, and through 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 an 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. The USICH comprises the secretaries and directors of these 19 federal agencies. The agencies that have the largest roles in providing these resources include HUD, the Department of Health and Human Services, the Department of Labor, and the VA. These agencies rotate responsibility for chairing the USICH. The USICH's main task is implementing Opening Doors, the federal 10-year plan to end homelessness, which was released in spring 2010. 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 the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (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 because of financial problems that stemmed from the country's 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 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. Treasury has overseen funding for several recent disaster recovery efforts, including special allocations of LIHTCs and other incentives to spur redevelopment. Treasury also oversees Housing Bonds, which finance the development of rental and homeownership units. Treasury offers backing to HUD's FHA Mutual Mortgage Insurance Fund. Treasury also 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.

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; the 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
- Office of Management and Budget, 202-395-3080, www.whitehouse.gov/OMB
- HUD, 202-708-1112, www.hud.gov
- HUD USER, 202-708-1112, 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.rurdev.usda.gov
- Federal Housing Finance Agency, 202-414-3800, www.fhfa.gov
- Department of Health and Human Services, Office of Community Services, 202-690-7000, www.acf.hhs.gov/programs/ocs
- Department of Justice, 202-514-2000, www.usdoj.gov
- Department of Transportation, 202-366-4000, www.dot.gov
- Department of Treasury, Community Development Financial Institutions Fund, 202-622-6355, www.tres.gov/cdfi
- Department of Veterans Affairs, http://www.va.gov/
- FEMA, 202-646-2500, www.fema.gov
- Environmental Protection Agency, 202-272-0167, www.epa.gov
- Small Business Administration, 202-205-8885, www.sba.gov

Using Federal Data Sources for Housing Advocacy

By Andrew Aurand, Vice President for Research, National Low Income Housing Coalition

Data collected and disseminated by the U.S. federal government are critical to understanding the quantity and quality of our nation's housing stock and how well it meets our citizens' housing needs. Housing advocates have long used federal data, and their visual presentation, to influence policy at the national, state, and local levels. Data from the American Community Survey (ACS) and American Housing Survey (AHS), for example, allow us to quantify the critical housing shortage for extremely low income renters; while HUD's *A Picture of Subsidized Households* gives us a look at the quantity and geographic distribution of HUD-subsidized housing for these households.

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. The Census Project for example is a network of organizations that fight against significant budget cuts to the planning of the 2020 U.S. Decennial Census and the implementation of the ACS.

HOUSING NEED, SUPPLY, AND QUALITY

American Community Survey

https://www.census.gov/programs-surveys/acs/

http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml

The ACS is a nationwide mandatory survey of approximately 3.5 million housing units annually, conducted by the U.S. Census Bureau. The survey is distributed on a rolling basis, with approximately 295,000 housing units surveyed each month. The annual data provide timely information on the demographic, social, 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. Therefore, multiple years of ACS data are combined to obtain accurate estimates for smaller areas. The Census Bureau releases five-year ACS data that provides a five-year moving average for all communities, down to census tracts. The annual data are more timely than the five-year data and available for large populations, although the five-year data are more reliable (because of the larger sample) and available for communities across the country. 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. The ACS for example captures data on housing costs and household income, allowing us to calculate the prevalence of housing cost burdens across communities. The data also allow us to measure the shortage (or surplus) of housing for various income groups. Other important variables in the ACS include race, household type, and employment.

The U.S. House of Representatives has voted in recent years to make participation in the ACS voluntary rather than mandatory of U.S. citizens by prohibiting enforcement. Research from the Census Bureau shows that a voluntary ACS would lower response rates by as much as 20 percentage points[1], forcing the Bureau to send surveys to a larger number of households and spend more time following up with them in person and by telephone to encourage participation. These additional steps would add to the Bureau's expenses. If the ACS became voluntary and the Bureau did not take these additional steps, the survey's sample size would decline, resulting in less accurate data, especially for small communities and hard-to-reach populations.

Comprehensive Housing Affordability Strategy Data

https://www.huduser.gov/portal/datasets/cp.html

1 Williams, Jennifer D. (2013.) *The American Community Survey: Development, Implementation, and Issues for Congress*. Washington, DC: Congressional Research Service.

The U.S. Census Bureau provides HUD with custom tabulations of ACS data that allow users to gain a better understanding of the 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 Plan, and can also be useful for housing advocates in measuring the housing need in their community. The CHAS data use HUD-defined income limits to categorize households as extremely low, very low, low, and moderate 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-yr 2010-2014 ACS. HUD provides a web-based query tool that makes commonly used CHAS data readily available, particularly housing cost burdens, for communities. More advanced users can download the CHAS raw data for more detailed analyses.

HUD Point-in-Time Count and Housing Inventory Count

www.hudexchange.info/resource/3031/pit-and-hic-data-since-2007

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 the homeless population 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.

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

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

American Housing Survey

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

www.huduser.gov/portal/datasets/ahs.html

The national AHS is a longitudinal survey of housing units. 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, as well as 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, HUD-assisted units were identified through administrative data and oversampled, so comparisons between subsidized and unsubsidized housing will be more reliable than in the past. Supplemental samples in the 2015 AHS provide data for 10 additional metropolitan areas. Future metropolitan supplemental samples are contingent on HUD's budget. The 2015 AHS also included supplemental questions on food security, healthy homes, housing counseling, and neighborhood arts & culture. Supplemental questions typically change from survey-year to survey-year.

The 2017 AHS will include supplemental questions on delinquent housing payments, disaster preparedness, and commuting.

The AHS is the data source for HUD's Worst Case

Housing Needs Report 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 physically inadequate housing. HUD provides data from these reports, dating from 2001 to 2013, in its Housing Affordability Data System. 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.

Fair Market Rents

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 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.

In most metropolitan areas and nonmetropolitan counties, FMRs are set at the 40th percentile of gross rent, which is the top end of the price range that movers could expect to pay for the cheapest 40% of apartments. In select metropolitan areas where voucher holders are concentrated in certain neighborhoods, FMRs are set at the 50th percentile for a three-year time period. FMRs influence the maximum rent that a HCV will cover, so the 50th percentile FMRs are intended to expand the range of housing opportunities available to voucher households, enabling them to deconcentrate out of low opportunity areas. In FY18, there are seven 50th percentile FMR areas.

Some research suggests that 50th percentile FMRs may not be the most effective approach to deconcentrate voucher holders. As a result, HUD published a final rule on November 16, 2016, that eventually eliminates 50th percentile FMRs and 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 higher opportunity neighborhoods with more expensive rents and lower subsidies in neighborhoods with lower rents. Small Area FMRs are expected to help households use vouchers in higher opportunity neighborhoods. On August 11, 2017, HUD delayed the required use of Small Area FMRs from October 1, 2017, to October 1, 2019. Small Area FMRs for all metropolitan areas are available on HUD's FMR webpages.

Affirmatively Furthering Fair Housing Data and Mapping Tool

https://egis.hud.gov/affht/

https://www.hudexchange.info/resource/4867/affh-data-and-mapping-tool/

HUD's Affirmatively Furthering Fair Housing (AFFH) rule requires CDBG-entitled communities to conduct an Assessment of Fair Housing (AFH) as part of their five-year Consolidated Plan. The rule's intention is to encourage communities to plan for providing residents greater residential choice and access to high opportunity areas, such as those in close proximity to good schools and employment. HUD's AFFH Data and Mapping Tool (AFFH-T) provides some of the data HUD requires communities to include in their AFH. The AFFH-T provides maps and tables that provide census tract-level demographics, combined with job proximity, school proficiency, environmental health, poverty, transit, and housing burdens. The map data also include the location of publicly supported housing and Housing Choice Vouchers. A User Guide with instructions for using the AFFH-T is also available.

U.S. Decennial Census

http://www.census.gov/programs-surveys/decennial-census/about.html

The Decennial Census asks U.S. citizens a limited number of questions, but serves an important Constitutional and governmental function. Article 1, Section 2 of the U.S. Constitution mandates a full count of American residents every 10 years, which is used to apportion seats in the U.S. House of Representatives among the states. The Census Bureau distributes a questionnaire to every U.S. household and group quarters, requesting basic demographic information, such as age, sex, and race. The count is also used to help determine the distribution of billions of dollars in federal money for infrastructure and other services.

PUBLICLY ASSISTED HOUSING

A Picture of Subsidized Households

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

HUD's *A 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, Project Based Section 8, Section 236, Section 202, and Section 811. This dataset allows users to examine the income, age, household type, and racial distribution of occupants in subsidized housing at the national, state, metropolitan area, city, 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

https://egis.hud.gov/cart/

Community Assessment Reporting Tool (CART) 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 and housing cost burdens.

National Housing Preservation Database

http://www.preservationdatabase.org/

The National Housing Preservation Database (NHPD) was created in 2012 by NLIHC and the Public and Affordable Housing Research Corporation (PAHRC) 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's Rural Housing Service 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 location and ownership information.

NHPD can also be a useful resource in light of HUD's Affirmatively Furthering Fair Housing (AFFH) rule. The new AFFH rule requires CDBG-entitled communities to conduct an Assessment of Fair Housing (AFH) as part of their five-year Consolidated Plan. The AFFH rule requires communities to consider the location of publicly assisted housing relative to high opportunity areas, such as those in close proximity to good schools and employment. Subsidized housing in these areas could be at greater risk of being lost from the affordable housing stock. NHPD can aid housing advocates and communities in identifying where efforts must be made to preserve this housing.

OTHER DATA SOURCES

CPD Maps

https://egis.hud.gov/cpdmaps/ https://www.hudexchange.info/resource/2405/cpd-maps-desk-guide/

CPD Maps is a mapping and data tool that allows users to identify housing needs and resources in their communities. Some of the tool's data include the location of CDBG and HOME activities, public housing, private HUD-assisted housing, and LIHTC; economic and demographic characteristics of the community; and the number and types of households experiencing a housing problem, such as cost burden, overcrowding, or substandard housing. The CPD Maps Desk Guide provides instructions on using CPD Maps.

HUD eGIS

https://www.huduser.gov/portal/egis/index.html

HUD eGIS is a mapping and data tool that provides users with access to multiple HUD datasets, including HOME activities, HUD-insured multifamily properties, LIHTC properties, and many others.

Home Mortgage Disclosure Act (HMDA) Data

http://www.consumerfinance.gov/hmda/

The Home Mortgage Disclosure Act requires many lending institutions to publicly report information about mortgage applications and their outcome. 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 vs. FHA); mortgage amount; the applicant's race, ethnicity, and gender; whether the application was approved; and census tract of the property's location. Lenders are also required to identify "high-priced" loans with high interest rates or fees. 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.

Each September, the previous year's HMDA data are released to the public. Small lenders and those with offices only in nonmetropolitan areas are not required to report data.

Other Surveys

The **Current Population Survey (CPS)** (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.

Housing Vacancy Survey (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.

Survey of Market Absorption (www.census.gov/programs-surveys/soma.html) is a HUD-sponsored survey of newly constructed multifamily units conducted by the Census Bureau. 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 6, 9, and 12 months. The data provide the absorption rate of new multifamily housing.

Survey of Income and Program Participation (www.census.gov/sipp) is a Census Bureau survey that tracks families for two to four years, investigating household members' sources of income, participation in government transfer programs, and basic demographic characteristics.

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 and other federal surveys for which they are selected. The accuracy and reliability of the Census' products depend on it.

Advocacy organizations, such as NLIHC and its state partners, use a variety of 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 for example provides housing profiles for each U.S. state and Congressional district.

WHAT TO SAY TO LEGISLATORS

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

- Adequate funding for the U.S. Census Bureau to prepare for the 2020 Decennial Census is imperative. Appropriate planning and testing will allow the Census Bureau to save money in the long run. The Census Project provides relevant fact sheets and reports for advocates.
- Adequate funding for the ACS and AHS is necessary to ensure we have up-to-date and reliable data regarding the nation's housing supply and needs.
- Participation in the ACS needs to remain mandatory. Changing the ACS to a voluntary survey would lower response rates. The reliability of the survey's findings would decline unless the Census Bureau spent millions of dollars in additional money each year to send the survey to a larger number of households

and to follow-up with them in-person or by phone to encourage participation.

FOR MORE INFORMATION

Association of Public Data Users, http://apdu.org/

HUD Office of Policy Development and Research, https://www.huduser.gov/portal/home.html

The Census Project, https://thecensusproject.org/

Using the Freedom of Information Act for Housing Advocacy

By Ed Gramlich, Senior Advisor, National Low Income Housing Coalition

Everyone 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 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.

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 reviewing, including by automated means, agency records (e.g., performing relatively simple computer searches).

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 fairly 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.

- HUD contact information can be found under the "Contact Us" tab on the HUD website, www.hud.gov.
- 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 your 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 through email, by fax, or through postal mail.

HUD FOIA requests:

- To make a FOIA request of HUD headquarters electronically, go to https://hudpal.efoia-host.com/palMain.aspx. To make a FOIA request through the mail write to:

  U.S. Department of Housing and Urban Development
  Freedom of Information Act Office
  451 Seventh Street, SW, Room 10139
  Washington, DC 20410-3000
  Fax: 202-619-8365
- If the response is not adequate, contact the FOIA Public Liaison for HUD headquarters at https://www.hud.gov/program_offices/administration/foia/servicecenters.
- 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 at https://www.hud.gov/program_offices/administration/foia/servicecenters.
- The Department of Justice also has list of HUD regional FOIA contacts as well as FOIA liaisons at https://www.foia.gov/report-makerequest.html.
- If the response from the FOIA Requester Service Center is not adequate, contact the FOIA Public Liaison for the appropriate geographic region.

RD FOIA requests:

- To make a FOIA request for RD documents at either the local level or at RD headquarters, advocates can write to the RD FOIA Coordinator for their state. Contact information for RD FOIA State Coordinators can be found at https://www.rd.usda.gov/files/USDA_RDFOIAStateContacts.pdf.
- If you are not sure where the information is located, send the FOIA request 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 that request and provide a tracking number. The agencies must grant or deny a FOIA request within 20 working days of receiving it. This response simply shows whether or not the agency intends to provide the information. There is no time limit on actually providing the information; however, USDA's regulations require RD to approximate the date the information will be provided.

When an agency makes a determination whether or not to comply with a FOIA request, the FOIA Improvement 2016 Act 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.

Denial of Requests. 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.

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 OGIS.

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 make a decision regarding 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

Public Citizen's Freedom of Information, https://www.citizen.org/our-work/transparency/freedom-information-act

Reporters Committee for Freedom of the Press FOIA, https://www.ifoia.org/#!/

Federal Open Government Guide (Reporters Committee for Freedom of the Press), https://www.rcfp.org/federal-open-government-guide

HUD FOIA webpage, https://www.hud.gov/program_offices/administration/foia

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

General Services Administration, Your Right to Federal Records, https://www.gsa.gov/cdnstatic/Your_Right_to_Federal_Records.pdf

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

Avoiding and Overcoming Neighborhood Opposition to Affordable Rental Housing

By Jaimie Ross, President and CEO, Florida Housing Coalition

The extraordinary need for rental units has caused an increase in homelessness notwithstanding the successful implementation of the housing first model. HUD's 2017 Annual Homelessness Assessment Report to Congress reports an increase in homelessness for the first time in seven years. A hepatitis outbreak in San Diego in 2017 is linked to the homelessness caused by a lack of affordable rental housing; it is a cautionary tale for what can happen if local governments continue to deny development approvals for affordable rental housing in deference to neighborhood opposition.

Not in My Backyard (NIMBY) connotes objections made to stop the development of affordable housing for reasons such as fear and prejudice. NIMBYism presents a particularly pernicious obstacle to meeting local housing needs. The outcry of constituents with concerns over the siting and permitting of affordable housing can lead to lengthy and hostile public proceedings, frustrated Consolidated Plan implementation, increased costs of development, and property rights disputes. The consequence is the development or preservation of less rental housing at a time when the country is in desperate need of more rental housing. Advocates need to generate support for affordable rental housing and fight NIMBYism.

TOOLS FOR LOCAL SUCCESS

Education Campaign. Increased understanding about affordable rental housing and the positive impact it has on individuals, families, and the community at large is instrumental to gaining wide support. The more informed the public, local government staff, and elected officials are about the need for affordable rental housing and the benefits of avoiding housing insecurity and homelessness, the more leverage advocates will have to advance the development of affordable rental homes. Advocates should make use of credible research and local data to support their message.

Anecdotal information about particular residents and the success of previous developments goes a long way in a public education effort. There are many resources available to help in an education campaign. The ALICE Report (Asset Limited, Low Income, Constrained Employed) by United Way, which busts the myths about who needs rental housing, is based upon research that full-time low income employed workers do not make enough money to pay for market rate apartments. Reports from credible entities that are not in the business of affordable housing can be used in addition to the Out of Reach Report, Make Room Report, and Home Matters Reports, for example, to attract the attention of news outlets and provide allies for the cause.

Garner Support from a Broad Range of Interests. Advocates should ask members of the business community, clergy, social service agencies, and others who would be well received, to stand with them in advancing affordable housing goals. These supporters can be helpful in making the connection between housing development and other community concerns. For instance, members of the local school board or parent advisory committees can attest to the imperative of stable rental housing for children to succeed in school. Potential beneficiaries of the development, such as future residents, may also be effective advocates. The media can be a crucial ally; whenever advocates foresee a potential NIMBY problem, it is best to contact the media right away so that they understand the development plans, the public purpose, and the population to be served before they hear neighborhood opposition.

Educate Elected Officials. Once a NIMBY battle ensues, it is often too late to educate. Advocates should anticipate the value of and the need to build relationships with elected officials and their staff members before a NIMBY issue arises. It is imperative to underscore the importance of affordable housing and the consequences of not having enough rental housing, which results in homelessness, so that elected officials make the connection between adequate rental housing and the economic health of the entire community.

Advocates should include allies in the education process. Learning about the elected officials' interests will help to inform the advocates about which of its allies are best to bring to the meeting. For example, a particular elected official may be more inclined to hear from a local business about the need for employee housing, while another may be moved by hearing from local clergy about the needs of homeless veterans, elders, and those with disabilities. Whenever possible, advocates should invite elected officials to visit completed developments, and should share credit with them at ribbon cuttings and when speaking with the media. Whether advocates can meet with elected officials in regard to a pending approval, depends upon the ex parte rules in each jurisdiction. If advocates discover that community opposition is meeting with elected officials about a development, advocates should try to do the same.

Address All Legitimate Opposition. The key to overcoming community opposition is addressing the opposition's legitimate concerns. Legitimate, non-discriminatory concern around issues like traffic or project design may lead the affordable housing developer to make adjustments to a proposed development. For example, modifying the location of the entrance driveway or modifying the design of the building to ensure the affordable rental development fits within the aesthetics of the existing community may be changes worth making, even if they come with an increase in cost. It is always wise for the affordable housing developer to work with the neighbors and be able to report to the local elected body that they have done their best to address the concerns of those in opposition. Property values are often the root of neighborhood opposition. Yet, virtually without exception, research about property values and affordable housing finds no negative effect on neighboring market rate property values. And, in some instances, affordable housing has increased the value of neighboring property. In November, 2016, Trulia released a report; There Doesn't Go the Neighborhood: Low Income Housing Has No Impact on Nearby Home Values," adding fresh data to the large body of research that shows affordable housing does not decrease neighboring property values.

The critical point is this: once all legitimate concerns are addressed, if opposition persists, it can be stated with certainty that the opposition is illegitimate and is therefore opposition that would be inappropriate, arbitrary, capricious, or unlawful for the local government to consider in making its land use decision. The unlawfulness of the opposition may be a violation of fair housing laws, as explained below.

Know the Law and Expand Legal Protections. The Federal Fair Housing Act is not new. However, it was substantially elevated by the Affirmatively Furthering Fair Housing rule adopted by HUD. Advocates should view neighborhood opposition through the lens of fair housing. If all legitimate concerns have been addressed it is likely that thwarting the affordable rental development violates federal fair housing law. As advocates, we can help local elected officials avoid potential liability by providing education about the protections provided by fair housing law, and the affirmative duty that government has to further fair housing. Advocates can work for state or local laws that make it harder for NIMBYism to prevail. For example, in 2000, the Florida Fair Housing Act (the state's substantial equivalent to the federal Fair Housing Act) was amended to include affordable housing as a protected class (Section 760.26, Florida Statutes). In 2009, North Carolina adopted a similar statute to add affordable housing as a protected class in its fair housing law. Decision makers and their staffs must be aware of the law if it is to be helpful to the cause. The expansion of the state fair housing act to include affordable housing in Florida has been successful because housing advocates have been conscientious about ensuring that local government lawyers know about the statutory change. It is now commonplace in Florida for a city or county attorney to inform the elected body during a heated public hearing that they would run afoul of the state's fair housing law if they deny the affordable housing developer's application.

Avoid unnecessary approvals. The greater the number of land use and development approvals that require a vote by the elected body, the more opportunities there will be for neighborhood opposition. Two ways to avoid unnecessary approvals are (1) "by right" development and (2) approvals made at the staff level rather than in a public hearing. In Los Angeles, neighborhood opposition for siting supportive housing led advocates to push for a local code change to permit supportive housing on property that is zoned for public facilities, removing the requirement for a zoning change in certain circumstances, and thereby reducing the threat of neighborhood opposition.

FOR MORE INFO:

Managing Local Opposition through Education and Communication:

- http://nonprofithousing.org/resources/the-original- nph-toolkit
- http://www.hcd.ca.gov/community-development/community-acceptance/index.shtml
- http://www.hcd.ca.gov/community-development/community-acceptance/index/docs/mythsnfacts.pdf

Property Value Studies:

- There Doesn't Go the Neighborhood: Low-Income Housing Has No Impact on Nearby Home Values — See more at: https://www.trulia.com/blog/trends/low-income-housing/
- http://www.hcd.ca.gov/community-development/community-acceptance/index/docs/prop_value.pdf https://www.nar.realtor/effects-of-low-income-housing-on-property-values#

Additional Examples of State Laws:

- California law bars state-sponsored discrimination in residency, ownership, and land use decisions based on the method of financing and the intended occupancy of any residential development by persons who are very low, low, moderate, or middle income. CA: Cal Gov. Code S. 65008 (1984).
- Washington law provides that "A city, county, or other local governmental entity or agency may not adopt, impose, or enforce requirements on an affordable housing development that are different than {sic} the requirements imposed on housing developments generally." WA: RCW 36.130.020 (2008)

Contact the author at ross@flhousing.org

Resident and Tenant Organizing

By James Saucedo, Housing Advocacy Organizer, National Low Income Housing Coalition

Why organize? Organizing rebalances 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. This 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 apartment and the landlord keeps saying they will address it but never does, chances are 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.

Organizing doesn't stop when an immediate problem is fixed. As a group, tenants can identify systematic problems in their building. They can see patterns of neglect or harassment, and demand long-term solutions that prevent problems, instead of just dealing with them once they occur. And it doesn't 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 as a whole. As a united tenant organization with experience dealing with their landlord and building management, they know 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 get power. In an apartment building, a small minority of people hold almost all of 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.

TENANT ORGANIZING TIPS

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.

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 of a group is weakened, and therefore so is its strength.

Keep an eye on process. There is no one-size-fits all decision-making process or leadership structure for tenant associations, but 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 if 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, whether regarding the right to organize, affordability restrictions, or living-condition standards. They should figure out if and who in the community 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.

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 that can help achieve the goal(s), make sure all interested residents have a role to play, and develop solidarity within the group. Strength of 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, but can also play an important role in advocating for better, more just public policy over the long term.

Timeline of a Tenant Association. The timeline for developing a tenant association will vary from building to building, depending on the given issues facing resident 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? Does it have a subsidized mortgage? Is there a federal rental assistance program in place? Are there state or local assistance programs at play? 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: DOORKNOCK

- **Prepare.** Make sure you have everything you need to doorknock effectively—a clipboard, 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.** There is no more effective way to find out 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 doorknock in the evening, since that is when most people will be home from work.
- **Identify potential leaders.** Use doorknocking as a way not only to identify problems, but also to identify potential leaders. Note whether there are any tenants people seem to defer to or listen to. 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 doorknocking, engage a small group of tenants who seemed most enthusiastic about addressing the problems facing residents in the building.
- **Organize one or two smaller meetings,** likely in one of the tenants' apartments. Brainstorm with this small group: 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 the tenants need to meet their goals, and to facilitate this small group's leadership.

WEEK 5: FIRST BUILDING-WIDE MEETING

- **Once you have picked a date, determine a location that is physically accessible to all who may like to attend.** Many buildings have a community room. Community rooms are a great resource because they 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 with 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.
- **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 every action item has a person assigned to it.

WEEK 6: DEVELOP AND 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 you 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 BYLAWS

- 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.** There are many different leadership structures. Tenants should consider different options and determine what makes 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.
- **Determine the decision-making process.** This should be a process 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.

SUSTAINING THE TENANT ASSOCIATION

- 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.
- **Stay engaged, but set realistic expectations.** It is important to keep residents 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.

- **Look to the community.** Although it is usually a problem in the building that brings tenants together, 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 school 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 as a whole.
- **Look beyond the community.** Does the tenant group have issues with the way a federal or local program is regulated or run? How can they weigh in and advocate for themselves and their neighbors?
- Finding ways to maintain a strong tenant association 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.

Adapted from New York State Tenants & Neighbors' 2008 Organizers' Manual, *by Michele Bonan.*
For more information, contact Katie Goldstein at kgoldstein@tandn.org, *or visit Tenants & Neighbors' website at* http://tandn.org/

Resident Participation in Federally Subsidized Housing

By Ed Gramlich, Senior Advisor,
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Subsidized housing residents have important personal perspectives about the impact of established and emerging subsidized housing policies on their homes and communities. Consequently, they have good ideas about how their housing developments should be managed. Resident participation in all aspects of housing management is critical to the long-term success of federal housing programs.

HUD has three major programs that provide rent subsidies to approximately 4.4 million households nationwide. These programs are the public housing program, private multifamily HUD-assisted rent programs, and the Section 8 Housing Choice Voucher program. Each program has its own set of challenges and opportunities related to resident participation.

PUBLIC HOUSING

Administering agency: HUD's Office of Public and Indian Housing

Year started: 1986 for public housing tenant participation, 1998 for Resident Advisory Boards

Population targeted: Residents of public housing

See also: *Public Housing, Public Housing Agency Plan, Rental Assistance Demonstration*

There are a number of HUD policies that help support the participation of all public housing residents in public housing agency (PHA) decision making.

PHA Plan Process. Opportunities for resident participation exist in the annual and five-year planning processes, collectively called the PHA Plan, required by the Quality Housing and Work Responsibility Act of 1998 (QHWRA). Many PHAs only have minimal PHA Plan resident engagement requirements, but the process does open the door for residents and other community members to interact and influence PHA decisions. The regulations for the PHA Plan process are at Part 903 of Title 24 of the Code of Federal Regulations (24 CFR Part 903). For more, see *Public Housing Agency Plan* in Chapter 7 of this *Advocates' Guide*.

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 and to assist in other ways in drafting the PHA Plan and any significant amendments to it. 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, Part 903.

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 the 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 the PHA for resident participation activities. On August 23, 2013, HUD issued Notice PIH 2013-21 providing new guidance on the use of tenant participation funds.

Resident Commissioners. The law also mandates that every PHA, with a few exceptions, have at least one person on its governing board who is either a public housing resident or voucher household. 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.

Resident Opportunities and Self-Sufficiency program. HUD's Resident Opportunities and Self-Sufficiency (ROSS) program is designed to help public housing residents become more self-sufficient by linking them to supportive services and resident empowerment activities. Competitive grants under the ROSS program can be awarded to PHAs, resident councils, resident organizations, and other entities. ROSS funds have been appropriated annually by Congress, followed by a Notice of Funding Availability (NOFA) from HUD inviting eligible applicants to compete for the funds. Twenty-five percent of ROSS grants have been set aside for formally recognized resident councils, but few ever apply for it. For FY16 and FY17, Congress appropriated $35 million for ROSS—$10 million less than FY15, and $15 million less than FY12 and earlier.

RENTAL ASSISTANCE DEMONSTRATION

The Rental Assistance Demonstration (RAD) allows 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. The public housing component allows up to 225,000 units of public housing to compete for permission to convert their existing public housing capital and operating fund assistance to project-based Housing Choice Vouchers (PBVs) or to Section 8 project-based rental assistance (PBRA) by September 30, 2020.

Before submitting a RAD application to HUD, the PHA must notify residents and resident organizations of a project proposed for conversion. The PHA is not required to notify the RAB or residents of other developments. The PHA must conduct two meetings with residents of the selected project(s) to discuss conversion plans and to give those residents a chance to comment. Once there is preliminary HUD approval, the PHA must hold at least one more meeting with those residents.

RAD is a Significant Amendment. RAD conversion is a "Significant Amendment" to the PHA Plan. However, HUD does not require a Significant Amendment process to begin until late in the conversion process, which could be as late as six months after HUD has issued a preliminary approval for RAD conversion of a specific development and by which time the PHA has secured all necessary private financing. 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 of its financing and construction plans approved and is ready to proceed.

Resident Organizations Continue to Receive $25 Per Unit. Whether a property is converted to PBV or PBRA, each year the PHA must provide $25 per occupied unit at the property for tenant 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. The 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.

Residents Right to Organize. 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 (see "Privately Owned, HUD-Assisted Multifamily Housing (Project-Based Section 8 Rental Assistance, PBRA" below). If a property is converted to PBV, instead of using public housing's so-called "Section 964" provisions (see "Part 964 Resident Participation Regulations" above), RAD requires resident participation provisions similar to those of Section 245. For example, PHAs 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, 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.

HOUSING CHOICE VOUCHERS (SECTION 8)

Administering agency: HUD's Office of Public and Indian Housing

Year started: 1998 RABs

Population targeted: Residents with Section 8 Housing Choice Vouchers

See also: *Vouchers: Housing Choice Voucher Program; Public Housing Agency Plan*

Approximately 2 million households receive tenant-based assistance through the Housing Choice Voucher Program. Housing Choice Voucher households, often referred to as Section 8 voucher households, are among the most difficult residents to organize because they can choose a private place to rent anywhere in the PHA's market, so are 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 RAB, offer platforms for organizing voucher households so that they can amplify their influence in the decision making affecting their homes.

Participating in PHA Plan Processes. At the local level, 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, such as setting minimum rents, developing admissions criteria, determining the amount of time a voucher household may search for a unit, giving preferences for people living in the 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).

Participation on Resident Advisory Boards. 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 when there are a significant number of voucher households assisted by the PHA.

PRIVATELY OWNED, HUD-ASSISTED MULTIFAMILY HOUSING (PROJECT-BASED SECTION 8 RENTAL ASSISTANCE)

Administering agency: HUD's Office of Multifamily Housing Programs

Year started: 1978, with significant regulatory changes in 2000

Population targeted: Residents of private multifamily HUD-assisted rental developments

See also: *Project-Based Rental Assistance*

Tenants' right to organize is based in law at 12 USC 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 to 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 in 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.

The civil money penalties regulation from 2001 (24 CFR Part 30) allows HUD to assess fines on owners or management agents for major violations of tenants' right to organize. However, to date HUD has not issued any fines, despite widespread reported violations. 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. Policy Notice H 2011-29 of October 13, 2011, and Notice H 2012-21 of October 17, 2012, 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, issued on September 4, 2014, 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.

Notice H 2016-05 issued on March 31, 2016, 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 that civil money penalties may be assessed on Project-based Section 8 developments, not just buildings with HUD mortgages. 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. In addition, when residents have complaints the notice allowed 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 includes HUD's Model Lease, which is applicable to all HUD tenants, and explicitly refers to the regulations' provisions 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 in appropriate languages and distributed annually to all HUD tenants at lease signing or recertification.

In addition, 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. In addition, 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.

HUD Grants for Tenant Capacity-Building in Multifamily Housing. For 20 years, Congress has provided funds to help tenants organize, primarily so they could understand and influence the future of their homes when a development's Section 8 contract was expiring. In 1997, Congress enacted Section 514(f) of the Multifamily Assisted Housing and Reform Affordability Act, following advocacy by the National Alliance of HUD Tenants (NAHT) and the National Housing Law Project. Section 514 allowed HUD to set aside up to $10 million annually to enable tenants to participate in decisions regarding Section 8 contract renewals in their buildings. HUD awarded two rounds of Outreach and Tenant Grants to 35 local organizations in 1998 and 2000, with a portion of these funds as well as smaller targeted grants to individual tenant groups and nonprofit purchasers. In addition, HUD funded a VISTA program targeting at-risk HUD housing. However, between FY02 and FY10, HUD did not utilize the Section 514 set-aside, and the programs lapsed.

NAHT advocated throughout that period to reactivate Section 514 to provide resources for tenant organizing and capacity-building. Finally, in FY11 HUD set aside $10 million in Section 514 resources and issued a NOFA for a revised tenant assistance program called the Tenant Resource Network (TRN). In June 2012, HUD awarded $5 million for 15 grants to local, area-wide tenant organizing groups to inform and engage tenants about their rights and options if their privately owned, HUD-assisted apartments were at risk of leaving the affordable housing stock. Although the TRN grants successfully helped preserve at-risk buildings, advocates criticized the two-year program because HUD placed unnecessary restrictions that limited eligible properties and local assistance. HUD has not issued any new NOFAs for TRN. Although, HUD Secretary Donovan requested, and Congress approved, an additional $30 million in Section 514 funding in FY10, FY12, and FY13, these funds were ultimately re-programmed by HUD for other purposes.

In 2014, NAHT persuaded HUD to utilize the remaining balance of FY11 funds for a HUD funded AmeriCorps VISTA Volunteer program. To date, HUD has provided $5 million to VISTA, a federal agency, which has re-granted the funds to Equal Justice Works, an intermediary agency, to administer the program as VISTA's agent. Equal Justice Works, a nationwide legal service internship program, partnered with NAHT to create the VISTA Affordable Housing Preservation Project (VAHPP) in fall 2014. NAHT recommends organizing sites and provides training and support to the VISTA organizers in the program; Equal Justice Works administers the program overall and provides training to locally placed VISTA lawyers (Legal Fellows).

Initially, through VAHPP, 45 VISTA members – 33 organizers and 12 legal fellows – have been placed with 20 local nonprofit tenant organizing groups and 10 legal service organizations to build the capacity of tenant organizations through outreach, education, leadership development, and legal services with the goal of working with owners and project administrators to preserve, maintain, and improve project-based Section 8 homes. The project aims to: increase tenant outreach and the training capacity of qualified local nonprofit organizations in at least 20 cities; organize or strengthen up to 120 independent tenant associations that meet HUD standards; and help tenants save or improve at least 120 eligible Section 8 communities that house more than 18,000 families.

Developments currently eligible for VAHPP are those with a PBRA contract [Project-Based Section 8, Rent Supplement (Rent Supp), Rental Assistance Program (RAP), or Moderate Rehabilitation (Mod Rehab) Section 8] for which:

- The contract will expire within five years.
- The property has two consecutive Real Estate Assessment Center physical inspection scores less than 60.
- The property is otherwise at risk of HUD abating the Housing Assistance Payment contract due to health and safety issues.
- The property is eligible for Component II of HUD's RAD program, which includes privately-owned, multifamily housing with Rent Supp, RAP, or Mod Rehab Section 8 contracts.
- The owner has submitted a request to HUD to prepay the mortgage, such that the prepayment would trigger the issuance of preservation vouchers to tenants of non-assisted units.

In fall 2016, Equal Justice Works authorized expansion of the number of VAHPP organizers to 38 and added additional Legal Fellows positions. The successful VAHPP program has been extended through at least August 2019 based on current funding projections.

In 2015-16, HUD re-programmed $2 million of the $5 million awarded to VISTA for a new program called "Tec/Dev," to assist Public Housing tenants in buildings converting to HUD's RAD, provided the RAD conversions result in PBRA contracts, not PBV. Equal Justice Works has been asked to coordinate the Tec/Dev placements of VISTA lawyers and "community advocates" with qualified local agencies. However, as of January 2018, very few lawyers and "community advocates" have been placed through Tec/Dev.

Responding to the NAHT Board's advocacy with former HUD Secretary Castro, the Obama Administration's FY16 budget request included $3 million from Section 514 to provide staff management support for local VISTA sites to supplement VAHPP. HUD advertised the funds through a NOFA through the Community Compass (formerly OneCPD) program in May 2016, designated as the "MAHRAA TA" program. Although four qualified regional nonprofits applied to provide staffing subcontracts to most of the

VAHPP VISTA sites, in the end HUD awarded the funds for other purposes, and the funds remain unspent as of January 2018. HUD requested $4 million in additional Section 514 funds in its FY17 appropriations request, which was approved by Congress but has yet to be allocated by HUD.

WHAT TO SAY TO LEGISLATORS

Advocates should speak to their Members of Congress and ask them to:

- Fund the public housing ROSS program at $50 million in FY19.
- Reverse HUD's administrative weakening of the PHA Plan and Congress' streamlining of the plan's requirements for 75% of the nation's PHAs.
- Adhere to Section 514 by ensuring $10 million is available and utilized each year to support qualified and independent organizations to provide outreach and training to HUD-assisted housing tenants threatened with the loss of their housing.

FOR MORE INFORMATION

National Alliance of HUD Tenants, 617-522-4523, www.saveourhomes.org

National Housing Law Project, 415-546-7000, www.nhlp.org

NLIHC, 202-662-1530, www.nlihc.org

24 CFR Part 964, Tenant Participation and Tenant Organizing in Public Housing Regulations, https://www.gpo.gov/fdsys/pkg/CFR-2017-title24-vol4/pdf/CFR-2017-title24-vol4-part964.pdf

24 CFR Part 903, Public Housing Agency Plans Regulations, https://www.gpo.gov/fdsys/pkg/CFR-2017-title24-vol4/pdf/CFR-2017-title24-vol4-part903.pdf

24 CFR Part 245, Tenant Participation in Multifamily Housing Projects, https://www.gpo.gov/fdsys/pkg/CFR-2016-title24-vol2/pdf/CFR-2016-title24-vol2-part245.pdf

HUD Resident Rights and Responsibilities brochure, http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12162.pdf

Notice PIH 2013-21, Guidance on the use of Tenant Participation Funds, http://1.usa.gov/1oeNmvJ

Notice H 2014-12, Implementation of Tenant Participation Requirements in Accordance with 24 CFR Part 245, http://portal.hud.gov/hudportal/documents/huddoc?id=14-12hsgn.pdf

Notice H 2016-05, Revision of Tenant Participation Requirements in accordance with 24 CFR Part 245, https://portal.hud.gov/hudportal/documents/huddoc?id=16-05hsgn.pdf

Our Homes, Our Votes: A Guide to Voter Engagement Activities for Nonprofit Housing Providers and Resident Organizations

By Joey Lindstrom, Manager for Field Organizing, National Low Income Housing Coalition

Our Homes, Our Votes is NLIHC's effort to expand voter engagement work conducted by community organizations dedicated to expanding affordable housing. This guide is designed to help you through the steps of planning your agency's voter engagement work. These materials offer resources for organizations seeking to engage traditionally underrepresented people in the civic process. Beyond this guide, NLIHC will offer trainings and additional tools through the 2018 election. Be sure to visit nlihc.org/library/voter-engagement for the most updated materials and announcements.

This voter engagement plan provides all of the steps you need to implement a campaign to integrate registration, education, mobilization, and voter protection without overtaxing your staff or resources, while staying within legal guidelines for nonprofits. Our plan presents a menu of activities for your group to consider. Your organization may or may not be able to undertake all of the suggested activities; plan according to available resources. If this is your first voter engagement project, remember to think long-term. It is usually best to start small and build your project over several election cycles.

Please let us know if you are conducting a voter engagement effort so that we can provide assistance, connect you with helpful resources, and spotlight your election-related work on our blog or in other NLIHC publications such as *Tenant Talk*. Call NLIHC's Field Team at 202-662-1530, or email us at outreach@nlihc.org.

WHY ENGAGE IN ELECTION WORK?

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. At the same time, it is vital that low income voters: understand how the decisions made by federal elected officials directly affect their lives; know how to register to vote; and, know how to get to the polls on Election Day.

Census data confirm that low income voters are registered and vote at lower rates than higher income citizens. While 85% of people with incomes over $100,000 were registered to vote in 2016 and 74% voted, just 60% of people with incomes below $20,000 were registered, and only 38% actually voted. (U.S. Census Bureau. *Voting and Registration in the Election of November 2016*. May 2017.)

People in low income communities face several challenges to voting such as less-flexible work schedules that may not allow time off to vote; more difficulty obtaining legal identification; transportation impediments that may make getting to the polls more difficult; and, a greater likelihood of misinformation about their rights as voters. People experiencing homelessness, ex-offenders, and survivors of a natural disaster may face especially tough barriers to voting.

Nonprofit organizations, which benefit from close ties with their members, are a natural fit in helping people overcome these challenges. Nonprofits that have implemented voter engagement projects have identified several benefits of doing so:

- Residents engage in civic life and learn how decisions of elected officials affect their lives.
- The issue of homelessness and housing scarcity is elevated in public debate.
- Elected officials become educated on low income housing issues and on how their decisions affect residents.
- Influential relationships are built with elected officials.
- Residents develop leadership skills.
- Assists residents in meeting community service requirements, if applicable.
- Press is earned for the program or project.

LEGALLY SPEAKING

Nonprofit organizations can, and should, engage in nonpartisan election-related activity, including voter registration, education, and mobilization. The basic rule is that 501(c)(3) organizations cannot in any way support or oppose particular candidates. For detailed legal guidance, you may want to consult:

- **Nonprofit VOTE**, www.nonprofitvote.org
  Specifically, read their comprehensive legal guide on what nonprofits can and cannot do: *Nonprofits, Voting & Elections.*
- **Alliance for Justice**, www.afj.org
  Through their Bolder Advocacy campaign, AFJ works to ensure nonprofit groups are up to date on rules governing campaign involvement. Review their materials and sign up for upcoming webinars at www.bolderadvocacy.org
- **League of Women Voters**, www.vote411.org
  The League offers Vote411.org, an online resource providing nonpartisan information to the public, with both general and state-specific information on all aspects of the election process. An important component of This site is the polling place locator, which enables users to type in their address and retrieve the polling location for the voting precinct in which that address is located.
- **HUD**, www.hud.gov
  Public housing agencies are often under the impression that they are not able to register residents to vote. That is not the case; in fact, HUD issued a Notice (FR-3968-N-01) in 1996 that encouraged housing agencies, Indian housing authorities, and resident management companies to become involved in voter registration activities.

Organizations with specific legal questions related to their voter engagement projects after consulting the above resources 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.

REGISTERING VOTERS: BEFORE YOU START

Before your organization begins to register voters, you will want to prepare in several ways:

Set Goals

Setting goals for both registration and mobilization can be an important part of your plan. The staff and volunteers involved in the project will have something to work towards, and you will have a way to evaluate your project after the election. The plan provides a framework for setting these goals.

Get to Know Your Local Board of Elections

Your local Board of Elections can be a wealth of information as you plan to register low income renters to vote. 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 deputized or meet other requirements. Request the voter rolls for your community, so you will know who in your target audience is already registered. Learn about identification requirements for registration and voting. Request enough voter registration forms to meet your registration goals. In many places, the role of the Board of Elections will be conducted out of the office of the County or City Clerk. Please contact NLIHC if you need help determining who the best local authority is for your organization.

Offer Registration Trainings

Residents and staff who plan to register voters will often benefit from receiving training on the process. You may want to bring in someone from the local Board of Elections who can explain the state's registration requirements and how voter registration forms must be filled out. It can also help to spend a bit of time role-playing so that people who are registering voters are not discouraged when confronted with apathy. It is also helpful to practice voter registration updates for renters who have recently moved.

Consider Resources

Whether simple or more involved, all voter engagement projects will involve some investment of resources. Once you know what you would like to accomplish, you should consider potential funding sources for your project, and how you might work with other organizations to maximize resources.

Other organizations may have resources that your organization can access. Student groups may be interested in registering voters as part of a community service project, or a civic group may already be providing rides to the polls and could include your clients in its plans. Remember to partner only with nonpartisan organizations.

REGISTERING VOTERS

Once you know the voting guidelines for your state and have set registration goals for your agency, you are ready to begin registering voters. As described in the sample plan, there are four ways to approach voter registration.

1. Fit Voter Registration into Your Agency's Regular Contact with Residents

The first option is to incorporate registration into day-to-day activities that already take place at your agency. Registration can usually be incorporated with few resources and little hassle into the intake process, training sessions, resident association meetings, and any other meetings of clients.

2. Plan Specific Voter Registration Activities

A second way to think about registration at your agency is to plan special registration activities or campaigns. Many organizations have had success holding social or other events at which residents are encouraged to register to vote. Consider hosting an event for National Voter Registration Day on September 25, 2018.

3. Organize a Door-To-Door Campaign

The third, and most effective, way for larger organizations to systematically register clients is through a door-to-door campaign. If your agency is a housing provider or a resident council, such a campaign can be especially effective. In particular, resident leaders can volunteer to receive training and serve as 'building captains' or 'floor captains.' Captains can take on responsibility for registering, keeping registration records, and then turning out, all of the people in their building or on their floor, etc. Such a system can be a great way to get residents or clients involved while ensuring that staff does not become overwhelmed with additional responsibilities. The key is to have personal and organized contact with potential voters by people they know or trust. Especially in this type of campaign, you will want to use the voter list from your county to see who in your buildings is already registered or whose registration needs updating. Voter lists may cost a small fee, but they are essential for tracking who is already registered.

4. Go Into the Community

Finally, especially if you have a smaller membership or client base, you may also want to think about having your volunteers reach out into the community to register other low income, homeless or underrepresented people. Consider staffing voter registration and information tables at community events. Also, make sure to promote your voter registration efforts through your website and other social media platforms. And do not forget to make sure everyone on the staff and board is registered!

KEEPING RECORDS

It is crucial to have a plan for how you will keep a record of who you have registered to vote—as well as who is already registered—so that you will be able to contact these people as part of your mobilization activities. You will be able to compile a list of which of your residents are already registered from the voter rolls you acquire from your local Board of Elections.

Collect Information

For new registrants, there are two ways to collect this information. One easy way, if allowed by the laws in your state, is to collect voter registration forms from new registrants, then photocopy the forms before mailing them in. (Note: Some states require forms to be returned within a specific number of days after they have been completed.) This also allows you to review and catch mistakes before a form is submitted. You may also ask registrants to fill out two-part pledge cards. They will keep the half of the card that reminds them of their pledge to vote; you will keep the half with their contact information.

Enter the Information into a Database

Once you have collected voters' information, it is important to enter it into a database so the data can be easily accessed for mobilization purposes.

EDUCATING CLIENTS AND ELECTED OFFICIALS

There can be as many as three components to the education piece of your plan.

Educate Low Income Renters on Voting and Their Rights as Voters

Clients should be informed of where their polling place is, what documentation they will need to have with them in order to vote, and their rights if election officials attempt to prevent them from voting. Arranging for local election officials to demonstrate how voting machines work can be helpful in easing fears about voting for the first time.

The National Coalition for the Homeless' *You Don't Need A Home to Vote* Voting Rights Campaign seeks to protect and promote the right of homeless people to vote. It offers materials on all aspects of a voter engagement campaign, including specific, state-by-state information on the legal issues affecting the rights of people experiencing homelessness to vote. Find the campaign at www.nationalhomeless.org/campaigns/voting

Many states have new requirements for showing identification during the registration process or at the voting booth. The League of Women Voters has updated information about the rules in each state at www.Vote411.org.

Educate Your Network and Clients on the Issues

Nonprofits can best assist low income voters in becoming familiar with the issues by providing opportunities for people to hear the direct views of candidates. Distribution of candidate questionnaires, hosting debate watch parties, or holding candidate forums are examples of such opportunities. It can often be very powerful when candidates are asked about housing issues or homelessness in public forums or town hall meetings. Please contact NLIHC if you would like help putting together a candidate questionnaire that includes federal policy. This is an activity in which you must be especially vigilant about ensuring that your agency follows IRS requirements. Please refer to the guide *Nonprofits, Voting & Elections* before you send questionnaires to your candidates or invite candidates to speak to clients.

Educate Candidates

Asking candidates to fill out a questionnaire or inviting them to your agency can be a way to learn more about them while making them aware of your organization and the issues that are important to renters. You may also want to report the number of new voters your organization has been able to register. Candidates also learn what issues are important to voters by reading the letters to the editor page of the newspaper. Consider having clients 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.

MOBILIZING VOTERS

Your voter mobilization, or Get Out The Vote (GOTV), plan can be the most important and rewarding piece of your project. Just registering voters is not enough; it has been consistently shown that voters are much more likely to go to the polls if they are contacted on several occasions and reminded to vote by someone they trust. Further, once someone has voted, he or she is more likely to vote in future elections. Considerable attention should be paid to mobilizing the people you have registered.

Aim for at Least Three Contacts with Each Registered Voter

If possible, contact each potential voter three times between the day she registers and Election Day: once a few weeks before the election, once a few days before the election, and at least once on Election Day. On Election Day, you may want to contact voters until they have affirmed that they have voted. For example, if someone tells you at noon that she has not yet had a chance to vote, call back at 4pm to see whether she has been able to get to her local polling location. Make sure to coordinate rides for voters so that they can get to the polls; offering a ride is not offering an illegal incentive to vote. Use your database of registered voters to make your contacts.

Over the course of your contacts, you should make sure that the voter commits to voting, knows when Election Day is, and knows where her polling place is. Ideally these contacts should be in person through a knock at the door, but phone calls, emails, and postcards can also work. Not everyone will be home when your canvassers visit, so you may want to create a pre-printed note that can be left on people's doors on Election Day.

Recruit volunteers, whether staff, residents, or community members, to assist in making GOTV contacts. If you have had building or floor captains who have been in regular contact with their voters, they should conduct these mobilization activities to the greatest extent possible.

Again, it is personal contact from someone residents know or trust that will make an impact. Research shows nonprofit agencies can have an impact on voter turnout in their communities by incorporating engagement efforts such as active tabling and voter pledge cards, which have shown to increase the turnout of low propensity voters by 29%. *Engaging New Voters: The Impact of Nonprofit Voter Outreach on Client and Community Turnout*. 2015. Retrieved from http://www.nonprofitvote.org/engaging-new-voters.

Consider Early Vote and Absentee Ballots

Early voting, if available in your state, and absentee voting can each facilitate voting by the people your agency serves. Again, your local Board of Elections can provide information on laws in your state. For early voting, consider holding ballot parties where voters gather to go and vote as a group, perhaps after a discussion of affordable housing issues. Where it is allowed, you might also want to send volunteers to gather early voting ballots and submit them to your local clerk's office.

Work the Polls

In addition to recruiting volunteers for your Election Day GOTV efforts, you may also want to encourage other residents to sign up with the county as poll workers. This provides an additional—and often paid—way for low income renters to participate in the election process.

Host a Polling Location

Some nonprofits have increased their turnout rates by asking the county to use their organization's location as a polling place. It is much easier to vote when you only need to go to the lobby! This arrangement also offers community members an opportunity to visit your agency.

Protecting the Right to Vote

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 effort to be poll watchers who spend their day at the polls to record and report instances of voter harassment or unlawful suppression. Poll watchers can help identify potential issues in your community, and can also be on call on Election Day if anyone experiences problems voting.

Capitalizing On Your Project

Once Election Day is over, take a few days to rest. You deserve it! Then, it's time to do a few things: Celebrate your accomplishments and honor your volunteers. Evaluate your project and your results, and plan what you will do differently next year.

Next, set up appointments for elected officials to meet with renters or clients you serve to discuss housing issues important to your organization; be prepared with statistics showing the increased voting rates in your community. Now that renters and staff have been energized by being involved in the election process, talk to them about who might be interested in running for local office themselves.

Most importantly, consider your voter engagement project to be an ongoing effort; continue to make registration, education, and mobilization a part of your agency's day-to-day activities.

2018 *Our Homes, Our Votes* Engagement Plan

Completing a voter engagement plan for your agency will help you assess how best to incorporate voter registration, education, and mobilization into your agency's work. This plan template presents a menu of activities that your organization may want to consider.

Please let NLIHC know you are participating! Contact NLIHC's Field Team at 202-662-1530 or outreach@nlihc.org with a description of your project.

WHY BECOME VOTERIZED?

Below are some reasons that organizations have undertaken voter engagement projects. Check those that apply to your organization, and add any others that apply.

- ❏ Engage residents in civic participation and help them become familiar with how decisions of elected officials affect their lives.
- ❏ Elevate the issue of homelessness and housing scarcity in public debate.
- ❏ Educate elected officials on low income housing issues and on how their decisions affect residents.
- ❏ Build influential relationships with elected officials. Help develop residents' leadership skills.
- ❏ Assist residents in meeting community service requirements, if applicable. Earn positive press for your program or project.
- ❏ Other: ______________________________

LEGALLY SPEAKING

501(c)(3) organizations can, and should, engage in nonpartisan election-related activity, including voter registration, education, and mobilization. 501(c)(3)s cannot in any way support or oppose particular candidates. For detailed information on these issues:

- ❏ Contact the Office of the Secretary of State or Board of Elections in your state to learn your state's rules for voter registration drives.
- ❏ Take a look at the Permissible Activities Checklist put together by Nonprofit VOTE at: www.nonprofitvote.org/documents/2017/04/nonpartisan-election-activities-501c3-nonprofits.pdf.
- ❏ Visit the League of Women Voters at www.vote411.org for the latest information on voting in your state.
- ❏ Read and review *Nonprofits, Voting & Elections* produced by Nonprofit VOTE at: http://www.nonprofitvote.org/nonprofits-voting-elections-onlinedocuments/2010/11/nonprofits-voting-and-elections.pdf.

REGISTERING VOTERS

Setting Goals for Registering Voters

A. What percentage of your clients will you register? What number? ______________

B. Will your agency also register other low income members of the community, beyond those served by your programs? ______________

C. How many weeks do you have until the deadline to register voters? ______________

D. How many people must you register on average per week to meet your goal? ______________

Assigning Responsibilities

A. What staff person will ultimately be responsible for meeting registration goals? ____________________

B. What resident leaders will have responsibility for meeting registration goals? ____________________

Preparing To Register Voters

Your local Board of Elections can be a valuable source of information as you plan to register clients to vote. 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 deputized or meet other requirements.
- ❏ Request the voter rolls for your locality. There may be a small charge for this, but it's important; you will use this list to determine which of your residents and clients are already registered, and which need to change their official voting address.
- ❏ Request enough voter registration forms to meet your registration goals.
- ❏ Are there special requirements someone must meet before registering voters?
- ❏ Who will obtain the county voter list and pick up the voter registration forms? ____________________

REGISTRATION CHECKLIST

For each section, check those ways in which your agency will register voters. In the space after the activity, list the staff or resident(s) who will carry out the activity, and the timeframe for carrying it out.

Fitting Voter Registration Into Your Agency's Regular Contact With Residents

- ❏ Add voter registration to the client intake process. Directly ask people to register and assist them in completing the form; don't just provide the form.
- ❏ Register clients when they come in to receive your services.
- ❏ Train all staff and volunteers who work directly with clients to be able to answer questions and assist with registration forms.
- ❏ Add a voter registration component to all job training, computer skills, financial literacy, or other classes offered by your agency.
- ❏ Other: ____
- ❏ Staff or volunteer responsible for organizing these activities: ____________________

Planning Specific Voter Registration Activities

- ❏ Hold a social or other event at which voter registration is an activity.
- ❏ Host an event for National Voter Registration Day (September 25, 2018), http://nationalvoterregistrationday.org/
- ❏ Other: ____
- ❏ Staff or volunteer responsible for organizing these activities: ____________________

Organizing A Door-To-Door Campaign

- ❏ Train residents, staff, and other volunteers who are already registered to go door-to-door to register low income renters. Use the county voter list to determine who needs to be registered and whose registration needs to be updated.
- ❏ Appoint residents as building captains, floor captains, etc. Ensure they are trained on the rules in your state, and make them responsible for registration and turnout where they live.
- ❏ For locked buildings where you have not recruited a resident captain, approach landlords to ask if they will allow door-to-door registration or a registration table in the lobby.
- ❏ Consider offering public recognition to those who register the most new voters or the highest percentage of their area.
- ❏ Staff or volunteer responsible for organizing these activities: ______________________________

Reaching Out To the Community

- ❏ Have your registrars reach out into the community to register other low income, homeless or underrepresented people.
- ❏ Provide a voter registration and information table at neighborhood events.
- ❏ Make sure everyone on the staff and board is registered!
- ❏ Staff or volunteer responsible for organizing these activities: ______________________________

KEEPING RECORDS

Keeping records of the people you register to vote helps both with determining whether you havemet your registration goals and with planning Get Out The Vote activities. NLIHC has a sample database that you can use for recordkeeping at the end of this document.

Where allowable by law, one easy way to gather the information for your list is to collect voter registration forms from new registrants, then photocopy the forms or portions of forms before mailing them in. You can also have new registrants fill out a two-part pledge card. They will keep the half of the card that reminds them of their pledge to vote; you will keep the half with their contact information.

Who will be responsible for keeping records of who becomes registered to vote?

EDUCATING CLIENTS AND ELECTED OFFICIALS

A. Which staff person will ultimately be responsible for meeting education goals? ____________________

____

B. Which resident leaders will have responsibility for meeting education goals? ____________________

____

EDUCATION CHECKLIST

For each following section, check those ways in which your agency will educate voters and candidates.

Educating Renters on Voting and Their Rights As Voters

- ❑ Educate clients and low income renters on new identification requirements for voter registration and voting in your state.
- ❑ Obtain sample ballots from your Board of Elections or County Clerk's and distribute to residents.
- ❑ Arrange for someone from your Board of Elections or County Clerk's office to come to your agency to provide a demonstration of your county's voting machines and explain people's rights as voters.
- ❑ Host a discussion on the importance of voting and what can be gained by increasing the percentage of voters who are low income renters and allies.
- ❑ Encourage residents to sign up with the Board of Elections as poll workers.

Educating Voters on the Issues

- ❑ Obtain materials on current federal affordable housing issues from NLIHC at http://nlihc.org/issues.
- ❑ Host a discussion to clarify who your community's elected officials are, and the connection between what those officials do and your clients' lives.
- ❑ Arrange for clients to attend or watch a candidate debate or public forum.
- ❑ Ask all candidates to complete a candidate questionnaire and distribute their answers. Publish the answers on your website, if possible. For information on putting together a questionnaire or hosting a forum, see: http://bit.ly/1gD2hdR.

C. Other: ____

Educating Candidates

- ❑ Include information on your agency when sending candidates your questionnaire.
- ❑ Encourage clients to write letters to the editor explaining why affordable housing is an important issue for them as they consider how they will vote.
- ❑ Prepare low income voters for asking questions at candidate forums or town hall events.
- ❑ Arrange for each candidate for a particular office to take a tour of your agency and speak with clients.
- ❑ Other: ____

PROTECTING THE RIGHT TO VOTE

Some low income people, including people experiencing homelessness and ex-offenders, are at a greater risk of being turned away from the polls on Election Day, or otherwise being disenfranchised. Find information on protecting people's rights to vote through the Fair Elections Legal Network at: http://fairelectionsnetwork.com/state-guides/.

You may also want to contact a local attorney who is experienced in voter protection. He or she can help identify potential issues locally, and can also be available on Election Day in case anyone experiences problems voting.

Who will be responsible for ensuring the rights of the people you work with are protected on Election Day?

____

MOBILIZING VOTERS

Setting Goals for Getting Out the Vote (GOTV)

- ❏ What is the total number of people your agency plans to register to vote? ____________________
- ❏ How many additional clients are already registered (from the voter list you obtained from your county's Board of Elections)? ____________________
- ❏ What is your total number of potential voters (A+B)? ____________________
- ❏ What percentage of these people would you like to see vote on Election Day? ____________________
- ❏ What is the total number of people you would like to see vote on Election Day? ____________________

Reminding People To Vote

- ❏ Which staff person will ultimately be responsible for meeting mobilization goals? ____________________
- ❏ Which resident leaders will have responsibility for meeting mobilization goals? ____________________

PLANNING FOR ABSENTEE BALLOTS AND EARLY VOTING

In all states, absentee ballots can be requested by residents who are unable to get to the polls on Election Day. In some states, there is no reason required for absentee voting, and all voters have the option to vote by absentee ballot or to vote before Election Day. Providing your clients with absentee ballot request forms or helping them to take advantage of early voting if available is a great way to increase voter turnout.

Voting by absentee ballots generally involves two steps. First, clients fill out forms requesting their ballots. Once they receive their ballots, clients fill them out and return them.

Check with your county's Board of Elections on each of the following questions:

- ❏ What is the deadline in your state for requesting absentee ballots? ____________________
- ❏ When must ballots be returned to the county? ____________________
- ❏ Does your state allow for no-excuse absentee ballots (residents may vote absentee even if they would be able to go to the polls on Election Day)? ____________________
- ❏ Does your state allow for early voting? ____________________
- ❏ Who will be responsible for coordinating absentee ballots and early voting? ____________________

MOBILIZATION CHECKLIST

For each following section, check those ways in which your agency will mobilize voters and candidates.

The Months and Weeks Before Election Day

- ❏ If time allows, request an updated list of registered voters from your Board of Elections to ensure the voters you registered are included.
- ❏ Investigate the possibility of adding a polling place at your agency.
- ❏ Download and print GOTV materials, including posters, from www.nonprofitvote.org.
- ❏ Host voting-related events on the first Tuesday of the month to get residents accustomed to participating in civic engagement activities on that day.
- ❏ Make your first contact with each voter in your database. Call them, thank them for registering, and remind them to vote.

- ❑ Plan for Election Day:
  - Recruit residents or other volunteers who will spend Election Day going door-to-door to Get Out The Vote. Prepare captains to turn out all registered people on their floor or in their building, etc.
  - Once the deadline for registering new voters has passed, obtain an updated voter registration list from your county. Check against your database and prepare a final list of voters to be mobilized.

One To Two Weeks Before Election Day

- ❑ Make your second contact with voters in your database. Call them, remind them to vote on Election Day, and provide them with their polling place. Ask whether each will need a ride to the polls.
- ❑ Continue to plan for Election Day:
  - Hold a training session for Election Day volunteers.
  - From your database, print lists of all of your registered clients whose doors will be knocked on when Election Day comes. Print in groups of 20-30 people, based on geography and the number of Election Day volunteers.
  - Arrange to provide rides to the polls for those who need them.
  - Plan to provide lunch for your Election Day volunteers.
  - Plan a party for after the polls close!
- ❑ Other: ____________________

The Day Before Election Day

- ❑ Make your third contact with each voter in your database. Call and ask them to commit to vote the following day. Remind them of the location of their polling place and the times that polls will be open.
- ❑ Other: ____________________

Election Day

- ❑ Have volunteers with lists of registered residents knock on the doors of everyone on their list, crossing off the names of those who have voted. If a voter is not home, leave a pre-printed note on the door. Call or knock again until everyone has voted, or until the polls are closed.
- ❑ Provide rides to the polls for residents who need them.
- ❑ Celebrate! Host a party for voters and volunteers. Watch the election results.
- ❑ Other: ____________________

Post-Election Day

- ❑ Thank voters and volunteers, and share your success stories.
- ❑ Evaluate your program and plan your next project. Continue with registration and education activities.
- ❑ Use your new influence by meeting with newly elected officials and discussing your priority issues.
- ❑ Consider if there are staff or residents who should be encouraged to run for office.
- ❑ Other:____________________

CONSIDERING RESOURCES

Now that you have gone through all of the preceding items in this template you will have a better sense of what resources will be required to implement your voter engagement project. Whether simple or more involved, all voter engagement projects will involve some level of resources. Now that you know what you would like to accomplish, you should identify what funding sources you can access and how you might work with other organizations to leverage resources.

How much funding do you anticipate needing? This funding should cover things like voter databases, supplies, transportation, training, events, etc. ______________________________

What sources of funding can you access? ______________________________

Other organizations may have resources that your organization can access such as meeting space, printing materials, or access to volunteers. Student groups may be interested in registering voters as part of a community service project. A civic group may already be providing rides to the polls, and could include your clients in their plans. Remember to partner only with nonprofit organizations. ______________________________

____

What groups in your area might you partner with, and in what ways? ______________________________

____

APPENDIX: SAMPLE RECORD KEEPING DATABASE

It has been shown that just registering voters will not ensure an increase in voter turnout. To have a successful mobilization operation, you must contact your newly registered voters in the weeks and days leading up to the election. To do this effectively, you will need to have a record of who is registered to vote.

The easiest way to keep records is in a database format. Your voter database does not have to be complex or have a lot of fields. Many people find Microsoft Excel and Microsoft Access to be the easiest platforms to use. Your database should include the following fields:

First Name	Last Name	Street Number	Street Name	City	State	Zip Code	Phone	Email	Polling Place

Note that street number and street name are kept as two separate fields. If you plan to knock doors on Election Day, being able to sort by street number will be useful for organizing a door-to-door Election Day outreach drive.

There are a number of ways to compile this data. One way is to enter the data straight from the voter registration card once the new registrant fills it out. Another way is to have the new registrant fill out both sides of a pledge card. They would give you one side and keep the other side. Once you have this information recorded you are well on your way towards a successful Get Out The Vote operation.

Chapter 3:

NATIONAL HOUSING TRUST FUND

The National Housing Trust Fund

By Ed Gramlich, Senior Advisor,
National Low Income Housing Coalition

Administering agency: HUD's Office of Affordable Housing Programs within the Office of Community Planning and Development

History: Enacted by the Housing and Economic Recovery Act of 2008 on July 30, 2008

Population targeted: Extremely low income renters

FY18 funding: Estimate approximately $220 million.

See also: *National Housing Trust Fund: Funding, Mortgage Interest Deduction Reform, Fannie Mae, Freddie Mac, and Housing Finance Reform*

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. 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 enacting the HTF, the shortage of rental housing that the lowest income people can afford has only gotten worse. The foreclosure crisis, the recession, and persistent low wages have made millions more at risk of homelessness, including families with children, seniors, people with disabilities, and veterans. 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 of Fannie Mae and Freddie Mac. (This is unrelated to profits.) The HTF was to receive 65% of the assessment, and the Capital Magnet Fund (CMF) was to receive 35%. However 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 FHFA director lifted the temporary suspension of Fannie Mae and Freddie Mac set-asides for the HTF and CMF, directing Fannie Mae and Freddie Mac 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. For 2017, $219 million was available for the HTF.

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 explains that after states have gained experience implementing the HTF, HUD will open the interim rule for public comment and possibly amend the rule.

The HTF is administered by HUD's Office of Affordable Housing Programs 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 regulations.

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 it 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 to be 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 them. 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 a state's HTF program and makes grants 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 at https://www.hudexchange.info/programs/htf/grantees.

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 of the HTF for 2016. Based on their total business for 2017, 4.2 basis points provided $219 million for the HTF in 2017. The amount for 2018 will probably be announced around April 2018.

The statute calls for 65% to go to the HTF and 35% to the CMF. However, the statute also requires that 25% go to the Hope Reserve Fund to cover potential losses from the Hope for Homeowners program, also created in HERA. Although it is expected that the 25% that goes to the Hope Reserve Fund in FY16 will more than cover any risk of losses from Hope for Homeowners, an additional 25% was planned for FY17. FY18 and subsequent years should not be subject to this 25% reduction.

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. 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 benefit ELI households or households with income less than the federal poverty line, whichever is higher. No more than 25% may be used to benefit VLI renter households. For homeowner activities, the statute requires that all assisted homeowners have incomes less than 50% of AMI. When there is less than $1 billion for the HTF, 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. 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 how much each state would receive based on $250 million and $500 million at http://bit.ly/2ilbOyw. NLIHC has also estimated state allocations when the HTF reaches $5 billion, http://bit.ly/1m9orp0.

State distribution of HTF money. States are 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 at https://www.hudexchange.info/programs/htf/grantees. See also *Consolidated Planning Process.*

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 the state's HTF program and to 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 for 2016, only Alaska and Hawaii 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 tests:

- 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.

Each year HUD issues a CPD Notice providing guidance regarding the HTF Allocation Plan. Notice CPD 2017-5 provided guidance for 2017; look for 2018 guidance at https://www.hudexchange.info/programs/htf/law-regulations-and-notices. HUD also issued a 2017 HTF Grantee Sample Allocation Plan Form; look for a 2018 Form at https://www.hudexchange.info/programs/htf/guides.

NLIHC drafted a model Allocation Plan with recommendations for the first years; it is at http://nlihc.org/sites/default/files/NHTF_Model-Allocation-Plan.pdf. A summary of all draft 2016 HTF Allocation Plans written by NLIHC is at http://nlihc.org/sites/default/files/NHTF_Allocation-Report_2017.pdf. NLIHC intends to update that summary based on final, HUD-approved 2016 HTF Allocation Plans.

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 Credits (LIHTCs). The HTF campaign had recommended a 50-year affordability period. Twenty-one states addressed longer affordability plans in their draft HTF Allocation Plans. Of these, 3 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). Of the other states, they 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% of the 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% of AMI or 30% of the poverty line. This is because in 92% of the counties in the nation, 30% of the poverty line is greater than 30% of 30% AMI. If 30% of the poverty line is used in these counties, HTF-assisted households will end up cost burdened, paying more than 30% of their income for rent and utilities. Households with income around 20% of AMI (approximately the income of households with Supplemental Security Income) would almost always be severely cost burdened, paying more than 50% of their income. Advocates can find the 2016 values for their states and counties at http://bit.ly/2bnPRYZ.

Although NLIHC thinks HTF-assisted households should not be cost burdened, underwriting developments with variable Brooke rents (households paying 30% of their actual income) can be very difficult. One possible approach to avoid or minimize causing HTF-assisted households from being 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, and 30% of 15% AMI or 30% of 10% AMI.

A volunteer Developer Advisory Group prepared two papers addressing "Funding Strategies for Developing and Operating ELI Housing," http://bit.ly/1OKhLQm and "HTF Operating Assistance Options and Considerations," http://bit.ly/1WEu1nS.

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 for a number of 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, and 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 interpret 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).

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 just manufactured home lots. 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 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, the 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.

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 at least equals 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 "particular, 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 (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, 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, the amount of a state's annual grant 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 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 grant 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.

HUD anticipates providing guidance about operating cost assistance and reserves sometime in the future. In the meantime, 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," http://bit.ly/1WEu1nS

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 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 modifying the rule in its final stage.

Administration and planning costs. The statute limits the amount of HTF dollars that may be used for general administration and planning to 10% of a 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 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 for 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 for preparation of 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:

1. 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 225,000 public housing units may be converted under RAD, and HUD continues to seek Congressional approval to allow all public housing units to be converted.
2. 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 have been allocated and 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 new 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, and would 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.

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 of the requirements of the HTF rule.

The interim regulation presents a number of 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. 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. The state HTF Allocation Plan will be 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.
- Some states' draft Allocation Plans in 2016 only showed the public changes to the state ConPlan and Annual Action Plan. And other states peppered their standard developer application guide with HTF information. These approaches made it difficult—if not impossible—to determine key issues such as which ELI populations those states prioritized for assisting with HTF in 2016. State ConPlans and Annual Action Plans are generic documents that aggregate information about a number of programs such as HOME, LIHTC, state housing trust funds, CDBG, etc. Consequently it can be difficult if not impossible to determine a state's HTF intentions for the upcoming year.

All states will be fully integrating their HTF Allocation Plans into state ConPlan Annual Action Plans in 2017. Advocates may need to press their state HTF agency to provide a simple, stand-alone HTF document clearly explaining the HTF program (because it is still a unique, novel program focused on rental housing for ELI households), HTF target populations, types of projects, priority project features, and geographic locations. Observing several HUD-approved 2016 HTF Allocation Plans and even some draft 2017 HTF Allocation Plans, NLIHC finds states inserting "HTF-Specific" sections or an HTF-specific appendix to their ConPlan Annual Action Plans that do 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.

Many draft HTF Allocation Plans in 2016 gave equal weight to the six statutory priority factors.

These states did not indicate relative priorities. 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 factors. On a related note, too many states gave disproportionate weight to the statutory factor regarding the ability of an applicant to obligate HTF funds and carry out projects in a timely manner. NLIHC thinks this factor should be a threshold factor 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. See NLIHC's Model Allocation Plan for ideas, http://bit.ly/1WqjT0J

Advocates should learn which agency in their state administers the HTF program and get to know the day-to-day person running it. Let the state HTF agency know that you are interested 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 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 http://nlihc.org/issues/nhtf/state-allocation-plans

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 for 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 your 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, 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 (new construction, rehabilitation, 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, senior citizens).
- Make sure that the public participation obligations are truly met, that the state does not just "go through the motions."
- Make sure that HTF-assisted projects affirmatively further fair housing.

FORECAST FOR 2018

The HTF faces significant threats and opportunities in 2018.

Contributions to the HTF are at risk under current FHFA policy. In the first quarter of 2018, Fannie Mae and Freddie Mac will need a draw from the U.S. Department of the Treasury due to the impact of the Tax Cuts and Jobs Act of 2017, which effectively reduced the value of tax deferred assets owned by the enterprises. Under current policy outlined by FHFA director Mel Watt, a draw could prompt FHFA to suspend payments to the HTF. Once the contributions are suspended, it is unclear when the contributions would be resumed. Director Watt's term ends next year, and President Trump is expected to appoint a new director who would have broad discretion in limiting contributions to the HTF.

The HTF also faces threats in the budget process. In his 2018 budget request, the president proposed eliminating the HTF. In the past, Congress has attempted to divert funding from the HTF to fill gaps in the HUD budget. NLIHC opposes any effort to cut or eliminate the HTF and will work with members of Congress, advocates, and other stakeholders to protect the HTF in the budget process.

However, there is an opportunity to greatly expand the HTF through comprehensive housing finance reform legislation. NLIHC will continue to advocate for comprehensive reform, since it offers the best chance of substantial new funding for 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. At the time this goes to print, Senators Corker (R-TN) and Warner (D-VA) are working on draft legislation that could significantly de-fund the HTF and divert its resources to other priorities. NLIHC will strongly oppose any housing finance reform bill that provides less funding to the HTF than what is needed.

It is also important that advocates continue to educate their senators and representatives on the HTF and the critical role it plays in serving households with the most acute housing needs.

FOR MORE INFORMATION

NLIHC's HTF webpage, www.nhtf.org

- Information about each state such as key personnel, draft and final HTF Allocation Plans, http://nlihc.org/issues/nhtf/state-allocation-plans
- A five-part series all about the new rules regarding implementation of the NHTF http://nlihc.org/issues/nhtf/videos
- PowerPoint slides highlighting the key features of the NHTF law and regulations, http://nlihc.org/sites/default/files/NHTF_Getting-to-Know-NHTF_0617.pdf
- Key features of the NHTF law and interim regulations presented in 15 short papers broken down by topics, http://nlihc.org/issues/nhtf/basic-nlihc
- NLIHC Volunteer Developer Advisory Group, http://nlihc.org/sites/default/files/NHTF_Developer-Resources.pdf

The interim regulation, http://www.gpo.gov/fdsys/pkg/FR-2015-01-30/pdf/2015-01642.pdf

HUD NHTF webpage, https://www.hudexchange.info/htf, including Frequently Asked Questions, https://www.hudexchange.info/resource/4420/htf-faqs

National Housing Trust Fund: Funding

By Sarah Mickelson, Director of Public Policy, National Low Income Housing Coalition

The national Housing Trust Fund (HTF) is the first new federal housing resource in a generation that is exclusively targeted to help build, preserve, rehabilitate, and operate housing affordable to people with the lowest incomes. In 2016, the first $174 million in HTF dollars were allocated to states. This was an important first step, but far more resources are necessary to meet the need for affordable housing. NLIHC is committed to working with Congress and the administration to expand the HTF in order 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). The HTF is to receive 65% and the CMF 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 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.

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 spending bill, housing finance reform, or mortgage interest deduction reforms.

Infrastructure Bill. President Trump has announced that a large-scale investment in infrastructure is a top priority for his administration. Policymakers from both sides of the aisle agree. To maximize this investment's impact on long-term economic growth, NLIHC strongly believes that any infrastructure package should include resources to increase the supply of affordable housing for families with the lowest incomes, including an expansion of the HTF.

Investing in affordable housing infrastructure—through new construction and preservation—will bolster productivity and economic growth, provide long-term assets that connect low income families to communities of opportunity, support local job creation and increased incomes, and create inclusive communities.

The connection between affordable housing and infrastructure is clear. Like roads and bridges, affordable housing is a long-term asset that helps communities and families thrive. Without access to affordable housing, investments in transportation and infrastructure will fall short. Increasing the supply of affordable housing—especially in areas connected to good schools, well-paying jobs, healthcare, and transportation—helps families climb the economic ladder and leads to greater community development.

Research shows that the shortage of affordable housing in major metropolitan areas costs the American economy about $2 trillion a year in lower wages and productivity. The lack of affordable housing acts as a barrier to entry, preventing lower-income households from moving to communities with more economic opportunities. Without the burden of higher housing costs, these families would be better able to move to areas with growing local economies where their wages and employment prospects may improve.

Housing finance reform. It is unclear whether there will be enough political will to move comprehensive reforms forward in the 115th Congress. Contributions to the HTF are at risk under current Federal Housing Finance Agency (FHFA) policy if Fannie Mae or Freddie Mac need a draw from the U.S. Department of the Treasury. Even though Fannie and Freddie have now returned far more to the Treasury than they received in federal assistance during the housing collapse of 2008, currently all of Fannie Mae and Freddie Mac's profits are swept into the Treasury each quarter (except for the amount needed to retain $3 billion in capital reserves). Even with a limited capital buffer, the government-sponsored enterprises may require a draw from the Treasury when experiencing a down quarter. This could occur as soon as the first quarter of 2018 due to the impact of the tax reform legislation passed by Congress in 2017, which reduced the value of the enterprises' tax-deferred assets. A draw could prompt FHFA to suspend payments to the HTF.

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 the next Congress.

HOW ADVOCATES CAN TAKE ACTION

Advocates should be actively engaged in the process of HTF implementation in their states to ensure that the first round of funding is successful. The second round of funding is coming soon.

ON HOUSING FINANCE REFORM

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 a robust source of funding for the HTF similar to the Johnson-Crapo bill.
- 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.
- Oppose efforts to recapitalize and release Fannie Mae and Freddie Mac from conservatorship before Congress passes comprehensive housing finance reform legislation.

For more information, go to:www.NHTF.org

Fannie Mae, Freddie Mac, and Housing Finance Reform

By Sarah Mickelson, Director, Public Policy and Elayne Weiss, Senior Policy Analyst, National Low Income Housing Coalition

See also: National Housing Trust Fund: Funding

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 the future 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 comprehensive reform 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. Prior to 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. Currently, Freddie Mac's and Fannie Mae's combined purchases represent just over 30% of the multifamily market. 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-implied, 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. In August 2015, FHFA published its final rule establishing the GSEs' housing goals for the 2015–2017 period. As required by HERA, the new goals include a single family purchase dollar goal for low income families, a single-family purchase dollar goal for families residing in low income areas, a single-family purchase dollar goal for very low income families, a single-family goal for the refinancing of mortgages for low income families, and a goal for the purchase of multifamily loans affordable to low income families.

There is also a multifamily subgoal targeting very low income families. The multifamily goals for the 2015–2017 period are higher than those that were set for the 2012–2014 period "to account for the overall size of the multifamily finance market, which has expanded substantially since the proposed rule was issued [in 2014]." In addition, FHFA boosted the subgoal for financing multifamily properties with units affordable to very low income families.

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 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.

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 NHTF and 35% is to go to the CMF after the first year when 25% must come off the top for the HOPE Reserve Fund, also created in HERA.

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, activity that is not possible through any of their business products.

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. The first $174 million in HTF dollars were allocated to states in 2016. For 2017, $219 million was available for the HTF. This is an important start, but more HTF resources are needed.

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 are "swept" into the U.S. 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. Some lawsuits have already been thrown out of court, while others are pending.

Hedge funds and some civil rights and consumer advocacy groups have been pushing the Trump Administration and FHFA 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

Almost a decade after the financial crisis, policy makers are still grappling with how to reform the housing finance market. Although some would like to nationalize the housing finance system and others would like to privatize it, most agree that a hybrid system of private capital backed by federal mortgage insurance is the preferred approach. Because of these 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 113th Congress (2013-2014), even though no legislation was considered by either the full House or Senate. The greatest progress was made in the Senate.

Efforts to reform the housing finance system will ramp up in 2018, when Senate Banking Committee members are expected to introduce legislation in the early part of the year.

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 Depository Insurance Corporation. The FMIC would have offered an explicit government guarantee, purchase and securitize single and multifamily mortgage portfolios, and provide 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 create 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 receive 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) 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. House Committee on Financial Services Ranking Member 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. It does not continue the housing goals. The bill was never introduced.

PATH Act. House Committee on Financial Services Chair 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 blocked by then Speaker of the House John Boehner (R-OH). It was opposed by virtually every segment of the housing industry.

HOUSING FINANCE REFORM IN THE 115TH CONGRESS

The Trump Administration and Congress will likely have to address the issue of housing finance reform in some way in 2018. Currently all of Fannie Mae’s and Freddie Mac’s profits are swept into the Treasury each quarter, and their capital buffers will be reduced to zero by January 1, 2018, or soon thereafter. Even though Fannie Mae and Freddie Mac have now returned to the Treasury far more than they received in federal assistance during the housing collapse of 2008, the lack of capital buffers in 2018 will require them to need another draw from the Treasury when they next experience a down quarter. This could occur as soon as the first quarter of 2018 due to the impact of the tax reform legislation passed by Congress in 2017, which reduced the value of the enterprises’ tax-deferred assets. A draw could prompt FHFA to suspend payments to the HTF.

NLIHC will continue to advocate for comprehensive reform, since it offers the best chance of substantial new funding for 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 a robust source of 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.
- Oppose efforts to recapitalize and release Fannie Mae and Freddie Mac from conservatorship before Congress passes comprehensive housing finance reform legislation.

FOR MORE INFORMATION

Federal Housing Finance Agency, www.fhfa.gov

Federal Home Loan Mortgage Corporation, www.fanniemae.com

Federal National Mortgage Association, www.freddiemac.com

Chapter 4:
RENTAL HOUSING PROGRAMS FOR THE LOWEST INCOME HOUSEHOLDS

Homeless Assistance: McKinney-Vento Homeless Assistance Programs

By Mindy Mitchell, Program and Policy Analyst, 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 program started: 1987

Number of persons/households served: Total year-round capacity to provide beds for 399,439 people experiencing homelessness, plus 499,620 formerly homeless people now in permanent housing.

Population targeted: People experiencing or at risk of homelessness.

FY17 funding: $2.383 billion

Also see: Continuum of Care Planning, Federal Surplus Property to Address Homelessness

The McKinney-Vento homeless assistance programs are a set of federal programs created by the McKinney-Vento Homeless Assistance Act. This article refers to the two programs administered by HUD: the Emergency Solutions Grants (ESG) and the Continuum of Care (CoC). 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 the McKinney-Vento Homeless Assistance Act. For many years these programs received no comprehensive overhaul, despite advancing 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 implementing 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 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 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:

1. The Supportive Housing program, which funded transitional housing, permanent supportive housing, and supportive services.
2. The Shelter Plus Care program, which funded rental assistance in permanent supportive housing for people experiencing homelessness with disabilities.
3. 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 all of 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 all of 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 includes 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.
- Incentives include creating new rapid re-housing project 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 also 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 a number of 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, and $2.383 billion for FY17. For FY18, the Senate bill would provide $2.456 billion, and the House bill would provide $2.383 billion.

FORECAST FOR 2018

In recent years, HUD's homeless assistance programs have helped communities reduce homelessness. Given skyrocketing rents in many communities across the country, 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 to not return to homelessness. This will in turn help build even further support in Congress.

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 work, 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 your community's effort to end homelessness, and the FY18 funding proposed in the House and Senate bills is simply not enough to keep up with the rising need around the country that is driven by increasing rents.
- Congress needs to first raise the "sequestration" spending caps so that they can adequately fund HUD's McKinney-Vento Homeless Assistance Grants and other programs supporting people with housing needs. Then they should help their communities' efforts to end homelessness by supporting an increase of $217 million to $2.6 billion to HUD's McKinney-Vento programs in the FY18 appropriations.

FOR MORE INFORMATION

National Alliance to End Homelessness, 202-638-1526, www.endhomelessness.org

Corporation for Supportive Housing, 212-986-2966, www.csh.org

Homeless Assistance: Federal Surplus Property to Address Homelessness

By Tristia Bauman, Senior Attorney, National Law Center on Homelessness & Poverty

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: Homeless persons

FY16 funding: The Title V program does not receive an appropriation.

Also see: *McKinney-Vento Homeless Assistance Programs*, *Continuum of Care Planning, Ten-Year Plans to End Homelessness*

Title V of the McKinney-Vento Homeless Assistance Act of 1987 (Title V) grants nonprofit groups, state agencies, and local governments a right of first refusal to land and real property no longer needed by the federal government. This largely untapped resource provides service providers with potential access to valuable assets that may be used to provide housing and/or services to homeless people – at no charge to service provider.

Homeless service providers, community development organizations, and local government agencies have used Title V properties in a variety of ways to meet the needs of people experiencing homelessness in their communities. To date, approximately 500 buildings on nearly 900 acres of land in 30 states and the District of Columbia have been transferred to nonprofit organizations and local governments under Title V to provide emergency shelter, job training, and even permanent housing to homeless people.

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, while the federal government has property that it no longer needs. Title V originally included properties on newly closed military bases. In 1994, the law was amended to provide a separate process for ensuring that a portion of Base Realignment and Closure properties 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 set forth a reasonable plan to finance the approved program. No later than 15 days after receipt of this information, HHS has 15 days to make a final determination.

FUNDING

The Title V program does not receive an appropriation.

FORECAST FOR 2018

In December 2016, the Federal Assets Sale and Transfer Act of 2016 (FAST Act) was signed into law by President Barack Obama. The law amends the Title V program, but preserves the application of Title V disposal requirements to all but the first $500 to $750 million in "high value" properties recommended for disposal by the newly established Public Buildings Reform Board. Although this law is now in effect, amendments to federal regulations governing the Title V program will be made in 2018. The application packet provided to homeless service providers will also be updated in 2018 to reflect legislative changes made under the FAST Act.

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. It should be noted that the application timeline is short, so applicants must be prepared to act quickly when a suitable property becomes available.

The National Law Center on Homelessness & Poverty published a toolkit to assist homeless service providers with 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://www.nlchp.org/documents/Public-Property-Public-Need.

WHAT TO SAY TO LEGISLATORS

Advocates should meet with their Members of Congress with the message that Title V is a no-cost way to advance the national goal of ending homelessness, and ask the government to improve its efforts to make local governments and nonprofit agencies aware of the program. Also, advocates should meet with their Members of Congress to urge that the government improve compliance with the Title V program and ensure that suitable properties no longer needed by the federal government are quickly conveyed to local homeless service providers.

FOR MORE INFORMATION

For information about how to search and successfully apply for surplus federal properties, you may contact the National Law Center on Homelessness & Poverty, 202-638-2535, www.nlchp.org

Housing Opportunities for Persons with AIDS (HOPWA)

By Lauren Banks Killelea, Housing Policy Specialist, and Russell Bennett, Executive Director National AIDS Housing Coalition

Administering agency: Office of HIV/AIDS Housing (OHH) in HUD's Office of Community Planning and Development (CPD)

Year program started: 1990

Number of persons/households served: 53,108 households

Population targeted: Low income people with HIV/AIDS, and their families

FY17 funding: $356 million.

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 in 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 in reality AIDS remains an active crisis. According to the Centers for Disease Control (CDC), there are an estimated 38,000 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 one out of eight is unaware of their status.

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. According to the CDC, an estimated 47% of those living with HIV had household incomes at or below the federal poverty level. Subsequently, as many as half of all people living with HIV/AIDS will need housing assistance at some point during their illness. Stable housing, like the housing provided by HOPWA grantees, leads to better health outcomes, including viral suppression, for those living with HIV. 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 remaining healthy and in stable housing. But for others, more intensive supportive services are needed.

The HOPWA program is a homelessness prevention program 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 need and assists communities to create housing strategies to prevent these 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 through assisting them with stable housing and related support services.

Eligibility for HOPWA assistance is limited to low income individuals with HIV/AIDS, and their families. The vast majority of individuals receiving HOPWA housing assistance—76%—are extremely low income, earning 30% of the area median income (AMI) or less. Of the 2,443 homeless individuals newly receiving HOPWA during FY16, 11% were veterans and 56% were chronically homeless. 94% of HOPWA households have a housing plan and 91% have contact with a primary care provider. Of the households served by HOPWA supportive housing programs, 95% achieve housing stability.

HOPWA consists of two grant-making programs. 90% of the funds are distributed as formula grants 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.

During 2017, HOPWA formula grants totaling $320.4 million were awarded to grantees within 140 eligible areas. These grantees represent 42 states 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 distributed 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 FY17, 32 expiring competitive grants were renewed in 22 states and the Virgin Islands. Currently the HOPWA program includes 82 competitive renewal grants, 25 of which will be up for a three-year renewal during 2018***. In the competitive program, grantees can distribute funds to projects that provide one or more of the following services: housing information and referral; housing search assistance, shelter or rental assistance; the development or operation of single room occupancy housing and other community-based residences; and, technical assistance. HOPWA also provides technical assistance to support sound management in local programs and develop strategies to address HIV/AIDS housing need.

FUNDING

HOPWA remains sorely underfunded relative to the immense need. HOPWA would need an estimated $1.12 billion to serve all those living with HIV/AIDS in need of housing assistance.

For FY17, HOPWA is funded at $356 million, its highest appropriated level.

The National AIDS Housing Coalition recommends $375 million for HOPWA for FY18, an increase of $19 million from the FY17 appropriation. This recommended funding level, while meeting only a fraction of need, would sustain existing programs, permit small program expansions at the local level, and support newly added jurisdictions. Moreover, it would maintain the funding levels for programs in HOPWA formula funding jurisdictions that will lose funding as the new HOPWA formula update is implemented. The formula update, which became law in July 2016 as part of the Housing Opportunities Through Modernization Act (HOTMA), switches from cumulative AIDS to living HIV/AIDS and includes both housing cost and poverty factors. The update is phased in over five years with annual caps on gains and losses during the phase-in (P.L. 114-201; 7.29.16).

FORECAST FOR 2018

The coming fiscal year will be the second year of phase-in for the new HOPWA formula based on the HOTMA. Depending on the funding level for FY18 and FY19, this will pose significant challenges to HOPWA formula jurisdictions, striving to adjust their programs to accommodate the loss of resources or the infusion of additional dollars as the HOPWA formula update is implemented. In addition to dealing with shifts required by systems changes, communities will face continued challenges in ensuring that individuals remain connected to care to achieve optimal health. Housing is a critical intervention in assuring that this connection happens in many communities. HOPWA continues to be the foundation for a system of care that links healthcare and array of other affordable housing and services.

FOR MORE INFORMATION

National AIDS Housing Coalition, 202-377-0333, www.nationalaidshousing.org

Public Housing

By Ed Gramlich, Senior Advisor, National Low Income Housing Coalition

Administering agency: HUD's Office of Public and Indian Housing

Year program started: 1937

Number of persons/households served: 1.1 million households, 1.9 million residents

Population targeted: All households must have incomes 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: FY17 funding was $6.34 billion ($1.94 billion for the capital fund and $4.4 billion for the operating fund). As of the time this goes to print, all housing programs have been operating under a Continuing Resolution (CR) in FY18 at FY17 levels.

Also see: Rental Assistance Demonstration, Public Housing Agency Plan

The nation's 1.1 million units of public housing, serving 1.9 million residents, are administered by a network of 3,128 local public housing agencies (PHAs), with funding from 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.

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. There are persistent calls for deregulation of public housing through the expansion of the Moving to Work (MTW) demonstration and other efforts 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.

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 project-based rental assistance.

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 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 through demolition and disposition (sale) of units, mandatory and voluntary conversion of public housing to voucher assistance, and the cumulative impact of decades of underfunding and neglect on once-viable public housing units. HUD officials regularly state that more than 10,000 units of public housing leave the affordable housing inventory each year.

According to HUD testimony, between the mid-1990s and 2010, approximately 200,000 public housing units had been demolished; upwards of 50,000 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 almost 50,000 units of non-public housing were incorporated into these new developments, but serve households with income higher than those of the displaced households, and with no rental assistance like that provided by the public housing program.

PROGRAM SUMMARY

There are approximately 1.1 million public housing units. According to HUD, of the families served by public housing, 33% of household heads are elderly, 20% are non-elderly disabled, and 39% are families with children. The average annual income of a public housing household is $14,686. Of all public housing households, 64% are extremely low income, 21% are very low income, and 9% are low income. Fully 80% of public housing households have incomes less than $20,000 a year. Fifty-six percent of the households have Supplemental Security Income (SSI), Social Security, or pension income. Thirty-four percent have wage income, while 30% receive some form of welfare assistance.

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 *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 income, defined income less than 30% of AMI or the federal poverty level 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, particularly 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 average public housing household pays $349 per month toward rent and utilities. Public housing operating and capital subsidies provided by Congress and administered by HUD 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 the housing. Most PHAs also administer the Housing Choice Voucher program.

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 way for public housing residents, voucher holders, and community stakeholders to participate in the PHA's planning process.

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. The $4.4 billion appropriated for the public housing operating subsidy in FY17, left PHAs with 93% of known operating cost needs. The $1.94 billion appropriated for the public housing capital subsidy in FY17 further increased PHAs' capital needs backlog. In 2010, PHAs had a $26 billion capital needs backlog, which was estimated to grow by $3.4 billion each year, meaning approximately a $53 billion capital needs backlog in FY18.

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. Since 2008, HUD's operating formula system, called "Asset Management," has determined an agency's operating subsidy on a property-by-property basis, rather than on the previous overall PHA basis.

The capital fund can be used for a variety of purposes, including modernization, demolition, and replacement housing. Up to 20% can also be used to make management improvements. The annual capital needs accrual amount 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.

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.

In 2012, HUD clarified and strengthened its guidance (Notice PIH 2012-7) regarding demolition and disposition in an effort to curb the decades-long sale and needless destruction of the public housing stock. This guidance clarifies the demolition and disposition process in a number of ways. For example, the guidance unequivocally states 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 reminds PHAs that HUD's Section 3 requirement to provide employment, training and economic opportunities to residents applies to properties in the demolition and disposition process. The review criteria for demolition applications must meet clear HUD standards, and no demolition or disposition is permissible prior to HUD's approval, including any phase of the resident relocation process.

Although additional reforms through regulation were hoped for in 2014, a proposed rule never made it to the final regulation stage. Informally, a HUD official stated in late 2017 that the proposed demolition/disposition rule would not be finalized and that a new PIH Notice will be issued, presumably to water down the improvements in Notice PIH 2012-7.

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 Moderate Rehabilitation program units into either project-based Section 8 rental assistance contracts (PBRA) or to project-based vouchers (PBV) by September 2015. Since then Congress has increased the cap twice, first to 185,000 units and now to 225,000 units by September 30, 2020. The authorizing legislation contains several provisions intended to protect public housing residents whose homes are converted to PBRA or PBV through RAD.

The Obama and Trump Administrations, along with many developer-oriented organizations have urged Congress to allow all 1.1 million public housing units to undergo RAD conversion even though the demonstration is still in its early stages. 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 protections in the authorizing legislation will be honored by PHAs and developers or monitored by HUD. Recently, the National Housing Law Project sent a letter to HUD Secretary Carson listing numerous problems residents have experienced, such as illegal and inadequate resident relocation practices, unlawful resident re-screening practices, and impediments to resident organizing. See the separate RAD article in this *Advocates' Guide* for more information.

Choice Neighborhoods Initiative. The 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 Availability (NOFA). CNI was funded at $65 million in both FY10 and FY11, $120 million in FY12, $114 million in FY13, $90 million in FY14, $80 million in FY15, $125 million in FY16, and $138 million in FY17.

HUD states that CNI has three goals:

1. **Housing**: Replace distressed public and HUD-assisted private housing into mixed-income housing that is responsive to the needs of the surrounding neighborhood.
2. **People**: Improve educational outcomes and intergenerational mobility for youth with services and supports.
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. Seventy-three planning grants totaling $28,166,500 have been awarded as of August 2016.Twenty-seven applications for FY17 funds were received by August 28, 2017.

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. HUD works closely with the Department of Education to align CNI's educational investments and outcomes with those of the Promise Neighborhoods program. Twenty-two implementation grants totaling $633,020,927 have been awarded through 2016. Applications for FY17 implementation grants were being accepted until November 22, 2017.

Although each NOFA 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.

Moving to Work. A key public housing issue is the MTW demonstration that provides a limited number of housing agencies flexibility from most statutory and regulatory requirements. Because this demonstration program has not been evaluated, and the potential for harm to residents and the long-term health of the PHAs are at stake, 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. Today, there are 39 PHAs in the MTW demonstration. 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 FY16 funding bill for HUD 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, and no more than three can administer between 6,001 and 27,000 combined units. PHAs will be added to the MTW demonstration by cohort, each of which will be overseen by a research advisory committee to ensure the demonstrations are evaluated with rigorous research protocols. Each year's cohort of MTW sites will be directed by HUD to test one specific policy change.

The new MTW demonstration Advisory Committee consists of five PHA staff, two former and one current public housing resident, three university-based researchers, two researchers from consulting firms, and two HUD researchers. HUD asked the public for recommendations regarding specific policy proposals to be researched for the MTW demonstration expansion. NLIHC offered detailed comments regarding a variety of concerns including work requirements, time limits, and alternative rent-setting methods. NLIHC has long opposed such MTW policies due to potential harm to residents.

HUD issued a draft MTW Operations Notice for public comment. It proposed three categories of statutory and regulatory waivers that MTW agencies could pursue:

1. General waivers available without review by HUD to all MTW expansion agencies.
2. Conditional waivers available if approved by HUD. Conditional waivers are expected to have a greater and more direct impact on households.
3. Cohort-specific waivers available only to MTW agencies implementing a specific cohort policy change.

NLIHC's letter conveyed strong opposition to the inclusion of work requirements, time limits, and major changes to rent policies among possible conditional waivers. Because such policies have the potential to cause substantial harm to residents in the form of severe cost burden, housing instability, and perhaps homelessness, those policies should only be allowed as cohort-specific waivers subject to the most rigorous evaluation required by the MTW expansion statute. A final Operations Notice was not issued prior to publication of this *Advocates' Guide*.

Statutory and Regulatory Changes Made in 2016

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 or 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, which disregarded certain increases in earned income for residents who had been unemployed or receiving welfare, was eliminated.
- 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.
  - The child care deduction is unchanged.
  - 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.
  - Any expenses related to aid and attendance for 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.
- If a household's income exceeds 120% of AMI for two consecutive years, the PHA must either:
  - Terminate the household's tenancy within six months, or
  - Charge a monthly rent equal to the greater of the Fair Market Rent 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, as long as the PHA Plan provides for such use of operating funds.

A "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 SSI). If that person or household 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 to. 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.

A "smoke free" rule was published on December 5, 2016. PHAs must 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") in which public housing is located. 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 have until August 2018 to develop and implement their smoke-free policy.

FUNDING

The two public housing funds, operating and capital, received $6.4 billion for the two funds in FY16 and $6.34 in FY17.

FORECAST FOR 2018

Subsidy funding for public housing has been woefully insufficient to meet the need of the nation's 1.1 million public housing units for many years. Without adequate funds, more units will go into irretrievable disrepair, potentially leading to greater homelessness. In 2018, funding will continue to be a major issue.

President Trump's proposed FY18 budget would have drastically reduced the public housing capital fund to a mere $590 million and the operating fund to $3.9 billion. However, the House passed an omnibus spending package on September 14, 2017, that included $1.85 billion for the capital fund and $4.4 billion for the operating fund. The Senate Appropriations Committee approved $1.95 billion for the capital fund and $4.5 billion for the operating fund. As of the date this *Advocates' Guide* went to press, Congress has not enacted its final FY18 spending bills.

President Trump's proposed FY18 budget also recommended legislative changes that would have imposed rent increases for public housing residents by raising tenant contributions toward rent from 30% of adjusted income to 35% of gross income, establishing minimum rents of $50 per month, and eliminating utility reimbursements. President Trump also proposed waiving various statutory and regulatory provisions relating to PHA administrative, planning, and reporting requirements, among others. Finally, President Trump proposed allowing PHAs to use their capital and operating funds interchangeably. These proposals were rejected by Congress in its draft FY18 spending bills.

This year, NLIHC expects to see efforts to enact Speaker of the House of Representatives Paul Ryan's A Better Way anti-poverty agenda, including imposing time limits and work requirements on "work-capable" people receiving federal housing assistance. NLIHC believes that work requirements and time limits for housing programs are not solutions to the very real issue of poverty, and in fact, only make it more difficult for low income families to achieve financial stability. Instead, these proposals are designed to cut housing benefits to help pay for the Republican Tax Cuts and Jobs Act, enacted in 2017, that provided massive tax cuts to wealthy individuals and corporations. If Congress is serious about helping families struggling to make ends meet, it should expand – not slash – investments in housing, education, job training, and childcare and enact other policies that make it easier for families to get and maintain well-paying jobs.

WHAT TO SAY TO LEGISLATORS

Advocates should ask Members of Congress to:

- Lift the spending caps with parity for defense and non-defense programs.
- Maintain funding for the public housing operating and capital funds.
- Support public housing as one way to end all types of homelessness.
- Oppose burdensome and costly time limits and work requirements for people receiving federal housing assistance.

FOR MORE INFORMATION

NLIHC, 202-662-1530, www.nlihc.org

NLIHC's *Housing Spotlight: The Long Wait for a Home*, http://bit.ly/2dGp2CU

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, http://bit.ly/2hULSJy

The Rental Assistance Demonstration homepage, http://bit.ly/2ht2w2C

The Moving to Work demonstration homepage, http://bit.ly/2i0tmwC

The Choice Neighborhoods homepage, http://bit.ly/2hURgwh

Rental Assistance Demonstration

By Ed Gramlich, Senior Advisor, National Low Income Housing Coalition

Administering agency: HUD's Office of Multifamily Housing Programs

Year program started: 2012

Number of persons/households served: Initially 60,000 public housing units were allowed to convert, expanded to 185,000 units in FY15 and 225,000 units in FY16; and 23,000 private, HUD-assisted multifamily units as of May 2017.

FY17 Funding: $0;

See also: *Public Housing, Project-Based Rental Assistance, Project-Based Vouchers, Public Housing Agency Plan*

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) program, Rental Assistance Program (RAP), as well as the Mod Rehab program.

HISTORY

Congress authorized RAD through the FY12 HUD appropriations act. HUD published PIH Notice 2012-32 implementing RAD on July 26, 2012. A set of revisions were made on 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). 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.

PROGRAM SUMMARY

The intent of RAD is to help preserve and improve 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.

Key Features of the First Component. The first component initially allowed up to 60,000 units of public housing and Mod Rehab program units 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, 2015. HUD proposed to limit the number of Mod Rehab units converted under the component to 1,250 units.

The FY15 appropriations act raised the cap on the number of public housing and Mod Rehab units that can be converted from 60,000 to 185,000 units. As requested by the administration, the FY15 appropriations act also extended the deadline for PHAs to apply for RAD conversion to September 30, 2018. In addition, projects assisted under the McKinney-Vento Single Room Occupancy program could now apply for RAD conversion.

On December 9, 2015, HUD announced that RAD reached its 185,000 unit limit, having given preliminary approval for 185,000 public housing units, the maximum allowed by Congress, to convert to either project-based vouchers (PBV) or to PBRA. At that time HUD had a waiting list of 10,946 public housing units that could be considered for RAD conversion if some of the projects with preliminary approval were withdrawn or revoked.

The FY17 appropriations act further raised the cap on the number of units that could be converted under RAD to 225,000 and extended the application deadline to September 30, 2020. As of October 1, 2017, there were 58,651 units on the waitlist.

This *Advocates' Guide* article will focus 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. There is no limit to the number of units that may be converted under the second component, and there is no competitive selection process for it. The FY15 appropriations act permanently extended the ability to convert under the second component. As of May 2017, there were 23,000 private, HUD-assisted multifamily units that had completed conversion.

Owners of Mod Rehab properties have an alternative to the competitive process of the first RAD component. They may seek HUD permission to convert Enhanced Vouchers (EVs), which tenants are entitled to when a Mod Rehab contract expires, to PBVs.

The second RAD component initially allowed Rent Supp, RAP, as well as Mod Rehab projects to convert tenant protection vouchers (TPVs) to PBVs if a property's contract expired or terminated due to mortgage prepayment after October 1, 2006, or before December 31, 2014.

The FY15 appropriations act eliminated the December 31, 2014, deadline, permanently extending the ability to convert under the second component. The FY15 appropriations act allowed properties with contracts that have not expired or terminated to convert to PBRA or PBV.

Owners must notify residents of an intent to convert TPVs. There must be a briefing to inform residents about the differences between PBVs, PBRAs, and EVs (for Mod Rehab) and TPVs (for Rent Supp and RAP), including different rights, potential impact on rent payments, and mobility provisions. Residents must be informed that they may remain in their unit with an EV or TPV and cannot be forced to move for rejecting a PBV or a PBRA. Residents must have an opportunity to comment at the briefing.

Key features 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 PBVs 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. 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 PBVs, the initial contract must be for 15 years (but could be up to 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 would apply.
2. Project-based rental assistance. 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 would apply.

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 estimates that 10,000 to 15,000 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 than for public housing. Therefore, some units that were public housing before conversion will remain available and affordable to people with extremely low and very low incomes because of the long-term Section 8 contract.

Ownership. The RAD statute requires converted units to be owned or controlled by a public or nonprofit entity. 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.

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. This improvement has the potential to address concern expressed by many residents – that their public housing homes could be privatized after RAD conversion.

- A public or nonprofit entity must:
  - Hold fee simple interest in the real property.
  - 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.
  - And as of January 19, 2017 due to the REV 3 Notice:
    - 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 an LLC and hold certain control rights approved by HUD.
- HUD may allow ownership of a project to be transferred to a Low Income Housing Tax Credit (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, being the sole general partner or managing member.
  - The PHA retaining fee ownership and leasing the real estate to the LIHTC entity as part of a long-term ground lease.
  - The PHA retaining control over project leasing, such as exclusively maintaining and administering the waiting list for the project, including performing eligibility determinations that comply with the PHA Plan.
  - The PHA entering 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.

Resident protections and rights. The statute and the Notice implementing the statute spell out a number of protections and rights for residents, including:

- **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 of 10% or $25, whichever is greater, that is solely due to conversion is phased in over the course of three to five years.
- **Rescreening**. Current residents cannot be rescreened.
- **Right to Return**. Residents temporarily relocated while rehabilitation is conducted have a right to return.
- **Renewing the Lease**. PHAs must renew a resident's lease, unless there is "good cause" not to.
- **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.

Resident Involvement

Resident Meetings. Before submitting a RAD application to HUD, the 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. The PHA must conduct two meetings with residents of the selected project to discuss conversion plans and to give those residents a chance to comment. The January 19, 2017, REV 3

Notice required the meetings to describe:

- The scope of work;
- Any change in the number or configuration of assisted units or any other change that might impact a household's ability to re-occupy the property;
- Any "de minimus" reduction of units which have been vacant for more than 24 months (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;
- Any transfer of assistance to another property.

In addition, before the two resident meetings, the REV 3 Notice requires PHAs to issue a RAD Information Notice (RIN) to inform residents of projects that are proposed to be converted of their rights.

Once there is preliminary HUD approval (called a "CHAP"), the PHA must hold at least one more meeting with those residents. The January 19, 2017 REV 3 Notice adds that this meeting must be held before the PHA submits a Financing Plan (a document submitted to HUD demonstrating that the PHA has secured all necessary private financing needed to sustain the project for the term of the HAP contract). Additional meetings with residents must discuss any material change in the calculation of utility allowances and any substantial change to the conversion plans, including:

- A substantial change in the scope of work;
- Change in the number or configuration of assisted units or any other change that might impact a household's ability to re-occupy the property;
- De minimus reduction of units that have been vacant for more than 24 months (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;
- Introduction or abandonment of a transfer of assistance to another property, or material change in the location to which assistance would be transferred.

Significant Amendment to the PHA Plan. RAD conversion is a "Significant Amendment" to the PHA Plan. However, HUD does not require a Significant Amendment process to begin until late in the conversion process, which could be as late as six months after HUD has issued a preliminary approval for RAD conversion of a specific development [called a Commitment to enter into a Housing Assistance Payment contract (CHAP)]. This is because HUD requires a PHA to have a letter from HUD approving a Significant Amendment when submitting a RAD *Financing Plan*. A Financing Plan is a document submitted to HUD demonstrating that the 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 of its financing and construction plans approved and is ready to proceed.

A RAD conversion Significant Amendment must describe the units to be converted, including the number of bedrooms, bedroom distribution of units, 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 bedroom distribution of units, as well as any change in policies regarding eligibility, admission, selection, and occupancy of units.

$25 Per Unit for Resident Participation. Whether a property is converted to PBV or PBRA, each year the 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. The 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, PIH Notice 2012-32 requires resident participation provisions similar to those of Section 245. For example, PHAs 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, 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.

One-for-One Replacement. Although PIH Notice 2012-32 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 5 units, whichever is greater, without seeking HUD approval. HUD calls this the "de minimus" exception. Furthermore, RAD does not count against the 5%/5 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%.

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. For PBRA, a resident has the right to move with a HCV, if one is available, after two years.

Limits on PBVs per Development. RAD limits to 50%, the number of units in a public housing development that can be converted to PBVs. However, the 50% cap can be exceeded if the other units are "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.

A public housing household whose development is converted cannot 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 that does not meet one of the exception criteria (e.g., elderly, disabled, supportive service) and does not want to move, cannot be terminated from PBV and cannot be required to move – even if they cause the development to exceed the 50% PBV + exception unit cap. However, once one of those original households (non-elderly, non-disabled, non-supportive services) leaves, causing the property to exceed the 50% PBV + exception unit cap, that unit can only be assisted with PBV if it is rented to a household that meets one of the three exception categories (supportive services, elderly, or disabled). What this means is that some PHAs might urge half of the households to move to other developments, if available – but, a resident's decision to relocate must be voluntary. It could also mean that for a development to be able to continue to use PBVs after current residents leave exception units, some developments might change in character. For example, a development mostly occupied by families might become 50% to 100% elderly.

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.

Regarding relocation provisions, there are a number of new features, several of which are 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 temporary relocation anticipated to exceed 12 months;

- PHAs to provide residents with a RIN before a RAD application is submitted in order to ensure that residents are informed of potential project plans and of their rights in connection with RAD;
- Project owners to provide a notification of Return to the Covered Project; and,
- PHAs to maintain detailed data regarding each household that will be relocated, with key dates of notices and moves.

In addition, the relocation section of the Notice:

- Provides enhanced guidance on the right to return requirements, any offers of alternative housing options, and the documentation that must be retained when tenants choose an alternative housing option and decline their right to return; and
- Describes how HUD has administratively implemented the Uniform Relocation Act (URA) requirements and the URA relocation assistance and payments for displaced residents who decline the right to return and instead choose voluntary permanent relocation.

Some of the key provisions pertaining to fair housing and civil rights listed in the introduction of the Notice include:

- An outline of conditions under which HUD will conduct a front-end review to determine whether the 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;
- 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.

Problems Identified by Advocates. In the first years of implementation, NLIHC spoke with local advocates who related problems residents had obtaining basic information about proposed RAD conversions at the required meetings and through Freedom of Information Act requests. Although NLIHC informed key HUD officials about these problems they persisted. As more projects were approved and as early projects began or completed renovation or demolition and construction of new developments, legal services attorneys and tenant organizers reported mounting problems to the National Housing Law Project.

As detailed in an October 11, 2017, letter to HUD Secretary Carson, problems include:

- PHAs routinely deny residents and advocates access to plans and documents related to RAD conversions, or do not provide the information in a timely manner.
- The three required meetings with residents are inadequate to explain the changes that residents will experience as their property converts and are insufficient to discuss the complex options presented at the time of conversion. Sometimes, PHAs do not present the minimum amount of information required by the statute.
- PHAs frequently have inadequate relocation policies. PHAs or owners have failed to: provide residents with adequate notice as required by law; provide the required relocation advisory services; or create adequate written relocation plans or comply with their own written relocation plans. In some situations the temporary housing provided is uninhabitable or an inadequate size for the household.
- PHAs and owners frequently interfere with tenant organizing activities. There are many instances of PHAs and owners explicitly impeding or prohibiting resident organizing efforts.
- Although prohibited by the RAD statute, residents are routinely re-screened at the time of conversion for income, credit history, criminal history, and other requirements, especially at properties that will be using LIHCs.
- Although prohibited by the RAD statute, numerous residents have been denied their right to a grievance procedure. Owners routinely fail to include references to the grievance procedures in the "house rules."

- Explicit violations of fair housing and civil rights laws have been identified, such as familial status discrimination, failure to provide reasonable accommodations to residents with disabilities, and failure to provide translation services to individuals with limited English proficiency.
- In transfers of assistance, residents are told they must move a significant distance away from the public housing property. Such transfers will have a devastating impact on residents because they will be moved far from their friends, families, workplaces, churches, schools, and medical providers.

FUNDING

RAD does not have any appropriated funds. The FY15 and FY16 Appropriations Acts did not include the administration's requested $10 million for targeted expansion of RAD to public housing properties that cannot feasibly convert at existing funding levels and are located in high-poverty neighborhoods.

FORECAST FOR 2018

The Trump Administration's FY18 budget request sought two RAD changes previously sought by the Obama Administration, that were also included in the House appropriations bill (H.R. 3354.) and in a bill that cleared the Senate Appropriations THUD subcommittee (s. 1655):

- Make Section 202 Project Rental Assistance Contract (PRAC) owners eligible to convert their subsidy stream under RAD.
- Add RAD statutory language to ensure residents' right to continue their tenancy by imposing the first component's prohibition on rescreening or terminating residents when their Rent Supp, RAP, or Mod Rehab developments convert under RAD.

The Trump Administration and the Senate Appropriations THUD subcommittee also proposed three harmful amendments:

- Eliminating the cap on the number of public housing units that could be converted.
- Eliminating the September 30, 2020 deadline for public housing conversions.
- Allowing nonprofits (which are not publicly accountable) to be considered as preserving a public interest when LIHTCs are used for conversion or when there is a foreclosure, bankruptcy, or default (As did H.R. 3354) of an already converted property.

As of the date this *Advocates' Guide* went to press, Congress has not enacted its final FY18 spending bills.

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 RAD Conversion Commitment, the 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 waiting list, seek to get 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 you fully understand the differences between PBVs and PBRAs so that you can influence the option best for you.

Contact HUD's Office of Recapitalization with problems, 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 of the tenant protections written into the RAD statute. Ask Members of Congress to ensure that HUD, as required by statute, prepares, conducts, and publishes an assessment of the impact of conversion on public housing residents to ensure that further conversions do not adversely impact residents. Did residents have a genuine role during and after conversion? Were residents evicted just prior to conversion? Was every resident household that wanted to remain after conversion able to remain? Was there inappropriate re-screening? Are Section 6 resident protections, such as grievance procedures, being fully honored? Are residents of converted properties able to participate on resident councils and RABs? Is 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

NLIHC's "RAD: Key Features for Public Housing Residents," http://nlihc.org/sites/default/files/RAD-Outline_Updated_August-2017.pdf

National Housing Law Project's RAD resource webpage, http://nhlp.org/RAD

National Housing Law Project's October 11, 2017, letter to HUD Secretary Carson, http://nlihc.org/sites/default/files/NHLP_Concerns-with-RAD-Implementation.PDF

National Housing Law Project/American Federation of State, County, and Municipal Employees RAD-Watch.org, http://www.rad-watch.org

HUD's RAD website, http://portal.hud.gov/hudportal/HUD?src=/RAD

HUD's Office of Recapitalization, https://www.hud.gov/program_offices/housing/mfh/hsgmfbus/aboutahp

Project-Based Rental Assistance

By Ellen Lurie Hoffman, Federal Policy Director, National Housing Trust

Administering agency: HUD's Office of Multifamily Housing Programs and Office of Recapitalization

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: 1.2 million

Population targeted: Extremely low to moderate income households

FY17 funding: $10.8 billion. This funding level has been extended by Congress through December 8, 2017.

See also: *USDA Rural Housing, Tenant Protection Vouchers, Project-Based Vouchers*

Project-based housing is a category of federally assisted housing produced through a public-private partnership to build and maintain affordable rental housing for low income households. 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, to make units affordable. Project-based assistance is fixed to a property.

This stock of affordable housing is in danger of being permanently lost as a result of owners opting out, physical deterioration of a property, or maturing mortgages ending use restrictions. When owners "opt out" of the HUD project-based assistance program, they may convert their properties to market-rate rental buildings or condominiums.

HISTORY AND PROGRAM SUMMARY

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, or project-based Section 8 contracts. Currently, no additional units are being produced through those programs.

Initially, project-based assistance was provided through the Federal Housing Administration (FHA) in the form of a mortgage subsidy. Mortgage subsidies reduced the cost of developing rental housing; in return, HUD required owners to agree to use restrictions that limit contract rents and limit occupancy to households meeting a program's income limits. These programs did not provide the direct rental assistance needed in order to be affordable to extremely low or very low income households.

The Section 221(d)(3) Below Market Interest Rate (BMIR) mortgage insurance program, created by the National Housing Act of 1961, enabled HUD to purchase below-market loans made by private lenders. In 1968, the Section 221(d)(3) BMIR program was replaced by the Section 236 program, which combined FHA mortgage insurance on private loans with an interest rate subsidy to effectively lower the mortgage interest rate to 1%. Owners of Section 221(d)(3) BMIR and Section 236 properties were required to make units available to low and moderate income families at HUD-approved rents for the term of their 40-year mortgages. More than 600,000 units of affordable housing were built under those two programs. Some, but not all, subsidized mortgage properties also have project-based rental assistance from the Section 8 program.

In 1974, Section 236 was replaced by the Section 8 New Construction and Substantial Rehabilitation program, now known as the project-based Section 8 program. HUD entered into 20- to 40-year contracts with private owners to serve low income tenants. More than 800,000 units were developed from 1974 to 1983, when authorization for new construction was repealed.

There are three other smaller programs that still have units associated with them. Those programs are sometimes referred to as the "orphan" programs. In addition to mortgage subsidies, HUD provided rental assistance payments to owners for some tenants of Section 221(d)(3) BMIR and Section 236 insured properties through several programs.

The Section 101 Rent Supplement program (Rent Supp) was authorized by the Housing and Urban Development Act of 1965. Many of those properties received Loan Management Set-Aside (LMSA) Section 8 contracts due to rapidly rising operating costs in the mid-1970s. Currently, there are two active Rent Supp contracts covering 140 units. Both of these projects are currently considering a conversion to a long-term project-based voucher (PBV) contract under the Rental Assistance Demonstration (RAD).

Some Section 236 properties were provided additional rental assistance through the Rental Assistance Payments (RAP) program, authorized by the Housing and Community Development Act of 1974. RAP payments were made to owners on behalf of very low income tenants unable to afford the basic rent with 30% of their income. RAP reduces tenant payment for rent to 10% of gross income, 30% of adjusted income, or the designated portion of welfare assistance, whichever is greater. Most RAP contracts converted to Section 8 LMSA contracts. Currently there are 22 active RAP contracts covering 1,271 units. Of these, five projects covering 3,856 units are being reviewed by HUD's Office of Recapitalization for a conversion to a long-term PBV contract under RAD. All remaining properties are considering a RAD conversion as well.

Another form of rental assistance is the Section 8 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, but 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 were approximately 18,486 Mod Rehab units and approximately 13,000 Mod Rehab single room occupancy units in 2017.

The Office of Rural Development at the U.S. Department of Agriculture administers two rental housing programs, Section 515 and Section 521. The Section 515 program provided subsidized mortgage loans that developed more than 550,000 rental units for very low to moderate income households. Started in 1963, budget cuts reduced production dramatically after 1979. The stock of Section 515 units has been dwindling due to mortgage prepayment and deteriorating physical conditions. The Section 521 program is a project-based subsidy available for Section 515 projects (as well as Section 514/516 farm worker projects) that subsidizes the difference between the contract rent and a tenant rent payment of 30% of income.

ISSUE SUMMARY

Today, more than 1.2 million households live in homes with project-based rental assistance. Sixty-four percent of these households include someone who is disabled or elderly. The average household income is less than $12,000. Another 300,000 households live in homes with one of the other forms of project-based assistance, but without rental assistance.

For project-based Section 8 rental assistance, HUD enters into Housing Assistance Payment (HAP) contracts with owners. These contracts can be renewed in 1-, 5-, or 20-year increments. However, funding for the contracts is provided 12 months at a time. Tenants pay 30% of their monthly adjusted income for rent and utilities, and HUD pays the owner the difference between the contract rent and the tenant's portion. The average monthly subsidy per unit in 2016 was $715. New residents in project-based Section 8 units can have income of no more than 80% of the area median income (AMI), with 40% of new admissions required to have incomes below 30% of AMI.

New residents of Section 221(d)(3) BMIR properties can have incomes up to 95% of AMI, although those in Section 236 properties can have incomes up to 80% of AMI, though the median annual household income for residents of these properties is between $11,000 and $12,000. Since no new units are being constructed, 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 HUD-subsidized mortgage is either prepaid or matures, or when an owner decides not to renew an expiring project-based Section 8 contract.

There are several specific conversion risks for rental housing with project-based assistance.

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 and any Section 8 rent subsidy. 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, that allows a tenant to either remain in the property or find new affordable rental housing with the voucher assistance.

Maturing 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 currently qualify for enhanced vouchers or other rental assistance when the HUD-subsidized mortgage expires. Using data from the National Housing Preservation Database, the National Housing Law Project identified more than 41,880 unassisted units in 343 properties in 44 states and the District of Columbia at risk of mortgage maturity or the expiration of use restrictions or assistance between FY16 and FY22. (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 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 Urban Institute, of the approximately 1.34 million active PBRA units, more than 446,000 units (33%) are at risk of losing their affordability status, according to calculations from the National Housing Preservation Database. Of the PBRA units currently at risk, the majority (397,000 units) are so because of contracts that expire within the next 24 months.

Enhanced Vouchers. Special voucher assistance is provided to tenants who would otherwise be displaced due to rising rents or condo conversion if an owner prepays a Section 221(d)(3) BMIR or Section 236 mortgage, or if an owner opts out of a project-based Section 8 contract. HUD is required by statute to provide enhanced tenant-based vouchers to tenants in such properties in order 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. 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.

Mark-to-Market and Mark-Up-to-Market. Some FHA-insured properties with expiring project-based Section 8 contracts have rents that exceed market rents. Upon contract renewal, HUD is required to reduce rents 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, or opt out. In the Mark-to-Market program, an owner has two options:

- To choose to have the mortgage restructured in order 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.
- To 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.

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 so-called Schumer Amendment. The provision requires HUD to maintain a project-based Section 8 contract at foreclosure or disposition sale as long as 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 of HUD terminating a Section 8 contract mid-term or refusing 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.

Rental Assistance Demonstration. Through RAD, HUD may convert expiring Rent Supp or RAP contracts to a long-term PBV contract. Currently, Rent Supp and RAP contracts can only be extended for a one-year term, making it difficult to finance a rehabilitation project. By allowing owners to convert to a longer-term PBV contract, the affordability of the apartments will be maintained and owners will be able to finance recapitalization projects.

Provisions of FY17 Appropriations Act. The FY17 Appropriations Act had five key provisions affecting project-based programs:

1. RAD is extended into 2020. The Act also raised the number of public housing units that can participate in the program from 185,000 to 225,000.
2. A $5 million set-aside was allocated within the public housing TPV account to provide TPVs or enhanced vouchers to at-risk tenants living in buildings with expiring HUD-insured mortgages (e.g., Rent Supp) or expiring RAP contracts that do not qualify tenants for enhanced vouchers. Tenants would have to be in jeopardy of paying more than 30% of income for rent in properties located in low-vacancy areas. These vouchers could also be project-based.
3. The Schumer Amendment was renewed for FY17, generally requiring HUD to preserve project-based contracts on troubled properties before or during the foreclosure process, canceling HUD's prior policy of automatically terminating contracts. This provision also required HUD to notify tenants and obtain their consent before HUD abates a contract and relocates tenants for major health and safety threats.
4. Section 8 transfer authority is renewed, allowing HUD to transfer a Section 8 contract, debt, and use restrictions from a financially troubled or physically obsolete building to another building or buildings. This provision allows transfers to be completed in phases, and permits the number of units in the receiving property to be fewer than in the original if those units were unoccupied and the reconfiguration is justified by current market conditions.

The Act added a new requirement that property owners receiving housing assistance payments must comply with state and local standards regarding the physical condition of a property. The Act reiterated the regulatory and contractual obligation that owners receiving housing assistance payments must maintain decent, safe, and sanitary conditions. HUD's enforcement protocol was expanded to include PBRA properties with a Uniform Physical Condition Standards score of 60 or less or properties that fail to certify in writing to HUD within three days that all Exigent Health and Safety deficiencies identified by the inspector at the property have been corrected. The Act eliminated a requirement for HUD to develop a Compliance and Enforcement Plan, but instead required HUD to issue a Notice of Default. The Act also modified HUD's enforcement reporting system. As of publication time, Congress had passed a Continuing Resolution (CR) funding all federal programs at FY17 levels through December 8, 2017.

HUD PRESERVATION ACTION

In 2017, HUD encouraged the preservation of the existing multifamily housing stock through several regulatory actions. First, HUD issued announced TPV awards for FY16 to public housing agencies under the Section 8 Housing Choice Voucher (HCV) Program. In addition, HUD implemented the Housing Opportunity Through Modernization Act of 2016 (HOTMA) and requested public comments on several provisions related to the HCV and PBV programs. HUD published its HUD Preservation Workbook: Successful Stewardship of Multifamily Housing Recapitalization and a Recapitalization Excel Tool to help property owners through the process of developing a preservation strategy for their HUD-insured and/or assisted multifamily affordable rental properties. HUD also updated many sections of its 4350.1 HUD Handbook on Multifamily Asset Management and Project Servicing and its Section 8 Renewal Policy Guidebook.

TIPS FOR LOCAL SUCCESS

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.

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.

Having a local database of subsidized multifamily rental housing is an essential tool for preserving assisted housing in a community because it provides an inventory of properties available to low-income households, their location, and factors threatening the affordability of each project.

Many projects benefit from multiple layers of subsidy. HUD makes data on specific affordable housing programs available to the public, but nowhere does HUD combine these files into one database that counts each subsidized project only once and associates it with all of the subsidies that make it affordable to low income households. NLIHC has a publication that spells out how to create an easy-to-use database. See Chapter 5 of *The Preservation Guide*, located at: http://nlihc.org/library/other/preservation/guides/2010

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 at: http://www.preservationdatabase.org

WHAT TO SAY TO LEGISLATORS

Advocates should urge legislators to provide sufficient funding to renew all project-based Section 8 contracts for a full 12 months in FY18. If Congress moves forward with another long-term CR, 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 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 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.
- Authorize rural housing preservation program for Rural Development Section 515 properties.

FOR MORE INFORMATION

National Low Income Housing Coalition, 202-662-1530, www.nlihc.org

National Housing Trust, 202-333-8931, www.nhtinc.org

National Housing Law Project, 415-546-7000, www.nhlp.org

National Alliance of HUD Tenants, 617-267-9564, www.saveourhomes.org

HUD Notice H 2013-3, http://1.usa.gov/VAXMZ6

Section 202: Supportive Housing for the Elderly

By Linda Couch, Vice President, Housing Policy, LeadingAge

Administering agency: HUD: Office of Housing's Office of Housing Assistance and Grant Administration **Year program started:** 1959

Number of persons/households served: 400,000 households

Population targeted: People over the age of 62 with very low income (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.

FY17 funding: $502 million, including $77 million to renew existing service coordinator grants

Also see: *Services for Residents of Low Income Housing*

The Section 202 Supportive Housing for the Elderly program provides funding to nonprofit organizations that have developed and operate housing for seniors with very low incomes. In its FY17 HUD appropriations bill, Congress included $10 million in the 202 account for, at HUD's discretion, either new construction or preservation of pre-1974 202 communities. Before the DY17 bill, Congress had not provided new resources for new Section 202 construction since FY12. 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.

KEY ISSUES:

- New construction and rental assistance need to address the insufficient supply of affordable housing for very low income seniors.
- Ensuring full funding to meet annual renewal needs of Section 202 rental assistance, provided by PRAC and Section 8 Project-Based Rental Assistance.
- Necessary expansion of the Rental Assistance Demonstration program to include Project Rental Assistance Contracts.

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 providing assistance with housing and supportive services, the program has gone through various programmatic iterations during its lifetime. Prior to 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 serving very low income seniors.

The 202 program allows seniors to age in place and avoid unnecessary, unwanted, and much more costly institutionalization. With 38% of existing Section 202 tenants being frail or near-frail, requiring assistance with basic activities of daily living, and thus being at high risk of institutionalization, Section 202 residents have access to community-based services and support to keep living independently and age in place in their community.

According to HUD's *2017 Worst Case Housing Needs Report*, only 34% of income-eligible seniors receive the rental assistance they qualify for today. The Joint Center projects that the number of over-65 households will grow from 29.6 million 2015 to 49.6 million in 2035. With each passing day, senior households are older, most likely single renters, who are likely to have disabilities related to mobility and self-care, and who usually have lower incomes than ever before.

HUD's 2017 *Worst Case Housing Needs* report to Congress noted that older adult households made up 66% of the overall 382,000 household increase of worst case housing needs households identified in the report between 2013–2015.

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. Many Section 202 project sponsors are faith-based or fraternal organizations.

Section 202 tenants generally must be at least 62 years old and have income less than 50% of the area median income (AMI) qualifying them as very low income. Some facilities have a percentage of units designed to be accessible to non-elderly persons with mobility impairments or may serve other targeted disabilities. The average age of a Section 202 resident is 79, and nearly 39% of residents are over the age of 80. In 2017, the average annual household income for Section 202 households was $13,300.

The Section 202 PRAC has two main components: a capital advance that covers expenses related to housing construction, and operating assistance that supports a building's ongoing operating costs. Both the capital and operating funding streams are allocated to nonprofits on a competitive basis, through a HUD Notice of Funding Availability (NOFA), although the Capital Advance program has not been funded since FY11 except for a $10 million appropriation in FY17 that HUD may choose to use for new construction or preservation.

Capital funding. The first component of the Section 202 program provides capital advance funds to nonprofits for the construction, rehabilitation, or acquisition of supportive housing for seniors. These funds are often augmented by the HOME program and by Low Income Housing Tax Credit (LIHTC) debt and equity to either build additional units or supplement the capital advance as gap financing in so-called mixed-finance transactions.

Given the current and growing need for affordable senior housing, Congress must renew its commitment to senior housing. A new program, which merges the benefits of the Section 202 program with modern flexibilities, is needed. The Service-Enriched Affordable Living (SEAL) program is such a program. It would be administered by the Department of Housing and Urban Development. SEAL would provide a leveraging source of construction resources to nonprofit sponsors for the development of housing affordable to very low income seniors. In addition to providing a share of capital funding, SEAL funds would include project-based rental assistance and enriched services financing.

Operating funding. The second program component provides rental assistance in the form of Project Rental Assistance Contracts (PRACs) to subsidize the operating expenses of these developments. Residents pay rent equal to 30% of their adjusted income, and the PRAC makes up the difference between rental income and operating expenses.

In addition to the core components of the Section 202 program, HUD administers three complementary programs that have been established by Congress to help meet the needs of seniors aging in place:

1. 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 the Section 202 appropriation or through HUD grants. Service Coordinators assess residents' needs, identify and link residents to services, and monitor the delivery of services. The older Section 202 properties are eligible for grant funding, while the Section 202/PRAC properties may include the cost of service coordinators in their operating budgets if funds are available.

2. Supportive Services Demonstration for Elderly Households in HUD-Assisted Multifamily Housing, a $15 million demonstration at 40 Section 202 communities to help their low-income senior tenants to age in their own homes and delay or avoid the need for nursing home care.

3. Senior Preservation Rental Assistance Contract (SPRAC), which was created to provide rental assistance for the pre-1974 Section 202 properties, has its renewals funded out of the project-based assistance account.

FUNDING

In FY17, Congress appropriated $502 million for Section 202, again providing no new funding for new construction. Congress did provide funding for PRAC renewals and $77 million for service coordinators. In addition, Congress included the estimated $16 million SPRAC renewals in the Section 202 account. For FY18, Congress must fund the overall 202 account at at least $573 million. This is the amount needed to renew current PRACs and Service Coordinators.

FORECAST FOR 2018

The Trump Administration's FY18 budget request to Congress seeks $510 million total for the Section 202 account, at least $63 million less than what is needed to renew rental assistance and Service Coordinators in FY18. To make up for the insufficient funding request, HUD has also proposed, for FY18, raising rents on all 202 residents, instituting minimum rents for 202/PRC residents, raising minimum rents for 202/8 residents, and freezing rents to private owners. The Administration also proposed making Section 202 PRAC properties eligible for the RAD.

Given the Budget Control Act's caps on discretionary spending, and the threat particularly to nondefense discretionary housing in FY18 and beyond, securing resources and policies to preserve existing affordable housing will be a focus of affordable senior housing advocacy.

New Section 202 units. The Trump Administration, the Senate, and the House, have yet to provide resources for new Section 202 construction in their to-be-completed FY18 HUD bill. Advocates will need to focus on new construction efforts for FY18 and beyond.

Section 202 Preservation / RAD for PRAC. Enact RAD for PRAC expansion. Between 1990 and 2012, Congress funded the creation of approximately 2,800 properties serving over 120,000 households headed by low-income seniors. Most of those properties are still operated by the nonprofit owners that built them, but as the seniors inside have aged and become more frail, the buildings themselves have become older and in need of repairs and upgrades to meet the changing needs of their residents. These apartments, created by HUD's Section 202 program for low-income seniors and funded by PRACs currently have no mechanism that allows them to bring in new capital to make needed repairs and improvements.

Congress must to address this problem by making PRAC properties eligible for HUD's RAD program, which is currently providing for the recapitalization of thousands of public housing and privately-owned, HUD-assisted properties at no additional cost to the government. The FY18 HUD appropriations package approved by the Senate Appropriations Committee included a provision to allow PRAC properties to participate in RAD, and also includes $4 million to allow some properties to increase their rents to market levels in order to allow them to leverage new debt for repairs and improvements. The House Committee on Appropriations-passed FY17 HUD bill also includes RAD for PRAC conversion authority. Although the RAD program will not address the preservation needs of all of HUD's housing for seniors, this is an important start that we strongly support.

WHAT TO SAY TO LEGISLATORS

Advocates concerned with senior housing issues should encourage their Members of Congress to take the following actions:

- Support funding for Section 202 program, including full funding for PRAC renewals.
- Authorize the expansion of RAD to include PRAC.
- Provide $91 million for the Section 202 Service Coordinator program to fund all existing grant renewals and provide new grants to Section 202 properties.
- Support funding for a new HUD construction leveraging program for low income seniors, the SEAL program.
- Support the Section 202 program as a platform for the delivery of supportive services and make sure all buildings have the necessary staff to assist seniors aging in place.
- Provide sufficient renewal funding for all Project-Based Section 8 contracts, including the Section 202/8 properties.

FOR MORE INFORMATION

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Section 811: Supportive Housing for Persons with Disabilities Program

By Gina Schaak, Senior Associate, and Lisa Sloane, Senior Policy Advisor, Technical Assistance Collaborative

Administering agency: HUD's Office of Asset Management and Portfolio Oversight

Year program started: 1992 (previous to this Section 811 was part of the Section 202 program)

Numbers of persons/households served: An estimated 32,800 households

Population targeted: Persons ages 18–61 who are extremely or very-low income, and have significant and long-term disabilities

FY17 funding: $146 million for renewals only

Also see: Olmstead Implementation

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 to live independently in the community by providing affordable housing linked with voluntary services and supports. Congress passed major reforms to the Section 811 program in 2010 including the creation of the Project Rental Assistance (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. With HUD funds provided through FY12 and FY13 Notices of Funding Availability (NOFAs), these reforms are creating thousands of new integrated Section 811 units. Forty-three of the 50 states plus the District of Columbia submitted applications in response to the FY12 and/or FY13 NOFAs[1], a very high response rate for this innovative and supportive housing funding approach.

HISTORY

Over the course of the past two decades, the Section 811 program created more than 34,000 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 two different components: the Capital Advance/PRAC, including a new multi-family integrated housing option, and the PRA Program. As Congress directed that all FY12, FY13, and FY14 funding for new Section 811 units be provided solely through the PRA option, the remainder of this article focuses on the PRA program. Advocates seeking additional information about the other Section 811 options are directed to HUD's webpage at https://www.hud.gov/program_offices/housing/mfh/progdesc/disab811

The Section 811 PRA program facilitates the creation of integrated supportive housing units for extremely low-income people with disabilities.

- Affordability: The Section 811 PRA program is targeted to non-elderly people with disabilities and extremely low incomes, at or below 30% of AMI. The PRA program provides housing

1 The FY13 NOFA included funds appropriated in FY13 and FY14.

affordability by ensuring that tenants pay no more than 30% of their adjusted income for rent and utilities.

- Cost-effective: The statute requires that the PRA Program leverage capital from other sources such as the federal Low Income Housing Tax Credit (LIHTC) program, the Home Investment Partnerships (HOME) program, or similar federal, state or local capital financing programs.
- Integrated: No more than 25% of the units in a development receiving PRA funds may be targeted specifically for people with disabilities. This ensures that people with disabilities living in PRA units will have the opportunity to live in affordable rental properties alongside people who do not have disabilities.
- Voluntary Services: States are required to make appropriate services available to PRA tenants. PRA tenants, however, are not required to accept or use services except on a voluntary basis.

HUD awards Section 811 PRA funds to state housing agencies through a competitive NOFA process. To apply for Section 811 PRA funds, the state housing agency is required to enter into an agreement with the state's Medicaid agency and, if separate, the state health and human services agency. The agreement must identify the state's target population(s) for the program, the outreach and referral process for the PRA units, and commitments of appropriate supportive services for the target population.

The state housing agencies select properties to participate in the PRA Program. Properties may be new construction or existing properties. Once selected, the owner will sign a Rental Assistance Contract (RAC), which includes an agreement to maintain the units for extremely low-income persons with disabilities for 30 years.

FUNDING

In May 2012, HUD published the first Section 811 PRA NOFA. This NOFA resulted in Cooperative Agreements with 12 states totaling $98 million for the development of an estimated 2,300 units. In March 2014, HUD published the second NOFA for the Section 811 PRA program, awarding $150 million to 24 states. Twenty-eight states are now administering the program, with more than 6400 units anticipated. 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 FY12 and/or FY13 NOFAs.

Additional information about the Grantees is available at https://www.hudexchange.info/programs/811-pra/pra-program-grantees-and-awards/.

FORECAST FOR 2018

In addition to renewal funds, national disability advocates will be advocating for $25 million in the FY18 Budget for expansion of the Section 811 PRA Program to continue to address the critical need for community-based, affordable PSH for persons with significant disabilities and build on HUD's successful implementation of the PRA model. Affordable housing advocates are encouraged to support this request of $25 million in FY18 for new PRA units.

TIPS FOR LOCAL SUCCESS

Advocates in states receiving Section 811 PRA funds from the FY12 and FY13 competitions should work with state officials to support the implementation of the demonstration. Advocates in states that did not apply for or receive funds in FY12 or FY13 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 supportive housing for people with disabilities. The program website at https://www.hudexchange.info/programs/811-pra/success-stories/ provides several videos and stories of 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. TAC's publication Priced Out http://www.tacinc.org/knowledge-resources/priced-out-findings/ found that nearly five 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 government reach its goals of ending homelessness and minimizing the number of persons living in costly institutions. National disability advocates are requesting $25 million for expansion of the Section 811 PRA Program in FY18.

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

USDA Rural Rental Housing Programs

By Leslie R. Strauss, Senior Housing Analyst, Housing Assistance Council

Administering agency: U.S. Department of Agriculture (USDA)

Year program started: Section 515 – 1963; Section 514 – 1962; Section 516 – 1966; Section 521 – 1978

Number of households served: Section 515 – 533,000; Section 514/516 – 28,000; Section 521 – currently 269,000; Section 542 – currently 5,303

Population targeted: Section 515 - very low, low, and moderate income households; Section 514/516 – farm workers

FY17 funding: Section 515 - $35 million; Section 514 - $23.9 million; Section 516 - $8.3 million; Section 521 - $1.405 billion; MPR - $22 million; Section 542 – $19.4

FY18 funding in House and Senate bills: Section 515 - $28.4 million House, $35 million Senate; Section 514 - $15 million House, $23.9 million Senate; Section 516 - $6 million House, $8.3 million Senate; Section 521 - $1.345 billion both; MPR - $15 million House, $22 million Senate; Section 542 - $20 million House, $19.4 million Senate

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). The USDA RD provides project-based rental assistance to some of the properties it finances through the Section 521 Rental Assistance (RA) program. USDA RD also offers several tools to preserve the affordability of USDA-financed rentals.

The programs face serious problems, however. Production of new units has greatly decreased, many existing units are deteriorating physically or are in danger of leaving the affordable housing stock, and rental assistance costs are growing faster than available funding.

HISTORY AND PURPOSE

In operation since the 1960s, the Section 515 Rural Rental Housing program and the Section 514/516 Farm Labor Housing program have provided essential, 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 farm workers and Native Americans.

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 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; the program's entire appropriation for the last several years 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. Residents' incomes average about $12,960 per year. The vast majority (92%) of Section 515 tenants have incomes less than 50% of area median income. More than half of the assisted households are headed by elderly people or people with disabilities.

Section 514/516 loans are made available on a competitive basis each year, using a national Notice of Funding Availability (NOFA). Beginning in FY12, USDA has not issued NOFAs for Section 515 loans; instead, it has used all of its Section 515 funds for preservation purposes.

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. Almost 900 properties (containing 21,400 units) will be able to pay off their mortgages by 2027, 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 reamortized 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) updating a 2004 study. The new CPA reviewed Section 515 rental properties, off-farm Section 514/516 farmworker housing properties, those with loans guaranteed under the Section 538 program, and those 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—pay 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 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.

For the last few years, USDA RD has funneled most of its preservation efforts through its Multifamily Housing Preservation and Revitalization (MPR) demonstration program. MPR offers several possible types of assistance to owners or purchasers of Section 515 properties. The most commonly used assistance is debt deferral, although other possibilities include grants, loans, and soft-second loans. Since FY08, MPR has also been available to Section 514/516 farm worker housing properties.

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 $28.4 million in FY14, FY15, and FY16, and $35 million in FY17. Section 514 received $28.9 million in FY14, $28.6 million in FY15, $28.9 million in FY16, and $23.9 million in FY17. Section 516 was funded at $8.3 million in FY14, FY15, FY16, and FY17.

The MPR preservation program received $20 million in FY14, $17 million in FY15, and $22 million in both FY16 and FY17. The Preservation Revolving Loan Fund has not been funded since FY11.

Funding for the Section 521 RA program was a major concern for appropriators and supporters beginning with sequestration in FY13, but in FY16 USDA instituted a new way of calculating RA renewal costs that seems to have resolved difficulties in figuring out how much is needed. The program's cost just to renew expiring contracts usually rises annually. In FY14 for the first time RA's appropriation topped $1 billion. It was $1.11 billion in FY14, $1.09 billion in FY15, $1.39 billion in FY16, and $1.4 billion in FY17.

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, does require congressional action. Over the next five years and beyond, RA costs will drop as USDA mortgages expire, but there will be corresponding increases in costs for alternatives such as USDA vouchers, HUD vouchers, or assistance to those who become homeless.

FORECAST FOR 2018

Maintaining funding levels for the rural housing programs, like other non-defense discretionary programs, is likely to be a major challenge in 2018. The administration has not demonstrated support for rural housing – its FY17 budget called for the elimination of the Section 515, 514/516, and MPR programs, and it has replaced the previous USDA Under Secretary for Rural Development with an Assistant to the Secretary, a position with far less authority in the department. The Senate's agriculture appropriations bill for FY18 would require restoring the Under Secretary position, but the House bill does not include the same provision.

It is also possible that Congress might consider moving the USDA rural housing programs to HUD, a change that has been suggested in the past because housing is such a minor part of the Department of Agriculture. Although that is true, it is equally true that rural places are a minor part of HUD's housing programs. In addition, HUD does not have a field office structure as extensive as USDA's, nor does HUD have recent experience operating direct loan programs, several of which are included among the rural programs.

TIPS FOR LOCAL SUCCESS

Activity related to USDA's Section 515 program now focuses on 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.

WHAT TO SAY TO LEGISLATORS

Advocates should speak with their Members of Congress and urge them to:

- Maintain funding for all USDA rural housing programs (do not reduce funding for other programs in order to shift funds to Section 521 RA).
- Continue to provide enough funding to renew all Section 521 RA contracts.
- 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.
- Restore the position of Under Secretary of Rural Development within USDA, to keep the housing programs (along with RD's business and utilities programs) at the same level of departmental priority as other USDA functions.
- 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

National Housing Law Project, 510-251-9400,
http://nhlp.org/resourcecenter?tid=61

U.S. Department of Agriculture Rural Development,
www.rurdev.usda.gov

Housing Choice Vouchers

By Ed Gramlich, Senior Advisor,
National Low Income Housing Coalition

Administering agency: HUD's Office of Public and Indian Housing (PIH)

Year program started: 1974

Population targeted: Seventy-five percent of all new voucher households must have extremely low incomes (less than 30% of the area median income, AMI, or the federal poverty line, whichever is higher); the remaining 25% of new vouchers can be distributed to residents with income up to 80% of AMI.

FY17 Funding: $18.355 billion; As of the date this Advocates' Guide went to press, Congress has not enacted its final FY18 spending bills.

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 the rent itself, up to a reasonable amount. The HCV program is HUD's largest rental assistance program, assisting approximately 2.2 million households.

See also: *Project-Based Vouchers, Family Unification Program, Tenant Protection Vouchers, Veterans Affairs Supportive Housing (HUD-VASH)*

ADMINISTRATION

The voucher program is administered by HUD's Office of Public and Indian Housing (PIH), as well as approximately 2,200 state and local public housing agencies (PHAs).

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 enjoyed 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 some 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—no more than about 17,000, for special populations—mostly for homeless veterans under the HUD-Veterans Affairs Supportive Housing program.

PROGRAM SUMMARY

Today, about 2.2 million households have HUD HCVs, also called Section 8 tenant-based rental assistance. Of voucher households, 75% have extremely low income (less than 30% of the area median income, AMI, or the federal poverty level, whichever is greater), 27% have a head of household who has a disability, and 22% are elderly. The national average income of a voucher household is $14,000.

Housing vouchers are one of the major federal programs intended to bridge the gap between the cost of housing and the incomes of low wage earners, people on limited fixed incomes, and other poor people. The Housing Choice Voucher program offers assisted households options because they can use vouchers to help pay rent at privately owned apartments that they choose. 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 *Advocates' Guide*.

The HCV program has deep income targeting requirements. Since 1998, 75% of all new voucher households must have extremely low incomes. The remaining 25% of new vouchers can be distributed to residents with income up to 80% of AMI.

HUD has annual contracts with about 2,200 PHAs to administer vouchers—about 800 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 HUD based on the number of vouchers in use in 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 waiting 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 vouchers receives any form of federal rental assistance. The success of the existing voucher program and any expansion because of new vouchers depends on sufficient annual appropriations.

Local PHAs distribute vouchers to qualified families who have 60 days to conduct their own housing search to identify private apartments with rents within the PHA's rent payment standards. 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 with the Low Income Housing Tax Credit, HOME, or national Housing Trust Fund programs must rent to an otherwise qualifying household that has a voucher. In addition, some states and local governments have "source of income" laws that also prohibit landlords from discriminating against households with vouchers.)

The amount of the housing voucher subsidy is capped at a "payment standard" set by the 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 pays $332 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 income can afford to offer landlords greater 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 the FMR area. In addition, an exception payment greater than 120% of the FMR may 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 time limit allowed to search for a landlord who will accept a voucher.

As a result of recent legislation (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.

Once a household selects an apartment, the PHA must inspect it to ensure it meets HUD's "housing quality standards" (HQS). Generally, voucher program "participants" pay 30% of their income toward rent and utilities. The value of the voucher, the PHA's payment standard, then makes up the difference between the tenant's rent payment and rent charged by the owner. Tenants renting units that have contract rents that are 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 a year in an apartment, a family can choose to pay more than 40% of its income toward rent.

Housing vouchers are portable, meaning families can use them to move nearly anywhere in the country where there is a functioning voucher program; their use is not limited to the jurisdiction of the administering agency. A PHA is permitted to impose some restrictions on portability in the first year if a family did not live in the jurisdiction of the PHA 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.

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 applicants for assistance, rent must be based on estimated income for the upcoming year.
  - For residents already assisted, rents must be based on a household's income from the prior 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 or deductions are estimated to increase by 10%, except that any increase in earned income cannot be considered until the next annual recertification.
- Income Deductions and Exclusions:
  - The Earned Income Disregard (EID) was eliminated, which disregarded certain increases in earned income for residents who had been unemployed or receiving welfare.
  - 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.
  - The child care deduction is unchanged.
  - 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.
  - Any expenses related to aid and attendance for veterans is excluded from income.
  - Any income of a full-time student who is a dependent is excluded from income, as is any scholarship funds used for tuition and books.
- Physical Inspections:
  - Initial inspections.
    - Unchanged is the requirement that before a voucher household can move into a unit it has selected, the PHA must inspect it to make sure it meets HUD's HQS. HOTMA now allows a household to move into a unit and begin making housing assistance payments to the owner if the unit does not meet HQS, as long as the deficiencies are not life-threatening.
    - However, the PHA must withhold payments to the owner if the unit does not meet HQS 30 days after the household first occupied the unit.
      - Implementing guidance published in 2017 allows a PHA to withhold payments for up to 180 days before terminating a housing assistance payment (HAP) contract. Once a unit meets HQS, a PHA may reimburse the owner.
      - The PHA must provide a list of deficiencies to the household and offer the household an opportunity to turn down the lease without jeopardizing its voucher.
    - PHAs 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.
  - Ongoing inspections for units that already have a voucher contract.
    - 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. The PHA may withhold assistance 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 after 30 days, the PHA must abate assistance, notifying the household and owner of the abatement and that the household 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 in order to move if it chooses. The household must have at least 90 days to find another unit to rent. 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.
- 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 homeless, 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 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.
    - If the 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 the PHA's payment standard.
- 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.

ADDITIONAL REGULATORY CHANGES

- A "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). If that person or household 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 the amounts due were $45 or less. PHAs can continue to provide utility reimbursements monthly if they choose to. 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.
- Small Area FMRs (also referred to as SAFMRs) must be used by 24 designated metropolitan areas to administer their voucher program. SAFMRs reflect rents for U.S. Postal ZIP Codes, while traditional FMRs reflect a single rent standard for an entire metropolitan region. The intent is to provide voucher payment standards that are more in line with neighborhood-scale rental markets, resulting in lower subsidies in neighborhoods with lower rents and concentrations of voucher holders, and relatively higher subsidies in neighborhoods with higher rents and greater opportunities. A goal of SAFMRs is to help households use vouchers in areas of higher opportunity and lower poverty, thereby reducing voucher concentrations high poverty areas. However, in a surprise move without public notice, HUD suspended for two years, the obligation of PHAs to implement SAFMRs in all but one of the 24 metropolitan areas. (The Dallas metro area is still required to comply under a 2011 legal settlement.) Advocates expressed serious concern to HUD because a final rule that had undergone a year and half of formal public review and comment was abruptly suspended based on several specious reasons.

FORECAST FOR 2018

In 2011, Congress passed the Budget Control Act, which set in motion very low spending caps. Since then, Congress and the White House have reached short-term agreements to provide limited budgetary relief—with parity for both defense and nondefense programs, which includes federal affordable housing programs. At the time this *Advocates' Guide* goes to print, it is unknown whether Congress has agreed to lift the low spending caps for FY18 and FY19.

Each PHA's eligibility for renewal funding is based on the cost of vouchers in use in the prior year. The Center on Budget and Policy Priorities estimates that $19.72 billion will be needed in FY18 to fully renew vouchers and prevent a reduction in the number of households using vouchers. As of the date this Advocates' Guide went to press, Congress has not enacted its final FY18 spending bills, nor is it clear how much funding would be needed in FY19.

This year, NLIHC expects to see efforts to enact Speaker of the House of Representatives Paul Ryan's A Better Way anti-poverty agenda, including imposing time limits and work requirements on "work-capable" people receiving federal housing assistance. NLIHC believes that work requirements and time limits for housing programs are not solutions to the very real issue of poverty, and in fact, only make it more difficult for low income families to achieve financial stability. Instead, these proposals are designed to cut housing benefits to help pay for the Republican Tax Cuts and Jobs Act, enacted in 2017, that provided massive tax cuts to wealthy individuals and corporations. If Congress is serious about helping families struggling to make ends meet, it should expand – not slash – investments in housing, education, job training, and childcare and enact other policies that make it easier for families to get and maintain well-paying jobs.

President Trump's FY18 budget proposal included so-called rent reforms that would have placed serious financial burdens on voucher households. First, tenant contributions toward rent would have increased from 30% of their adjusted income to 35% of their gross income. Second, minimum rents would have increased to $50 per month. Third, utility reimbursement payments to residents would have been eliminated. Congress did not adopt these provisions, but the president might propose them again for FY19.

WHAT TO SAY TO LEGISLATORS

Advocates should encourage Members of the House and Senate to:

- Lift the spending caps with parity for defense and nondefense programs.
- Fund fully the renewal of all vouchers.
- Provide $15 million for a new HCV Mobility Demonstration to encourage voucher participants to move to lower-poverty areas and expand access to opportunity areas. Funds would be used for pre- and post-move counseling as well as for PHA administrative costs.
- Oppose burdensome and costly time limits and work requirements for people receiving federal housing assistance.

FOR MORE INFORMATION

NLIHC, 202-662-1530, www.nlihc.org

Center on Budget and Policy Priorities, 202-408-1080, https://www.cbpp.org/topics/housing

National Housing Law Project, 415-546-7000, http://nhlp.org/resourcecenter?tid=121

Technical Assistance Collaborative, *Section 8 Made Simple*, http://bit.ly/2hWKzYa

HUD's Housing Choice Voucher homepage, http://bit.ly/2ijlWUs

HUD's Non-Elderly Disabled webpage, http://bit.ly/2ifnv9I

HUD's VASH webpage, http://bit.ly/2h5yHRr

Vouchers: Family Unification Program

By Ruth White, Executive Director, National Center for Housing and Child Welfare

Administering agency: HUD's Office of Public and Indian Housing

Year program started: 1990

Number of persons/households served: Nearly 30,000 households currently hold Housing Choice Vouchers through the Family Unification Program (FUP).

Population targeted: Homeless or precariously families in danger of losing children to foster care or that are unable to regain custody primarily due to housing problems, as well as youth aging out of foster care who are at risk of homelessness.

FY18 funding: HUD has not yet issued the $10 million in funding appropriated for FY17. The FY18 Senate bill includes $20 million for new FUP vouchers as well. Additionally, FUP remains an eligible use of HUD's Tenant Protection Fund.

Also see: *Housing Choice Voucher Program, Tenant Protection Vouchers, Services for Residents of Low Income Housing – Family Self-Sufficiency Program*

HUD's FUP is a federal housing program aimed at keeping homeless families together and safe, as well as preventing homelessness among youth 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 in order to select eligible participants for the program. These vouchers can be used to prevent children from entering foster care, to reunite foster children with their parents, and to help ease the transition to adulthood for older youth in foster care. In 2016, Congress initiated an extensive program to allow PHAs to couple FUP youth vouchers with the Family Self Sufficiency Program.

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, more than 58,000 children who entered foster care because their families lack access to safe, decent, and affordable housing. FUP is also a valuable resource for the 25,000 youth who age out of foster care each year without the support of a permanent family. Nearly a quarter of these young people experience homelessness within a year of leaving foster care. Despite these staggering figures, child welfare workers seldom have access to the housing resources or supportive services necessary to prevent and end homelessness among vulnerable families and youth. A recent Chapin Hall study found that each year nearly 3 million youth between the ages of 18 and 24 experience homelessness; roughly half of these young people report a history of foster care involvement.

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 in order to apply to HUD in response to a Notice of Funding Availability. FUP vouchers are awarded through a competitive process. Depending on the size of the PHA, communities can receive a maximum of 100, 50, or 25 vouchers. Communities are encouraged to apply only for the number of vouchers that can be leased up quickly, meaning that both families and youth have been identified and landlords have been recruited for the program.

PHAs receiving an allocation of FUP vouchers then administer these vouchers to families and youth who have been certified as eligible for FUP by the local public child welfare agency. The FUP vouchers work in the same way a typical housing choice voucher does. The child welfare agency is required to help FUP clients gather the necessary Section 8 paperwork, find suitable housing, and to 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 educational and training vouchers, independent living programs, counseling, and employment assistance. The housing subsidies available to youth under this program are limited to 36 months. FUP youth who participate in HUD's Family Self-Sufficiency Program may keep their voucher for up to five years.

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 any time after the age of 14 and are currently between the ages of 14 and 24 (have not reached their 24th birthday) and are homeless or at risk of homelessness. Unlike families, youth can only participate in FUP for 36 months.

FUNDING

Each year between 1992 and 2001, HUD awarded an average of 3,560 FUP vouchers to public housing agencies. Unfortunately, from FY02 through FY07, HUD used its rescission authority to avoid funding FUP, even though the Housing Choice Voucher program's Tenant Protection Fund—out of which FUP is funded—had carryover funds ranging from $18 million to $170 million. Thanks to the efforts of the Senate Appropriations Subcommittee on Transportation, Housing and Urban Development, $50 million in new funding was awarded for new FUP vouchers in FY08 and FY11. Despite the continuing availability of Tenant Protection Fund vouchers for FUP, HUD has failed to issue new vouchers for FUP for the past decade from this account. Advocates must urge HUD to issue the $10 million in funding appropriated for FY17. Further, advocates must encourage the House to include the $20 million requested in the FY18 Senate bill for new FUP vouchers in the final FY18 appropriations act.

FORECAST FOR 2018

There is growing interagency support for FUP at the federal level in Congress and within the administration. With the recent passage of the Housing Opportunity through Modernization Act of 2015, Congress extended the time limit on FUP vouchers for youth from 18 months to 36 months. In addition, HUD and HHS recently worked together to create a pilot program that will allow Public Housing Authorities to enroll young people using FUP vouchers into the Family Self Sufficiency (FSS) program. Young people who participate in FSS can maintain their subsidy for five years.

In 2017, HUD issued the final regulation (Notice PIH 2015-10) on the project-basing of FUP vouchers, which was made possible as a part of HOTMA. The opportunity to project-base FUP vouchers will give communities the opportunity to improve access to supportive services particularly for youth leaving foster care. HUD encourages PHAs interested in project-basing FUP vouchers to consider an appropriate balance between family units and units for youth leaving foster care. Additionally, PHAs and the child welfare partner agencies must be aware that they cannot exclude families or youth who are pregnant or parenting from project-based FUP units, as this is a violation of the Fair Housing Act.

TIPS FOR LOCAL SUCCESS

Throughout the years, it has become clear that the most successful FUP partnerships require cross training, single points of contact (liaisons) within each partner agency, and ongoing communication. In fact, HUD now 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.

The MOU required by HUD provides an excellent formula for all community partnerships designed to share resources and information in an effort to prevent and end family and youth homelessness. PHAs use this model in communities across the country. In doing so, they demonstrate an extraordinary commitment to these at-risk populations by matching services to Section 8 vouchers in order to successfully serve hard-to-house families and youth leaving foster care.

WHAT TO SAY TO LEGISLATORS

Advocates 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 $32,500 per family in annual foster care costs. 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

Project-Based Vouchers

By Barbara Sard, Vice President for Housing Policy, Center on Budget and Policy Priorities

Administering agency: HUD's Office of Public and Indian Housing (PIH)

Year current version of program started: 2001

Number of persons/households served: About 140,000 households (could rise to more than 700,000)

Population targeted: Extremely low, and low income households

See also: *Housing Choice Voucher Program, Public Housing Agency Plan*

Public housing agencies (PHAs) may "project-base" up to 20% of their authorized Housing Choice Vouchers (HCVs), and up to 30% if the additional units contain particular 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 the family. More than 700,000 vouchers could be project-based nationwide under this expanded authority, but only about 140,000 units had PBV assistance in 2016. About 640 of the approximately 2,150 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 potential is particularly important in higher cost areas, where PBV rules may allow higher subsidies than tenant-based vouchers.

ADMINISTRATION

PBVs are administered by PHAs that decide to include this option as part of their HCV programs, and are overseen by PIH.

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., HUD 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 family 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 to assist another eligible family. This requirement helps ensure that PBV recipients remain able to choose the areas in which they live. Congress also included statutory requirements to promote mixed-income housing and to deconcentrate poverty.

HUD 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, and making contract extensions more flexible. Effective July 2014, HUD revised the PBV rule to incorporate the HERA amendments and make some additional changes.

In section 106 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA, a/k/a H.R. 3700), which the president signed into law on July 29, 2016, Congress made substantial changes to the PBV program. By *Federal Register* notice published January 18, 2017, HUD made most of these changes effective in 90 days (i.e., April 18, 2017). HUD issued technical corrections to the January notice in July, and consolidated all PBV policy guidance in PIH 2017-21, October 30, 2017. Implementation of the remaining provisions will require the issuance of new regulations. Properties selected to receive PBVs prior to April 18, 2017, generally 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.

PROGRAM SUMMARY

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 Plan. A PHA also must include in its HCV Administrative Plan various details about how it will select properties in which to project-base vouchers, how it will maintain waiting lists, and what if any supportive services will be offered to PBV residents. No HUD approval is required, but HUD requires PHAs to submit certain information to the local HUD office prior to selecting properties to receive PBV contracts.

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 permits a more streamlined process. The locations where PBVs are used must be consistent with the goal of deconcentrating poverty and expanding housing and economic opportunity, but agencies have substantial discretion to make this judgment, so long as they consider certain HUD-specified factors. 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.

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 likely is a higher level. In addition, HOTMA allows an agency 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 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 project-based vouchers (PBVs) as part of the Rental Assistance Demonstration, generally do not count toward this cap.

In general, PBVs can be attached to no more than the greater of 25% of the units in a project or 25 units in order to achieve a mix of incomes, although there are several exceptions to this requirement. The limitation does not apply to projects that were previously federally assisted or rent restricted. In projects located in census tracts where the poverty rate does not exceed 20%, the PBV limit is increased to 40% of the project's units. Units housing seniors, or whose non-elderly residents (including but not limited to people with disabilities) are eligible for supportive services that are made available to the assisted tenants in the project, are not subject to the income-mixing limitation. (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 HUD 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.

Units receiving PBV assistance, like other HCV units, must meet HUD's housing quality standards prior to initial occupancy. HOTMA provides some new flexibility to speed initial occupancy where units have been approved under a comparable alternative inspection method or where defects are not life-threatening and are fixed within 30 days. Where tenants remain in place, PHAs may inspect only a sample of PBV units in a property biannually rather than each assisted unit, reducing administrative costs.

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 unit rent 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 in PBV units:

1. There is no risk that families will have to pay more than 30% of its income if the rent is above the agency's payment standard;
2. The unit rent is not limited by the PHA's payment standard, but may be any reasonable amount up to 110% of the applicable Fair Market Rent (FMR), or HUD-approved exception payment standard. This flexibility on unit rents applies even in the case of units that receive HOME Program funds, where rents usually are capped at 100% of the HUD FMR. Special and more flexible rent rules apply in LIHTC units.
3. In metro areas where HUD sets FMRs at the ZIP code level (Small Area FMRs) rather than metro-wide, or at PHAs that choose to adopt Small Area FMRs, the metro-wide FMRs continue to apply to 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.

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 are allowed to 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 for the regular tenant-based list, including 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 each individual 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.

HOTMA makes PBVs more flexible in other ways. The maximum term of the initial contract or any extension is increased to 20 years, and PHAs may project-base vouchers provided under the Family Unification or HUD-VASH programs. PHAs and owners can modify HUD's form PBV contracts to adjust to local circumstances and to add units to existing contracts.

PHAs are bound by the PBV contract with an owner, and may not refuse to refer applicants to vacant units in order to reduce costs. If Congress drastically reduces or eliminates funding for the HCV program making it impossible to avoid terminating vouchers, PHAs could terminate PBV contracts, but otherwise funding for PBV units is more secure than for other vouchers.

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 at the project level.

HUD'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.

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 2018

The number of PBVs may increase if PHAs take advantage of the expanded authority and increased flexibility HOTMA provides (as well as due to more RAD conversions). Funding uncertainty for the HCV program as a whole, however, may deter PHAs from making long-term PBV commitments.

Statutory changes. Further statutory changes are unlikely.

Regulatory changes. HUD may propose new regulations to implement HOTMA policy changes that are not already effective. These policy changes include: defining areas where vouchers are "difficult to use," which could expand the types of households or areas that qualify a PHA to use more PBVs overall and within individual projects; allowing owner-managed, site-based waiting lists; authorizing the use of an operating cost adjustment factor to adjust PBV contract rents; streamlining environmental review requirements for existing housing; and allowing PHAs to enter into a contract for a property under construction. It is not clear, however, when HUD will initiate the rulemaking process.

FOR MORE INFORMATION

Center on Budget and Policy Priorities, 202-408-1080, www.cbpp.org

A "policy basic" on PBVs is at https://www.cbpp.org/research/housing/policy-basics-project-based-vouchers

Information on housing policy and funding is at http://bit.ly/1d2pkIR.

Vouchers: Tenant Protection

By Ed Gramlich, Senior Advisor, National Low Income Housing Coalition

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

FY17 Funding: $110 million. As of the date this Advocates' Guide went to press, Congress has not enacted its final FY18 spending bills.

See also: Housing Choice Voucher Program, Project-Based Rental Assistance

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." 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 TVPs is determined by HUD estimates of need in the upcoming year and Congressional appropriations.

PROGRAM SUMMARY

Residents are eligible for either HCVs or EVs, depending upon which housing program assisted the development in which they are living, as well as certain circumstances for some of the programs. The FY17 Appropriations Act continued the policy of limiting TPVs to units that have been occupied during the previous two years. However, in Notice PIH 2017-10, HUD states that due to inadequate funding, TPVs will only be awarded for units occupied at the time a PHA or private owner applies for them, or when HUD approves a demolition or disposition of public housing. The FY17 Appropriations Act also continued a provision first introduced by the FY15 Appropriations Act, prohibiting TPVs to be reissued when the initial family with the TPV no longer uses it, except as a "replacement voucher," described in the section on Regular Tenant Protection Vouchers.

Regular Tenant Protection Vouchers. Traditional HCVs are provided to residents to enable them to find alternative affordable homes when:

- Public housing is demolished, sold ("disposition"), or undergoes a mandatory conversion to HCVs.
- Private housing assisted with a project-based Section 8 contract has been terminated or not renewed by HUD (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, or 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 renew the contract – "opt outs" of the contract. Prepayment of certain unrestricted HUD-insured mortgages [generally Section 236 and Section 221(d)(3) projects] is another type of eligibility event.

There are a number of other situations triggering an eligibility event, depending on the program initially providing assistance. HUD must provide TPVs for opt outs and qualifying mortgage prepayments just described; however, HUD has discretion regarding TPVs for other circumstances such as Rent Supp or RAP contract terminations, or Section 202 Direct

Loan prepayments.

Replacement and Relocation Tenant Protection Vouchers

Since FY15, Congress has prohibited TPVs to be reissued when a household no longer uses it, unless that TPV was a "replacement voucher." 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. 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 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. Such TPVs cannot be reissued once the household returns to the redeveloped property.

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 advocates assert that this qualification in HUD guidance is contrary to statute.)
   b. Meets HUD's "reasonable rent" criteria, basically 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.
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 the owner after the housing conversion action, even if that new rent is greater than the PHA's basic voucher payment standard. A PHA's regular voucher payment standard is between 90% and 110% of the Fair Market Rent. 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 income or the percentage of income the household was paying on the date of the conversion event, whichever is greater.

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 spells out the various types of such mortgages.

Some properties that received preservation assistance under the Emergency Low-Income Housing Preservation Act 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.

Set-Aside for TPVs at Certain Properties. The FY17 Appropriations Act continued the provision setting aside $5 million of the $110 million appropriated for tenant protection vouchers for low income households in low-vacancy areas that may have to pay more than 30% of their income for rent at three types of HUD-assisted multifamily properties:

1. The maturity of a HUD-insured, HUD-held, or Section 202 loan that would have required HUD permission prior to loan prepayment. These include Section 236, Section 221(d)(3) Below Market Interest Rate (BMIR), and Section 202 Direct Loans.
2. 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 include properties with a RAP contract that expired before FY12, or a property with a Rent Supp contract that expired before FY2000.
3. The expiration of affordability restrictions accompanying a mortgage or preservation program administered by HUD. These include Section 236, Section 221(d)(3) BMIR, or Section 202 Direct Loan mortgages for which permission from HUD is not required, but the underlying affordability restrictions expired with the maturity of the mortgages. This category also includes properties with stand-alone "Affordability Restrictions" that expired.

TPVs provided under the set-aside are considered replacement TPVs, and may be reissued when an initial household no longer needs the TPV. Other key provisions that have applied to the set-aside in previous years provided in joint PIH and Housing Notices (such as Notice PIH 2016-12/Notice H 2016-7) were:

- Owners of eligible properties must apply for the assistance for residents. If an owner does not request assistance, residents could not receive EVs.
- Requests from owners would be accepted on a rolling basis until funding is exhausted. To prevent significant delay in funding of applications in subsequent fiscal years, applications would also be accepted on a rolling basis after September 30, 2016, but would only be funded subject to the availability of appropriations.
- The tenant protection assistance could be either an EV or a project-based voucher.
- Public housing agencies (PHAs) must administer the vouchers. A PHA may decline to participate; if so, HUD would attempt to identify an alternative PHA willing to administer the vouchers.

Notice PIH 2017-10 stated that until a replacement for Notice PIH 2016-12/Notice H 2016-7 was issued, HUD would not accept any applications for TPV set-aside funding in FY17. HUD failed to issue a new Notice; consequently no residents were protected in FY17. In mid-November 2017, HUD staff stated that a new Notice is in clearance and could apply retroactively. When a new Notice is issued, NLIHC will write about it in NLIHC's *Memo to Members and Partners*.

The National Housing Law Project (NHLP) identified, as of May 2016, approximately 32,300 unassisted units in 314 properties in 45 states that were at risk of mortgage maturity or the expiration of use restrictions or assistance. Of this total, more than 16,800 unassisted units in 150 properties were at risk and eligible for tenant protections. An additional 15,700 unassisted units in 164 properties were also at risk, but were not eligible for TPVs because they were not located in HUD-defined low-vacancy areas.

NHLP created a list of these properties along with a Google map of their locations. A memorandum from NHLP also explains how advocates can identify properties that might warrant tenant protection vouchers. NHLP's materials are at http://nhlp.org/node/15844 (Note: NHLP will be launching a new website; therefore the above link might not work in the near future.)

Advocates, including NLIHC and NHLP, have consistently urged HUD to:

- Issue a Notice implementing the TPV set-aside much earlier in the fiscal year.
- Allow unused funds to roll over to the next fiscal year.
- Allow residents or a PHA to apply for TPVs if the owner does not.
- Loosen the definition of low vacancy rate.
- Improve outreach to owners to better ensure full use of the set-aside.

FUNDING

The amount of funding available for TVPs should be determined by HUD estimates of need in the upcoming year and Congressional appropriations.

President Trump proposed only $60 million for FY18, as did the House; the Senate proposed only $75 million. As of the date this *Advocates' Guide* went to press, Congress has not enacted its final FY18 spending bills.

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 an assisted property leaves a HUD program; and, low income households losing their homes as a result of public housing demolition, disposition, or mandatory conversion to vouchers have tenant-based assistance to be able to afford rent elsewhere.

FOR MORE INFORMATION

NLIHC, 202-662-1530, www.nlihc.org

National Housing Law Project, 415-546-7000, http://nhlp.org/resourcecenter?tid=114

HUD Fact Sheet PHAs are now required to issue to residents when owners of private, HUD-assisted housing decide to no longer participate in the HUD program, http://bit.ly/2vYkeBL

Notice PIH 2017-10 is at https://www.hud.gov/sites/documents/pih2017-10.pdf

Chapter 11 of HUD's *Section 8 Renewal Policy Guide*, "Tenant Issues" is at https://www.hud.gov/sites/documents/508FIN_CONSOL_GUIDE6_8_17.PDF

The joint Notice H 2016-7/Notice PIH 2016-12 is at http://bit.ly/2bpBojd

Rental Housing Programs for the Lowest Income Households: Renters' Tax Credit

By Will Fischer, Senior Policy Analyst, Center on Budget and Policy Priorities

The federal government provided about $150 billion in housing tax benefits in 2017, according to the Joint Committee on Taxation, but more than 90 percent of that amount went toward tax subsidies for homeowners. Moreover, these subsidies mainly benefit higher-income homeowners, even though low -income renters are much more likely to struggle to afford housing. The recently enacted tax reform legislation will trim these subsidies, but still leave in place housing tax benefits that disproportionately help families who do not need assistance to afford a home. 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 rents affordable to the lowest-income families, but only reach about one-in-four eligible households due to inadequate funding. Caps on domestic discretionary appropriations—the budget category that includes federal rental assistance—will make it very difficult to expand these programs enough to address the unmet need for assistance. A renters' credit would be funded through the tax code, so it would not be subject to those spending caps. As a result, the renters' credit offers an important opportunity in a challenging budget and political environment to help more of the nation's most vulnerable families and individuals to 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 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 a number of 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 major challenges. For a tenant-claimed credit to reach the poorest families it would need to be refundable—that is, the federal government would have to make payments to cover the amount of the credit that exceeds the household's tax liability. However, this approach could make enactment of the credit significantly more difficult politically. A renters' credit would be far more effective if it were provided on a monthly basis, since low income families have to pay their rent every month, and it would be difficult to deliver a tenant-claimed renters' credit on a monthly basis—since the Internal Revenue Service does not currently make monthly refund payments under the individual income tax.

An owner-claimed credit, by contrast, would not need to be refundable (especially if the owner were permitted to transfer the credit to an outside investor or lender). And it would be straightforward to provide monthly rent reductions through an owner-claimed credit. The owner would be required to reduce the family's rent each month, and the credit would 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, in a tight budget environment it would 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 more modest overall budgetary 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 and low crime, 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 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 particular developments to make housing affordable to extremely low income families. Families in units assisted with the renters' credit would pay 30% of their income for rent and utilities. The owner would receive a federal tax credit based on the rent reductions it provides, and could opt to pass the credit on to an outside investor or lender who provides resources to keep rents in the development low. If such a credit were capped so that it has a fully phased-in cost of $6 billion a year, it could enable about 720,000 extremely low income families to live in decent, stable, affordable homes.

In 2016, the University of California, Berkeley's Terner Center for Housing Innovation issued a report presenting three renters' tax credit options. One of these would provide an entitlement, tenant-claimed credit sufficient to reduce all renters' housing costs 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 three sessions of Congress, including two bills during 2017: Representative Barbara Lee's (D-CA) Pathways Out of Poverty Act and Representative Joseph Crowley's Rent Relief Act. In addition, Representative Keith Ellison's Common Sense Housing Investment Act proposed a renters' credit as one use for savings generated through reform of the mortgage interest deduction.

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 rents.) State renters' and circuit breaker credits are usually shallow, rarely providing more than a few hundred dollars per year.

Advocates could work at the state level to establish credits to help renters afford housing. In states where credits already exist advocates could seek to improve them by increasing their amount, making them refundable (if they are not already), and providing them through periodic payments rather than a single lump sum. Advocates could also consider supporting establishment of state owner-claimed renters' credits like the federal CBPP proposal described above.

FORECAST FOR 2018

There is a good chance Congress will consider at least some significant additional tax legislation during 2018. A federal renters' credit helping the lowest-income families afford housing could potentially be incorporated into such legislation, in order to better match federal housing tax benefits to the most pressing housing needs. Even if the credit is not enacted during the current Congress, ensuring that it is part of the debate could increase the chances that it will be enacted in the future.

FOR MORE INFORMATION

Center on Budget and Policy Priorities renters' credit webpage, http://www.cbpp.org/topics/renters-credit

Carol Galante, Carolina Reid, Nathaniel Decker, *The FAIR Tax Credit: A Proposal for a Federal Assistance In Rental Credit to Support Low-Income Renters*, Terner Center for Housing Innovation, University of California, Berkeley, October 7, 2016, http://ternercenter.berkeley.edu/fair-tax-credit

Institute on Taxation and Economic Policy, State Tax Codes as Poverty Fighting Tools: 2017 Update on Four Key Policies in All 50 States, Institute on Taxation and Economic Policy, September 2017, https://itep.org/state-tax-codes-as-poverty-fighting-tools-4/

Chapter 5:
AFFORDABLE HOUSING PROGRAMS

Fair Housing Programs

By Jorge Andres Soto, Director of Public Policy, National Fair Housing Alliance

Administering agency: HUD's Office of Fair Housing and Equal Opportunity (FHEO)

Year program started: 1989

Number of persons/households served: In 2015 and 2017, organizations funded by the Fair Housing Initiatives Program (FHIP) investigated 39,385 complaints of housing discrimination.

Population targeted: Protected classes under the Fair Housing Act – race, national origin, color, religion, sex, familial status, and disability.

FY17 funding: FHIP, $39.2 million; Fair Housing Assistance Program (FHAP), $24.3 million through December 22, 2017.

See also: *Affirmatively Furthering Fair Housing*

The federal Fair Housing Act protects individuals and families 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 provided guidance that interprets 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.

Two HUD-funded programs are specifically dedicated to the enforcement of the Fair Housing Act: The Fair Housing Initiatives Program (FHIP) and the Fair Housing Assistance Program (FHAP).

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. 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 involving zoning and land use, and pattern and practice cases.

HISTORY AND PURPOSE

The federal Fair Housing Act was passed in 1968 and amended in 1974 and 1988. FHIP and FHAP were created as a means of carrying out the objectives of the Act.

PROGRAMS SUMMARY

There are two federal programs dedicated solely to assist in the enforcement of the Fair Housing Act. FHIP funds private fair housing organizations, and FHAP funds the fair housing enforcement programs of state and local government agencies.

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, 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 organizations to conduct complaint intake, testing, investigations, and other enforcement activities. The Education and Outreach Initiative funds organizations to educate the general 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.

In 2015 and 2016, FHIP-funded organizations investigated 39,385 complaints of housing discrimination across the country for families and communities, 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. In 2015 and 2016, FHAP entities investigated 14,002 complaints of housing discrimination.

FUNDING

The Trump Administration proposed $39.2 million for FHIP, and $24.3 million for FHAP for FY18, level with every year since FY16. At least $57 million, including $5 million for a systemic testing program, must be provided for the FHIP program going forward. FHAP must be funded at $40 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 the onslaught of discrimination against immigrants and religious minorities instigated by the hateful rhetoric of the 2016 presidential campaign and its continuation in the first year of this administration.

FORECAST FOR 2018

Conservative members of Congress continue to attack enforcement of the Fair Housing Act, and will likely again target HUD's Affirmatively Furthering Fair Housing rule and funding for the FHIP program's private enforcement component. The same conservative members of Congress may also try to direct HUD to focus funding on education and outreach instead of enforcement grants. Such a drastic shift in priorities would undermine the purpose of the FHIP program, forcing victims of discrimination to rely on state agencies and HUD, which depend on the enforcement expertise and services of FHIP organizations to handle the overwhelming majority of reported complaints annually. Advocates should support increased fair housing funding and urge HUD to prioritize private enforcement grants under the FHIP program.

Private fair housing organizations remain a critical part of the United States' civil rights enforcement infrastructure. In 2016, private nonprofit fair housing organizations investigated 70% of fair housing complaints, more than twice as many complaints as all federal, state, and local government agencies combined. FHAP agencies processed 25% of complaints, and HUD processed 4.8% of all reported complaints.

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 or the National Fair Housing Alliance at 800-910-7315, or see a list of fair housing organizations under "Find Local Help" at www.nationalfairhousing.org

Fair housing complaints can be filed with 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's criminal section 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 or by calling 855-411-CFPB (2372). Non-English speakers can receive information and submit mortgage complaints in any 1 of 200 languages by calling the CFPB.

WHAT TO SAY TO LEGISLATORS

Advocates should speak to legislators with the message that private fair housing organizations investigate more than two-thirds of all fair housing complaints each year—twice as many as all government agencies combined. This important service is historically underfunded, and as a result fair housing and fair lending violations remain under-reported and unaddressed. To help put an end to pervasive housing discrimination, funding for FHIP should be at least $57 million, including

$5 million for a systemic testing program, and funding for FHAP should be $40 million going forward.

Legislators must also be prepared to protect HUD's Affirmatively Furthering Fair Housing regulation.

FOR MORE INFORMATION

National Fair Housing Alliance, 202-898-1661, 800-910-7315, www.nationalfairhousing.org

Federal Housing Administration

By Sarah Mickelson, Director, Public Policy & Elayne Weiss, Senior Policy Analyst, National Low Income Housing Coalition

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, 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.

PROGRAM SUMMARY

The FHA provides mortgage insurance to lenders on both single-family dwellings (one to four units) and multifamily dwellings (five units or more). 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 FHA, triggering an FHA payment to the lender for the claim amount. FHA then takes possession of the property that secured the mortgage loan. The FHA consists of several insurance funds supported by: premium, fee, and interest income; Congressional appropriations if necessary; and, other miscellaneous sources.

Mutual Mortgage Insurance. FHA's primary single-family programs are within the Mutual Mortgage Insurance (MMI) Fund, which is managed by the Office of Single Family Housing. 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 pays out claims to lenders and is able to cover administrative costs without federal subsidies.

FHA insurance allows borrowers to purchase a home with a lower down payment than is often available in the nongovernmental market. Borrowers pay a fee for FHA insurance. For single-family loans, this fee consists of an upfront amount collected at the time the mortgage is closed, and an annual fee that varies with the loan-to-value ratio and length of the mortgage. The annual fee is collected with the monthly mortgage payments. FHA borrowers are required to make a minimum down payment of 3.5%. FHA insures loans only in amounts under set loan limits. Generally, the loan limits are set at 115% of area median home prices, with a floor of 65% of the Federal Home Loan Mortgage Corporation (Freddie Mac) loan limit and a ceiling of 150% of the Freddie Mac limit. The limit for high-cost areas is 625,500, down from the previous temporary high-cost area limit of $729,750, which expired at the end of 2013. The mortgage amount also cannot exceed 100% of the property's appraised value.

Special Risk Insurance and General Insurance Funds. In addition to the MMI Fund, FHA also operates Special Risk Insurance and General Insurance Funds, which insure loans used for the development, construction, rehabilitation, purchase, and refinancing of multifamily housing and health care facilities. Unlike the MMI Fund, this insurance requires subsidies from the federal budget.

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. The insured loan may not exceed $69,678 for a manufactured home, $23,226 for a manufactured home lot, or $92,904 for a combined manufactured home and lot. These limits can be increased by 85% in high-cost areas.

Ginnie Mae. The Government National Mortgage Association (Ginnie Mae), also part of HUD, is an important sister agency to FHA. Ginnie Mae guarantees the principal and interest on privately issued securities backed by FHA, the U.S. Department of Veterans Affairs (VA), and the U.S. Department of Agriculture's Rural Housing Service mortgages, thereby enabling a constant flow of capital for mortgage loans. In FY15, Ginnie Mae guaranteed $436 billion in new mortgage-backed securities. These transactions supported nearly two million families, representing one-third of all home loans issued during the year.

FORECAST FOR 2018

In recent years, the House and Senate have not sought to reform the FHA to assure the stability of the agency and avoid future instances where congressional appropriations are needed to bolster the MMI Fund. Although there have been several hearings that focused on the financial health and oversight of FHA, neither chamber has introduced legislation that would include tools requested by FHA to manage the MMI Fund.

Even though the FHA announced in November of 2015 that the MMI Fund had surpassed the legally required threshold of 2%, House Financial Services Committee Chair Jeb Hensarling (R-TX) still questioned the health of the fund. Mr. Hensarling voiced concern for the size of the fund's capital reserve, and said that, without a spike in the value of FHA's "volatile" reverse mortgage program, the fund would not have met the 2% threshold. He further stated his belief that FHA continues to crowd out private mortgage lenders from entering the market.

A 2015 Urban Institute analysis showed that in the FHA, along with Freddie Mac, the Federal National Mortgage Association (Fannie Mae), and the VA provided the financing for about 71% of the mortgage loans in this country. Although private capital is returning to the market, the government has a disproportionately large share, and this level of federal government support for the mortgage market is unsustainable and undesirable over the long run. However, Congress has largely failed in working to reduce the government's role in the housing finance system and return the bulk of mortgage lending to the private sector.

Revenue generated by FHA is used to underpin HUD's annual budget request. HUD uses FHA receipts to undergird its budget, keeping HUD from making deep cuts in rental assistance programs. However, when FHA receipts are down, appropriators must fill the hole before HUD's other programs can be funded. FHA's market share has been decreasing as the housing market starts to recover, resulting in a lower level of receipts that can be applied to the HUD budget. The Congressional Budget Office will ultimately determine if HUD's revenue projections for FHA are accurate. Ideally, the pace of declining receipts will decrease and Congress can use its limited funds for HUD programs rather than to fill a revenue gap. Congress decides whether FHA revenue can be dedicated to HUD's bottom line, or whether these revenues should flow into the general treasury of the United States.

Lead Hazard Control and Healthy Homes

By David E. Jacobs, PhD, CIH, Chief Scientist, National Center for Healthy Housing

Administering agency: HUD's Office of Lead Hazard Control and Healthy Homes (OLHCHH)

Year program 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.

FY17 funding: $145 Million

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. Often these units have a combination of health dangers that include dust mites, molds, and pests that can trigger asthma; carcinogens, such as asbestos, radon, and pesticides; and other deadly toxins such as carbon monoxide.

RECENT DEVELOPMENTS:

1. HUD published an important revision to its Lead Safe Housing rule on January 13, 2017, that conforms its definition of elevated blood lead level to that of the Centers for Disease Control and Prevention (CDC). The revision also establishes more comprehensive testing and evaluation procedures for the assisted housing where such children reside and certain reporting requirements. See: https://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/enforcement/lshr
2. The National Safe and Healthy Housing Coalition has developed sign-on letters for appropriations for these two programs. See: www.nchh.org and: http://www.nchh.org/Policy/National-Policy/Federal-Appropriations.aspx healthy homes fact sheets are now available for each state (see: http://www.nchh.org/Policy/StateandLocalPolicy/StateHealthyHousingProfiles.aspx)
3. New Lead Poisoning Report now available in the wake of lead poisoning in flint, East Chicago and elsewhere: (see http://www.nchh.org/Policy/10Policies.aspx)

HISTORY AND PURPOSE

Lead Hazard Control. 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 Lead Hazard Control Grants Program to provide grants to local jurisdictions to identify and control lead-based paint hazards in privately owned, low income, owner-occupied, and rental housing. In 2003, Congress created Lead Hazard Reduction Demonstration Grants to target additional lead hazard control grants to the nation's highest-risk cities. Both programs and enforcement of related regulations are housed in HUD's OLHCHH.

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 through education campaigns. 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.

ISSUE SUMMARY

Recent research confirms that housing policy has a profound impact on public health, and for any public health agenda to be effective, it must include a housing component. The statistics and key findings regarding the long-term effects of housing-related health hazards are alarming. The CDC's most recent estimate is that about 535,000 children aged 1-5 in the U.S. have elevated blood lead levels. 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.; 26 million people in the U.S. have asthma, including 9.5% of children under 18. In 2007-2008, the economic costs to society of lead poisoning and asthma were estimated at $50 billion and $56 billion respectively.

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 are twice as likely as others to have lead hazards in their homes. Children of low income families are eight times more likely to be lead-poisoned than those of higher income families, and African-American children are five times more likely than whites to be lead-poisoned. 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.

There are even bigger consequences when dealing with the cumulative effects of multiple hazards. Inadequate ventilation increases the concentration of lethal 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 leaded dust and paint chips. Moisture also encourages growth of mold, mildew, dust mites, and microbes, which contribute to asthma and other respiratory diseases. 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 visual assessments, 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 U.S. Environmental Protection Agency's (EPA's) renovation, repair and painting rule (and for federally assisted housing, HUD's Lead Safe Housing rule, which was updated in Jan 2017). 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 new 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

PROGRAM SUMMARY

Programs based at HUD include:

Healthy Homes Initiative. The Healthy Homes Demonstration Grant Program develops, demonstrates and promotes cost-effective, preventive measures for identifying and correcting residential health and safety hazards. HUD awards Healthy Homes Demonstration grants to not-for profits, for-profit firms located in the U.S., state and local governments, federally recognized Indian Tribes, and colleges and universities.

Lead Hazard Control Grants. The typical award of $3 million 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%–25% from local or Community Development Block Grant (CDBG) funds. More than $1 billion has been awarded since the program started in 1993.

Lead Hazard Reduction Demonstration Grants. This program targets funds for lead hazard control to the nation's 100 highest-risk cities as defined by the prevalence of lead poisoning and the number of pre-1940 rental housing units. Grants may be as high as $4 million, but 80% of the funds must be spent on direct activities, and HUD requires a 25% local match from local or CDBG funds. High-risk cities can receive demonstration grants in addition to basic lead hazard control grants.

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 organizations.

OTHER FEDERAL AGENCIES:

The CDC Healthy Homes and Lead Poisoning Prevention and Asthma Control Programs, and the EPA provide complementary programs to HUD's OLHCHH. The EPA identifies housing hazards and their impacts and provides training; CDC-funded programs provide surveillance data, education and outreach on resulting diseases and injuries; and HUD-funded programs remediate homes to remove the health hazards.

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 (not all states receive these grants).

FUNDING

HUD FY17 funding includes $145 million for the Office of Lead Hazard Control and Healthy Homes, including $115 million for Lead Hazard Control and Demonstration Programs as well as Lead and Healthy Homes Technical Studies, and $30 million for Healthy Homes Demonstration and Production Programs.

CDC FY17 funding includes $17 million for CDC's Healthy Homes and Lead Poisoning Prevention program and $29.5 million for its Asthma Control Program.

FORECAST FOR 2018

A forecast is difficult at this time. The Senate has provided $160 million for HUD's Lead and Healthy Homes program, but the House has only provided $130 million (the National Safe and Healthy Housing Coalition has requested $230 million). CDC FY18 funding for lead and healthy homes and asthma programs is unchanged in both Senate and House from FY17 at the time of this writing (the National Safe and Healthy Housing Coalition has requested $50 million for the CDC lead program). Please see this link for updates http://nchh.org/Policy/National-Policy/Federal-Appropriations.aspx

TIPS FOR LOCAL SUCCESS

Many communities have improved the quality of their housing stock through development of better codes, such as the National Healthy Housing Standard, and proactive code enforcement programs, instead of a complaint-driven processes. For example, sanitary 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; add a requirement for radon-resistant new construction; and, 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. For example, the State of Michigan recently succeeded in obtaining a Children Health Insurance Amendment to conduct lead paint and lead drinking water pipe mitigation totaling $160 million.

WHAT TO SAY TO LEGISLATORS

Advocates should contact their Members of Congress, ask to speak to the person who deals with housing policy, and deliver the message that funding is needed in FY18 to correct health and safety hazards and lead hazards in homes. 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 $5.30 –$14. Healthy homes interventions prevent injury, neurological and respiratory diseases, cancer, and even death from toxins such as carbon monoxide and radon. Advocates should use the Healthy Homes Fact Sheets for each state at: http://www.nchh.org/policy/stateandlocalpolicy/statehealthyhousingprofiles.aspx.

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.

Fully fund CDC's Healthy Homes and Lead Poisoning Prevention Program so that all states can provide surveillance of children's blood lead levels, promote prevention, and respond to lead-poisoned children.

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, http://bit.ly/1dvzV04

HUD's Office of Lead Hazard Control and Healthy Homes, http://1.usa.gov/1iOKkas

CDC's Healthy Homes and Lead Poisoning Prevention Program, http://www.cdc.gov/nceh/lead/

HOME Investment Partnerships Program

By Ed Gramlich, Senior Advisor, National Low Income Housing Coalition

Administering agency: HUD's Office of Community Planning and Development (CPD)

Year program started: 1990

Population targeted: Households with income below 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 below 60% AMI.

FY17 Funding: $950 million; As of the time this goes to print, all housing programs have been operating under a Continuing Resolution (CR) in FY18 at FY17 levels.

The HOME Investment Partnerships (HOME) Program is a federal block grant intended to expand the supply of decent, affordable housing for lower income people.

HISTORY

The HOME Program was authorized in 1990 as part of the Cranston-Gonzalez National Affordable Housing Act.

PROGRAM SUMMARY

HOME is a federal block grant to 637 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 AMI, and units must be occupied by income-eligible households for a set period of time. 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 agreements are limited to two-year terms, they can be renewed without limit.

PJs may spend no more than 10% of their HOME dollars 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 or assisted 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 must be spent for 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. If a PJ fails to reserve any portion of the minimum 15% CHDO set-aside within 2 years, the PJ and its low income residents lose that amount of money. 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. In order to be considered a CHDO, a change to the HOME regulations in 2013 require a nonprofit that is a developer or sponsor to have paid employees on staff who have housing development experience. However, another change in 2013 could assist nonprofits seeking to keep or obtain CHDO status by 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.

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 below 80% of the 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. Local PJs are eligible for an allocation of at least $500,000 ($335,000 in years when Congress appropriates less than $1.5 billion). Each state receives the greater of its formula allocation or $3 million. The state share is intended for small cities, towns, and rural areas not receiving HOME money directly from HUD. 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, or property, or other noncash contributions.

Beneficiaries. When HOME is used to assist renters, at least 90% of the 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, at least 20% of the HOME 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 of 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 or 30% of the adjusted income of a hypothetical household with an annual income of 65% of AMI. In projects with 5 or more HOME-assisted units in which at least 20% of the HOME units must be occupied by households with very low income, rent is considered affordable to them 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 5 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 FY17 on September 30, 2017, HOME has delivered 1,261,231 completed physical units and provided another 303,750 tenant-based rental assistance contracts since 1992. Out of the 1,261,231 physical units, 40% (502,952) were rental units, 19% (244,025) were homeowner rehabilitation and/or new construction units, and 41% (520,806) were homebuyer units.

At the time of initial occupancy, households with income less than 30% of AMI occupied 43.9% of the physical rental units, but only 17% of all 1,261,231 physical units. Households with income less than 30% AMI occupied 30.4% of the homeowner units, and 5.9% of the homebuyer units. Twenty-six percent of the rental units have had households assisted with Housing Choice Vouchers. In addition, 79.2% of the tenant-based rental assistance units were occupied by extremely low income people.

FORECAST FOR 2018

For FY18, the Trump Administration proposed eliminating HOME, although the House proposed $850 million and the Senate proposed $950 million. As of the date this *Advocates' Guide* went to press, Congress has not enacted its final FY18 spending bills.

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 HOME page of HUD's Exchange website.

- The monthly Open Activities Report lists 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, and amount budgeted and spent.
- The Vacant Unit Report identifies units marked vacant in HUD's reporting system.
- SNAPSHOT is a quarterly cumulative report that shows, in the aggregate, income category, race, household size, and household type of beneficiaries, as well as the number of units completed for each type of housing.
- Dashboard Reports are quarterly reports intended to provide a quick overview of a jurisdiction's use of HOME dollars. Using charts and graphs, Dashboard Reports show:
  - Cumulative HOME dollars received and percentage disbursed, committed, and uncommitted.
  - Cumulative number of units completed, and percentage of rental, homeowner rehab, and homebuyer units.
  - Net number of units completed in the most recent quarter, with percentage of rental, homeowner rehab, and homebuyer units.
  - Cumulative number and the last quarter's net new number of tenant-based rental assistance units.
  - Race and ethnicity percentages among rental, homeowner rehab, and homebuyer projects.
  - Average total development cost per unit for rental, homeowner rehab, and homebuyer projects.
- The National Production Report offers cumulative information since 1992.

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 $1.2 billion.

FOR MORE INFORMATION

National Low Income Housing Coalition, 202-662-1530, www.nlihc.org

HUD's HOME program website, 202-708-2470

Most HOME program information has migrated to HUD Exchange, https://www.hudexchange.info/programs/home

HUD-Funded Service Coordination Programs:

ROSS, FAMILY SELF-SUFFICIENCY, AND SERVICE COORDINATORS IN MULTIFAMILY HOUSING FOR ELDERLY AND DISABLED

By Judith Chavis, Executive Vice President/ Public Policy, American Association of Service Coordinators

HUD currently has three distinct service coordinator programs, each with its own federally-appropriated funding stream:

1. The Resident Opportunities and Self-Sufficiency (ROSS) Service Coordinator program.
2. The Family Self-Sufficiency (FSS) program.
3. Service Coordinators in Multifamily Housing for the Elderly/Disabled.

HUD's Office of Public and Indian Housing 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. That office also oversees the FSS program for owners of private multifamily projects that have a project-based Section 8 Housing Assistance Payment contract.

A service coordinator is defined as 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 was a social service professional who 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, assistance and services/case management.

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, entitlements, and community-based resources for low income residents.

Many service coordinators value and cultivate an empowering attitude—they see their roles as facilitators rather than fixers and as resources rather than rescuers. Specifically, service coordinators help the residents in these settings to remain independent, increase their assets and self-sufficiency by connecting them with community-based services, supports and other income-related benefits.

HISTORY

Service coordination is a growing profession that has expanded since beginning 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), which 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

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. A research study on service coordination offers some exciting information on the benefits of service coordination across the country. Additionally, national data from the American Association of Service Coordinators' (AASC) Online documentation system has shown the benefits of service coordination in terms of: providing access to services and supports; increased length of independent living; and, most recent data from the system is also showing 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 been able to identify cost savings for the residents from 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."

In terms of cost savings, a comparison of the national average monthly cost of nursing home care versus keeping a low income, frail elderly person in their own apartment with access to benefits, supports, and services at a property with a service coordinator reveals some startling data. According to the *Genworth 2016 Cost of Care Survey of Home Care Providers, Adult Day Health Care Facilities, Assisted Living Facilities and Nursing Homes*, the average monthly cost of a semi-private room in a nursing home is $6,844. Keeping a frail elderly person independent in his/her own subsidized apartment with supportive services and public benefits can reduce spending of taxpayer dollars to approximately 64% less than the monthly average cost of nursing home care. This figure is based on the average SNAP (food stamp) benefit for seniors of $194/month; Homemaker/Home Health Aide services at an average of 40 hours/month; 70% of the national average of HUD's 2016 fair market rent for a one-bedroom apartment; and, the average monthly cost of a service coordinator based on the *AASC 2016 Service Coordinator Salary Survey*.

HUD's Office of Policy Development and Research 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 the residents in their housing properties. The report also goes on to find resident occupancy appears to be longer in properties with a service coordinator when compared to properties without the position. Specifically, the report stated that the length of occupancy at 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.

SUMMARIES OF THE PROGRAMS

Service Coordinators in Multifamily Housing for the Elderly/Disabled, and Resident Opportunities and Self-Sufficiency Service Coordinators

The service coordinator position is funded to carry out the following activities:

- Assessing each elderly resident's needs in Activities of Daily Living and determining their respective service needs.
- Assisting residents with obtaining needed community-based services and/or public benefits.
- Monitoring and evaluating the effectiveness of the supportive services provided to residents individually and collectively.
- Identifying and networking with appropriate community-based supports and services.
- Advocating on behalf of residents individually and collectively to ensure their needs are met.

- Assisting residents with establishing and working with RAs/Resident Councils, as requested.
- Assisting residents in setting up informal support networks.
- Assisting heads of family households with removing barriers to gainful employment and self-sufficiency
- Assisting residents with resolving problems with their tenancy.
- Developing and updating a profile of the property, as a whole, through resident capacity and needs assessments to acquire appropriate health, wellness, education and other programs for the housing community.
- Developing and acquiring appropriate health and wellness programs for the housing community.
- Developing after-school youth, job readiness, literacy, volunteer, and financial management programs for residents and their families.
- Developing health/wellness and other property-wide outcomes to promote improved health conditions among residents as well as increased independence and financial self-sufficiency.
- Performing 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.

Service coordinators are specifically prohibited from directly providing support services, serving as an activities director, or coordinator or assisting with other administrative work of the property. However, based on the collective needs of the residents of the property or properties where they work, service coordinators will develop health, wellness, financial literacy, after-school programs, and other beneficial group presentations or programs at the property. Additionally, service coordinators assist residents at a property with starting a residents' or tenants' association, and will provide guidance, contacts, and strategies for planning events, conducting effective meetings, and completing tasks. However, they do not conduct or attend these meetings unless they are specifically invited to do so.

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.

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. As of the three most recent federal appropriations cycles, federal appropriations have only been sufficient to renew existing three-year ROSS grants.

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.

Family Self-Sufficiency

The FSS program helps housing choice voucher (HCV) holders and PH residents 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 also choose to apply for funding for FSS coordinator costs as part of an annual competitive grant process. Some agencies are required to continue to participate in FSS until they graduate a sufficient number of families to satisfy mandates associated with receipt of incremental housing assistance in the mid-1990s. For all other agencies and for mandated agencies once they satisfy their mandate, participation is voluntary.

Each family participating in the FSS program works with an FSS coordinator/case manager 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 he or she has 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.

FUNDING

For FY17, Congress appropriated $75 million for the Service Coordinators in Multifamily Housing for the Elderly and Disabled grant program. This was a reduction in funding that served to minimally fund one-year grant extensions for existing service coordinator grants with no Cost of Living increase for the grantees. There was no funding to provide for new three-year grants for properties to hire a service coordinator.

The president's FY18 budget requested a $90 million funding level for the Service Coordinators in Multifamily Housing for the Elderly and Disabled grant program. At this funding level, it is anticipated that all one-year grant extensions will be fully funded with funding for new three-year grants. As of the writing of this *Advocates' Guide* article, FY18 funding has been appropriated via a Continuing Resolution that maintains funding at the FY17 level through December 22, 2017.

For ROSS Service Coordinator grants, FY17 funds were appropriated at a level of $35 million. As has been the practice in this as well as previous administrations, no funding was requested in the FY18 budget for the ROSS Service Coordinator grant program. However, the House Appropriations Committee's FY18 Transportation, Housing and Urban Development (T-HUD) funding bill (H.R. 3353) appropriated $35 million for the ROSS program with the Senate Appropriations Committee's FY18 bill (S. 1655) appropriating $25 million for the ROSS grant program. Neither bill has passed from its respective chamber.

In the FY14 Omnibus Appropriations Act, the FSS program was consolidated into one program and funded at a $75 million level to pay the salary and benefits of FSS coordinators/case managers. This funding level constitutes "flat funding," meaning there was no increase in funding for the FSS program. Previously, there were two separate FSS programs with separate funding streams–one specifically for HCV holders (funded at the $60 million level for the past few funding cycles) and another for PH residents with funding carved out of ROSS funds (approximately $15 million out of a total ROSS funding level of $50 million for the past few funding cycles).

For HCV participants, FSS escrow deposits are eligible expenses for reimbursement under the housing assistance payments that HUD makes to PHAs. For PH residents, PHAs are compensated for FSS escrow deposits through the PH operating subsidy calculation.

The president's FY18 budget request and both the House and Senate FY18 T-HUD appropriations bills maintains the funding level for the consolidated FSS programs at $75 million, and maintains the expansion of the program to allow privately owned Project-Based Rental Assistance multifamily projects with a Section 8 contract to voluntarily make a FSS program available to their tenants.

In an August 2016 Notice to Multifamily Housing Managers, Owners, Management Agents and HUD laid out the parameters for establishing a voluntary FSS program at a privately-owned HUD-assisted multifamily housing property. Participation in the FSS program is voluntary for families living in these properties. Congress has not appropriated funds for FSS in private multifamily projects that have a project-based Section 8 Housing Assistance Payment contract. However, owners who participate in FSS may now use residual receipts to hire FSS program coordinators.

FORECAST FOR 2018

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 or through modest rent adjustments or the property's residual receipts. Although statutory authority exists to allow HUD-subsidized properties to fund service coordinators, many senior housing facilities continue to not be able to secure the necessary rent adjustments to accommodate them. Currently, there are more than 12,000 properties for low income elderly that are eligible for a service coordinator. However, only one-third—approximately 4,300+—of the eligible properties have a service coordinator on staff. There is a critical need for service coordinators in these properties to provide assistance with accessing benefits, supportive social and health/wellness services to maintain the independence and improve the health outcomes for these low income elderly tenants.

A promising initiative is developing that is anticipated to provide evidence-based data on the benefits of an "enhanced" form of service coordination in improving the health/wellness outcomes for low income, frail elderly residents in multifamily housing. On January 20, 2016, HUD announced the availability of $15 million (from FY14 appropriations) for a Supportive Services Demonstration/Integrated Wellness in Supportive Housing. This three-year demonstration seeks to test models of housing-with-services that demonstrate the potential to delay or avoid the need for nursing home care. The demonstration is expected to produce evidence about the impact of housing with an expanded and "enhanced" service coordinator role and a wellness nurse on site on aging in place, transitions to institutional care, housing stability, well-being and improved health/wellness outcomes, and proactive health care utilization. As of the writing of this *Advocates' Guide* article, the demonstration has identified properties that will be both the "treatment" and "control" groups and are finalizing the budgets and respective contracts for participation.

There is also a need to expand the funding for housing-based service coordinators to assist frail seniors 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 properties 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.

Family Self-Sufficiency Grant Program. For the FSS program, the key issue is expanding and making effective use of the FSS 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/case managers 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/case managers. 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.

In previous Congressional sessions, a number of legislative proposals have sought to streamline the FSS program and stabilize its funding, including S. 454, The Family Self-Sufficiency Act sponsored by Senator Jack Reed (D-RI). In addition to simplifying the funding, these proposals would also open up funding to additional housing types and agencies that wanted to start or expand their FSS programs. Unfortunately, S.454 did not make significant progress through the federal legislative process of the 113th Congress, and was never enacted into law.

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 seniors living independently in cost-effective housing instead of being placed in costly institutional (nursing home) care. Funding for service coordinators remains very limited despite the critical need in eligible properties without a service coordinator on staff. The supportive services demonstration will provide evidence-based data on the cost-effective impact service coordinators have on maintaining low income, frail elderly with multiple chronic medical conditions in stable, subsidized housing in the community with access to adequate care and treatment in lieu of more costly nursing home settings.

Members of Congress should be urged to:

- Appropriate the $90 million funding level, as identified and passed in both the House and Senate Appropriations Committees' FY18 T-HUD appropriations bills for service coordinators in federally-assisted housing, particularly to ensure adequate funds for expiring grants for existing service coordinator positions, and to expand the number of properties with a service coordinator since the number of low income, frail older adults is growing.
- Fully fund Section 8, PRAC, 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 in FY18 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 PH 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/wellness outcomes, and achieve economic self-sufficiency.

Members of Congress should be urged to:

- Restore the $45 million funding level as a stand-alone appropriations line item 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 better support FSS in the near term and moving forward, Congress should appropriate funding for FSS program coordinators at the $85 million level so as to include training for FSS coordinators as well as needed case management tools and equipment as allowable expenses.
- Congress should pass legislation that strengthens the FSS program, and stabilizes funding for FSS coordinators, their training, and necessary equipment to effectively perform their case management duties.

FOR MORE INFORMATION

American Association of Service Coordinators, 614-848-5958, www.servicecoordinator.org

HUD's Office of Public and Indian Housing's ROSS and FSS website is at, http://1.usa.gov/1gxezRs

HUD's Office of Multifamily Housing Program's Service Coordinator's website is at, http://1.usa.gov/1qzW0Tf

HUD's Office of Multifamily Housing Program's Notice H-2016-08 implementing FSS in private, HUD-assisted housing is at http://bit.ly/2mlUgTF

The HUD report *Multifamily Property Managers' Satisfaction with Service Coordination*, http://bit.ly/XoZo5d

Housing Bonds

By Garth Rieman, Interim Executive Director, National Council of State Housing Agencies

Administering Agency: U.S. Department of the Treasury

Year program started: 1954

Number of households served: In 2016, 31,157 with Mortgage Revenue Bonds (MRBs); 20,056 with Mortgage Credit Certificates (MCCs); and 34,637 with multifamily bonds.

Population targeted: Low and moderate-income homebuyers and renters

See also: *Low Income Housing Tax Credits*, *HOME Investment Partnerships Program*

Housing bonds are used to finance low-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 purchase housing bonds at low interest rates because the income from them is tax free. The interest savings made possible by the tax exemption is passed on to homebuyers and renters in reduced housing costs.

Thanks in part to advocacy by state housing finance agencies (HFAs) and their partners, Congress preserved the exemption for housing bonds in tax reform (the Tax Cuts and Jobs Act, H.R. 1). The National Council of State Housing Agencies and others are now working with lawmakers to continue to protect housing bonds and strengthen them.

HISTORY

Private activity bonds (PABs) were established under the Tax Code of 1954. These bonds were known as Industrial Development Bonds until the Tax Reform Act of 1986 and other legislation changed their name.

PROGRAM SUMMARY

PABs, a category that includes housing bonds, are distinct from other tax-exempt bonds because they are issued for activities that involve private entities, as opposed to governmental bonds for wholly governmental activities. The private activities must fulfill public purposes, and each private activity bond issuer must hold public hearings to demonstrate such public purposes. In addition to housing, PABs are issued for other public purposes that include 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 housing purchase and development.

There are two main types of housing bonds: Mortgage Revenue Bonds (MRBs), which finance single-family home purchases for qualified low income homebuyers; and multifamily housing bonds, which finance the acquisition, construction, and rehabilitation of multifamily developments for low income renters.

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 loans. HFAs often combine MRBs with down payment assistance that allows home purchases by families and individuals who would not otherwise be able to buy homes.

Congress limits MRB mortgages 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 mortgages 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 Mortgage Credit Certificates (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 loan or an MCC.

Multifamily Bonds. Multifamily bonds provide funding for affordable rental housing development that reaches income groups the market might not otherwise serve. Multifamily housing bonds finance the acquisition, construction, or rehabilitation of affordable rental housing. Multifamily housing developments with bond financing must set aside at least 40% of their apartments for families with income of 60% of area median income (AMI) or less, or 20% for families with income of 50% of AMI or less. The income-restricted apartments financed by those bonds must remain affordable for at least 15 years.

States increasingly combine multifamily bonds with other resources—including Low Income Housing Tax Credits (LIHTC) and HOME Investment Partnerships (HOME) program funds—to serve even lower income families for longer periods of time than the law requires. Rental developments that use tax-exempt bond financing to pay more than 50% of their total development costs are eligible to receive 4% housing credits from outside the state-allocated housing credit cap. In addition, many multifamily bonds finance special needs housing, such as housing for formerly homeless people, 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 2016, the most recent year for which data are available, state HFAs issued nearly $6 billion in MRBs and supported the purchase of 31,157 homes nationwide. Some bond issuance was used to raise proceeds that were saved for use in future years and to refund prior-year bonds. HFAs also issued 20,056 MCCs in 2016, a four-fold increase since 2012. States issued just over $4.1 billion in multifamily bonds in 2016 to finance more than 34,637 affordable rental homes—a significant increase from prior years, indicating a trend that is likely to continue.

Housing bonds have been an unqualified success in providing lower income Americans an opportunity they might not otherwise have to own a decent and affordable home and to access quality rental opportunities. Using MRBs, HFAs have made homeownership possible for more than 3.1 million low and moderate income families. They help another approximately 100,000 families buy their first homes with MRB mortgages in a typical year. In 2015, 81% of MRB borrowers earned less than AMI. The median MRB borrower income was $48,571, 86% of the national median income.

HFAs have also provided over 275,000 lower and moderate income homeowners critical tax relief through the MCC program. Ninety-four percent of all MCC borrowers in 2015 earned less than AMI.

Multifamily bonds also boost the productivity of the LIHTC program. Affordable rental housing sponsors may obtain 4% housing credits from outside the state credit authority cap if 50% or more of the development is financed using housing bonds. HFAs have financed an additional 1 million affordable rental apartments with multifamily bonds. Over 50% of all annual LIHTC rental home production includes housing bond financing. HFAs have used the LIHTC to produce almost 3 million rental homes for families earning 60% of AMI or less. They add another 100,000 LIHTC apartments every year.

FUNDING

By law, the annual state issuance of PABs, including MRBs and multifamily bonds, is capped by each state's population and indexed to inflation. The 2018 state cap is $105 per capita, with a per-state minimum of $311,375,000.

FORECAST FOR 2018

Despite their enormous success, housing bonds were in grave danger of being eliminated via tax reform. The U.S. House of Representatives eliminated the exemption for housing bonds and other PABs issued after 2017 in its original tax reform legislation, which passed in November. The House-passed legislation also rescinded the MCC program.

Fortunately, thanks to the advocacy of state HFAs, their partners, and other PAB issuers, both the tax reform legislation initially passed by the Senate and the final tax reform bill maintained the exemption for PABs and continued MCCs, preserving HFAs' ability to support affordable housing opportunities.

Now that Congress is done with comprehensive tax reform for the foreseeable future, there is an opportunity to advance a number of critical reforms that will strengthen housing bonds. These small but significant changes will make housing bonds more efficient and effective at minimal cost to taxpayers.

At the same time, the fact that the House's original tax reform bill repealed PABs and MCCs underscores the need for advocates to remain vigilant in our efforts to protect housing bonds.

Congress is likely to seriously consider legislation to promote infrastructure in 2018. Advocates must help legislators understand that housing is a key component of our nation's infrastructure and housing bonds should be preserved and strengthened in infrastructure legislation.

WHAT TO SAY TO LEGISLATORS

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 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 necessary infrastructure improvements and address unmet housing needs.

Advocates should also ask legislators to strengthen the housing bond program with targeted improvements. These enhancements include:

- Repealing the housing bonds purchase price limit;
- Allowing housing bonds to be used to support loan refinancings;
- Increasing the MRB home improvement loan limit to reflect the increased costs of construction since the limit was first established in 1980;
- Strengthening the MCC program.

FOR MORE INFORMATION

National Council of State Housing Agencies, 202-624-7710, www.ncsha.org

Housing Counseling Assistance

By Matthew Goodro, Policy & Program Manager, National Housing Resource Center

Administering agency: HUD's Office of Housing Counseling

Year program started: 1968

Number of persons/households served: More than 1.2 million households in FY16

Populations targeted: Low- and moderate-income households, people of color, people with limited English proficiency, and rural households

FY17 Funding: $55 million

The Housing Counseling Assistance (HCA) program provides grants to nonprofit, HUD-approved housing counseling agencies, which are distributed through a competitive grant process.

HISTORY

The HUD Housing Counseling program was first authorized by the Housing and Urban Development Act of 1968, "to provide counseling and advice to tenants and homeowners, both current and prospective, to assist them in improving their housing conditions, meeting their financial needs, and fulfilling the responsibilities of tenancy or homeownership."

The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act made important changes to the HUD Housing Counseling program by creating a new HUD Office of Housing Counseling (OHC) and by mandating that all counseling by HUD-approved counseling agencies be provided by certified counselors. OHC has since promulgated a rule around counselor certification that became effective in 2017 and all counseling provided by HUD-approved agencies will be required to be done by certified counselors by 2020.

PROGRAM SUMMARY

For nearly 50 years, the HUD-approved housing counseling agencies that receive grants through the HCA program have been on the frontlines of helping predominantly low and moderate-income households achieve their housing goals, whether by purchasing their first home, saving their home from foreclosure, or finding safe and affordable rental housing.[1] In addition to addressing housing-specific issues, counselors also work to improve their clients' general financial outlook by teaching skills such as household budgeting, paying down debt, and increasing savings. A general lack of public awareness about both the availability and value of HUD-approved housing counseling services, however, has led many in the housing counseling community to consider housing counseling the best-kept secret in housing, so effective education and advocacy are needed to expand awareness of and access to these valuable services.

HUD-approved counseling agencies provide both counseling services and educational programs. Housing counseling is conducted one-on-one with a household and delivers personalized information including a review of income, credit, household budget, and savings, Education programs deliver generalized information in a group workshop setting or online. In FY16, two-thirds of all clients of HUD-approved counseling agencies sought one-on-one counseling and one-third sought 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 need. Two-thirds of counseling clients are seeking to either purchase a home, often for the first time, or resolve or prevent a mortgage delinquency or default. The remaining one-third of counseling clients seek assistance with rental housing or homelessness, are seniors interested in a reverse mortgage (which requires counseling from a HUD-approved agency), or are homeowners seeking home maintenance and financial management assistance.

Most clients who seek group education services from HUD-approved counseling agencies attend a pre-purchase homebuyer education workshop (49 percent) or a financial literacy workshop (36 percent), which includes information on home

1 In FY 2016, 73.1 percent of counseled households had incomes below 80 percent of area median income.

affordability, budgeting, and understanding use of credit.

FUNDING

The HCA program was funded at $55 million in the FY17 budget, which was an $8 million increase over the $47 million from FY16. Unfortunately, the increase in funding for the HCA program was offset by the elimination of the National Foreclosure Mitigation Counseling (NFMC), which had been funded at $40 million in FY16.

As of the time of this writing, the federal government is being funded by a continuing resolution. The HUD budget that was passed by the House, however, cut funding for HCA to $50 million, while the bill passed by the Senate Appropriations Committee cut the program even further, back to the FY16 level of $47 million. Housing counseling advocates are hopeful that a budget deal will be reached that will allow funding to be restored to at least its current level of $55 million.

It is important to note when discussing federal funding for housing counseling that overall funding has declined significantly in recent years, from a peak of $87.5 million in FY10. Congress also appropriated $65 million for the NFMC program in FY10 for a total of $152.5 million in federal funding for housing counseling. Advocates will ask Congress to restore some of this lost funding by including $60 million for HCA in the FY19 appropriation.

2018 FORECAST

Federal funding for housing counseling has been the single biggest legislative fight for advocates in recent years. In 2018, advocates will be heavily focused on restoring some of the HCA funding that has been lost since FY10 by pushing Congress to fund HCA at $60 million in their FY19 appropriation.

Another focus for housing counseling advocates will be integrating counseling into FHA mortgages. FHA-insured mortgages are the most common mortgage for people of color and low- and moderate-income buyers. Although there have been proposals in the past to incentivize FHA borrowers to participate in housing counseling programs, by providing discounts on the required mortgage insurance, this is not currently FHA's practice. Any discussion on how to address FHA performance and solvency of the FHA Insurance Fund will be an opportunity to raise the issue of greater support for and integration of housing counseling in FHA lending and servicing.

Housing counseling advocates will remain involved in a wide range of housing policy advocacy, including expanding language capacity in the lending and servicing industries for people with limited English proficiency, expanding homeownership opportunities and bridging the wealth gap for people of color, and integrating housing counseling into the mortgage process. If Congress revisits the question of housing finance reform and what should be done with Fannie Mae and Freddie Mac, there will be opportunities to include housing counseling in the reform solutions.

TIPS FOR LOCAL SUCCESS

When talking to legislators, keep your advocacy as locally-focused as possible. Talk as specifically as possible about the local communities you serve, why people from those communities are seeking housing counseling services, and the outcomes you are helping them to achieve. Talk about local trends you 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?) and focus on the real-life impact that HUD-approved counseling agencies are having on people in the state/district. Include counseling clients in meetings. Meeting a family who was able to become a homeowner for the first time or one that was able to save their home and get back on their feet as a result of working with a counseling agency can have a lasting impact on a legislator or his or her staff. Offer to be help constituents who call the district office for help on housing issues.

Some offices will be very aware of the HUD-approved counseling agencies that serve their district/state, but some offices may not be, so it is useful to compile a list of HUD-approved counseling agencies that serve the relevant communities. You can find local agencies in your area by searching by state or ZIP code.[2] When

2 You can search for HUD-approved counseling agencies by state using the HUD search tool (https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm) or by zip code using the CFPB search tool (https://www.consumerfinance.gov/find-a-housing-counselor/).

providing a list of local agencies to staff, make sure they understand that it should be seen as a resource for constituents who contact the office with housing issues that a counseling agency would be able to help with.

Providing data on the impact counseling is having in the local community is very valuable, and the HUD 9902 data that each HUD-approved counseling agency provides is an excellent source of local data (e.g., client income level, race and ethnicity data, and type of counseling sought). In addition to HUD 9902 data, you can ask local counseling agencies for data that you can present at your meetings.

WHAT TO SAY TO LEGISLATORS

The profile and perception of housing counseling has improved in recent years, particularly among legislators and their staffs on the Republican side of the aisle. 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.

General Tips for Talking with Legislators

- Have a concrete ask. If you are talking with a member of the Appropriations Committee, "Please support $60 million for HUD Housing Counseling in the FY19 budget." If you are talking with a legislator, "Please tell you Appropriations Committee leadership that you support $60 million for HUD Housing Counseling in the FY19 Budget."
- Focus on the local impact counseling has in the legislator's state or district, including using localized data if possible (please see "Tips for Local Success," above).
- Use the significant body of research demonstrating 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.[3]
- Highlight the overall decline in federal funding for housing counseling (please see "Funding," above) and the need for additional support.
- Make the connections about how your work helps solve problems in their district. For example, helping a family in subsidized housing to purchase a home helps ease the burden on strained housing subsidies and helping a family avoid foreclosure and stay in their home eases the burden on strained shelter systems.
- Make sure the person with whom you are speaking sees you and your agency as a resource to whom they can refer their constituents who come to them with issues you may be able to help resolve.
- 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 your meetings with legislators as an opportunity to give that legislator a reason to want to be a champion for housing counseling.

Lawmakers Who Are Unfamiliar with Housing Counseling

- Some legislators and their staffs will come to a meeting with little knowledge of counseling, in which case you will have to start at the beginning and give them a clear understanding of what housing counseling is.
- Things that may be helpful to focus on include, the different types of counseling (pre-purchase, default/delinquency, Home Equity Conversion Mortgage, etc.), the distinction between counseling and education, and what a typical counseling session looks like.
- Focus on the holistic approach counseling takes to improve the clients' overall financial well-being, not just on meeting their housing goals.

Talking to Republican Legislators

- Keep in mind that some Republican legislators believe that the primary cause of the foreclosure crisis was people who were not qualified being given mortgages and buying homes. Convey to

3 https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Counseling-Works.pdf

legislators the role housing counseling plays to help homebuyers understand mortgage terms and products and avoid unaffordable mortgages.

- Stress that HUD-approved counseling prepares people for responsible, sustainable homeownership and that counselors often play a "gate-keeping" function of guiding people who are not yet ready for homeownership away from it until they are.
- Focus on housing counseling giving people the tools they need to be more self-sufficient, by working with people to develop a household budget, pay down debt, and maintain good credit.

Talking to Appropriators

- When talking to appropriators or their staffs, you are likely to hear either that they are unable to fully fund all of the programs because spending levels are too low (from Republican offices) or that they would love to fully fund HCA but do not have much say because they are in the minority (from Democratic offices).
- There are several responses to this, including:
  - It is critical that Congress lift spending caps in order to ensure that critical programs such as housing counseling are able to meet the existing demand that exists in their district.
  - Federal funding for HCA is down significantly since 2010 (please see "Funding," above) and funding for foreclosure mitigation counseling was eliminated in the FY17 spending bill.
  - 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).
  - As the housing market has recovered, demand for pre-purchase counseling is picking up. It is critical to the continued recovery that potential homebuyers are given the tools they need to become successful homeowners.

FOR MORE INFORMATION

- 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 your 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
- National Housing Resource Center is an advocacy organization for the nonprofit housing counseling community and has resources for counselors and advocates: mgoodro@hsgcenter.org, www.hsgcenter.org

The Low Income Home Energy Assistance Program (LIHEAP)

By Olivia Wein, Staff Attorney, National Consumer Law Center

Administering agency: U.S. Department of Health and Human Service (HHS), Office of Community Services within the Administration for Children and Families

Year program started: 1981

Number of persons/households served: An estimated 6.2 million families receive Low Income Home Energy Assistance Program (LIHEAP) assistance, which includes heating grants, cooling grants and crisis assistance.

Population targeted: Low income households (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

FY18 funding: So far 90% of F18 LIHEAP funding allocation ($3.03 billion) has been released under the Continuing Appropriations Resolution 2018, P.L. 115-56, signed into law on September 8, 2017.

LIHEAP is a targeted block grant program to help 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 main challenge for LIHEAP is securing adequate annual appropriations and to be prepared to fight assertions in the upcoming president's proposed budget for FY19 that LIHEAP does not demonstrate strong performance and that other state and utility measure can achieve the same level of energy assistance, as was stated in the president's proposed budget for FY18.

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 to help 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 the 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 also 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 in 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.
- **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 FY14, LIHEAP provided essential energy assistance to 6.2 million households, including heating and cooling bill payment assistance and crisis assistance.

FUNDING

H.R.601, the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56) includes stop-gap funding for HHS along with other government agencies. LIHEAP received $3.03 billion for the regular block grant program. This is approximately 90% of the FY17 LIHEAP allocation amount (there was a .6791% rescission in the short-term spending bill) and allowed states to begin their winter heating programs on time. No emergency contingency funding was provided. These FY18 LIHEAP funds were released to the states on October 20, 2017.

The high water mark for LIHEAP funding was in FY09 and FY10 when LIHEAP was funded at a total of $5.1 billion: $4.509 billion through the regular formula and $590 million through the LIHEAP emergency contingency fund. The authorized funding level for LIHEAP is $5.1 billion for the regular block grant program and $600 million in LIHEAP emergency contingency funds.

FORECAST FOR 2018

The immediate concern for LIHEAP advocates is to secure the release of the remaining $300 million in LIHEAP funding to achieve a level FY17 funding amount for the program. Even at level funding, LIHEAP only serves about 20% of the eligible households. The main threat to this effort is the perilous FY18 appropriations negotiations that could result in cuts to many essential human needs programs. We also expect the administration to propose discontinuing LIHEAP in FY19 as it did in its FY18 budget proposal. In the administration's FY18 budget proposal it said LIHEAP is unable to demonstrate strong performance outcomes and pointed to state and utility assistance programs and disconnection rules. This is a difficult political climate and LIHEAP will need strong advocacy to preserve the program and secure level funding.

TIPS FOR LOCAL SUCCESS

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 their LIHEAP grant directly through the federal agency (as opposed to the state). Each state's LIHEAP office is listed at http://www.acf.hhs.gov/programs/ocs/liheap-state-and-territory-contact-listing

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 a list of some of the additional assistance programs, see https://liheapch.acf.hhs.gov/dereg.htm or contact 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 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 you find the relevant rules. For municipal utilities or cooperatives, the rules will reside with the municipality or the co-op. For links to the state utility commissions, visit: https://www.naruc.org/about-naruc/regulatory-commissions/

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 to help vulnerable households afford residential energy.
- There is significant need in your 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) 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.

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. View at: https://liheapch.acf.hhs.gov/

The LIHEAP Clearinghouse also tracks states' supplemental energy assistance activities (listed as "State Leveraging under State Programs in the menu on the homepage). View at: https://liheapch.acf.hhs.gov/state-leveraging

For those seeking 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
- 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/
- The Campaign for Home Energy Assistance has helpful fact sheets for advocates that describe the need for increased LIHEAP funding as well as local assistance programs. View at: www.liheap.org

Low Income Housing Tax Credits

By Ed Gramlich, Senior Advisor, National Low Income Housing Coalition

Administering Agency: Internal Revenue Service (IRS) of the Department of the Treasury

Year program started: 1986

Number of households served: 37,118 lower income households in 2015, the latest data available

Population targeted: Households with income either less than 60% of area median income (AMI) or 50% AMI

FY18 funding: Joint Committee on Taxation estimates $10.1 billion for 2018

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 housing tax credits are federal, each state 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 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 revenue rulings, technical advice memorandums, notices, 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 housing tax credits are federal, each state has an independent HFA that decides how to allocate the state's share of federal housing tax credits. Tax credits are allocated to states based on population.

The 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 area median income (AMI) or 50% AMI. The LIHTC program provides this encouragement by providing a tax credit to the investor over the course of a 10-year 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 HOME Investment Partnerships or the national Housing Trust Fund to build new affordable housing or to make substantial repairs to existing affordable housing. The housing credit is not meant to provide 100% financing. The infusion of equity reduces the amount of money a developer has to borrow and pay interest on, thereby reducing the rent level that needs to be charged.

The Furman Center for Real Estate and Urban Policy at New York University released a report in October 2012 using tenant-level data from 15 states representing 30% 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 43% of the households had income below 30% AMI, were "extremely low income" (ELI), approximately 70% of those ELI households also had other forms of rental assistance, such as 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. Only 8% of ELI households in LIHTC homes were neither cost-burdened, nor in receipt of additional housing assistance.

PROGRAM BENEFICIARIES

Housing Tax Credit Units

When applying to an HFA for tax credits, a developer has two lower income unit set-aside options, and must stick with the chosen option during a required lower income occupancy period. The two lower income unit set-aside choices are:

- Ensuring that at least 20% of the units are rent-restricted and occupied by households with income below 50% of AMI.
- Ensuring that at least 40% of the units are rent-restricted and occupied by households with income below 60% of AMI.

Tax credits are available only for rental units that meet one of the above rent-restricted minimums (20/50 or 40/60). 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 concerns about undue concentrations of poverty in certain neighborhoods.

Tax Credit 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 either 50% of AMI or 60% of AMI, whichever option the 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 (50% or 60%).

Consequently, lower income residents of tax credit projects might be rent-burdened, meaning they pay more than 30% of their income for rent and utilities. Or, tax credit projects might simply not be financially available to very low and ELI people 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 are 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 greater than 30 years or provide incentives for projects that voluntarily agree to longer commitments. Where states do not mandate longer restricted-use periods, an owner may submit a request to the 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 enabling them to remain in their units for three years. Issues and concerns about this Year 15 option are discussed toward the end 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.

Program Structure

Although housing tax credits are federal, each state has an HFA that decides how to allocate the state's share of federal housing tax credits. Tax credits are allocated to states based on population. In 2017, each state received $2.35 per capita, with small states receiving a minimum of $2.71 million. Each year the IRS adjusts the amount per state based on inflation and the latest population estimate. The 2018 allocations were not available by the time *Advocates' Guide* went to press.

Each HFA must have a qualified allocation plan (QAP), which sets out the state's priorities and eligibility criteria for awarding federal tax credits, as well as tax-exempt bonds and any state-level tax credits. More about QAPs is presented later in this article. Developers apply to an HFA and compete for tax credit allocations. The law requires that a minimum of 10% of an HFA's total tax credits be set aside for nonprofits.

Limited Partnerships

Once awarded tax credits, a developer then sells them to investors, usually to a group of investors 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 rehab 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 Percent and 4 Percent Credits

There are two levels of tax credit, 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% credit, the stream of tax credits over the 10-year credit period has a value today equal to 70% of the eligible development costs.

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 the greater of an average of $3,000 is spent on each rent-restricted lower income unit or 10% is spent on the "eligible basis" (described below) during a 24-month period.

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. (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 recent years, the figures 9% and 4% were only approximate rates. IRS computed actual rates monthly based on Treasury Department interest rates, or "appropriate percentage." For any given project, the real tax credit rate was set the month a binding commitment was made between an HFA and developer, or the month a finished project was first occupied, or "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").

For 9% projects, the Housing and Economic Recovery Act of 2008 (HERA) established a fixed 9% value for projects placed in service between July 30, 2008, and January 1, 2014. The American Taxpayer Relief Act of 2012 allowed any project receiving a LIHTC allocation before January 1, 2014, to qualify for the fixed 9% credit. There was no Congressional action in FY13 and FY14 renewing a fixed the 9% value. Although the FY15 Appropriations Act provided a fixed 9% minimum, it only extended the rate through December 31, 2014, providing virtually no benefit because most HFAs had already made their 2014 allocations and the vast majority of projects had closed using the floating rate. Therefore, the applicable percentage continued to float. For example, the 9% applicable percentage was 7.55% for December 2017.

Finally, on December 18, 2015, the president signed into law a broad tax extenders bill, the "Protecting Americans from Tax Hikes Act of 2015," which, among many other tax provisions, made the fixed 9% applicable percentage permanent for new buildings placed in service after July 30, 2008. However, the statute did not establish a fixed 4% applicable percentage rate. The Joint Committee on Taxation estimates that permanently setting the 9% rate will cost $19 million over the course of a 10-year period. The 4% credit continues to float, with an applicable percentage rate of 3.23% for December 2017.

Determining the Amount of Tax Credits

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.

The eligible basis of a project can get a 30% increase, or "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 the AMI. LIHTC projects in QCTs must contribute to a concerted community revitalization plan. The aggregate population in census tracts designated as QCTs cannot exceed 20% of the metropolitan area's population. DDAs are areas in which construction, land, and utility costs are high relative to incomes. 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 the project to be financially feasible.

Next, the "applicable fraction" must be determined. This is a measure of rent-restricted lower income units in a project. There are two possible percentages: the ratio of lower income units to all units (the 'unit fraction'), or the ratio of square feet in the 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 for 10 years (the "credit period").

A Simple Example

HUD's HOME Program website has a simple example that brings it all together:

- 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, (or HFAs), to have a QAP. Each state has an HFA and there are also a few local HFAs. The QAP sets out the 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 and any state LIHTC.

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 ELI 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 QAP must also give preference to projects:

- Serving residents with the lowest income.
- Serving income-eligible residents for the longest period of time.
- Located in HUD-designated QCTs or DDAs, 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. DDAs are areas in which construction, land, and utility costs are high relative to incomes.

In December 2016, the 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. The IRS declared that simply placing a LIHTC project in a QCT risks exacerbating 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 states' 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 particular populations or locations; for example, a $20 million set-aside for rural projects.
- The QAP may establish thresholds, minimum requirements that projects must meet simply to get in the game, thus improving targeting to particular populations or locations; for example, requiring a 50-year income-eligible compliance 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 people with lower incomes. 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 hearing. 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 that require 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 disinterested third party approved by the HFA to conduct the market study.

If a building that does not fit the QAP's priorities is to get 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.

POTENTIAL PROBLEMS TO MONITOR

Advocates have growing concerns about two practices that can affect LIHTC properties keeping income and rent restrictions – Qualified Contracts (QCs) and "planned foreclosures." The Internal Revenue Code permits early release from the LIHTC affordability requirements through the QC process or if there is a foreclosure. Advocates are also concerned about HFA monitoring projects for complying with income and rent restrictions for the full 30-year (or longer) extended use period.

Qualified Contracts

As explained earlier in this article, an owner may submit a request to the 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 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. The IRS code specifies the price that a preservation purchaser must pay in a QC situation, and in most cases the price if far greater than market price. Consequently, preservation purchasers are unable to acquire a LIHTC property at year 15 and the property converts to market-rate and income and rent restrictions are removed.

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.

Planned Foreclosures

Another concern is with entities that appear to engage in strategic acquisition of LIHTC-funded properties after the credits are already 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 foreclose on itself after claiming that properties are 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 30 years, the IRS has provided no guidance to HFAs regarding how to deal with these situations.

Complying with Use Restrictions After Year 15

Although HFAs are tasked with monitoring compliance, additional guidance is needed to ensure that properties are complying 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 restrictive use period and the 5-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 the longer it ages. IRS needs to develop guidance or new regulations to require HFAs plan for how they will ensure compliance throughout the entire restrictive use period.

FUNDING

The LIHTC is a tax expenditure, which does not require an appropriation. The Joint Committee on Taxation estimated that the program would cost $9.2 billion in tax expenditures in 2016, rising to $9.6 billion in FY17, $10.1 billion in FY18, $10.6 billion in FY19, and $11.2 billion in FY20, with a total of $50.6 billion between FY16 and FY20.

FORECAST FOR 2018

Although the LIHTC was preserved in the Tax Cuts and Jobs Act of 2017, its ability to generate equity may be reduced because the bill significantly lowered the corporate tax rate from 35% to 21%. Given the need for affordable rental homes for people with the lowest incomes, Congress should pursue opportunities to expand and reform LIHTC to ensure that this resource can better serve the most vulnerable families. For that reason, NLIHC urges Congress to enact the Affordable Housing Credit Improvement Act introduced by Senators Maria Cantwell (D-WA) and Orrin Hatch (R-UT).

Senators Maria Cantwell (D-WA) and Senator Orin Hatch (R-UT) introduced a bill in 2017, "The Affordable Housing Credit Improvement Act" to both expand LIHTC by 50% over 5 years, as well as improve the program by making reforms such as:

- Providing a 50% basis boost for developments that set aside at least 20% of units for ELI households or incomes less than the federal poverty level, thereby increasing investment in a project. With this much-needed financial incentive, the bill would help housing developments remain financially sustainable while serving families with limited means.
- Encouraging development in Native American communities by designating Native American communities as Difficult To Develop Areas, thus making developments automatically eligible for a 30% basis boost. The bill also requires states to consider the needs of Native Americans when allocating housing tax credits.
- Making changes to the program's income limitation formula in order to promote greater income mixing while achieving slightly deeper income targeting. The bill proposes "income averaging," requiring that at least 40% of the units in a project be occupied by residents whose incomes averaged no more than 60% of AMI, with no rent-restricted units occupied by households with income greater than 80% of AMI.

FOR MORE INFORMATION

NLIHC, 202-662-1530, www.nlihc.org

Affordable Rental Housing A.C.T.I.O.N. Campaign, http://rentalhousingaction.org

HUD's database of LIHTC projects, updated through 2015, www.huduser.org/datasets/lihtc.html

List of QCTs and DDAs, www.huduser.org/datasets/qct.html

Lists of HFAs, https://lihtc.huduser.gov/agency_list.htm

Novogradac, a consulting firm, also lists the HFAs in all states and provides links to their QAPs, http://bit.ly/XoOL2b

Native American, Alaska Native, and Native Hawaiian Housing Programs

By Anthony Walters, Executive Director, National American Indian Housing Council

The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) is the main piece of federal legislation designed to address Native American housing issues. NAHASDA has three major components: (1) the Indian Housing Block Grant (IHBG) program (which is not the same as the Indian Community Development Block Grant, or ICDBG); (2) 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; and (3) Title VI Tribal Housing Activities Loan Guarantee program.

Enacted in 1996, NAHASDA provides assistance to Indian tribes to allow affordable housing-related activities for low income families residing on reservations and 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 general housing programs administered by HUD. The Act recognizes tribal sovereignty and self-determination by providing block grants funds directly to tribes, which would be 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.

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 with tribes 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, Indian tribes became eligible for assistance under programs operated by HUD. HUD regional 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, the Office of Native American Programs.

NAHASDA was enacted in 1996 and consolidated multiple federal housing assistance programs into a single block grant for Indian tribes or tribally designated housing entities to provide affordable housing for low income families residing on reservations and tribal areas. Although the enactment of NAHASDA provided permanent dedicated funding to tribal housing programs, it also restricted tribes from accessing many other HUD programs. However, one program that has remained separate and accessible to tribes is the Native American Housing Loan Guarantee Program, better known as the Section 184 program. A relatively new non-NAHASDA resource, launched in October 2015, is the demonstration Tribal HUD-VA Supportive Housing Program (HUD-VASH), which provides rental vouchers and supportive services to Native American veterans in a limited number of tribes.

The face of housing in Native American communities is as diverse as the communities served, and located in more than 30 states. Overcrowding, poverty, unemployment, low household incomes, a rapidly increasing population, and lack of infrastructure are just some of the challenges that vex American Indians, Alaska Natives, and native Hawaiian communities. According to an extensive study of American Indian and Alaska Native (AIAN) housing conditions released by HUD in early 2017, some 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 Indian Country generally manifests as overcrowding: researchers estimated that 42,000–85,000 people in tribal areas 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 across Indian Country.

HUD's study found that NAHASDA's block grant program works well, with tribes 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, the purchasing power of the IHBG has been reduced by about a 1/3 since the enactment of NAHASDA.

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 Indian tribes or their Tribally Designated Housing Entities for a range of affordable housing activities on Indian reservations or in other Indian 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 Indian 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 guarantees can provide tribes and Tribally Designated Housing Entities (TDHEs) better access to capital to develop larger housing projects. For individual home construction, Section 184 loan guarantees can help secure mortgages for individual Indian 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 home lands. Since 2005, Title VIII has not been reauthorized, but the NHHBG has nevertheless been funded each year.

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 FY17. The Trump Administration proposed only $600 million for FY18. However, Congress has largely maintained IHBG funding with the House providing $654 million and the Senate bill setting the level at $655 million for FY18.

The tribal HUD-VASH demonstration program for Native American veterans received 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. The House's FY18 bill would provide $7 million to continue implementing tribal HUD-VASH with the Senate's bill funding the program at only $5 million.

FORECAST FOR 2018 & WHAT TO SAY TO LEGISLATORS

NAHASDA Reauthorization. NAHASDA programs are currently being administered without reauthorization. Although past reauthorizations struggled to move in the Senate, a significantly pared down bill was introduced that included only IHBG and Section 184 Loan Guarantee reauthorizations and a small number of other changes. More comprehensive reauthorizations were also re-introduced in both the House and Senate in 2017 that would authorize the IHBG, the NHHBG, and related loan guarantee programs for several years and make several other substantial changes. These include establishing timelines for departmental decisions and approvals, use of NAHASDA funds to leverage other funds or to fulfill matching requirements, new authority to use Indian Health Service sanitation facilities funding when building HUD-assisted homes, a demonstration project to encourage private investment in tribal communities, permanent authorization for the tribal HUD-VASH program, and favorable alterations to the Brooke Amendment. The Senate bills have not yet been reported out of Committee, although the House bill was reported out by the Financial Services Committee in mid-December. Advocates should strongly urge Congress to consider passing some version of the introduced bills to reauthorize these vital housing program dollars.

Resources for Tribal Housing Programs. Funding for tribal housing is the lifeblood of community development in Indian Country. For many years, funding has leveled off, failing even 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 growth with inflation since NAHASDA's enactment, the IHBG would be funded at nearly $1 billion. Mindful that such an increase is not likely, tribes have largely advocated for an increase in funding to at least $700 million, which would match the program's highest level of funding seen in 2010.

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 other Indian areas. In late 2015 and 2016, the pilot program provided $5.9 million to 26 tribes. Advocates should tell Congress to fund it for FY18 at the $7 million level set in the House's bill. Additionally, advocates should encourage Congress to pass the Tribal HUD-VASH bill that was introduced with bipartisan support in the Senate.

FOR MORE INFORMATION

Housing Assistance Council, www.ruralhome.org

National American Indian Housing Council, www.naihc.net

HUD Office of Native American Programs, www.hud.gov/offices/pih/ih

DHHL, http://hawaii.gov/dhhl

The Affordable Housing Program and Community Investment Program of the Federal Home Loan Banks

By David Jeffers, Executive Vice President of Policy and Public Affairs, Council of FHLBanks

The Federal Home Loan Banks (FHLBanks) are behind-the-scenes players that perform a vital role in the nation's financial system. These 11 regional cooperative banks provide reliable liquidity—lendable funds—to member institutions to support housing and community investment. 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; they are regulated by the Federal Housing Finance Agency (FHFA), the successor to the Federal Housing Finance Board. FHFA was created by the Housing and Economic Recovery Act of 2008, and also regulates Fannie Mae and Freddie Mac. FHLBanks are the largest single source of funds for community lending.

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 a 15-member Affordable Housing Advisory Council for guidance on regional housing and community development issues.

AHP consists of two programs: a competitive application program and a homeowner set-aside program. Under the competitive application program, an FHLBank member submits an application on behalf of a project sponsor. Each FHLBank establishes a point system to score applications based on nine criteria required by regulation. AHP competitive 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, Community Development Block Grants, and foundation grants. Each FHLBank provides training and application assistance. See 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 2016 was $10,469 per unit, while the average rural subsidy per unit was $17,283.

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 $15,000.

In 2016, the FHLBanks awarded $283 million under the competitive program to assist 25,530 households. In 2016, 94% of the competitive program units were rental units, the highest percentage over the last 10 years. Fifty-four percent of the rental units helped very low income households (with income between 31% and 50% AMI) and 21% served extremely low income households, those with income less than 30% of AMI. Forty-four percent of owner-occupied units served very low income households.

Between 1990 and 2016, the FHLBanks distributed approximately $4.4 billion in competitive AHP funds. This supported more than 660,000 units, 77% of which were rental units, 81% of which helped very low income households.

The homeowner set-aside program was authorized in 1995. Between 1995 and 2016, the homeowner set-aside program provided approximately $953 million, supporting more than 167,000 households. In 2016, the set-aside program distributed $85.5 million to assist 13,555 owner-occupied households. The average set-aside subsidy per household was $5,710.

Community Investment Program (CIP). Each FHLBank also 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 income 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 2016, total CIP advances amounted to $3.2 billion; $3.1 billion for housing projects resulting in 37,306 housing units, 58% of which were rental units (down from 72% in 2015). Economic development projects were awarded $115 million, up from $61 million in 2015.

How the FHLBanks Work. The FHLBanks are member-owned cooperatives that provide funding for housing through all market cycles. Approximately 7,000 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.

FORECAST FOR 2018

Since the inception of the AHP a quarter of a century ago, affordable housing markets and community development environments continue to evolve, making it necessary to update the AHP regulation and the related compliance expectations. Advisory councils for each FHLBank have called upon the FHLBanks and the FHFA to work together to modernize the regulatory requirements for AHP.

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

Federal Housing Finance Agency, https://www.fhfa.gov/SupervisionRegulation/FederalHomeLoanBanks

Self-Help Homeownership Opportunity Program

By Leslie R. Strauss, Senior Housing Analyst, Housing Assistance Council

Administering agency: HUD's Office of Rural Housing and Economic Development

Year program started: 1996

Number of persons/households served: More than 29,000

Population targeted: Households with incomes below 80% of the area median income

FY17 funding: $10 million.

FY18 funding: The House and Senate appropriations bills each include $10 million for SHOP.

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 the SHOP program 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–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 such items as 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 its home and the homes of others, although many families work far more than the required hours; in FY15, the requirement for each one-person household was reduced to 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 $27 million in FY11, $13.5 million in FY12, $13.5 million in FY13 (before sequestration was applied), and $10 million in FY14, FY15, FY16, and FY17.

FORECAST FOR 2018

SHOP, created in 1996, received steady support from Congress and the Clinton and George W. Bush Administrations. The Obama Administration's budget proposed no funding for the program in FY12 and FY13, and then proposed $10 million for FY14 and the same for FY15. The FY16 and FY17 budgets proposed to make SHOP a set-aside in the HOME program, but Congress chose to keep the programs separate. The Trump Administration's

FY18 budget proposed defunding SHOP, but both houses of Congress included it in their appropriations bills. 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 $10 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

Housing Assistance Council, 202-842-8600, www.ruralhome.org

HUD, 877-787-2526 or 202-708-2290, https://www.hudexchange.info/programs/shop/

State and Local Housing Trust Funds

By Michael Anderson, Housing Trust Fund Project, Center for Community Change

State and local housing trust funds are created when ongoing, dedicated sources of public funds are committed by ordinance or legislation to support the production and preservation of homes for lower income households. Dedicated sources of funds, the key characteristic of housing trust funds, advance the way this country supports affordable housing by guaranteeing that revenues are available each year to support critical affordable housing needs.

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 770 housing trust funds in cities, counties, and states, those funds have become important elements in an overall housing policy, and are well known for their flexibility, sustainability, and success in addressing critical housing needs. Forty-seven states have created state housing trust funds—some more than one.

ISSUE SUMMARY

Because state and local housing trust funds are distinct funds created through the dedication of public revenues, they are essentially public funds, and this shapes how they operate. There are three key elements to any state or local housing trust fund:

1. **Administration.** 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.
2. **Board.** One administrative characteristic of housing trust funds that can bring considerable expertise to the operation of the trust fund, along with keeping a connection to the community, 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.
3. **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.

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. 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. 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. Rental assistance is provided by some housing trust funds. There are a few state and local housing trust funds that specifically serve the needs of the homeless population and define their activities accordingly.

Key Decisions to Make. 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 (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 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 concern is the long-term affordability requirements that must be met. Many state and local housing trust funds require that the units 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 that can be committed to a housing trust fund is what makes creating these trust funds challenging. Different revenue sources are available to different types of jurisdictions, because each 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 the inclusion of a linkage fee program as part of the zoning ordinance. These are impact fees placed on non-residential developers to offset the impact the development's employees may have on the housing supply. Along with linkage fees, many jurisdictions also use inclusionary zoning in-lieu fees. 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. However, states have committed nearly two dozen different revenue sources to housing trust funds. Other options include interest from state-held funds (such as unclaimed property funds and budget stabilization funds), interest from real estate escrow or mortgage escrow accounts, and document recording fees.

Often, housing advocates study alternative revenue sources themselves and propose the best options. These are not difficult studies, but it takes time and some diligence to obtain the necessary information. Relying on elected officials to identify a potential revenue source to be dedicated is not typically a productive strategy, but suggesting alternatives for their consideration seems more acceptable. 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.

Necessary Research. Each state is unique in its treatment of taxes and fees. Research into what the state constitution and statutes permit with regard to 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, any commitments already imposed on the revenues collected, among other questions. New ideas are constantly being explored, so 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.

As the search for revenue sources is undertaken, it is extremely important to identify a dollar goal for the amount of 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 actually 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 as ongoing dedicated public revenues are secured.

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 extended economic benefits. Many such reports have included stories sharing the impact that having a safe affordable home has on individual families.

Relationship Between State and Local housing Trust Funds. One of the most innovative recent advances in the housing trust fund field is state legislation that enables local jurisdictions to create housing trust funds. There are several models 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 75% 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. Twelve states have passed some kind of legislation to encourage local housing trust funds.

FORECAST FOR 2018

Today, there are easily 30 housing trust fund campaigns underway in cities, counties, and states across the country. Some are focused on creating new housing trust funds; many are working to increase resources for existing housing trust funds. The housing trust fund model can be adapted in many ways to make it possible to dedicate public funding toward addressing critical housing needs. Trust funds have been created in most states and many small cities, rural counties, and large metropolitan areas. What it takes is commitment on the part of advocates.

During 2017, housing and homeless advocates celebrated the following victories:

- California Governor Jerry Brown signed a series of landmark affordable housing bills that include a document filing fee on real estate transactions which will raise $250 million a year for affordable housing for state housing trust funds, and a $4 billion bond that will be referred to voters in November 2018 that includes a $300 million matching fund for local housing trust funds.
- The South Dakota legislature increased the percentage of the disbursement from the Building South Dakota fund directed to the South Dakota Housing Opportunity Fund from 25% to 35%. Including the increase, the

Housing Opportunity Fund will receive an estimated $3 million over the course of the next several years.

- Nashville, Tennessee, Mayor Barry added an additional $5M to fund a one-time Spring Innovation Round. The Barnes Housing Trust Fund is fully operational, having invested more than $14 million in affordable homes, which in turn leveraged more than $50 million additional federal and private funding sources and financed the development of more than 500 homes and apartments.
- Louisville Metro Council passed a budget for FY17–18 that includes $14.5 million for affordable housing, of which $9.57 million will be allocated to the Louisville Affordable Housing Trust Fund (LAHTF) for unit development and administration. The budget allocation represents a significant win for Louisville housing advocates, who have been pushing Metro Council for nearly a decade to fulfill the $10 million annual commitment it made in the ordinance establishing the LAHTF in 2009.
- The City Council in Detroit, Michigan, established the Detroit Affordable Housing Development and Preservation Fund as part of a new inclusionary zoning policy. The AHDPF directs 75% of funds to serve households at or below 30% AMI. The City Council capitalized the fund with $2 million and will receive 20 percent of revenue derived from sales of city-owned commercial property, estimated at roughly $500,000 annually.
- Voters in Ellensburg, Washington, approved a special 0.1 percent sales tax to fund affordable housing and mental health services, which will generate an estimated $450,000 annually, with 75 %of funds committed to a new city housing trust fund.
- Voters in Lawrence, Kansas, approved a ballot initiative in November passed with 62 percent of the vote, extending a sun-setting sales tax and dedicating an estimated $1.1 million in revenue annually to the Lawrence Housing Trust Fund for the next decade.

With more than 770 such funds created and implemented throughout the past 30 years, housing trust funds are well established as a vital part of the affordable housing field. Cities, counties, and states have developed models that work, supported innovative approaches to all aspects of addressing affordable housing and homelessness, and demonstrated that decent affordable homes can be provided for everyone if communities commit the resources to do so. Creating a state or local housing trust fund is a proactive step that housing advocates can take to make systemic change in the housing world.

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 a number of 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—no less important than streets, sewers, health centers, police or fire protection, schools, and other basic components of a viable community.

Housing trust funds don't just happen, and their abundance is a reflection of how strong affordable housing/homeless advocacy has become. Campaigns have been waged by faith-based organizations, coalitions of nonprofit developers, statewide housing advocacy groups, or a combination of these and many others. The experiences of those campaigns are as unique as they are uplifting and full of promise.

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. Of particular note, in California and Washington, the state housing coalition are building statewide networks of organized residents and staff of affordable housing to create a powerful new force to advance housing justice.

To learn about California's Resident United Network, go to: http://www.housingca.org/residents-united-network-run

To learn more about Washington's Resident Action Project, go to: http://housingactionfund.org/resident-action-project

The power these strategies provide to advocating for the dedication of public funds to address critical housing needs is evident and speaks volumes about the potential for elevating the issue of funding affordable homes to the stature it deserves.

FOR MORE INFORMATION

Housing Trust Fund Project of the Center for Community Change, www.housingtrustfundproject.org

Veterans Affairs Supportive Housing Vouchers

By Kathryn Monet, Chief Executive Officer, National Coalition for Homeless Veterans

Administering agency: HUD's Office of Public and Indian Housing (PIH), and the Department of Veterans Affairs (VA)

Year program started: Formally in 1992; most active since 2008

Number of persons/households served: More than137,000 veterans since 2008

Population targeted: Homeless veterans meeting VA health care eligibility, with a focus on chronic homelessness

FY17 funding: $60 million in HUD-VASH vouchers with case management through the VA.

See also: *Housing Choice Voucher Program, Veterans Housing, Homeless Assistance Programs, Interagency Council on Homelessness*

BRIEF 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 the VA. It is a key program in the effort to end veteran homelessness. To date, this program has helped more than 137,000 homeless veterans—many of whom were chronically homeless—achieve housing stability.

HUD has awarded more than 86,000 HUD-VASH vouchers through FY17. Nationwide, more than 300 Public Housing Authorities (PHAs) participate in the program. In recent years, 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. 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.

The HUD-VASH program is jointly administered by the VA and HUD's Office of Public and Indian Housing (PIH). 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; clinical services are provided by the VAMC, or the contracted VAMC case management provider.

HISTORY

As of January 2017, HUD estimates that 40,056 veterans were homeless. This number represents a 45%decline in veteran homelessness since 2009. Major declines in veteran homelessness have occurred among the unsheltered population (a 49%drop), thanks in large part to the HUD-VASH program and national efforts to end chronic homelessness for all people, including veterans.

Congress began funding these special purpose vouchers in earnest in the 2008 Consolidated Appropriations Act (Public Law 110-161) with an allocation of $75 million for approximately 10,000 vouchers. Since FY08, Congress has allocated $75 million to HUD for approximately 10,000 new vouchers each year, with the exception of a $50 million award in FY11, a $60 million award in FY16, and a $40 million award in FY17. As of the end of FY16, some 88,348 vouchers had been distributed to local communities with 85,085 HUD-VASH vouchers in use.

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 those veterans experiencing chronic homelessness have received assistance through HUD-VASH due to high need and limited alternative options. Of the remaining 15,366 unsheltered homeless veterans, many chronically homelessness veterans still need this vital resource.

PROGRAM SUMMARY

HUD-VASH is a cornerstone in efforts to end veteran homelessness, providing a particularly effective resource because it combines both housing and services into one housing-first oriented resource. Historically, when Congress funded new HUD-VASH vouchers, HUD—in consultation with VA—awarded blocks of vouchers to PHAs across the country, based on geographic need. This year is the first year that PHAs were 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 their 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 are able to regain control of their lives, and ultimately reintegrate into society.

As additional target populations were 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 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 has also contributed to better voucher execution on the local level.

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;
- Meet the definition of homelessness defined in The McKinney Homeless Assistance Act as amended by S. 896 The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009; 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.

After determining which areas of the country have the highest number of homeless veterans, the VA Central Office identifies VA facilities in the corresponding communities. HUD then selects PHAs near to the identified VA facilities by considering the PHAs' administrative performance, and sends the PHAs invitations to apply for the vouchers. There is at least one site in each of the 50 states, the District of Columbia, Puerto Rico, and Guam.

The allocation for HUD–VASH vouchers has been a collaborative, data-driven effort conducted by HUD and the VA. Three major data sources help drive local allocations, 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 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 the 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, HUD was awarded $40 million for 5,500 new vouchers, with case management funding for VA coming in FY18 through the MILCON appropriation (the VA received no additional funding for HUD-VASH case management services to match the HUD-VASH vouchers allocated to HUD in FY17, so the next appropriations bill will back-fill this need.) 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 HUD-VASH vouchers.

VA has distributed its funding to its Medical Centers as special purpose funds, to ensure that each area has sufficient staffing to support the vouchers allocated to it. In 2017, the VA proposed to change the way funding was allocated such that it would be distributed through the Veterans Equitable Resource Allocation Model it uses for general health care funding. This could impact the amount of funding available at each VAMC to case manage veterans in HUD-VASH. The VA backed off of the idea for a year but intends to revisit funding for homeless programs in the next budget cycle.

FORECAST FOR 2018-2019

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.

The VA must ensure that case management funding follows the vouchers by maintaining the special purpose designation as it distributes funds to Medical Centers.

Additionally, HUD should request special purpose vouchers to allow for permanent housing for veterans who do not qualify for HUD-VASH due to their lack of healthcare eligibility.

VA and local service providers have identified additional priority groups for service through HUD-VASH. The VA has 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 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 the chronically homeless as well as other homeless veterans with high needs.

TIPS FOR LOCAL SUCCESS

Continue working with the VA to increase referrals and coordinate targeted 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 beyond resources through the Supportive Services for Veteran Families (SSVF) program. Support the VAMC to get creative with HUD-VASH staffing, 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 sorts 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.

WHAT TO SAY TO LEGISLATORS

For those policymakers who advocates have found difficult to approach for support on more broad affordable housing and homelessness issues, advocates may find success in discussing the need for resources to end veterans' homelessness. HUD Secretary Dr. Benjamin Carson stated support for the HUD-VASH program in his confirmation hearing.

Advocates should speak to Senators and Representatives, particularly if they are on the Appropriations or Veterans Affairs Committees, and urge them to provide $75 million for 10,000 new HUD-VASH vouchers to help end homelessness among veterans, while full-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 maintaining the special purpose designation to ensure each VAMC has sufficient funding and staffing 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

Corporation for Supportive Housing, 212-986-2966, www.csh.org

National Alliance to End Homelessness, 202-638-1526, www.endhomelessness.org

National Low Income Housing Coalition, 202-662-1530, www.nlihc.org

Chapter 6:

SPECIAL HOUSING ISSUES

Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking

By Monica McLaughlin, Director of Public Policy, and Debbie Fox, MSW, Senior Housing Policy and Practice Specialist, National Network to End Domestic Violence

Administering agencies: Department of Health and Human Services (HHS) for the Family Violence Prevention and Services Act (FVPSA); HUD, U.S. Department of Agriculture (USDA), Treasury Department, and Department of Justice (DOJ)/Office on Violence Against Women (OVW), for housing protections under the Violence Against Women Act (VAWA).

Year programs started: FVPSA, 1984; VAWA, 1994; VAWA housing protections, 2005.

Number of persons/households served: More than one million victims each year.

Population targeted: Victims of domestic violence, sexual assault, dating violence, and stalking (regardless of sex, gender identity, or sexual orientation).

FY17 funding: VAWA Transitional Housing, $30 million; FVPSA, $151 million

See also: *Homeless Assistance Programs, Continuum of Care Planning FVPSA, VAWA, and the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act create federal protections and support lifesaving programs for victims of domestic violence, sexual assault, dating violence, and stalking.*

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. VAWA created the first federal law to encourage coordinated community responses to combat domestic and sexual violence. Various federal agencies are responsible for VAWA compliance; housing-related agencies are HUD, USDA, and the Treasury Department.

ISSUE SUMMARY

Domestic violence is consistently identified as a significant factor in homelessness. A staggering 92% of homeless women report having experienced severe physical or sexual violence at some point in their lives, and upwards of 50% of all homeless women report that domestic violence was the immediate cause of their homelessness. Domestic violence is often life threatening; in the U.S. three women are killed each day by a former or current intimate partner. Advocates and survivors identify housing as a primary need of victims and a critical component in survivors' long-term safety and stability.

Although safe housing can give a survivor a pathway to freedom, there are many barriers that prevent victims 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 the family finances, have been prohibited from working, and have had their credit scores destroyed by the abuser. Victims often face discrimination in accessing or maintaining housing based on the violent and criminal actions of perpetrators. Additionally, victims 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 barriers that inadvertently exclude victims of violence.

Domestic violence programs do their best to serve those in need of emergency and transitional housing. Due to a lack of resources, however, every day thousands of abused adults and children are turned away from shelters and denied housing services because programs lack adequate resources and funding. The National Network to End Domestic Violence's *11th Annual Domestic Violence Counts: Census* found that—in just one 24-hour period in 2016—7,914 requests for shelter and housing went unmet. Finally, victims face the same economic barriers that challenge so many individuals in this nation–such as unemployment, and the lack of affordable housing, living-wage jobs, transportation, safety nets, and child care options with additional safety barriers as their abusers sabotage their attempts to leave the relationship. As a result, many victims face the impossible choice between staying with or returning to their abusers, or becoming homeless because they cannot find or afford safe, long-term, permanent housing and face life-threatening dangers from their abusers when they are attempting to flee to safety.

PROGRAM SUMMARIES

FVPSA shelters and services and the VAWA transitional housing program 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 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. The funds are primarily distributed through a state formula grant. In addition to lifesaving emergency 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 225 entities annually across the country on a competitive basis, including to: 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, or community-based and culturally specific organizations. Transitional housing grants allow entities to offer direct financial assistance for housing and housing-related costs, 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 for victims of domestic and sexual violence, stalking, and dating violence. 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, including those that ensured 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 builds upon the strengths of these housing programs and protections with key improvements.

Victims often face unfair eviction and denial of housing benefits because of the violence and criminal actions of others. VAWA housing protections prohibit cover housing program from denying housing or evicting a victim simply because they experienced domestic violence, allow public housing agencies (PHAs) to prioritize victims for housing when their safety dictates, and clarify that Housing Choice Vouchers are portable for victims. The 2013 VAWA reauthorization protects victims of sexual assault, covers victims in all federally subsidized housing programs and delineates 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; and, the Section 811 supportive housing for people with disabilities program; and the USDA Rural Development housing properties; and Low Income Housing Tax Credit (LIHTC) properties.

In April 2016, HUD issued a final rule, "Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs."

The final rule is comprehensive and includes many needed provisions, including details on the emergency transfer provisions. Programs were required to have their emergency transfer plans in place by June 2017.

HUD's Office of Multifamily Housing issued guidance with program notice H2017-05 on June 30, 2017, which applies to all multifamily assisted housing properties, including those with project-based Section 8, Section 202 and 811 supportive housing for the elderly and people with disabilities; Section 236 and 221(d)(3) below market and reduced interest rate programs; and the Section 811 Project Rental Assistance grant program. HUD's Office of Public and Indian Housing issued guidance with program notice PIH-2017-08 on May 19, 2017.

USDA also released an Administrative Notice (AN) 4747 (1944-N) on February 10, 2014, which included a Rural Development Model Emergency Transfer Plan. Though the 2013 VAWA reauthorization explicitly required that LIHTC providers comply with VAWA, the Department of the Treasury has issued no regulations or guidance on implementation for the LIHTC program. A new report, *Protections Delayed: State Housing Finance Agency Compliance with the Violence Against Women Act*, finds that the inaction of the part of the U.S. Department of the Treasury has led to significant state-by-state variation in the implementation of VAWA protections in the LIHTC program. This in turn has a substantial impact on level of protection afforded to survivors. Advocates encourage Treasury to issue regulations to implement VAWA.

Advocates call on HUD to issue guidance for remaining programs, call on USDA to issue further guidance, and for Treasury to issue guidance. Many of the housing provisions and protections under VAWA are not fully executed at the local level. Advocates are hopeful that the new regulations 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 are asserting their rights or simply trying to remain safe. VAWA protections should help victims obtain or maintain safe, affordable, and permanent housing.

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. HUD's interim rules on the Continuum of Care (CoC) process and the Emergency Solutions Grants for McKinney-Vento homelessness programs include a number of changes to these programs. Additionally, recent changes in the CoC funding process have created significant challenges for domestic violence programs and the survivors they serve. Over the course of the last several years, domestic violence housing programs have lost significant funds from the CoC program. In our assessment, the funding cuts are a result of a lack of clear guidance on how to evaluate the efficacy of domestic violence housing and a shift in priority away from transitional housing (without adequate evidence about the efficacy of DV transitional housing). Although both the FY15 and FY16 HUD Notice of Funding Availability (NOFA) included language encouraging communities to address domestic violence, many communities still defunded long-standing domestic violence programs.

The domestic violence field has submitted recommendation to HUD and USICH calling for amended funding processes and guidance to ensure that domestic violence housing programs can continue to access these vital funding streams. In response, HUD and USICH have issued guidance and messaging to encourage communities to assess domestic violence programs with both safety and housing in mind and have made changes to the FY17 NOFA. We continue to encourage HUD to align their funding processes with their messaging by awarding points in the NOFA to ensure that domestic violence programs can be competitive and integral partners for the CoC funding and can continue their lifesaving services. The FY17 CoC NOFA awarded up to three points to CoCs that demonstrate efforts to address the needs of persons fleeing domestic violence by including victim service providers on CoC boards; receive training on coordinated entry best practices for serving survivors of domestic violence; safety planning protocols for coordinated entry; and determine the needs of domestic violence and homelessness that includes data from victim service provider Comparable Databases.

The FY17 NOFA included a new project type, the Joint Transitional Housing (TH) and Permanent Housing (PH)-Rapid Rehousing (RRH) component project that includes two existing program models-TH and PH-RRH in a single project to better serve and expand housing options for homeless individuals and families, including individuals or families fleeing or attempting to flee domestic violence. This new project furthers HUD's message to communities to create high quality project regardless of component type and that "transitional housing, rapid re-housing, and permanent supportive housing for survivors each can and should have a place in a community's system as long as these programs meet a need in the community, can show positive safety and housing related outcomes, and provide choice to the people who want these types of programs."

HUD NOFA highlights the compliance with VAWA Final Rule housing protections. The grants to be awarded under the FY17 NOFA will be the first CoC Program grants that will be required to comply with the VAWA rule 24 CFR 578.99(j)(3). To enable full compliance with this rule, each CoC must establish an emergency transfer plan and make related updates to the written standards for administering CoC program assistance.

The FY18 Senate Transitional Housing Urban Development (THUD) bill included $25 million in additional funds to support domestic violence specific housing. The funds would complement existing CoC funds and allow communities to invest in DV specific housing.

Finally, NNEDV endorses the Help End Abusive Living Situation (HEALS) Act introduced in December 2017. The Act would help ensure that the survivors' unique housing needs are met through HUD and community investment in tailored housing programs.

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 PHAs' policies and procedures. Domestic violence advocates can train PHA staff, hearing officers, Section 8 owners, and resident groups on VAWA and the dynamics of domestic violence. PHAs should be encouraged to institute a preference for victims when making admission decisions. Advocates must also get involved with their PHA's planning process to ensure that victims' needs are addressed and that VAWA housing protections are adequately communicated to consumers. Advocates need to engage with current and newly covered housing programs to begin implementation of the new VAWA housing protections.

HEARTH. Implementation of the HEARTH Act and related funding decisions must reflect and respond to victims' serious safety needs and their desperate need for housing. Issues around 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 violence service providers play in meeting victims' specific needs. Communities must ensure that they have HEARTH Act funded domestic violence housing and shelter available. Each community should ensure that victim advocates are significantly involved in all homelessness resource planning.

Communities should use guidance from HUD and USICH to help support funding for domestic violence programs. In 2015, HUD, OVW, the Office for Victims of Crime, and the FVPSA at HHS launched 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.

SNAPS In-Focus on addressing the needs of domesitc violence survivors: https://www.hudexchange.info/onecpd/assets/File/SNAPS-In-Focus-Addressing-the-Needs-of-Persons-Fleeing-Domestic-Violence.pdf?utm_source=HUD+Exchange+Mailing+List&utm_campaign=8f859983b8-SNAPS+In+Focus%3A

+Domestic+Violence+-+7%2F22%2F16&utm_medium=email&utm_term=0_f32b935a5f-8f859983b8-19366061

USICH Guide to Reviewing Domestic Violence Transitional Housing Programs: https://www.usich.gov/resources/uploads/asset_library/Guide_To_Reviewing_DVTH_Projects_July_2016.pdf

USICH – Domestic Violence Service Providers are Key Partners in Preventing and Ending Homelessness: https://www.usich.gov/news/domestic-violence-service-providers-key-partners-in-preventing-and-ending-homelessness?utm_source=October+14+News+from+USICH&utm_campaign=October+14+News+from+USICH&utm_medium=email

Communities should also ensure that their coordinated assessment systems are victim centered. NNEDV's recommendations on coordinated entry can be found here https://nnedv.org/mdocs-posts/coordinated-assessment-meeting-the-needs-of-homeless-domestic-violence-victims/

FUNDING

Maintaining funding for FVPSA and VAWA programs 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 their 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 transitional housing unit remain unstable, while other victims in crisis cannot access shelter.

The FY18 Continuing Resolution has thus far maintained FY17 funding levels, including $30 million for VAWA transitional housing (authorized at $35 million). Although authorized at $175 million, FVPSA was funded at $151 million in FY17, $25 million below its funding authorization. To realize the benefits of these programs, VAWA funding must be increased in the FY18 and FY19 budgets, with at least $35 million specifically for transitional housing. In addition, investments in FVPSA at $175 million will help ensure that emergency domestic violence shelter is available when victims flee.

We strongly support the $25 million set-aside in the Senate FY18 THUD bill for domestic violence specific housing support full funding for the HEARTH Act programs with special emphasis on ensuring funds are allocated to domestic violence programs.

WHAT TO SAY TO LEGISLATORS

Advocates should tell Members of Congress why emergency shelter, transitional housing, and longer-term housing are essential for victims of domestic and sexual violence. Housing providers should talk about the victims that programs serve and about the struggles programs face in meeting victims' 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 victims' 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 victims' needs.

Specifically, advocates should ask the House and Senate Appropriations Committees to maintain targeted investments in FVPSA and all VAWA programs, including:

- In the Commerce, Justice, Science Appropriations bill, $35 million for VAWA Transitional Housing.
- In the Labor, Health and Human Services Appropriations bill, $175 million for FVPSA/domestic violence shelters.
- In the THUD bill, support $25 million designated for domestic violence housing and encourage CoC and Emergency Solutions Grants funding processes to reflect the needs of victims of domestic violence.

Advocates should tell their Senators and Representatives to pass the HEALS Act, which will help communities better meet the needs of homeless survivors of domestic violence.

FOR MORE INFORMATION

- National Network to End Domestic Violence, 202-543-5566, www.nnedv.org/census
- NNEDV Tools on Confidentiality, https://www.techsafety.org/confidentiality
- NNEDV Toolkit on Housing for Domestic Violence Survivors (includes comments on HUD interim rules), https://nnedv.org/content/housing/
- DVHTAC: To learn more about expanding safe housing options for domestic and sexual violence survivors, please visit www.SafeHousingPartnerships.org, a website of the Domestic Violence and Housing Technical Assistance Consortium (DVHTAC). Members: NNEDV; District Alliance for Safe Housing http://dashdc.org/; National Resource Center on Domestic Violence www.VAWnet.org (search housing); CSI, Inc. http://www.collaborative-solutions.net/
- The HUD Final rule on VAWA https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf
- The HUD notice on the applicability of VAWA to HUD programs, issued August 6, 2013, http://1.usa.gov/1nnf45i
- Violence Against Women Act (VAWA) Reauthorization Act of 2013 – H 2017-05, https://www.hud.gov/sites/documents/17-05HSGN.PDF
- Multifamily Owners and Management Agents VAWA guidance https://www.hud.gov/sites/documents/17-05HSGN.PDF
- PIH Violence Against Women Reauthorization Act of 2013 guidance https://www.hud.gov/sites/documents/PIH-2017-08VAWRA2013.PDF
- The USDA Rural Development Administrative Notice, http://www.rurdev.usda.gov/SupportDocuments/an4747.pdf
- VAWA 2013 Resources, National Housing Law Project, http://nhlp.org/node/3440 510-251-9400, www.nhlp.org
- National Law Center on Homelessness and Poverty, 202-638-2535, www.nlchp.org

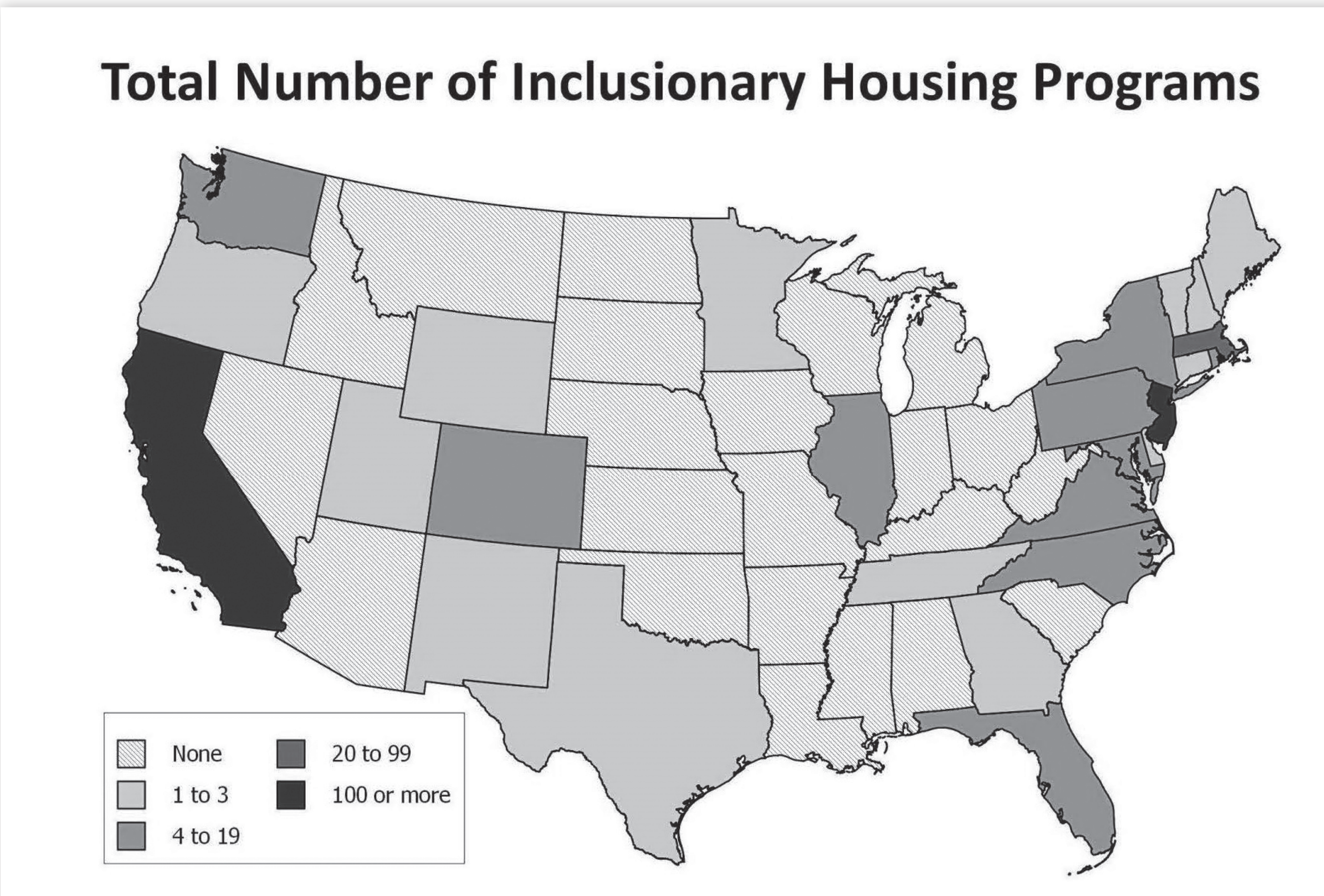
Inclusionary Housing Policies

By Rebekah King, Acting Policy Director and Ethan Handelman, Former Vice President for Policy and Advocacy, National Housing Conference

Inclusionary housing (often referred to as "inclusionary zoning") refers to the use of zoning law to encourage or require the development of affordable housing alongside market-rate housing. This is done by including a requirement in an area's zoning code that a certain percentage of new housing units must be made affordable to households at certain income thresholds. Any developer that is interested in building new housing in the neighborhoods subject to these codes becomes subject to this requirement. This ties the production of affordable housing to the development of traditional, market-rate housing. New development often brings with it improved amenities and an improved quality of life for residents; inclusionary housing programs help to spread these benefits more widely across a community by reserving space for low and moderate-income households.

The details of how many units are made affordable and the income limits vary from program to program and are subject to local political and economic constraints. Some inclusionary programs cover an entire city, although others are limited to particular neighborhoods, or even particular blocks within neighborhoods.

Inclusionary housing programs are often classified as either mandatory or voluntary; however, these categories blur when the details are considered. Mandatory programs may have an explicit requirement that a particular percentage of any new units are made affordable to low and middle-income households, but these programs often come with some kind of cost offset for developers. Voluntary programs provide incentives to developers to include affordable units, such as density bonuses or tax incentives. They are also



more responsive to changes in the house market. Inclusionary housing is tied to market activity, and providing a voluntary program might reduce the barriers to development enough that more units are built than would otherwise be. Using a voluntary program in a weak market may not produce many units; having mandatory requirements in the same context may discourage development completely.

Although inclusionary housing programs mostly began as mandatory programs, they have developed over time to incorporate incentives for developers (density bonuses, fee waivers, tax incentives) and alternative means of satisfying the affordability requirements (off-site development, fee-in-lieu of construction). Alternative forms of development are also part of an inclusionary housing strategy. Allowing the construction of accessory dwelling units (ADUs) can reduce housing prices by increasing density. Because ADUs are separate units built alongside existing housing on a single lot, this method can increase the density of neighborhoods without significantly altering its character.
There can also be more technical dimensions to inclusionary housing, such as reduced parking requirements or accelerated permitting processes. Providing an array of incentives and alternatives expands the potential participation of developers, and along with it, the potential number of affordable units.

HISTORY

The history of inclusionary housing is commonly traced back to 1974 and the introduction of Moderately Priced Dwelling Units in Montgomery County, Maryland. Since then, more than 800 inclusionary housing programs have been created across 25 states and the District of Columbia. Many of these are concentrated in California, Massachusetts, and New Jersey—states that have particularly robust support for affordable housing programs. However, they are also found in less typical states like Tennessee and Wyoming.

Source: Robert Hickey, Lisa Sturtevant, and Emily Thaden. 2014. Achieving Lasting Affordability through Inclusionary Housing. Lincoln Institute of Land Policy.

Inclusionary housing has also been the source and the product of various legal challenges around affordable housing. The series of Mount Laurel decisions in New Jersey led to municipalities being required to produce their "fair share" of affordable housing. In 2015, the California Supreme Court affirmed that inclusionary housing programs did not represent a form of unconstitutional "exactions" (closely related to the concept of "takings"), and that municipalities were within their rights to enforce laws that provided for the common benefit.

FUNDING

Because inclusionary housing uses the market to provide affordable units, the dollar costs to a jurisdiction for these programs tend to be low in comparison to programs that provide direct subsidies. When additional affordable housing is included in market-rate development plans, the immediate costs are shifted off the jurisdiction and into the price of land and/or the units. The cumulative cost of administering units created by the programs (and the cost of any financial incentives provided to developers) expands in direct proportion to how successful the program is in creating units. These administrative costs are generally far less than those directly subsidizing rental production.

Building partnerships with local organizations is an important element of many inclusionary housing programs. Working with nonprofits to manage the units created through inclusionary housing programs can help manage efficiently the costs of administering these units, and helps build relationships between the public and private sector. Some localities partner with local community development corporations, community land trusts, or other forms of community development organizations to augment their stewardship capacity.

PROGRAM SUMMARIES

Inclusionary housing programs look different depending on the needs and priorities of communities and jurisdictions. This section outlines three different programs in three different cities.

The city of Davis, California, has a relatively straightforward mandatory inclusionary housing program. It requires that developers set aside between 25 and 35% any new rental development and between 10 and 25% for owner-occupied development to be affordable. The income thresholds for these units are 80% and below of area median income (AMI) for rental units and 120% and below for owner-occupied units. There are two alternatives to building units: a fee-in-lieu or land dedication. These alternatives allowed Davis more flexibility in distributing resources. Units created through Davis' program are made affordable in perpetuity.

In 2016, the state of Oregon passed Senate Bill 1533, which lifted a pre-emption on municipal inclusionary housing programs. After the pre-emption was lifted, the city of Portland was the first municipality in the state to take advantage of the removal of the rule. The City Council unanimously approved an inclusionary housing measure. The program requires that any new developments of 20 units or more reserve 20% of those units for households at 80% of the AMI, or 10% for households at 60% of AMI. To offset the costs of building these units, the city provides certain incentives, including tax waivers, density bonuses, and tax exemptions. The requirement can be met by developers by building the units on-site, off-site, or by paying a fee-in-lieu to an affordable housing fund.

New York City's R10 program and the use of Inclusionary Housing designated areas is an example of geographically targeted inclusionary housing. These programs are applied in specific districts that are defined according to zoning (R10 is the highest density zoning available in New York). The R10 program is voluntary and uses density bonuses to incentivize the construction of affordable units. Depending on how the affordable housing is built (square footage, on-site or off-site, etc.), buildings in eligible districts receive a density bonus up to 20% of the existing maximum floor area ratio. The Inclusionary Housing designated areas program expands on the R10 program, and gives density bonuses for creating affordable housing in selected areas in particular neighborhoods.

For more information on what other inclusionary housing programs look like, see this 2017 report by the Lincoln Land Institute and the Grounded Solutions Network or this 2014 report produced by the National Housing Conference in collaboration with the Lincoln Institute of Land Policy

FORECAST FOR 2018

Inclusionary housing programs are most effective when there is a lot of rental housing construction. When demand for rental housing is high and developers are eager to fill that demand, it can be easier to finance and incorporate additional affordable apartments in new developments. Since inclusionary requirements require a minimum initial appropriation of funds, they are also appealing during periods of low federal funding.

As inclusionary housing is tied to market-rate development, the forecast for inclusionary housing is heavily influenced by the speed and vigor of the recovery of the housing market. It is also a very local type of program; most inclusionary programs are administered by cities or counties. This means that any forecast of their success (or failure) depends largely on local political and economic conditions.

There are signs that support for affordable housing is becoming a more important issue at the state and local level. In July 2017, Santa Monica's Planning Commission and City Council approved a Downtown Community plan with one of the highest inclusionary requirements in the state, up to 30% in projects that are 6 stories or more. Bozeman, Montana, approved inclusionary housing in 2017, and cities like Buffalo and Pittsburgh with gentrifying neighborhoods are considering inclusionary housing policies to preserve affordability in changing neighborhoods.

WHAT TO SAY TO LEGISLATORS

State and local legislators can introduce and pass inclusionary housing policies. First, find out whether state law allows inclusionary zoning. Oregon, as mentioned above, changed a long-standing state-level prohibition on inclusionary zoning. If state law already allows localities to pass inclusionary policies, focus on the local level. Make the case that inclusionary policies are very low cost to the locality, since they work with existing development imperatives to create affordable housing. They can also be an easy way to help create more integrated neighborhoods; inclusionary housing, when built on-site, help foster communities with a wide range of incomes.

Federal legislators can be allies and supporters of inclusionary policies even if they cannot pass them directly. Inclusionary housing programs help stretch federal funding further by creating additional affordable housing in places of high residential demand. In some localities, inclusionary apartments can become permanent supportive housing when combined with additional rental subsidy and supportive services. Inclusionary policies also are a way for state and local jurisdictions to help contribute to solving the lack of affordable housing, rather than simply relying on scarce federal subsidies. Furthermore, allowing state and local governments to choose their preferred form of inclusionary policies helps find the best fit for a local neighborhood's economic needs.

As a general comment to any public official, one should point out that inclusionary housing policies can be one tool among many to help states and localities meet fair housing obligations. Communities that want to offer residents more choices of where to live, inclusionary policies can be a low-cost way to reduce barriers to mobility and maintain affordability in rapidly changing communities.

FOR MORE INFORMATION

The National Housing Conference has a number of resources on inclusionary housing programs, including a report based on a first-of-its-kind nationwide database published in collaboration with the Lincoln Institute of Land Policy. This report has detailed summaries of inclusionary housing programs from around the country.

Grounded Solutions Network and the Lincoln Institute of Land Policy updated and expanded this report in 2017: *Inclusionary Housing in the United States: Prevalence, Impact, and Practices*.

City of Davis, California, program: http://cityofdavis.org/residents/affordable-housing-program

City of Portland, Oregon, program: https://www.portlandoregon.gov/bps/article/621577

Manufactured Housing

By Lance George, Director of Research and Information, Housing Assistance Council (HAC)

Manufactured homes are an often overlooked and maligned component of our nation's housing stock. But these unique 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, financed, and managed is still in need of improvement to ensure 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. More than half of all manufactured homes are located in rural areas around the country. Although the demographics of manufactured housing are changing, lower-income households are still the primary residents of manufactured homes. Modern manufactured homes have their origins in the automobile and recreational travel trailer industry, but 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.

Affordability and convenience make manufactured homes a popular housing option. The average sales price of a new manufactured home in 2016 was $70,658 (excluding land costs) compared to an average of $360,900 for a newly constructed single family home. Even though the purchase price of manufactured homes can be relatively affordable, financing them often is not. The majority of manufactured homes are still financed with personal property, or "chattel," loans. With shorter terms and higher interest rates, personal property loans are generally less beneficial for consumers than conventional mortgage financing. Approximately 64% of manufactured home loans in 2016 were classified as "high cost" (having a substantially high interest rate) which is more than 9 times the level of high cost lending for all homes nationally. Manufactured homes are typically sold at retail sales centers. In some cases, dealers resort to unscrupulous sales and financing tactics, trapping consumers into unaffordable loans.

A significant portion of manufactured and mobile homes are located in community or 'park' settings. With a history of being placed on rented land, manufactured homes have a pattern of land tenure status that is unique to this form of housing. 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 fewer reduced legal protections than 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.

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, and Weatherization funds.

Manufactured Housing "Done Right." Once shunned by nonprofit housing developers, manufactured homes are now making inroads into affordable housing projects and mindsets. Much of this progress is attributable to a small but 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.

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 are tasked with increasing mortgage investments and improving the distribution of capital available for mortgage financing in these markets. The Federal Housing Finance Agency (FHFA) recently issued a final rule on the duty to serve requirements. In a change from the initial and proposed rule, FHFA will now consider personal property or chattel loans for duty to serve credit on a pilot basis. Fannie Mae and Freddie Mac recently detailed their manufactured housing objectives in their underserved markets plans.

Preserving Access to Manufactured Housing Act of 2017. Recently passed in the House of Representatives, this bill amends the Truth in Lending Act (TILA) to specify that a retailer of manufactured housing is generally no considered a "mortgage originator." Additionally, the bill increases the annual percentage rates and transaction values at which mortgages for certain dwellings are considered "high-cost mortgages" under TILA.

The legislation is generally not supported by affordable housing advocates on the grounds that it considerably reduces, already weak consumer protections, in manufactured housing marketplace.

The Dodd-Frank Wall Street Reform and Consumer Protection Act *(PL 111-203)* included several provisions that enhance consumer protections for purchasers of manufactured homes. Dodd-Frank revised TILA to establish specific protections for mortgage loans, origination activities, and high-cost lending. Dodd-Frank also directs the newly created Bureau of Consumer Financial Protection to supervise manufactured housing finance activities.

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 personal property loans often used to finance this type of housing.
- 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.
- Policies and programs should be enacted to facilitate manufactured housing community preservation, such as protection from community sales, closures, and rent increases. Residents should be properly notified, and given first right of refusal on the sale of a 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 located 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

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

Prosperity Now's, I'M HOME: 202-409-9788, https://prosperitynow.org/get-involved/im-home

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 Home Owners Association: http://www.mhoaa.us/

Olmstead Implementation

By Kevin Martone, Executive Director, Technical Assistance Collaborative, Inc.

INTRODUCTION

On June 22, 1999, the U.S. Supreme Court issued its decision in *Olmstead v. LC*, a lawsuit against the State of Georgia that questioned the state's continued confinement of two individuals with disabilities in a state institution after it had been determined that they were ready to return to the community. The court described Georgia's actions as "unjustified isolation" and determined that Georgia had violated these individuals' rights under the Americans with Disabilities Act (ADA). Because of the *Olmstead* decision, many states are now in the process of: (1) implementing "*Olmstead* Plans" that expand community-based supports, including new integrated permanent supportive housing opportunities; (2) implementing *Olmstead*-related settlement agreements that require thousands of new integrated permanent supportive housing opportunities to be created in conjunction with the expansion of community-based services and supports; or 3) implementing other related activities, such as Medicaid reform, that will increase the ability of individuals to succeed in integrated, community-based settings.

ADMINISTRATION

The U.S. Department of Justice (DOJ) is the federal agency charged with enforcing the ADA and *Olmstead* compliance. Other federal agencies, including the Departments of Housing and Urban Development (HUD) and Health and Human Services (HHS), have 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. In its decision, the court found 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. But in the past decade, there has been increasing scrutiny on 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 a large number of residents primarily with disabilities, insufficient or inadequate services, restrictions on personal affairs, and housing that is contingent upon compliance with services. Some states, including Kentucky, Illinois, New York, and North Carolina, have been sued for over-reliance on such facilities, and are now implementing settlement agreements with DOJ and/or state P&A agencies to correct for these issues.

Agreements, for example in New Hampshire and Oregon, also cover people with mental illness who are at risk of institutionalization, such as those who are homeless or have insufficient services to support integrated community living. Advocacy groups and potential litigants are now also examining the lack of integrated employment opportunities in an *Olmstead* context. For example, settlement agreements now exist in Rhode Island and Oregon regarding persons with intellectual and developmental disabilities unnecessarily segregated in "sheltered workshops" and related day activity service programs.[1]

SUMMARY

On its *Olmstead* website,[2] 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 several of these states are struggling to meet supportive housing compliance targets due to lack of resources for housing assistance and services.

Housing affordability is a critical issue for states working to comply with ADA requirements because most people with disabilities living in restrictive settings qualify for federal Supplemental Security Income (SSI) payments that average only 20% of median income nationally. The recent *Priced Out* (December 2017) report by the Technical Assistance Collaborative points out that an individual on SSI would have to pay an average of 113% of their income nationally to afford a one-bedroom apartment at the fair market rent.[3] As federal housing assistance is so difficult to obtain, several states (e.g. Georgia, Mississippi, New Jersey, North Carolina, and Oregon) have created or expanded state-funded rental subsidies directly related to their *Olmstead* efforts. These state rental subsidies 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 also necessary services.

In June of 2013, HUD issued *Olmstead* guidance to provide information on *Olmstead*, to clarify how HUD programs can assist state and local *Olmstead* efforts, and to encourage housing providers to support *Olmstead* implementation by increasing integrated housing opportunities for people with disabilities.[4] HUD's guidance emphasizes that people with disabilities should have choice and self-determination in housing, and states that "HUD is committed to offering individuals with disabilities housing options that enable them to make meaningful choices about housing, health care, and long-term services and supports so they can participate fully in community life."

HUD also advises that "For communities that have

1 http://www.justice.gov/opa/pr/department-justice-reaches-landmark-americans-disabilities-act-settlement-agreement-rhode

2 http://www.ada.gov/olmstead/q&a_olmstead.htm

3 http://www.tacinc.org/knowledge-resources/priced-out-findings/

4 https://archives.hud.gov/news/2013/pr13-086.cfm

historically relied heavily on institutional settings or housing built exclusively and primarily for individuals with disabilities, the need for additional integrated housing options scattered through the community becomes more acute." HUD 504 regulations require that HUD and its grantees/housing providers administer their programs and activities in the most integrated setting appropriate to the needs of individuals covered by the ADA. HUD's guidance does not change the requirements for any existing HUD program, but points out that requests for disability-specific tenant selection "remedial" preferences may be approved by HUD's Office of General Counsel if they are related to *Olmstead* implementation.

OLMSTEAD ACTIVITY IN 2017

Several states continued to address *Olmstead* in 2017 as a result of proactive planning and implementation, investigations, and settlement agreements. Key highlights from across the country are described below:

- Delaware and New Jersey both successfully resolved *Olmstead* settlement agreements this year for the mental health population and resulted in thousands of additional supportive housing units and expanded service capacity within their systems.
- New *Olmstead* litigation was filed in South Carolina[5] and Iowa[6] by state P&A agencies. Both cases allege that individuals with disabilities are unnecessarily segregated in institutional settings or are being placed at risk of institutionalization as a result of cuts in community-based services.
- There is unresolved litigation or settlement negotiations in several states, including in Mississippi, Louisiana, South, Dakota and New York. Louisiana, South Dakota, and New York involve individuals with disabilities in nursing homes who wish to live in community-based settings.
- A class action lawsuit by individuals in nursing homes in Washington, DC, who want to live in more integrated settings was rejected by a U.S. District court.
- In August 2017, the Centers for Medicare and Medicaid Services (CMS), HUD, and the Substance Abuse and Mental Health Services Administration kicked off a second round of technical assistance (TA) to 8 states through the Innovation Accelerator Program for community integration.[7] The TA is designed to support the efforts of states to increase access to integrated supportive housing by strengthening relationships between Medicaid and other state services and housing agencies. The states include Alaska, Massachusetts, Michigan, Minnesota, Nebraska, Texas, Utah, and Virginia.
- States awarded HUD Section 811 Project Rental Assistance (PRA) continued making new units available in integrated multifamily developments (see article in this Guide). States also began accessing National Housing Trust Fund allocations to support the availability of rental housing for extremely low income (ELI) households for the production, preservation, rehabilitation, and operation of rental housing, primarily for ELI households; many states prioritized permanent supportive housing for these funds.
- State Medicaid agencies and their Mental Health and Intellectual/Developmental Disabilities continue implementation of their approved Home- and Community-Based Services (HCBS) transition plans to ensure compliance with the HCBS Final Rule. States have a strong interest in achieving compliance with the Final Rule, as a substantial amount of Medicaid HCBS funds are used by states to reimburse services provided to individuals living in integrated settings, thereby reducing the high costs of serving persons with disabilities in institutional settings.[8] However, CMS recently extended the compliance deadline from 2019 to 2022 due to the complex nature of complying with the rule. Only persons living in community-integrated settings as defined in the rule will be eligible for HCBS funded services beginning in 2022.

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5 http://www.pandasc.org/what-we-do/advocacy/

6 http://disabilityrightsiowa.org/resources/managed-care/managed-care-class-action-lawsuit/

7 https://www.medicaid.gov/state-resource-center/innovation-accelerator-program/community-integration-ltss/ci-ltss.html

8 The HCBS Rule, including its *settings* requirement, applies to Medicaid 1915(c), 1915(i), 1915(k) authorities only.

FORECAST FOR 2018

Title II of the ADA is the law, upheld by the Supreme Court in *Olmstead v. L.C.* States will continue to be responsible for ensuring that all individuals with disabilities have the civil right to live in integrated, community-based settings. Complying with *Olmstead* is not a one-time exercise, and states need to plan and implement integration strategies actively.

Disability stakeholders have interpreted recent actions from Congress and leadership of the USDOJ as signals of decreasing attention to *Olmstead* enforcement. For example, the Fairness in Class Action Litigation Act of 2017 intends to limit the ability of groups to bring class action lawsuits. For people with disabilities, class action lawsuits have been a successful vehicle to push states to create systems that support integrated community living.

Due to tremendous opposition from key advocates and constituents, efforts to repeal the Affordable Care Act , including Medicaid expansion, and on converting Medicaid to a block grant or per capita-based program have been unsuccessful to date. However, President Donald Trump and the Republican-controlled Congress remain intent to make these changes, and advocates are deeply concerned that cuts to services and housing assistance will place individuals with disabilities at risk of institutionalization, homelessness and incarceration.

Housing affordability is predicted to continue to be a problem in 2018, especially for persons with disabilities with extremely low income households. The FY17 federal budget provided funds for new vouchers including $10 million for "mainstream" vouchers for ELI people with disabilities. Although this is the first expansion of mainstream vouchers since Non-elderly Disabled vouchers were expanded in 2009, continued threats to the HUD budget only perpetuate the housing crisis for people with disabilities. The HUD Section 811 PRA program - designed to create integrated affordable housing for people with disabilities - has not received funding for new units since 2014. The exceptions have been new permanent supportive housing for people who are homeless (through the **Homeless Emergency Assistance and Rapid Transition to Housing Act**) including homeless veterans (Veterans Affairs Supportive Housing).

The housing advocacy community is also very concerned about funding for those affordable housing programs available to low income households including (but not targeted to) people with disabilities. Because of rising rents, even level funding for the Housing Choice Voucher (HCV) program, for example, means fewer units, and any cuts in or caps imposed on the federal budget will mean another step backward. In addition, as described elsewhere in this Guide, any changes Congress makes to the government-sponsored enterprises (i.e., Fannie Mae, Freddie Mac) is likely to impact the National Housing Trust Fund. Reductions to federal housing assistance will impede states in their ability to provide individuals with disabilities the opportunity to live in community-integrated settings.

Most *Olmstead* activity will continue to occur in states with active settlement agreements or litigation. Among these activities include expanding PSH and services such as Assertive Community Treatment (ACT), community support services, supported employment and integrated treatment. Other states will engage in activities consistent with community integration, such as implementation of HCBS transition plans, HUD Section 811 PRA, Money Follows the Person programs, state strategic supportive housing plans, Medicaid high cost utilizer cost savings initiatives, and local Continuum of Care supportive housing initiatives for the chronically homeless. Nebraska's legislature passed a law in 2016 requiring state agencies to develop a cross disability *Olmstead* plan by December 2018.[9]

Several states have created state-funded housing assistance programs that resemble the federal Housing Choice Voucher program, but these generally do not create enough affordable housing opportunities for people with disabilities who are stuck in institutional settings, such as psychiatric hospitals, developmental centers, nursing homes, or correctional facilities.

WHAT TO SAY TO LEGISLATORS AND SOME ACTIONS TO TAKE

States are legally obligated to ensure that all individuals with disabilities have the civil right to live and work in integrated, community-based

9 http://nebraskalegislature.gov/laws/statutes.php?statute=81-6,122&print=true

settings. With access to housing assistance and comprehensive health care services and supports, people with mental illness, intellectual or developmental disabilities, and physical or sensory disabilities can live and thrive in the community. There is a growing body of research that links access to safe, decent housing and adequate health care to positive health outcomes with reduced health care costs. Conversely, individuals with unstable housing and inadequate health care are high utilizers of costly services, and are likely to have poor health outcomes. States are beginning to realize the benefits from innovative initiatives that integrate physical and behavioral health care for individuals who have multiple chronic conditions. Reducing federal support for housing and health care may provide initial budgetary relief, but will end up swelling costs overall by increasing uncompensated health care, increasing unnecessary reliance on nursing facilities, further stressing the criminal justice and child welfare systems, and adding to homelessness in communities.

Stakeholders should also increase advocacy with national and state organizations on *Olmstead*. Groups such as state P&A organizations and other legal rights groups can provide leverage with state agencies to comply with *Olmstead*, and initiate litigation against states when necessary. For information on state protection and advocacy networks, see the National Disability Rights Network at http://www.ndrn.org/index.php

FOR MORE INFORMATION

Technical Assistance Collaborative, Inc. (TAC), 617-266-5657, www.tacinc.org

Protecting Tenants at Foreclosure

By Elayne Weiss, Senior Policy Analyst, National Low Income Housing Coalition

Administering agency: The Protecting Tenants at Foreclosure Act (PTFA) is self-executing; no agency is responsible for administering the act.

Year program started: 2009

Year program sunset: 2014

Population targeted: Renters

With the expiration of federal protections on December 31, 2014, state and local law now comprise the only protections for renters facing foreclosure.

As the foreclosure crisis took hold, experience and research have revealed that rental properties and renters are at significant risk, with renters comprising 40% of the families affected by foreclosure. These families often have no idea that their landlord has fallen behind on mortgage payments, and they have usually continued to pay their rent even as their landlord has failed to pay the mortgage.

Before the enactment of PTFA in May 2009, it was legal in most states for tenants to be required to move on only a few days' notice. Under the PTFA, most tenants had the right to remain in their home for the remainder of their lease, or at least 90 days.

In the 114th Congress, Representative Keith Ellison (D-MN) and Senator Richard Blumenthal (D-CT) introduced legislation to remove the 2014 sunset date and make the law permanent, but these efforts were met with Republican opposition and the law was not extended. The bills would also have added a private right of action to the law as an enforcement mechanism.

In addition to these stand-alone bills to restore and make permanent the PTFA, Senate Committee on Banking, Housing, and Urban Affairs Ranking Member Sherrod Brown (D-OH) and House Committee on Financial Services Ranking Member Maxine Waters (D-CA) also introduced legislation that included provisions that would have restored the PTFA and made it permanent.

HISTORY AND PURPOSE

During the financial crisis, inappropriate lending, falling home prices, and high unemployment led to a very high number of foreclosures across the U.S. However, the impact of these foreclosures was not limited to homeowners; renters lose their homes every day when the owner of the home they are renting goes into foreclosure. In fact, one in five properties in the foreclosure process is likely to be a rental. Further, research from NLIHC concludes that, since these properties often contain more than one unit, and many owner-occupied properties also house renters, roughly 40% of the families facing eviction as a result of the foreclosure crisis were renters. Unlike homeowners who have some indication that a foreclosure is coming, renters are often caught entirely off guard.

As might be expected, very low income families and low income and minority communities are bearing the brunt of rental foreclosures. Analysis from NLIHC shows that for four states in New England, the census tracts with the lowest percentage of white individuals and the highest percentage of households that are under the poverty line have the highest foreclosure rates. Multifamily foreclosures, which more often than not impact at least some renters, also occur in these high-poverty, high-minority census tracts.

Prior to May 2009, protections for renters in foreclosed properties varied from state to state, and in most states tenants had few protections. The National Law Center on Homelessness & Poverty (NLCHP) and NLIHC issued a joint report on the foreclosure and eviction laws in each state and the District of Columbia.

Recognizing the hardships experienced by tenants in foreclosed properties, Congress acted in early 2009 to provide a basic set of rights for such tenants. On May 20, 2009, President Obama signed PTFA into law (Public Law 111-22, division A, title VII). The PTFA was extended and clarified in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, section 1484). The law expired on December 31, 2014.

ISSUE

The PTFA required the immediate successor in interest at foreclosure to provide bona fide tenants with a notice 90 days before requiring them to vacate the property, and allows tenants with leases to occupy the property until the end of the lease term. A bona fide lease or tenancy was defined as one in which: the tenant is neither the mortgagor, nor the spouse, parent, or child of the mortgagor; the lease or tenancy is the result of an arm's length transaction; and, the lease or tenancy requires rent that is not substantially lower than fair market rent, or is reduced or subsidized due to a federal, state or local subsidy. If the property was purchased by someone who will occupy the property, then that purchaser can terminate the lease on 90 days' notice, even when the tenant has a lease that extends beyond 90 days after foreclosure.

Under PTFA, tenants with Section 8 housing choice voucher assistance had additional protections, which allowed them to retain their Section 8 lease and required the successor in interest to assume the housing assistance payment contract associated with that lease.

The PTFA applied to all foreclosures on all residential properties; traditional one-unit single family homes were covered, as were multi-unit properties. The law applied in cases of both judicial and nonjudicial foreclosures. Tenants with lease rights of any kind, including month-to-month leases or leases terminable at will, were protected as long as the tenancy was in effect as of the date of transfer of title at foreclosure.

The 90-day notice to vacate could only be given by the successor in interest at foreclosure. The successor in interest is whoever acquires title to the property at the end of the foreclosure process. It could be the financial institution that held the mortgage or it could be an individual who purchased the property at foreclosure. Notices of the pending foreclosure, although desirable, did not serve as the 90-day notice required by the PTFA.

The PTFA applied in all states, but did not override more protective state laws. The PTFA specifically provided that it does not affect "any [s]tate or local law that provides longer time periods or other additional protections for tenants." Consequently, state law should be examined whenever there is a tenant in a foreclosed property to maximize the protections available to tenants.

State and local law now comprise the only protections for renters facing foreclosure.

FORECAST FOR 2018

Representative Keith Ellison (D-MN) and Senator Richard Blumenthal (D-CT) introduced legislation (H.R. 915 and S.325) to renew the PTFA and ensure that its protections are made permanent. NLIHC urges Congress to act swiftly to enact these protections.

HOW YOU CAN TAKE ACTION

Urge your Members of Congress to support, resume, and extend PTFA protections for renters facing foreclosure by cosponsoring H.R. 915 and S.325.

Work to pass state and local laws similar to the PTFA. State and local laws are critical to protecting renters facing foreclosures with the expiration of the PTFA. NHLP has compiled state and local PTFA-like protections. Passing such protections in more states and localities will require working with a variety of housing stakeholders, including banks and real estate professionals. See NHLP's chart, at http://nhlp.org/node/1341

FOR MORE INFORMATION

NLIHC, 202-662-1530, www.nlihc.org

Renters in Foreclosure: A Fresh Look at an Ongoing Problem, from NLIHC, http://nlihc.org/library/other/periodic/rif2012

See NHLP's chart of state and local laws, http://nhlp.org/node/1341

NLCHP, http://www.nlchp.org/

Housing Access for People with Criminal Records

By Elayne Weiss, Senior Policy Analyst, National Low Income Housing Coalition

The United States incarcerates its citizens at a shockingly high rate and holds the title of world's largest jailer. The FBI estimates that as many as one in three Americans has a criminal record. After decades of imprisoning non-violent drug offenders with punitive mandatory minimum sentences, lawmakers and criminal justice reform advocates are making progress in the decarceration of prison inmates across the country. In 2014, the U.S. prison population experienced a decrease—the second largest decline in the number of inmates in more than 35 years. However, as more former prisoners return to their communities, there is a growing concern about how they will fare upon reentry.

Resources, especially affordable housing, are already scarce in the low income communities where formerly incarcerated persons typically return. Indeed, there is currently a shortage of 7.3 million affordable rental units that are available to extremely low income households. Because of their criminal records, justice-involved individuals face additional barriers in accessing affordable housing, potentially placing them at risk of housing instability, homelessness, and ultimately recidivism. One study, for example, has shown that returning inmates without stable housing were twice more 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 criminal records or precluding returning citizens from rejoining their families—which, studies have shown, most plan to do. Unless the administration and Congress work to reduce these barriers by providing additional guidance and housing resources, large-scale decarceration efforts are likely to result in an even greater unmet demand for housing.

LEGISLATIVE BACKGROUND

In the past few decades, Congress has passed legislation that included increasingly robust crime and drug enforcement policies in public housing. To reduce drug-related crime and promote the safety and well-being of public housing residents, Congress created policies that increased penalties related to certain activities and gave broad discretion to PHAs to evaluate potential and current residents. These policies also broadened resident accountability to include the behavior and actions 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.[1] Ten years later, Congress passed the Quality Housing and Work Responsibility Act of 1998, which allowed PHAs to exclude applicants with criminal records and use their discretion in determining whether an applicant was a potential safety risk to current residents.[2] 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.[3] PHAs were given the option to increase the ban's time length 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.[4] Moreover, HOPEA gave PHAs the ability to reject applicants they believed to be abusing drugs or alcohol or who had a history of drug or alcohol use that could potentially pose a 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

1 Pub. L. No. 100-690, 102 Stat. 4181, 4300 (1988).

2 Pub. L. No. 105-276, 112 Stat. 2461, 2518 (1998).

3 Pub. L. No. 101-625, 104 Stat. 4079, 4180 (1990).

4 Pub. L. No. 104-120, 110 Stat. 834, 836 (1996).

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 in two situations: (1) when a household includes a person who is required to register as a sex offender for life,[5] or (2) when a household member has ever been convicted of manufacturing methamphetamine on federally assisted property.[6]

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. 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. Moreover, PHAs and project owners must prohibit admitting households where the PHA or property owner has reason to believe that a household member's past history or current abuse of illegal drugs or alcohol "may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents."[7]

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. 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

Because much of HUD's guidance on evaluating current and potential tenants is advisory and not mandatory, PHAs and project owners across the country have developed their own criteria, creating additional barriers for people with criminal records and raising fair housing concerns.

One issue that continues to prevent justice-involved people from accessing affordable housing arises from PHAs and project-owners using unreasonable lookback periods into applicants' criminal records. Federal law instructs housing providers to look back in an applicant's history of criminal activity that occurred during a "reasonable time." However, neither the statute nor HUD has explicitly defined what constitutes a reasonable time; instead, HUD has provided suggested time limits nor best practices on this issue. Because of this lack of formal guidance, a large number of housing providers have established admissions policies that have no time limits on using a person's criminal history in evaluating their application for admission. Although HUD expects housing providers to define a "reasonable time" in their admissions, some neglect to do so or leave it open ended, and, as a result, discourage people with criminal records from applying. Others impose lifetime bans or use overly long lookback periods for particular crimes.

Even though HUD has suggested reasonable lookback periods for certain crimes (e.g., 5 years for serious crimes), housing providers routinely look further back into a person's criminal history, sometimes as long as 20 years. Meanwhile, HUD has long held that permanent bans contradict federal policy. Moreover, 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 criminal records to determine their eligibility. Until recently, just a criminal arrest could be the triggering event, even if it did not lead to a subsequent conviction.

Many housing providers utilize overly broad categories of criminal activity that reach beyond HUD's three general categories: drug-related criminal activity; violent crime activity; and other criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or anyone residing in the immediate vicinity. By casting such a wide net over almost any felony, which can include shoplifting and jaywalking, housing providers screen out potential

5 42 U.S.C. § 1437(f)(1) (2015); 24 C.F.R. §§ 960.204, 982.553(a)(2) (2012).

6 42 U.S.C. § 13663(a) (2015); 24 C.F.R. §§ 960.204, 982.553(a)(1)(ii)(C) (2012).

7 42 U.S.C § 13661(b)(1) (2015); 24 C.F.R. §§ 960.204, 982.553(a)(ii)(B) (2012).

tenants to the point that anyone with a criminal record need not apply. Housing providers are increasingly turning to private tenant screening companies to review applicants' criminal records and make recommendations whether to admit or deny. However, these recommendations are usually based on a crude check list and prevents applicants from knowing what criminal record was used to deny their admission.

Too often PHAs and project owners ignore or do not provide mechanisms for applicants to present mitigating circumstances to show they pose no risk to the community and will be good tenants. Currently, PHAs are required by federal law to consider mitigating circumstances during their admissions process—in particular, the time, nature and extent of the applicant's conduct, including 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 educate 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, putting them at risk of violating the FHA. In actuality, 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 racial minorities.

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. By refusing to add returning citizens to the lease, housing providers place these individuals and their families at risk of losing their housing if something happens to the head of household.

Finally, people with criminal records who have managed to secure a Housing Choice Voucher can run into trouble when needing to port their voucher to another jurisdiction. When a household moves from one jurisdiction to another, the receiving PHA can rescreen the household utilizing a more stringent criteria than the one used by the initial PHA. If the receiving PHA determines the household does not meet its criteria, it will try to terminate its assistance. This practice of rescreening prevent justice-involved individuals 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]eceiving 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."

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."[8] Secretary Donovan further encouraged the PHAs to allow justice-involved people, 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

8 Letter from Shaun Donovan, Sec'y of Housing and Urban Dev., & Sandra B. Henriquez, Assistant Sec'y for Public Housing and Indian Housing, to PHA Executive Director (June 17, 2011), https://www.usich.gov/resources/uploads/asset_library/Rentry_letter_from_Donovan_to_PHAs_6-17-11.pdf.

later, Secretary Donovan sent a similar letter to owners and agents of HUD-assisted properties.[9]

In 2013, the U.S. Interagency Council on Homelessness (USICH) published a guidebook for PHAs that includes best practices and policies that can be used 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[10]." Like Secretary Donovan, USICH encourage PHAS to consider individual factors when screening potential tenants with criminal records in order to remove barriers to housing assistance.

In November 2015, President Barack Obama announced new actions to promote the rehabilitation and reintegration for formerly-incarcerated people. The administration's criminal justice reform efforts included new pilot programs dedicated to housing people coming out of prison.

President Obama announced a new $8.7 million demonstration program to address homelessness and reduce recidivism rates. According to the White House, "The Pay for Success (PFS) Permanent Supportive Housing Demonstration will test cost-effective ways to help persons cycling between the criminal justice and homeless service systems, while making new Permanent Supportive housing available for the reentry population."

The president also announced that HUD would provide $1.75 million to aid eligible public housing residents under the age of 25 to expunge or seal their criminal records under the new Juvenile Reentry Assistance Program. The National Bar Association has committed 4,000 hours of pro bono legal services to support the program.

In conjunction with the president's announcement, HUD released new guidance to PHAs and owners of HUD-assisted housing that officially recognizes the responsibility of PHAs and project-owners to make sure that having a criminal record does not automatically disqualify a person from living in federally subsidized housing.[11] The guidance clarifies the use of arrest records to determine who can live in their properties. According to the guidance, an individual's arrest record cannot be used as evidence that he or she has committed a crime. The guidance states, "[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 criminal 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 that states housing providers, both in the public and private housing market, likely violate the Fair Housing Act of 1968 when employing blanket policies in refusing to rent or renew a lease based on an individual's criminal history since such policies may have a disparate impact on racial minorities. The Fair Housing Act prohibits housing discrimination on the basis of race, color, religion, sex, familial status, national origin or disability, the "protected classes" of people. The guidance says, "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 states that when a housing provider's seemingly neutral policy or practice has a

9 Letter from Shaun Donovan, Sec'y of Housing and Urban Dev., & Carol J. Galante, Acting Assistant Secretary for Housing to Owners and Agents (Mar. 14, 2012), http://nhlp.org/files/HUD%20Letter%203.14.12.pdf.

10 U.S. Interagency Council on Homelessness, PHA Guidebook to Ending Homelessness 23 (2013) https://www.usich.gov/resources/uploads/asset_library/PHA_Guidebook_Final.pdf.

11 U.S. Dep't of Hous. & Urban Dev, Notice PIH 2015-19 (Nov. 2, 2015), *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf.

discriminatory effect—such as restricting access to housing on the basis of criminal history, and has a disparate impact on individuals of a particular race, national origin, or other protected class—the policy or practice is unlawful under the Fair Housing Act 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 criminal history policies is to protect other residents and the property. The 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 actually assist in protecting residents and property.

The guidance also states that a housing provider with policies of excluding people because of a prior arrest without conviction cannot satisfy its burden of showing such a policy is necessary to achieve a "substantial, legitimate, nondiscriminatory interest," since an arrest is not a reliable basis upon which to assess the potential risk to residents or property. In instances 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 Fair Housing Act 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 criminal 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."

It is unclear if the Trump Administration plans to enforce this guidance. In July 2016, HUD released new guidance to PHAs and other stakeholders to encourage greater efforts and collaboration in housing persons with criminal records. The guidance, "It Starts with Housing," discusses ways HUD is supporting PHA efforts to provide housing for justice-involved individuals and highlights reentry models currently used by some PHAs, including the New York City Housing Authority, and the lessons learned in developing them.

The guidance encourages stakeholders to work with PHAs to review and develop new criminal background screening policies to improve housing opportunities for people with criminal records. The guidance also discusses the successful efforts by stakeholders to revise screening policies so that applicants are not denied housing without an individualized risk assessment.

Efforts in Congress

In April 2016, Representative Maxine Waters (D-CA) introduced legislation to ensure people with criminal records have access to federally assisted housing. The Fair Chance at Housing Act of 2016 would ban "one-strike" and "no-fault" policies, demand higher standards of evidence and individualized review processes, and extend support to providers actively seeking to house and rehabilitate justice-involved individuals. These measures will allow families to reunify when a household member returns home after serving their time in prison or jail. The bill proposes a means to help end the cycle of homelessness and recidivism too often experienced by justice-involved individuals.

FORECAST FOR 2018

In the 114th Congress, there was a large bipartisan push in both the House and Senate to pass criminal justice reform legislation and House Speaker Paul Ryan (R-WI) indicated it was a top priority for him. Unfortunately those efforts fell short and neither chamber of Congress voted on legislation to overhaul the criminal justice system.

Some lawmakers have indicated that they will again try to pass legislation in the 115th Congress. However, it remains unclear whether the Trump Administration will support these renewed efforts given the president's earlier rhetoric on the issue and his selection of Senator Jeff Sessions, an opponent of past reform proposals, to serve as U.S. Attorney General. In 2017, there was little movement in Congress to pass comprehensive criminal justice reform.

Some advocates believe that the Trump Administration may be less interested in working on more controversial reforms, such as reducing prison sentences, and might instead focus its efforts on reentry issues, which could include housing access for people with criminal records.

HOW YOU CAN TAKE ACTION

Urge your legislators to:

- Ensure criminal justice reform efforts include a comprehensive plan that addresses the housing needs of people with criminal records.
- Support legislation that reduces housing barriers for people with criminal records.

Urge HUD to:

- Ensure compliance with and build upon recent HUD guidance.
- Require all federally subsidized housing providers to consider mitigating circumstances.
- Provide more 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.
- Increase data collection on applicant screening practices.

FOR MORE INFORMATION

Reentry and Housing Working Group, http://www.reentryandhousing.org

Criminalization of Homelessness

Eric S. Tars, Senior Attorney, National Law Center on Homelessness & Poverty

Every day in America, people experiencing homelessness are threatened by law enforcement, ticketed, or even arrested for living in public spaces, even when they have no other alternatives. Millions of individuals, families, and youth on their own experience homelessness each year, and millions more lack access to decent, stable housing they can afford. But rather than providing adequate housing options, too many communities criminalize homelessness by making it illegal for people to sit, sleep, or even eat in public places, despite the absence of adequate alternatives. These laws and policies violate constitutional, civil, and human rights and create arrest records and fines and fees that stand in the way of homeless people getting jobs or housing. And yet these expensive policies are ineffective at addressing homelessness or reducing the number of people who must sleep on the streets. In fact, more effective policies, such as providing affordable housing and services can actually cost less than criminalizing homelessness.

Due to all of the above, the federal government has taken increasingly strong actions to discourage and stop the criminalization of homelessness throughout the past few years, but more must be done to end criminalization at the local level and promote constructive alternatives.

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, national origin, or 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 attempting to push homeless persons out of public view with laws criminalizing the 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.

Over the course of the past 10 years, the National Law Center on Homelessness & Poverty has tracked these laws in 187 cities and found that bans on camping have increased by 69%, on sitting or lying by 51%, on loitering by 88%, on panhandling by 43%, and on living in vehicles by 143%. Meanwhile, a dramatic growth of homeless encampments have been reported in all 50 states. Too often 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.

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—sleeping, resting, eating—activities we all do every day and take for granted. Communities of color; mentally and physically disabled persons; and lesbian, gay, bisexual, transgender, and queer/questioning youth and adults—already disproportionately affected by homelessness—are most likely to be further marginalized by criminalization.

Criminalization policies are ineffective and actually 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 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 the 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

In 2009, Congress passed the Homeless Emergency Assistance and Rapid Transition to Housing Act, directing the U.S. Interagency Council on Homelessness (USICH) to prepare a report on criminalization and constructive alternatives. In 2012, the USICH issued this report, Searching out Solutions: Constructive Alternatives to the Criminalization of Homelessness. *Searching Out Solutions* was groundbreaking in stating that in addition to raising constitutional issues, criminalization of homelessness may violate international human rights law, the first time a domestic agency has labelled domestic practice as such. In 2015, the USICH issued guidance on Ending Homelessness for Persons Living in Encampments, providing a checklist of steps for communities to constructively address homeless encampments without criminalization, and added several case studies of positive practices in 2017.

U.S. Department of Justice

In 2015, DOJ filed a statement of interest brief stating "Criminally prosecuting those individuals for something as innocent as sleeping, when they have no safe, legal place to go, violates their constitutional rights." DOJ's Office of Community Oriented Policing Services dedicated its December 2015 newsletter to reducing criminalization, stating, "Arresting people for performing basic life-sustaining activities like sleeping in public takes law enforcement professionals away from what they are trained to do: fight crime." DOJ also issued a letter on the impact of excessive fines and fees for poor persons that also is useful in addressing criminalization practices. And DOJ's Office for Access to Justice commented on a proposed ordinance in Seattle that would create constructive procedures for dealing with homeless encampments.

U.S. Department of Housing & 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 they are preventing the criminalization of homelessness. In 2016 and 2017, this question was updated with increased points and more specifics of steps CoCs could take. Additionally, HUD officials have repeatedly stated to communities, including those engaged in the Mayor's Challenge to End Veteran Homelessness, that achieving the goals of the challenge will be difficult or impossible if they continue to engage in criminalization practices.

U.S. Department of Education

In 2016, ED 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 and local legislatures to address criminalization of homelessness.

White House

In 2016, the White House created the Data-Driven Justice Initiative. The initiative is now working with more than 160 counties, states, and cities to use data to divert persons with mental illness and/or substance abuse issues—who frequently encounter the criminal justice or emergency healthcare systems (often those facing chronic homelessness)—into housing and services. This initiative has been transitioned to the National Association of Counties with the new administration.

FORECAST FOR 2018

Thanks to the new federal tools and continually emerging cost data, there is hope that in 2018 advocates will be able to continue the momentum against the criminalization of homelessness by changing policies and practices at the local, county, and state levels. At the federal level, the priority will be to maintain past gains and to look for strategic ways to move forward. Issues to watch for include proposals in Congress to cut non-defense spending (which could increase homelessness, and undermine other efforts for constructive alternatives) or any proposals to limit or de-fund offices that promote and protect the civil rights of people experiencing homelessness. In order to build on existing gains and address the urgent need, hundreds of national and local organizations, including the Law Center and NLIHC, launched the Housing Not Handcuffs Campaign in late 2016 to fight against criminalization and for adequate housing for all. It will not be an easy struggle, but it is more important than ever and within our sights if we work together.

WHAT TO SAY TO LEGISLATORS

The Housing Not Handcuffs Campaign has developed Model Policies for local, state, and federal government 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 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, and these criminal records only make it more difficult to hold a job, 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. Because housing provides the stability needed for people to take advantage of other programs and to get back on their feet.

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.

FOR MORE INFORMATION

National Law Center on Homelessness & Poverty, 202-638-2535, email@nlchp.org, www.nlchp.org

Housing Not Handcuffs Campaign, http://www.housingnothandcuffs.org

Disaster Housing Programs

By Ed Gramlich, Senior, Senior Advisor, National Low Income Housing Coalition

The Federal Emergency Management Agency (FEMA) leads the federal government's efforts to prepare the nation for all potential disasters and to manage the federal response and recovery efforts following any national disaster. FEMA provides immediate, direct financial and physical assistance to those affected by disasters, and has the responsibility for coordinating government-wide relief efforts.

HISTORY

Until the 1930s, ad hoc legislation was passed in response to hurricanes, earthquakes, floods, and other natural disasters. By the 1930s, when the federal approach to disaster-related events became popular, the Reconstruction Finance Corporation was given authority to make disaster loans for repair and reconstruction of certain public facilities following an earthquake, and later, other types of disasters. However, a piecemeal approach to disaster assistance continued. The Disaster Relief Act of 1974 firmly established the process of Presidential disaster declarations. Finally, on April 1, 1979, President Jimmy Carter signed Executive Order 12127, merging many of the separate federal disaster-related responsibilities into a newly created Federal Emergency Management Agency (FEMA). In 2003, FEMA became a part of the new Department of Homeland Security (DHS).

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 100-707), amending the Disaster Relief Act of 1974, became law on November 23, 1988. It created the system in place today by which a presidential disaster declaration of an emergency triggers financial and physical assistance through FEMA. The act gives FEMA the responsibility for coordinating government-wide relief efforts. It is designed to bring an orderly and systemic means of federal natural 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 programs for losses due to a disaster.

President George W. Bush signed the Post-Katrina Emergency Reform Act on October 4, 2006. The act significantly reorganized FEMA, provided substantial new authority to remedy gaps that became apparent in the response to Hurricane Katrina in August 2005, and included a more robust preparedness mission for FEMA. President Barack Obama signed the Sandy Recovery Improvement Act (SRIA) of 2013 on January 29, 2013. SRIA authorized several significant changes to the way FEMA may deliver federal disaster assistance to survivors.

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. Disaster housing and community development programs unique to FEMA include:

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. Four types of housing assistance are available under IHP:

1. Temporary housing assistance, which includes:
    a. Transitional Shelter Assistance (TSA). In recent large-scale disasters such as those due to Hurricanes Harvey, Irma, and Maria, FEMA has provided TSA, which covers 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 count against a household's maximum amount of assistance available under IHP.
    b. Rental Assistance. FEMA may provide financial assistance to rent temporary housing for up to 18 months. The amount is based on the area's Fair Market Rent (FMR) and covers rent plus utilities, and

may also include a security deposit equal to one month of FMR. Households may seek Continued Rental Assistance when alternate housing is not available.

c. Direct Temporary Housing Assistance. FEMA may provide direct housing assistance for up to 18 months when disaster survivors are unable to use Rental Assistance due to a lack of available housing resources. Direct Temporary Housing Assistance is not counted toward the IHP maximum award amount. The impacted government must request it. Direct Temporary Housing Assistance may include:
   - 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.

2. Home repair cash grants, available to homeowners for damage not covered by insurance. It is intended to repair the home to a safe, sanitary, or functional condition; it is not intended to return the home to its pre-disaster condition.
3. Home replacement cash grants, available to homeowners to replace a damaged home that is not covered by insurance.
4. Permanent or Semi-Permanent Housing Construction, which allows home repair and/or construction services 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.

Other Needs Assistance (ONA). In addition to housing assistance the Individuals and Households Program provide 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 are Critical Needs Assistance, which provides up to $500 to meet life-saving 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.

Public Assistance (PA). 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 provides assistance to remove debris and carry out emergency protective measures (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%.

Hazard Mitigation Grant Program (HMGP). In order to reduce the risk of damage and reliance on federal recovery funds in future disasters, FEMA administers the Hazard Mitigation Grant Program (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 from 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, making flood insurance available to homeowners for the first time. The Flood Disaster Protection Act of 1973 made 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

CDBG Disaster Recovery (CDBG-DR). CDBG Disaster Recovery (CDBG-DR) funding is provided for Presidentially Declared Major Disasters by appropriation acts, generally special appropriations 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, which are identified in a *Federal Register* notice issued by HUD following the announcement of the appropriation.

CDBG-DR grantees, generally 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, those with income at or less than 80% of the area median income. A CDBG-DR *Federal Register* notice on November 21, 2016 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.

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 "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 DRGR system showing each activity's progress, expenditures, accomplishments, and beneficiary characteristics such as race, ethnicity, and gender.

Disaster Housing Assistance Program (DHAP). In the aftermath of Hurricane Katrina in 2005, it became clear that HUD, not FEMA, was best suited to oversee and administer federal disaster housing assistance to the lowest income people. Congress amended the Stafford Act to require the federal government to create a disaster housing plan. That 2009 plan made it clear that HUD should be playing a key role in creating and operating disaster housing assistance programs and it recommended that Congress make the Disaster Housing Assistance Program (DHAP) permanent. The 2011 National Disaster Recovery Framework recommended that HUD, not FEMA, serve as the agency for coordinating and delivering housing assistance. However, to date, before HUD can put a DHAP program in place, FEMA must enter into an interagency agreement with HUD. In the wake of the 2017 hurricanes and wildfires, FEMA has resisted.

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, 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 their 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 prepare to assume full responsibility for their 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 them to public benefits.

DHAP helps fill the gaps low income households experience with FEMA's Transitional Shelter Assistance (TSA) program. Many hotels do not participate, and those that do often charge daily "resort" fees, require security deposits, and require that displaced households have credit cards – all of which are barriers for low income households who have already depleted any savings that they may have had and that are often unbanked or underbanked.

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 or refinance of a house along with its repair 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

After households apply to FEMA, they might be contacted by SBA to submit an application for a low-interest loan. If eligible, the household does not have to accept it. If a household is not eligible for an SBA loan, they will be referred back to FEMA to be considered for a FEMA Other Needs Assistance (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. 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 the homeowner 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 will depend upon 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.

U.S. Department of the Treasury

Though without a permanent disaster recovery program, Congress authorized the U.S. Department of the Treasury (Treasury) to provide special Low Income Housing Tax Credits (LIHTCs) and other tax incentives after recent major disasters. In the case of hurricanes Katrina and Rita, 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.

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 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 was located 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 in order 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.

FORECAST FOR 2018

Congress enacts relief bills to address recent disasters as they occur. It is critical that any disaster relief bill include resources to ensure that all survivors, including people with the lowest incomes, are served.

FOR MORE INFORMATION

National Low Income Housing Coalition, 202-662-1530, www.nlihc.org

The Disaster Housing Recovery Coalition's 2017 webpage, http://nlihc.org/issues/disaster, including its recommendations:

- To Congress
- To HUD
- To FEMA

NLIHC's 2017 Top Priorities for Any Disaster Recovery Package, http://bit.ly/2ADAN6n

HUD's Disaster Resources webpage, https://www.hud.gov/info/disasterresources

HUD's Hurricane Assistance and Recovery webpage, https://www.hud.gov/hurricane

HUD's CDBG-DR webpage, https://www.hudexchange.info/programs/cdbg-dr

HUD's CDBG-DR Toolkit https://www.hudexchange.info/programs/cdbg-dr/toolkits

HUD's "Basically CDBG" Chapter 21: Disaster Recovery CDBG (CDBG-DR), https://www.hudexchange.info/resources/documents/Basically-CDBG-Chapter-21-CDBG-DR.pdf

FEMA's website, https://www.fema.gov

SBA's Disaster Assistance website, https://www.sba.gov/disaster-assistance

Rural Development's Disaster Assistance website, https://www.rd.usda.gov/programs-services/services/rural-development-disaster-assistance

Chapter 7:
HOUSING TOOLS

Disparate Impact

By Jamie L. Crook, Relman, Dane & Colfax PLLC

The case of Texas Department of Housing and Community Affairs v. Inclusive Communities Project (hereinafter "Inclusive Communities") was argued in front of the Supreme Court in January 2015 and decided in June 2015. Fair housing organizations, banks, and local governments were intensely interested in the Supreme Court's decision that would decide whether disparate impact is a valid theory of liability under the Federal Fair Housing Act.[1]

Disparate impact is best understood as a method for proving housing discrimination without having to show that the discrimination was intentional. Under disparate impact theory, most courts, as well as HUD, use a "burden shifting" test. First, the plaintiff must show that the challenged conduct, policy, or practice disproportionately harms members of a group that is protected by the Fair Housing Act.[2] For example, a plaintiff could show that a city zoning ordinance that excludes mobile homes disproportionately harms Latinos because in that jurisdiction, Latinos are overrepresented among mobile home occupants.

Second, the defendant may seek to prove that the challenged practice is justified by a legitimate, non-discriminatory purpose. In our hypothetical, the city might try to prove that it passed the ordinance to ensure a minimum level of habitability for all housing in the jurisdiction.

At the final stage of the analysis, the plaintiff may prove that despite any legitimate, non-discriminatory purposes, the jurisdiction could achieve that goal in a way that has a less discriminatory impact on Latinos. For example, the plaintiff might show that the city could achieve its habitability goals by enacting and enforcing specific codes for the maintenance of mobile home parks, rather than banning such housing altogether.

The burden-shifting proof framework ensures that courts apply the disparate impact standard in a pragmatic, fact-specific way, thereby reconciling the two goals: (1) ferreting out conduct that unjustifiably discriminates by harming a protected class, and (2) allowing housing providers, lenders, local governments, and other potential defendants to pursue legitimate business and governmental goals. In fact, a quantitative survey of disparate impact cases over the past four decades found that disparate impact plaintiffs only rarely prevail,[3] indicating that the availability of disparate impact liability is not an obstacle to legitimate planning or business objectives.

In Inclusive Communities, a civil rights organization claimed that the State of Texas's methodology for allocating Low Income Housing Tax Credits lead to increased racial segregation in Dallas. Dozens of friend-of-the-court briefs submitted to the Court on the plaintiff's side argued that preserving the disparate impact standard was consistent with the statutory text and congressional intent and was critical to fulfill and further the broad mandate of the federal Fair Housing Act. On the State's side, dozens of such briefs argued the contrary, saying that a defendant should not be held liable without evidence of discriminatory intent, because allowing liability to turn on discriminatory effect alone would chill reasonable underwriting practices, local zoning decisions, city planning efforts, et cetera.

The majority opinion, by Justice Kennedy, addresses both themes. First, the Court recognized that disparate impact is a necessary tool for combatting ongoing, systemic discrimination of the type that motivated passage of the Fair Housing Act in the first place, such as exclusionary zoning. The Court found that "[m]uch progress remains to be made in our Nation's continuing struggle against racial isolation" and that the Fair Housing Act has an important "continuing role in moving the Nation toward a more integrated society" by helping to combat, among other things, "discriminatory ordinances barring the construction of certain types of housing units."[4]

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1 135 S. Ct. 2507 (2015).

2 24 C.F.R. § 100.500(a). The federal Fair Housing Act prohibits discrimination based on race, color, religion, national origin, sex, handicap, and familial status. Some state and local fair housing laws prohibit discrimination based on additional classifications, for example source of income or sexual orientation.

3 Stacy E. Seicshnaydre, *Is Disparate Impact Having Any Impact? An Appellate Analysis of Forty Years of Disparate Impact Claims Under the Fair Housing Act*, 63 Am. U. L. Rev. 357, 363 (2013).

4 *Inclusive Cmtys.*, *supra* note 1, 135 S. Ct. at 2525-26.

Thus, recognizing disparate impact liability enables "plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment," and "prevent segregated housing patterns that might otherwise result from covert and illicit stereotyping."[5]

Second, the Court emphasized that the disparate impact standard has been and remains properly limited "to give housing authorities and private developers leeway to state and explain the valid interest served by their policies. . . . [H]ousing authorities and private developers [must] be allowed to maintain a policy if they can prove it is necessary to achieve a valid interest…. The FHA does not decree a particular vision of urban development; and it does not put housing authorities and private developers in a double bind of liability, subject to suit whether they choose to rejuvenate a city core or to promote new low-income housing in suburban communities."[6]

The Inclusive Communities decision thus continues a long tradition of allowing disparate impact liability under the Fair Housing Act, while ensuring that the theory does not serve as a trap for housing providers or governments that are pursuing legitimate, housing-related objectives, so long as those legitimate objectives could not be achieved with less harmful impact on protected classes.[7]

As discussed in Inclusive Communities, courts have historically applied disparate impact liability under the Fair Housing Act in "heartland" cases targeting "zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification."[8] But this pragmatic and flexible standard has also been used to challenge myriad other housing-related practices that have discriminatory effects, such as subsidized housing waitlist preferences,[9] community redevelopment,[10] redlining and predatory lending,[11] mobile home registration requirements,[12] and condominium association rules restricting the presence of children,[13] to give just a few examples. Courts have also applied the disparate impact standard to conduct that, while facially neutral, would have the effect of perpetuating existing patterns of residential segregation.[14]

The Inclusive Communities decision confirms that going forward, disparate impact will remain an important tool for combatting practices that may not be motivated by bias but which nonetheless disproportionately harm protected groups.

One such example is redevelopment or urban renewal efforts. As cities throughout the country experience a massive resettlement of the urban cores,[15] they are rapidly seeking to redevelop formerly blighted areas. Because long-time residents of these areas are disproportionately black and Latino, redevelopment can have a disparate impact if it causes displacement. In a case that settled before Inclusive Communities, a group of African-American and Latino residents of a blighted neighborhood in Mount Holly, NJ, challenged a redevelopment plan using a disparate impact theory.[16] The plaintiffs argued that the proposed redevelopment would displace them; indeed, their statistical evidence showed that that the negative impact would overwhelmingly affect African

5 *Id.* at 2523.

6 *Id.* at 2522-23.

7 A similar balancing is achieved in HUD's 2013 disparate impact rule, *codified at* 24 C.F.R. § 100.500.

8 *Inclusive Communities*, *supra* note 1, 135 S. Ct. at 2522 (citing *Huntington Branch NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir. 1988) (holding that town's zoning restrictions against multifamily housing had an unlawful adverse racial impact and perpetuated segregation); *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974); *Greater New Orleans Fair Hous. Action Ctr. v. Saint Bernard Parish*, 641 F. Supp. 2d 563 (E.D. La. 2009))).

9 *See, e.g.*, *Langlois v. Abington Hous. Auth.*, 207 F.3d 43, 49 (1st Cir. 2000).

10 *See, e.g.*, *Mount Holly Gardens Citizens in Action Inc. v. Twp. of Mount Holly*, 658 F.3d 375 (3d Cir. 2011), *cert granted*, 133 S. Ct. 2824 (2013); *cert dismissed*, No. 11-1507, 2013 WL 6050174 (U.S. Nov. 15, 2013).

11 *See, e.g.*, Compl. for Declaratory and Inj. Relief and Damages, *Mayor of Balt. v. Wells Fargo, N.A.*, No. 08-062 (D. Md. Jan. 8, 2008); *Ramirez v. GreenPoint Mortg. Funding Inc.*, 633 F. Supp. 2d 922 (N.D. Cal. 2008).

12 *See Cent. Ala. Fair Hous. Ctr. v. Magee*, 835 F. Supp. 2d 1165 (M.D. Ala. 2011), *vacated as moot*, No. 11-16114, 2013 WL 2372302 (11th Cir. May 17, 2013).

13 *See, e.g.*, *Hous. Opportunities Project for Excellence Inc. v. Key Colony No. 4 Condominium Assoc.*, 510 F. Supp. 2d 1003 (S.D. Fla. 2007).

14 *See, e.g.*, *Huntington Branch*, *supra* note 8.

15 Leigh Gallagher, "The End of the Suburbs," July 31, 2013, *Time*, *available at* http://ideas.time.com/2013/07/31/the-end-of-the-suburbs/ ; William H. Frey, "Demographic Reversal: Cities Thrive, Suburbs Sputter," June 29, 2012, Brookings Institute, *available at* http://www.brookings.edu/research/opinions/2012/06/29-cities-suburbs-frey

16 *Mount Holly*, *supra* note 10.

Americans and Latinos, who were also significantly less likely to be able to afford replacement housing in the community.[17] The plaintiffs got a favorable decision from the Court of Appeals, and the case subsequently settled in a fashion that permitted most of the families to move into newly constructed units in the same neighborhood. Now that the Inclusive Communities decision has resolved that plaintiffs can challenge this type of conduct using disparate impact, one can expect similar cases to be brought in areas facing rapid gentrification.[18]

An example along similar lines is addressed in a 2016 Second Circuit affordable housing case, MHANY Management, Inc. v. County of Nassau.[19] Citing the Supreme Court's recognition in Inclusive Communities of the importance of such "heartland" zoning cases, the Second Circuit held that the plaintiffs met their burden of establishing that a rezoning decision by the City of Garden City, NY, prevented the development of affordable housing and therefore disproportionately harmed African Americans and Latinos and perpetuated residential segregation.[20] The Second Circuit sent the case back to the District Court to determine whether the plaintiffs could also show that Garden City could achieve any legitimate zoning goals through less discriminatory alternative means.[21]

Similarly, in Avenue 6E Investments, LLC v. City of Yuma, the Ninth Circuit emphasized the importance of "policy to provide fair housing nationwide" in holding that the denial of an affordable housing provider's zoning request in order "to permit the construction of housing that is more affordable" may constitute an unlawful disparate impact, and rejected an argument that the availability of affordable housing in the same region necessarily precludes a plaintiff from showing disparate impact.[22]

We can also expect disparate impact challenges to "disorderly conduct" or "chronic nuisance" ordinances, which subject landlords to fines and other penalties based on (among other things), police activity at their properties. Because these ordinances are drafted broadly, they have often been applied to include police responses to domestic violence incidents. Such ordinances will often force landlords to take steps to evict affected tenants following a triggering number of police responses at the property, under threat of hefty fines or other penalties.[23] These laws can have a clear disparate impact on women, who make up the very large majority of domestic violence victims.

One plaintiff who had experienced extreme and life-threatening domestic violence and had been threatened with eviction after the police were called to her apartment three times sued the Borough of Norristown, PA, which had applied its disorderly conduct ordinance to compel her landlord to evict her.[24] The plaintiff argued, among other things, that the Norristown ordinance violated the Fair Housing Act because it adversely affected and penalized victims of domestic violence, who are disproportionately women.

Although the Norristown case ultimately settled,[25] it provides an important model that should be studied and applied by fair housing practitioners. Hundreds of jurisdictions across the country have similar nuisance laws, some of which may have a chilling effect by discouraging a victim from calling the police in an event of domestic violence for fear of losing housing.[26]

17 *Id.* at 382-83.

18 Such cases may be brought against private developers as well as governmental entities. In the recently filed case *Crossroads Residents Organized for Stable and Secure ResiDencieS et al. v. MSP Crossroads Apartments LLC et al.*, No. 0:16-cv-00233 (D. Minn.), the plaintiffs, mostly low income tenants, challenge a private housing provider's plan to "reposition the complex in the market in order to appeal to and house a different [young professional] tenant demographic population." *See* Compl. (Doc. 1), ¶ 1; *id.* ¶¶ 49-59, 68-71 (disparate impact allegations). The District Court held that the plaintiffs adequately alleged both disparate treatment and disparate impact under the FHA and allowed those claims to proceed. *Crossroads Residents Organized for Stable and Secure ResiDencieS (CROSSRDS) v. MSP Crossroads Apartments LLC*, 2016 WL 3661146 (D. Minn. July 5, 2016).

19 819 F.3d 581 (2d Cir. 2016).

20 *Id.* at 619-20.

21 *Id.* at 620.

22 818 F.3d 493, 509-13 (9th Cir. 2016).

23 Matthew Desmond & Nicol Valdez, "Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women," *American Sociological Review* 78:117-141 (2013), *available at* https://scholar.harvard.edu/mdesmond/publications/unpolicing-urban-poor-consequences-third-party-policing-inner-city-women.pdf?m=1360100394'; Emily Werth, *The Cost of Being "Crime Free": Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances* (2013), Shriver Center, *available at* http://www.povertylaw.org/files/docs/cost-of-being-crime-free.pdf.

24 *Briggs v. Borough of Norristown*, Compl. (Doc. 1), No. 2:13-cv-2191 (E.D. Pa. 2013).

25 *See* https://www.aclu.org/cases/briggs-v-borough-norristown-et-al (last updated Sept. 18, 2014).

26 *See Briggs*, *supra* note 20, Compl. ¶¶ 55–60, 68–75, 87–102; *Markham v. City of Surprise, AZ*, Compl. (Doc.

To the extent such laws lead to evictions of tenants affected by domestic violence, they will also create a risk of increased homelessness for domestic violence victims and their children.[27] The availability of the disparate impact standard will allow plaintiffs to bring successful challenges if they can present evidence of a discriminatory effect on women or families with children, without having to also present frequently difficult or impossible-to-obtain evidence of bias.

Plaintiffs have also used a disparate impact theory to challenge housing restrictions against people with criminal records, another area where bias may well be at play but can be difficult to prove. In *Sams v. Ga West Gate, LLC*, for example, current and former tenants and a fair housing organization challenged an apartment complex's "99-year criminal history rule," which "barred from residency any individual who had certain felony or misdemeanor convictions within the past 99 years."[28] The district court held that the plaintiffs had adequately pleaded a disparate impact claim by showing that nationwide African Americans were more likely than whites to have criminal convictions and were over-represented in the prison population, and that the 99-year criminal history rule therefore adversely impacted African Americans.[29] A similar disparate impact challenge to a restriction against renting to people with non-traffic criminal offenses is pending before another district court in *Fortune Society, Inc. v. Sandcastle Towers Housing Development Fund Corp.* In that case, the U.S. Department of Justice has filed a Statement of Interest setting forth its view that such bans may violate the Fair Housing Act.[30]

1), No. 2:15-cv-01696 (D. Az. 2015); Annamarya Scaccia, *How Domestic Violence Survivors Get Evicted from their Homes After Calling the Police*, RH Reality Check (June 4, 2013, 2:16 PM), http://www.rhrealitycheck.org/article/2013/06/04/norristown-ordinance-and-impact-on-domestic-violence-victims-2/, *archived at* http://perma.cc/05nZHmFoPQd.

27 Nationwide, one in five homeless women cites domestic violence as the primary cause of her homelessness, demonstrating a strong correlation between domestic violence and homelessness. *See* Scaccia, *supra* note 22 (citing a study by the National Law Center on Homelessness and Poverty).

28 *Sams v. Ga W. Gate, LLC*, No. CV415-282, 2017 WL 436281, at *1 (S.D. Ga. Jan. 30, 2017).

29 *Id.* at *5.

30 Case 1:14-cv-06410-VMS, ECF No. 102 (E.D.N.Y. Oct. 18, 2016). The plaintiffs in *Sams* and *Fortune Society* also claim that the criminal record bans are motivated by discriminatory intent.

Defendants have sought to defend against a variety of disparate impact claims by arguing that the plaintiff cannot show that disproportionate harm to protected classes is caused by the challenged housing practice, relying on a reference in *Inclusive Communities* to a "robust causality requirement." Courts have recognized, however, that a plaintiff can show causation with evidence that the challenged policy or practice restricts housing opportunities to a particular group, and that members of a protected class are overrepresented in that group. In *Sams*, for example, the court found that the plaintiffs alleged a causal connection with evidence that the criminal history ban denied housing to people with criminal records, a population in which African Americans were overrepresented.[31]

In *National Fair Housing Alliance v. Travelers Indemnity Co.*, the district court likewise found a sufficient causal connection between a habitational insurance policy that excluded landlords who rent to tenants who use Housing Choice vouchers to pay their rent, and harm to African-American and women-headed households (both protected classes under the Fair Housing Act), who were more likely to be voucher recipients in the relevant geographical housing market.[32] The court cited a long line of cases finding insurance policies susceptible to challenge under the Fair Housing Act and rejected the defendant's argument that the "robust causality" language in *Inclusive Communities* rendered them invalid. The district court observed that *Inclusive Communities* "does not require courts to abandon common sense or necessary logical inferences that follow from the facts alleged. Indeed, quite the opposite—the Supreme Court instructed courts to ensure that disparate-impact liability is confined to removing artificial, arbitrary, and unnecessary barriers.[33]

In sum, in the aftermath of *Inclusive Communities*, fair housing advocates are continuing to make effective and creative use of the disparate impact theory to challenge a range of housing policies that have the effect of disproportionately harming protected classes without a lawful justification.

31 *Id.*

32 *Nat'l Fair Hous. All. v. Travelers Indem. Co.*, ---F. Supp. 3d---, Civil Action No. 16–928, 2017 WL 3608232 (D.D.C. 2017).

33 *Id.* at *7 (citing *Inclusive Communities*, 135 S. Ct. at 2524).

Affirmatively Furthering Fair Housing (AFFH): Under the July 16, 2015 Final Rule

By Ed Gramlich, Senior Advisor,
National Low Income Housing Coalition

Administering agency: HUD's Office of Fair Housing and Equal Opportunity (FHEO)

Year started: 1968

Population targeted: The Fair Housing Act's protected classes—race, color, religion, sex, national origin, disability, and familial status (in other words, households with children).

See Also: *Consolidated Planning Process*, *Public Housing Agency Plan*

HUD EFFECTIVELY SUSPENDS AFFH RULE FOR MOST JURISDICTIONS ON JANUARY 5, 2018

In a surprise move, HUD published a notice in the *Federal Register* on January 5, 2018, suspending most local governments' obligation under the Affirmatively Furthering Fair Housing (AFFH) rule to submit an Assessment of Fair Housing (AFH) well after October 31, 2020, and in many cases after 2025. The AFFH rule, published on July 16, 2015, requires local governments to conduct an AFH using an "Assessment Tool" to assist them in meeting their obligation to affirmatively further fair housing. The suspension effectively postpones implementation of the AFFH rule until 2025 for a large majority of jurisdictions. Based on a review of the first 49 AFH initial submissions, HUD claimed that many local governments need additional time and technical assistance to adjust to the AFFH process instituted in 2015.

The AFFH rule requires local jurisdictions receiving more than $500,000 a year in Community Development Block Grant (CDBG) funds to submit their first AFH 270 days before their program year that begins on or after January 1, 2017, for which a new Consolidated Plan (ConPlan) is due. In addition, the AFFH rule (as modified by an October 24, 2016, *Federal Register* notice) requires local governments that receive $500,000 or less in CDBG each year to submit an AFH when they have to prepare a new ConPlan in a program year that begins on or after January 1, 2019.

The vast majority of local governments renew their ConPlans on a five-year cycle that had them renewing their ConPlans in 2015, with an estimated 60% of those renewing by July 1, 2015; consequently they did not need to submit an AFH until their next new ConPlan in 2020. Therefore, the AFFH rule would require those July 1 program year local governments to submit an AFH 270 days before or around October of 2019 – well before the new suspension date of October 31, 2020. The local governments with the latest program year start dates, October 1, 2015 (an estimated 12% of 2015 jurisdictions), would be required to submit an AFH around January of 2020 – again, well before the suspension date of October 31, 2020.

Two additional groups of local governments will also be subject to the suspension: those that have prepared an AFH but have not yet submitted them to HUD, and those that are preparing to re-submit an AFH that HUD found had deficiencies when first submitted.

Advocates estimate that approximately 900 jurisdictions make up all four of the above categories of local jurisdictions affected by the suspension. There are approximately 1,200 local governments that submit a ConPlan.

Because HUD's *Federal Register* notice postpones jurisdictions' requirement to submit an AFH until their required AFH submission date that falls after October 31, 2020, HUD is effectively postponing implementation of the AFFH rule for a large majority of jurisdictions until 2025.

The legal obligation to affirmatively further fair housing continues for all. However, until a local government is required to submit an AFH according to the suspension date, their AFFH obligation reverts to the previous, grossly inadequate protocol of certifying that they are affirmatively furthering fair housing, which simply means conducting an analysis of impediments (AI) to fair housing choice, taking appropriate actions to overcome the effects of any impediments, and keeping records reflecting the analysis and actions. See the *Advocates' Guide* article following this one for information about the AI.

Local governments that have already submitted an AFH that has been accepted by

HUD must continue to execute the goals of that accepted AFH.

The January 5, 2018, *Federal Register* notice is at http://bit.ly/2mmWrGe

AFFIRMATIVELY FURTHERING FAIR HOUSING

This article describes the AFFH rule and AFH process introduced by the new July 16, 2015, rule. This new rule and process is being 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 began in 2017. Both lists are approximate; for example, a few of the 2016 jurisdictions decided to pair with another jurisdiction in their region, resulting in the 2016 jurisdiction postponing implementation due to the later required start date of the jurisdiction it paired with. NLIHC has obtained an unofficial list from HUD that might provide a clue about which jurisdictions are required to comply in 2018. All other CDBG entitlement jurisdictions, states, and public housing agencies will continue to use the pre-existing AI process (see the following *Advocates' Guide* article, *Affirmatively Furthering Fair Housing (AFFH): For Jurisdictions and Public Housing Agencies Not Yet Required to Comply with the 2015 AFFH Rule*.)

HISTORY

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, religion, sex, disability, or familial status.

The laws that establish the CDBG program, the Comprehensive Housing Affordability Strategy [(CHAS), the statutory basis of the ConPlan], the HOME Investment Partnerships Program, and the PHA Plan for public housing agencies (PHAs) each require jurisdictions to certify in writing that they are affirmatively furthering fair housing. States must ensure that units of local government receiving CDBG or HOME funds from the state comply.

On July 16, 2015, HUD published the long-awaited final rule implementing the Fair Housing Act of 1968's 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 do not have to use the Tool until HUD provides the needed data and issues a notice in the *Federal Register* announcing new submission dates. A proposed tool for states was published on March 11, 2016, but never finalized.

SUMMARY

The opening text of the final rule declares that the purpose of the AFFH rule is to provide "program participants" [cities, counties, states, and public housing agencies (PHAs)] "with an effective planning approach to aid them in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination."

In the preamble, HUD stresses that the new AFFH approach does not mandate specific outcomes; rather, it establishes basic parameters to help guide public sector housing and community development planning and investment decisions. The rule encourages a more engaged and data-driven approach to assessing fair housing and planning actions. The rule establishes a standardized fair housing assessment and planning process to give jurisdictions and PHAs a more effective means to affirmatively further the purposes of the Fair Housing Act.

The Need for the AFFH Rule

Although AFFH has been law since 1968, meaningful regulations to provide jurisdictions and PHAs with guidance on how to comply had not existed. The 1974 law creating CDBG required jurisdictions to certify that they would affirmatively further fair housing. Eventually, that certification was defined in CDBG regulations (and later in ConPlan regulations) to mean that the executive of a jurisdiction affirmed that the jurisdiction had an 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.

That pre-existing system was not effective, as noted by the Government Accountability Office. There were numerous limitations of the pre-existing AFFH system, beginning with the absence of regulatory guidance. (HUD published a booklet in 1996, but that booklet 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 a PHA's Five-Year PHA Plan. AIs also had no prescribed schedule for renewal; consequently, many were not updated in a timely fashion.

How the New AFH System Differs From the Pre-existing AI System

The key differences the new rule establishes, compared to the pre-existing AI system, include:

1. The AFH replaces the AI. There was no formal guidance for preparing an AI. The new rule provides a standardized framework for program participants to use to identify and examine what HUD is calling "fair housing issues" and the underlying "contributing factors" that cause the fair housing issues.
2. HUD will provide each program participant with data covering not only the local jurisdiction, but also the surrounding region. Program participants must consider these data when assessing fair housing.
3. HUD will now receive and review AFHs; HUD did not receive or review AIs.
4. The fair housing goals and priorities that program participants set in the AFH will be incorporated into their ConPlans and PHA Plans.
5. Public participation is required in the development of the AFH.
6. The AFH must be submitted every five years in sync with a new ConPlan or PHA Plan.

When Will the New AFFH System Begin?

Most program participants will not be required to use the new AFFH system until 2019. However, see "HUD Effectively Suspends AFFH Rule on January 5, 2018" at the beginning of this article. Until a program participant is required to submit an AFH, it must continue to follow the current AI process (see following *Advocates' Guide* article *Affirmatively Furthering Fair Housing (AFFH): For Jurisdictions and Public Housing Agencies Not Yet Required to Comply with the 2015 AFFH Rule*).

HUD Supports a Balanced Approach to AFFH

In the final rule, HUD clarifies that it supports a balanced approach to AFFH.

> "Strategies and actions must affirmatively further fair housing and may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, including HUD-assisted housing."

At several places in the preamble to the final rule, HUD stresses that the final rule supports a balanced approach to AFFH. For example:

> "The concept of affirmatively furthering fair housing embodies a balanced approach in which additional affordable housing is developed in areas of opportunity with an insufficient supply of affordable housing; racially or ethnically concentrated areas of poverty are transformed into areas of opportunity that continue to contain affordable housing as a result of preservation and revitalization efforts; and the mobility of low income residents from low-opportunity

areas to high-opportunity areas is encouraged and supported as a realistic, available part of fair housing choice."

"HUD's rule recognizes the role of place-based strategies, including economic development to improve conditions in high poverty neighborhoods, as well as preservation of the existing affordable housing stock, including HUD-assisted housing, to help respond to the overwhelming need for affordable housing. Examples of such strategies include investments that will improve conditions and thereby reduce disparities in access to opportunity between impacted neighborhoods and the rest of the city or efforts to maintain and preserve the existing affordable rental housing stock, including HUD-assisted housing, to address a jurisdiction's fair housing issues."

WHAT DOES IT MEAN TO "AFFIRMATIVELY FURTHER FAIR HOUSING"?

There is a new AFFH definition:

"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 it means taking meaningful actions that:

1. Address significant disparities in housing needs and in access to community opportunity.
2. Replace segregated living patterns with truly integrated and balanced living patterns.
3. Transform racially and ethnically concentrated areas of poverty into areas of opportunity.
4. Foster and maintain compliance with civil rights and fair housing laws."

What Are "Meaningful Actions"?

Meaningful actions are "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."

What Does It Mean to "Certify"?

Jurisdictions submitting ConPlans and PHAs submitting PHA Plans have always had to certify (pledge) that they are affirmatively furthering fair housing choice. The final rule amends the old definitions of certifying AFFH compliance to mean that program participants will:

- Take meaningful actions to further the goals in the AFH; and,
- Not take any action that is materially inconsistent with its obligation to AFFH.
- PHAs must also address fair housing issues and contributing factors in their programs.

A FEW DEFINITIONS OF OTHERWISE SIMPLE WORDS

Fair Housing Choice

Fair housing choice means people have enough information about realistic housing options to live where they choose without unlawful discrimination and other barriers. For people with disabilities, it also means accessible housing in the most integrated setting appropriate to the person's needs, including disability-related services needed to live in the housing.

Fair Housing "Issue"

This definition is also important and is likewise used throughout the new rule. Fair housing issue means a condition that restricts choice or access to opportunity, including:

1. Ongoing local or regional segregation, or lack of integration.
2. Racial or ethnic concentrations of poverty.
3. Significant disparities in access to opportunity.
4. Disproportionate housing needs based on the "protected classes" of race, color, national origin, religion, sex, familial status, or disability.

A fair housing issue also includes evidence of illegal discrimination or violations of civil rights laws, regulations, or guidance.

Fair Housing "Contributing Factor"

This definition is important. The term is used throughout the new rule. Fair housing contributing factor means something that creates, contributes to, perpetuates, or increases the severity of one or more fair housing "issues."

Definitions for the Four Fair Housing Issues

- **Integration** means that there is not a high concentration of people of a particular protected class in an area subject to analysis required by the Assessment Tool, such as a census tract or neighborhood, compared to the broader geographic area.

- **Segregation** means that there is a high concentration of people of a particular protected class in an area subject to analysis required by the Assessment Tool, such as a census tract or neighborhood, compared to the broader geographic area.
- **Racially or Ethnically Concentrated Area of Poverty** (**R/ECAP**) means a geographic area with significant concentrations of poverty and minority populations. The rule does not define "significant" or give metrics. However, the mapping system provided by HUD outlines R/ECAPs on maps and indicates them on data tables. An obscure document, *AFFH Data Documentation*, defines an R/ECAP as an area with a non-white population of 50% or more and a poverty rate that is greater than 40% or that is 3 or more times the average poverty rate for the metropolitan area, whichever threshold is lower.
- **Significant disparities in access to opportunities** means substantial and measurable differences in access to education, transportation, economic, and other important opportunities in a community, based on a protected class related to housing.
- **Disproportionate housing need** refers to a significant disparity in the proportion of a protected class experiencing a category of housing need compared to the proportion of any other relevant groups or the total population experiencing that category of housing need in the geographic area. Categories of housing need are:
  - Cost burden and severe cost burden (paying more than 30% and 50% of income, respectively, for rent/mortgage and utility costs).
  - Overcrowded housing (more than one person per room).
  - Substandard housing conditions.

Assessment Tool

The Assessment Tool refers to forms or templates provided by HUD that must be used to conduct and submit an AFH. The Assessment Tool consists of a series of questions designed to help program participants identify racially and ethnically concentrated areas of poverty, patterns of integration and segregation, disparities in access to opportunity, and disproportionate housing needs. The Assessment Tool gives more detailed definitions of these than the rule does. HUD states that the Assessment Tool questions are intended to enable program participants to perform meaningful assessments of fair housing issues and contributing factors, and to set meaningful fair housing goals and priorities. The Assessment Tool provides more detailed examples of fair housing issues and contributing factors. There are separate assessment tools for local jurisdictions, states, and PHAs.

WHAT IS AN AFH?

An AFH is an analysis of fair housing data, identification of fair housing "issues," and assessment of "contributing factors" leading to the establishment of fair housing priorities and statement of fair housing goals, all of which are submitted to HUD using the Assessment Tool. The purpose of the AFH is to identify goals to AFFH that must inform fair housing strategies in the Five-Year ConPlan, Annual ConPlan Action Plan, PHA Plan, and other community plans regarding transportation, education, or the environment. The introduction to the AFH in the regulation states that in order to develop a successful AFFH strategy, it is necessary to assess the factors that cause, increase, contribute to, or maintain fair housing problems such as segregation, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, and disproportionate housing needs.

CONTENT OF AN AFH

Program participants must conduct an AFH using the HUD-prescribed Assessment Tool. The rule sets out a structure for the AFH, unlike the AI it replaces, requiring the AFH to:

1. **Analyze data and other information**, such as HUD-provided data, other readily available local data, and local knowledge—including information gained from community participation. The purpose of this analysis is to identify—across the protected classes, both within the jurisdiction and region—the "fair housing issues" of integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, and disproportionate housing needs.

2. **Assess fair housing issues** by using the Assessment Tool and the data analysis of step #1 to identify "contributing factors" for segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs.
3. **Identify fair housing priorities** and goals based on the identified "fair housing issues" and "contributing factors" of steps #1 and #2. The AFH must:
   a. Identify and discuss the fair housing issues.
   b. Identify significant contributing factors, assign a priority to them, and justify the priorities.
   c. Set goals for overcoming the effects of the prioritized contributing factors. For each goal the program participant must:
      i. Identify one or more contributing factors that the goal is designed to address;
      ii. Describe how the goal relates to overcoming the contributing factor(s) and related fair housing issue(s); and,
      iii. Identify the metrics and milestones for determining what fair housing results will be achieved.
4. **Summarize the public participation**, including a summary of efforts to broaden participation in developing the AFH, public comments received in writing and/or orally at public hearings, unaccepted comments and the reasons why they were declined.
5. **Review progress** by summarizing (after the first AFH) the progress achieved in meeting the goals and related metrics and milestones of the previous AFH and identifying any barriers that prevented achieving those goals.

LINKAGE BETWEEN THE AFH AND THE CONPLAN OR PHA PLAN

Strategies and actions to implement the fair housing goals and priorities in an AFH must be included in a program participant's Five-Year ConPlan, Annual ConPlan Action Plan, or Five-Year PHA Plan. However, the AFH does not have to include the strategies and actions. If a program participant does not have a HUD-accepted AFH, HUD will not approve its ConPlan or PHA Plan.

ConPlan or PHA Plan strategies and actions must affirmatively further fair housing. Strategies and actions may include (but are not limited to) enhancing mobility, encouraging development of new affordable housing in areas of opportunity, encouraging community revitalization through place-based strategies, and preserving existing affordable housing.

Activities to affirmatively further fair housing may include:

- Developing affordable housing in areas of high opportunity.
- Removing barriers to developing affordable housing in areas of high opportunity.
- Revitalizing or stabilizing neighborhoods through targeted investments.
- Preserving or rehabilitating existing affordable housing.
- Promoting greater housing choice within or outside of areas of concentrated poverty.
- Promoting greater access to areas of high opportunity.
- Improving community assets, such as quality schools, employment, and transportation.

The ConPlan regulations were modified to require the Strategic Plan portion of the ConPlan to describe how a program participant's ConPlan priorities and specific objectives will affirmatively further fair housing by having strategies and actions consistent with the goals and "other elements" identified in the AFH. Annual Action Plans that are submitted in between Five-Year ConPlans must describe the actions the program participant plans to take during the upcoming year to address fair housing goals.

HUD REVIEW OF THE AFH

The AFH (unlike the AI) must be submitted to HUD for review and "acceptance." HUD will determine whether the AFH has a fair housing analysis, assessment, and goals. HUD may choose not to "accept" an AFH, or a part of an AFH, if:

- The AFH is "inconsistent" with fair housing or civil rights laws, examples of which include:
  – The analysis of fair housing issues, fair housing contributing factors, goals, or priorities in the AFH would result in policies or practices that would discriminate.
  – The AFH does not identify policies or practices as fair housing contributing factors even

people from areas of opportunity.

though they result in excluding protected class people from areas of opportunity.

- The AFH is "substantially incomplete," examples of which include an AFH that:
  - – Was developed without the required community participation or required consultation with other entities.
  - – Fails to satisfy a required element of this regulation, examples of which include:
    - ▪ An AFH with priorities or goals materially inconsistent with the data and other evidence.
    - ▪ An AFH that has priorities or goals not designed to overcome the effects of contributing factors and related fair housing issues.

The AFH will be considered "accepted" by HUD within 60 calendar days. HUD "acceptance" does not mean a program participant is meeting its obligation to AFFH; rather, it means that for purposes of administering HUD funds (such as CDBG) the program participant has provided the elements required in an AFH. If HUD does not "accept" an AFH, HUD must provide specific reasons and describe actions that must be taken to gain "acceptance." Program participants have 45 days to revise and resubmit an AFH. A revised AFH will be considered "accepted" after 30 calendar days, unless HUD does not "accept" the revised version.

PUBLIC PARTICIPATION IN THE AFH PROCESS

To ensure that the AFH is informed by meaningful community participation, the rule requires program participants to give the public reasonable opportunities for involvement in both the development of the AFH and its incorporation into the ConPlan, PHA Plan, and other planning documents. The public participation provisions of the ConPlan and PHA Plan regulations must be followed in the process of developing the AFH.

Program participants "should" use communications means designed to reach the broadest audience. Examples in the rule include: publishing a summary of each document in one or more newspapers; making copies of each document available on the program participant's official website; and, making copies of each document available at libraries, government offices, and public places.

The AFFH rule amended the ConPlan public participation regulations to include the AFH Encouraging Public Participation in the Development of the AFH

The AFFH rule adds to the ConPlan rule, requiring jurisdictions to:

- Provide for and encourage residents to participate in the development of the AFH and any revisions to the AFH.
- Encourage participation by the Continuum of Care, local and regional institutions, and other organizations (including community-based organizations) in the process of developing and implementing the AFH.
- Encourage participation by public housing residents, Resident Advisory Boards, resident councils, and other low income residents of a targeted revitalization area where a development is located, regarding developing and implementing the AFH.
- Describe procedures for assessing residents' language needs, including any need for translation of notices and other vital documents. At a minimum, jurisdictions must take reasonable steps to provide language assistance to ensure meaningful access to participation by people with limited English proficiency.

Make Data, the Proposed and Final AFH, and Records Available to the Public

The AFFH rule adds to the ConPlan rule, requiring jurisdictions to:

- Make available to the public as soon as practical [but] "***after*** the start of the public participation process," the HUD-provided data and any supplemental information the jurisdiction intends to use in preparing the AFH.
- Publish the proposed AFH in a manner that gives the public a reasonable opportunity to examine it and submit comments. The public participation plan must indicate how the proposed AFH will be published. Publishing may be met by:
  - – Summarizing the AFH in one or more newspapers of general circulation. The summary must include a list of places where copies of the entire AFH may be examined.
  - – Making copies available on the jurisdiction's official website, and at libraries, government offices, and other public places.

- The jurisdiction must provide a reasonable number of free copies of the proposed AFH to those who request it.
- The HUD-accepted AFH and any revisions must be available to the public—including in forms accessible to people with disabilities—when requested.
- The public must be able to have reasonable and timely access to records from the last five years that relate to the AFH.

Public Review and Comment During the Development of the AFH and the ConPlan

The AFFH rule adds to the ConPlan rule, requiring jurisdictions to:

- Have at least one public hearing during the development of the AFH.
- Have at least one public hearing before the proposed AFH is published for comment, in order to obtain public comments about AFH-related data and affirmatively furthering fair housing in the jurisdiction's housing and community development programs.
- Provide the public at least 30 days to comment on the proposed AFH.
- Consider public comments submitted in writing, or orally at public hearings, when preparing the final AFH. A summary of the comments must be attached to the final AFH, and an explanation of reasons for not accepting comments must be attached to the final AFH.
- Have at least one public hearing before a proposed ConPlan is published for comment in order to obtain public comments about AFFH concerns.
- Make one of the two required public hearings about the ConPlan address a program participant's proposed strategies and actions for affirmatively furthering fair housing consistent with the AFH.
- Respond to written complaints from the public about the AFH or any revisions to it. The response must be in writing, meaningful, and provided within 15 working days.

A Few Additional Key Public Participation Features of the ConPlan Regulations

- Jurisdictions must take appropriate actions to encourage participation by people of color, people who do not speak English, and people with disabilities. Localities must also encourage participation by residents of public and assisted housing.
- Access to information must be reasonable and timely. For local jurisdictions (not states) the public must have "reasonable and timely" access to local meetings, such as Advisory Committee meetings, City Council subcommittee meetings, etc.
- There must be "adequate" public notice of and access to upcoming hearings. Publishing small print notices in the newspaper a few days before the hearing is not adequate notice. Two weeks' notice is adequate. Hearings must be held at times convenient to people who are likely to be affected. Hearings must be held in places easy for lower income people to get to.

CONSULTATION WITH OTHER ENTITIES AND THE AFH PROCESS

The AFFH rule also amends the ConPlan regulations' consultation requirements to include the AFH. When preparing the AFH and then the ConPlan, jurisdictions are required to consult with community and regionally based (or state-based) organizations, including:

- Organizations that represent protected class members.
- Organizations that enforce fair housing laws (including participants in the Fair Housing Assistance Program).
- Fair housing organizations and nonprofits receiving funding under the Fair Housing Initiative Program.
- Other public and private fair housing service agencies.
- Adjacent governments, including agencies with metro-wide planning and transportation responsibilities, particularly for problems that go beyond a single jurisdiction.
- Entities previously listed in the ConPlan regulations, such as public and private agencies that provide assisted housing, health services, and social services.
- PHAs, not only about the AFH, but also about proposed strategies and actions for affirmatively furthering fair housing in the ConPlan.

- Consultation must be with any organizations that have relevant knowledge or data to inform the AFH, and that are independent and representative.
- Consultation "should" occur with organizations that have the capacity to engage with data informing the AFH, and are independent and representative.
- Consultation must occur at various points in the fair housing planning process, at least in the development of both the AFH and the ConPlan.
- Consultation regarding the ConPlan must specifically seek input about how the AFH goals inform the priorities and objectives of the ConPlan.

HUD ENCOURAGES JOINT AND REGIONAL AFHS

HUD encourages program participants to collaborate to submit a joint AFH or a regional AFH. A joint AFH involves two or more program participants submitting a single AFH. A regional AFH involves at least two program participants that must submit a ConPlan. Collaborating program participants do not have to be adjacent to each other, and they may cross state lines, as long as they are in the same Core Based Statistical Area. One of the program participants must be designated as the lead entity. All program participants are accountable for the analysis and any joint goals and priorities. Collaborating program participants must include their individual analysis, goals, and priorities in the collaborative AFH, and are accountable for them. A joint or regional AFH does not relieve each program participant from its obligation to analyze and address local and regional fair housing issues and contributing factors, and to set priorities and goals for its geographic area to overcome the effects of contributing factors and related fair housing issues. Collaborating program participants must have a plan for public participation that includes residents and others in each of the jurisdictions.

TIMING OF THE AFH

Most program participants will not be required to use the new AFFH system until 2019. However, see "HUD Effectively Suspends AFFH Rule on January 5, 2018" at the beginning of this article. Until a program participant is required to submit an AFH, it must continue to follow the current AI to fair housing choice process. (See the following *Advocates' Guide* article, *Affirmatively Furthering Fair Housing (AFFH): For Jurisdictions and Public Housing Agencies Not Yet Required to Comply with the 2015 AFFH Rule*)

There are five categories of due dates for the initial AFH. In each case, the first AFH must be submitted to HUD 270 calendar days before the start of the program participant's program year in which a new Five-Year ConPlan or Five-Year PHA Plan is due.

1. CDBG entitlement jurisdictions receiving $500,000 or more in FY15 and that are required to have a new Five-Year ConPlan on or after January 1, 2017, had to submit an initial AFH 270 calendar days before that new ConPlan is due. It is estimated that there were 22 such jurisdictions. However, HUD has indicated that several of these jurisdictions decided to join with another jurisdiction which has a later due date.
2. The final AFFH rule would have required CDBG entitlement jurisdictions receiving $500,000 or less in FY15 and that are required to have a new Five-Year ConPlan on or after January 1, 2018, to submit an initial AFH 270 calendar days before that new ConPlan is due. It is estimated that there were 105 entitlement jurisdictions with either more or less than $500,000 expected to have to submit a new Five-Year ConPlan on or after January 1, 2018. However, on October 24, 2016, HUD announced in the *Federal Register* that the deadline for submitting an AFH was extended to new Five-Year ConPlans due on or after January 1, 2019.

   The Assessment Tool published on January 13, 2017, had an "insert" intended to streamline compliance for local governments with a CDBG entitlement of $500,000 or less that chooses to collaborate with another local government completing the regular Tool.
3. The final AFFH rule would have required states required to have a new Five-Year ConPlan on or after January 1, 2018, to submit an initial AFH 270 calendar days before that new ConPlan is due. Six states were expected to start then. However, although a proposed Assessment Tool for states was published on March 11, 2016, it was never finalized. In response to comments from states, HUD started working with states to redesign the state Assessment Tool. In addition, HUD had not fully developed the data and mapping tool for states. HUD introduced interim guidance on January 18, 2017.

4. The final AFFH rule would have required PHAs with more than 550 public housing units and vouchers, combined, ("non-qualified PHAs") to submit an AFH 270 calendar days before a new Five-Year PHA Plan was due on or after January 1, 2018. An Assessment Tool for PHAs was published on January 13, 2017; however, PHAs do not have to use the Tool until HUD provides the needed data and issues a notice in the *Federal Register* announcing new submission date. HUD introduced interim guidance on January 18, 2017.
5. The final AFFH rule would have required PHAs with fewer than 550 public housing units and vouchers, combined ("qualified PHAs") to submit an AFH 270 calendar days before a new Five-Year PHA Plan is due on or after January 1, 2019. As with the non-qualified PHAs, qualified PHAs do not have to use the Assessment Tool yet. HUD introduced interim guidance on January 18, 2017

   The PHA Assessment Tool published on January 13, 2017, had an "insert" intended to streamline compliance for PHAs with 1,250 or fewer public housing units and vouchers (combined) that choose to collaborate with local governments completing the regular Tool. In addition, HUD indicated its intent to create a separate Assessment Tool for qualified PHAs.

After the first AFH, all program participants must submit a new AFH 195 calendar days before the start of the first year of their next Five-Year ConPlan or Five-Year PHA Plan. All program participants must submit an AFH at least every five years.

REVISING THE ASSESSMENT OF FAIR HOUSING

An AFH must be revised if there is a "material change," which is a change that affects the information the AFH is based on so that the analysis, fair housing contributing factors, or priorities and goals do not reflect the current situation. Examples include a presidentially declared disaster, major demographic changes, new significant contributing factors, or significant civil rights findings. HUD may also require a revision if it detects a significant change. A revised AFH must be submitted within 12 months of the onset of the material change. For presidentially declared disasters, the revised AFH is due two years after the date the disaster is declared.

A revised AFH might not require submitting an entirely new AFH. It only needs to focus on the material change and any new fair housing issues and contributing factors. It must include appropriate adjustments to the analysis, assessments, priorities, or goals.

A jurisdiction's ConPlan-required "Citizen Participation Plan" and a PHA's definition of a significant amendment must specify the criteria that will be used for determining when substantial (ConPlan) or significant (PHA Plan) revisions to the AFH are appropriate. When there are revisions to the AFH, the ConPlan and PHA Plan public or resident participation regulations pertaining to substantial/significant amendments must be followed. Completed revisions must be made public and submitted to HUD, following the ConPlan or PHA Plan regulations.

RECORDKEEPING

ConPlan participants and PHAs preparing their own AFHs must have and keep records, including:

- The information that formed the development of the AFH.
- Records demonstrating compliance with the consultation and community participation requirements, including: the names of the organizations involved in the development of the AFH, written public comments, summaries or transcripts of public meetings or hearings, public notices, other correspondence, distribution lists, surveys, interviews, etc.
- Records demonstrating actions taken to AFFH.

The records must be made available to HUD. The AFFH rule does not state that these records are to be made available to the public as well. However, the ConPlan regulations require ConPlan jurisdictions to provide the public with reasonable and timely access to information and records relating to the jurisdiction's AFH.

FOCUS ON PUBLIC HOUSING AGENCIES

The new AFFH rule offers PHAs three ways to meet the obligation to affirmatively further fair housing:

1. A PHA may work with a local or state government in preparing an AFH. If a PHA serves residents of two or more jurisdictions, the PHA may choose the jurisdiction that most closely aligns with its PHA Plan activities.

2. A PHA may work with one or more other PHAs in the planning, resident participation, and preparation of an AFH. One of the PHAs must be designated the lead agency.
3. A PHA may conduct its own AFH.

A PHA must certify that it will affirmatively further fair housing. This means the PHA will take meaningful actions to further the goals identified in the AFH, take no action that is materially inconsistent with its obligation to AFFH, and address fair housing issues and contributing factors.

A PHA is obligated to AFFH in its operating policies, procedures, and capital activities. A PHA's admission and occupancy policies for public housing and vouchers must comply with the PHA's plans to AFFH. A PHA's policies should be designed to reduce the concentration of tenants by race, national origin, and disability. Any affirmative steps or incentives a PHA plans to take must be stated in the admission policy. PHA policies should include affirmative steps to overcome the effects of discrimination and the effects of conditions that resulted in limiting participation because of race, national origin, disability, or other protected class. Affirmative steps may include:

- Marketing.
- Tenant selection and assignment policies that lead to desegregation.
- Providing additional supportive services and amenities (for example, supportive services that enable someone with a disability to transfer from an institutional setting into the community).
- Coordinating with agencies serving people with disabilities to provide additional community-based housing opportunities.
- Connecting people with disabilities to supportive services to enable them to transfer from an institutional setting into the community.

HUD may challenge a certification if a PHA fails to meet the requirements in the AFFH regulations, fails to take meaningful actions to further the goals of its AFH, or takes action that is materially inconsistent with AFFH.

A PHA's certification is in compliance if it meets the above requirements and it:

- Examines its programs.
- Identifies any fair housing issues and contributing factors in those programs.
- Specifies actions and strategies designed to address contributing factors, related fair housing issues, and goals in its AFH.
- Works with local governments to implement those local governments' efforts to AFFH that require the PHA's involvement.
- Operates its programs in a manner consistent with local jurisdictions' ConPlans.

FORECAST FOR 2018

As noted in "HUD Effectively Suspends AFFH Rule on January 5, 2018" at the beginning of this article, HUD abruptly suspended implementation of the AFFH rule for the vast majority of local governments. As this *Advocates' Guide* goes to press, advocates are considering what – if anything – can be done. Consult NLIHC's AFFH webpage to learn whether anything new has transpired in the subsequent months.

There are serious concerns about continued implementation of the AFFH rule in 2018. Attempts by a few members of Congress in 2017 appropriations bills to prevent HUD from using staff funds to implement the new rule were defeated, but are likely to emerge again in 2018. Furthermore, when he was a presidential candidate, HUD Secretary Ben Carson wrote that the rule "relies on a tortured reading of the Fair Housing law" and is "social engineering" akin to other "failed socialist experiments." He later amended these comments with a statement before the Senate banking committee that fair housing is "the law of the land" and expressed a commitment to implement the law. In July, 2017, in response to a letter from Senator Mike Lee (R-UT) asking that the July 15, 2015, AFFH rule be rescinded, Secretary Carson indicated that he would move to reinterpret the rule, according to an article in the *Washington Examiner*. It is likely that we will see attacks on AFFH implementation—whether through appropriations bills or additional attacks by the administration.

TIPS FOR LOCAL SUCCESS

In light of the surprise January 5, 2018, suspension of the AFFH rule, unless the courts or Congress override the suspension, advocates can still organize to convince their local jurisdictions to follow the lead of the AFFH rule and use the Assessment Tool to create an AFH.

All advocates should become familiar with the new AFFH rule and the Assessment Tools. For advocates whose jurisdictions should be or are implementing the new rule in 2018, it is critical to be actively engaged with your jurisdiction in the development of the AFH. Don't wait to be contacted; take the initiative. Provide data that you are aware of that helps identify fair housing issues and contributing factors; for example, research conducted by local universities or think tanks and records of social service agencies. Beyond quantifiable information, offer "local knowledge," for example experiences of protected class members that reveal fair housing issues or contributing factors—experiences such as displacement due to economic forces or landlords refusing to rent to households with children. Check NLIHC's AFFH webpage and HUD's webpage periodically for new information. For advocates in jurisdictions that should be required to implement the new rule in 2018, it will be important to ensure that the fair housing priorities and goals in your new AFH are reflected in the strategies and actions in your jurisdiction's 2018 ConPlan and Annual Action Plan. For advocates in jurisdictions or PHAs that will not be required to submit an AFH until later, work to convince your jurisdiction or PHA to begin using some or all of the new rule's guidance and the Assessment Tools even before being required to do so.

WHAT TO SAY TO LEGISLATORS

Be prepared to tell your Congressional delegation to oppose any attempts to prevent HUD from implementing the new rule. Remind them that HUD stresses that the new AFFH approach does not mandate specific outcomes; rather, it establishes basic parameters to help guide public sector housing and community development planning and investment decisions. The rule encourages a more engaged and data-driven approach to assessing fair housing and planning actions. The rule establishes a standardized fair housing assessment and planning process to give jurisdictions and PHAs a more effective means to affirmatively further the purposes of the Fair Housing Act.

FOR MORE INFORMATION

NLIHC, 202-662-1530, http://nlihc.org/issues/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, http://nationalfairhousing.org/affirmatively-furthering-fair-housing

Poverty & Race Research Action Council, http://prrac.org/full_text.php?text_id=1217&item_id=15168&newsletter_id=0&header=Current%20Projects

HUD's Affirmatively Furthering Fair Housing webpage, has links to the Assessment Tools, Frequently Asked Questions, an extensive Guidebook, and mapping tools https://www.hudexchange.info/programs/affh

HUD Office of Fair Housing and Equal Opportunity, http://1.usa.gov/VFQ4Nk

Affirmatively Furthering Fair Housing (AFFH): Under the Old Analysis of Impediments (AI) Protocol

By Ed Gramlich, Senior Advisor, National Low Income Housing Coalition

Administering agency: HUD's Office of Fair Housing and Equal Opportunity (FHEO)

Year started: 1968

Population targeted: The Fair Housing Act's protected classes—race, color, religion, sex, national origin, disability, and familial status (in other words, households with children).

See also: *Consolidated Planning Process*, *Public Housing Agency Plan*

This article describes the pre-existing Analysis of Impediments (AI) process. See the previous Advocates' Guide article Affirmatively Furthering Fair Housing (AFFH): For Jurisdictions Required to Comply in 2016, 2017, and 2018 with the 2015 AFFH Rule regarding the July 16, 2015, rule.

Most cities, counties, states, and public housing agencies (PHAs)—all of which HUD is now calling program participants—will not have to comply with the July 16, 2015, Affirmatively Furthering Fair Housing (AFFH) rule until 2019 or 2025. (See "HUD Effectively Suspends AFFH Rule for Most Jurisdictions on January 5, 2018" at the beginning of the preceding Advocates' Guide article.) Until then, program participants must continue to comply with the pre-existing minimal rules associated with the AI to fair housing choice. However, program participants may begin using the new rule if they so choose. NLIHC has obtained an unofficial list from HUD that might provide a clue about when a jurisdiction is required to comply with the July 2015 rule. Do not rely solely on this list because some smaller program participants might have decided to partner with others, resulting in a later start date for complying with the 2015 rule.

States and local governments must certify that they are affirmatively furthering fair housing in their Consolidated Plans (ConPlans) and Public Housing Agency Plans (PHA Plans). In order to comply, these jurisdictions must have an AI.

HISTORY

Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) requires HUD to administer its programs in a way that affirmatively furthers fair housing. The laws that established the Community Development Block Grant (CDBG) program, the Comprehensive Housing Affordability Strategy (CHAS, the statutory basis of the Consolidated Plan, ConPlan), and the PHA Plan all require jurisdictions to certify in writing that they are AFFH. States must ensure that units of local government receiving CDBG or HOME funds from the state comply. Further, HUD's 1996 *Fair Housing Planning Guide* declares that the obligation to affirmatively further fair housing applies to all housing and housing-related activities in a jurisdiction, whether publicly or privately funded.

SUMMARY

AFFH is defined in CDBG and ConPlan regulations as:

- Having an AI to Fair Housing Choice.
- Taking appropriate actions to overcome the effects of impediments.
- Keeping records reflecting the analysis and showing actions taken.

The regulations for public housing and vouchers are similar.

Analysis of Impediments. In the context of an AI, an impediment to fair housing can be an action or an inaction that restricts housing choice or that has the effect of restricting housing choice. Some policies or practices might seem neutral, but in fact can deny or limit the availability of housing. Obvious impediments include outright discrimination based on race or ethnicity, refusing to rent to families with children, or insurance practices that reinforce segregated housing patterns. Less obvious impediments include development policies that discourage the construction of properties with more than two bedrooms, inadequate multilingual marketing, zoning that limits group homes, and insufficient public transportation to areas with affordable housing.

AIs are their own separate documents, the contents of which are not prescribed by HUD. There is no specific term for a PHA's AI. AIs must be available to the public. HUD's *Fair Housing Planning Guide* defines an AI as:

- A comprehensive review of a jurisdiction's laws, regulations, and administrative policies, procedures, and practices.
- An assessment of how those laws, regulations, and practices affect the location, availability, and accessibility of housing.
- An assessment of conditions, both public and private, affecting fair housing choice for all protected classes. The protected classes under the Fair Housing Act are race, color, religion, sex, national origin, disability, and familial status (in other words, households with children).
- An assessment of the availability of affordable, accessible housing in a range of unit sizes.

The *Fair Housing Planning Guide* explains that analyzing fair housing impediments and taking appropriate actions means:

- Eliminating housing discrimination in the jurisdiction.
- Promoting fair housing choice for all.
- Providing housing opportunities for people of all races, colors, religions, genders, national origins, disabilities, and family types.
- Promoting housing that is structurally usable by all people, particularly those with disabilities.
- Fostering compliance with the nondiscrimination features of the Fair Housing Act.

The name of the agency or department that will have an AI varies from locality to locality. Generally, the office that manages the Consolidated Planning (ConPlan) process should be able to provide a copy, and the public housing agency (PHA) should have a copy of its own analysis. In addition, advocates can contact the HUD Regional Fair Housing and Equal Opportunity Office (FHEO).

AIs are not submitted to HUD and they are not a formal piece of the ConPlan's Annual Action Plan or Five-Year Strategy. However, a September 2, 2004, HUD policy memorandum says that a jurisdiction may include in its Annual Action Plan the actions it plans to take in the upcoming year to overcome the effects of impediments to fair housing. Note that this is only a may, not a must; in addition, many jurisdictions do not know this policy memorandum exists. Also, some jurisdictions point to a part of their ConPlan or Action Plan called "barriers to affordable housing" and claim that to be the AI. The law creating the CHAS (the statutory root of the ConPlan) requires such a discussion, but this is not an AI. Examples of barriers to affordable housing in that law include tax policies and building fees.

Timeframe. According to the *Fair Housing Planning Guide*, AIs must be updated on the same timeframe as the ConPlan updates. So, theoretically, if a jurisdiction has to come up with a new ConPlan every five years, then it should also revise its AI on a five-year cycle in time to inform revisions to the ConPlan. However, the September 2, 2004, HUD policy memorandum states that a jurisdiction "should update, where appropriate, its AI…to reflect the current fair housing situation in their community," and that "each jurisdiction should maintain its AI and update the AI annually where necessary." That policy memorandum also implies that jurisdictions that do not make appropriate revisions to update their AIs could face problems. Because much can change before a five-year ConPlan update, advocates might want to be sure that their jurisdiction's AI is up-to-date and reflects all impediments.

Public Participation. Unfortunately, the regulations do not directly tie public participation in CDBG, the ConPlan, or the PHA Plan with the AI. However, the *Fair Housing Planning Guide* offers a few words that advocates might be able to use: "Since the FHP [Fair Housing Plan] is a component of the Consolidated Plan, the citizen participation requirements for the Consolidated Plan apply." The introduction to the *Fair Housing Planning Guide* stresses that "all affected people in the community must be at the table and participate in making those decisions. The community participation requirement will never be more important to the integrity, and ultimately, the success of the process."

The *Fair Housing Planning Guide* also suggests that before developing actions to eliminate the effects of impediments, a jurisdiction "should ensure that diverse groups in the community are provided a real opportunity” to take part in the process of developing actions to be taken. HUD “encourages jurisdictions to schedule meetings [for public comment and input] to coincide with those for the Consolidated Plan.”

Monitoring Compliance. In order to get CDBG, HOME, or public housing money, jurisdictions must certify that they are AFFH before the start of the CDBG, HOME, or public housing program year. All annual plans have this written certification, signed by the authorized official. There must be evidence that supports this pledge, and such evidence must be available to the public.

HUD can disapprove a PHA Plan or a ConPlan (and therefore block receipt of CDBG and HOME dollars) if a certification is inaccurate. The September 2, 2004, policy memorandum gives examples of an inaccurate certification:

1. There is no AI.
2. The AI is substantially incomplete.
3. No actions were taken to overcome the impediments.
4. The actions taken were “plainly inappropriate” to address impediments.
5. There are no records.

Another situation that could cause HUD to look more carefully at an AI is the failure to make “appropriate revisions to update the AI.” This can be an important advocacy tool in years between new five-year ConPlans and PHA Plans. If there are major changes in conditions for people who are members of protected classes, advocates should make sure the AI is revised to show those changed conditions.

In general, if advocates think that a jurisdiction’s AI is inadequate or that the jurisdiction has not taken reasonable actions to overcome impediments to fair housing, they should write a complaint to the FHEO Regional Office.

CDBG regulations also allow a certification to be challenged if there is evidence that a policy, practice, standard, or method of administration that seems neutral really has the effect of significantly denying or adversely affecting fair housing for persons of a particular race, color, religion, sex, national origin, familial status, or disability. PHA Plan regulations also claim that a certification can be challenged.

In the Annual Performance Report related to the ConPlan, called the CAPER, a jurisdiction must describe the actions taken in the past year to overcome the effects of impediments in the CAPER template report CR-35.

If advocates think that the actions taken to overcome impediments to fair housing were inadequate, it is important to write a complaint to the jurisdiction and to send a copy to the FHEO Regional Office.

Records to Be Kept. CDBG regulations require jurisdictions to keep three types of records:

1. Documents showing the impediments and the actions carried out by the jurisdiction with CDBG and other money to remedy or lessen the impediments.
2. Data showing the extent to which people have applied for, participated in, or benefited from any program funded in whole or in part with CDBG. HOME regulations require similar data reporting.
3. Data indicating the race, ethnicity, and gender of those displaced as a result of CDBG use, plus the address and census tract of the housing to which they were relocated. This is not reported in the CAPER template.

A February 9, 2007, joint memorandum from the Assistant Secretaries for HUD’s FHEO and Office of Community Planning and Development (CPD), which administers CDBG and HOME, suggests that a jurisdiction keep for the record: (1) copies of local fair housing laws and ordinances, (2) the full history of the development of its AI, (3) options available for overcoming impediments, (4) a list of those consulted, (5) actions taken and planned, and (6) issues that came up when actions were carried out.

The *Fair Housing Planning Guide* also suggests that jurisdictions keep transcripts of public meetings or forums and public comments or input, a list of groups participating in the process, and a description of the financial support for fair housing, including funds or services provided by the jurisdiction.

The CAPER template report CR-10 requires a description of the race and ethnicity of families and persons assisted.

- For CDBG, local jurisdictions must maintain data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part by CDBG funds. States must maintain records for CDBG-funded projects that include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

- HOME grantees are required to maintain equal opportunity and fair housing documentation, including data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds.

DEVELOPMENTS IN RECENT YEARS

The Obama Administration significantly increased AFFH enforcement activity, much of it quietly behind the scenes and some of it openly. HUD has challenged Westchester County, NY; the State of Texas; Houston, TX; Dallas, TX; Marin County, CA; Joliet, IL; Sussex County, DE; and Dubuque, IA.

FORECAST FOR 2018

There are serious concerns about continued implementation of the AFFH rule in 2018. Attempts by a few members of Congress in 2016 and 2017 appropriations bills to prevent HUD from using staff funds to implement the new rule were defeated, but are likely to emerge again in 2018. When he was a presidential candidate, HUD Secretary Ben Carson wrote that the rule "relies on a tortured reading of the Fair Housing law" and is "social engineering" akin to other "failed socialist experiments." He later amended these comments with a statement before the Senate Banking committee that fair housing is "the law of the land" and expressed a commitment to implement the law. In July, 2017, in response to a letter from Senator Mike Lee (R-UT) asking that the July 15, 2015, AFFH rule be rescinded, Secretary Carson indicated that he would move to reinterpret the rule, according to an article in the *Washington Examiner*.

As noted in "HUD Effectively Suspends AFFH Rule on January 5, 2018" at the beginning of the preceding *Advocates' Guide* article, HUD abruptly suspended implementation of the AFFH rule for the vast majority of local governments. As this *Advocates' Guide* goes to press, advocates are considering what – if anything – can be done. Consult NLIHC's AFFH webpage to learn whether anything new has transpired in the subsequent months.

It is likely that we will see continued attacks on AFFH implementation—whether through appropriations bills or by the administration.

FOR MORE INFORMATION

NLIHC, 202-662-1530, http://nlihc.org/issues/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, http://nationalfairhousing.org/affirmatively-furthering-fair-housing

Poverty & Race Research Action Council, http://prrac.org/full_text.php?text_id=1217&item_id=15168&newsletter_id=0&header=Current%20Projects

HUD Office of Fair Housing and Equal Opportunity, http://1.usa.gov/VFQ4Nk, with a page titled Affirmatively Furthering Fair Housing providing general background information, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/16affh_home_page

AFFH on HUD's Policy Development and Research (PD&R) website, https://www.huduser.gov/portal/affht_pt.html

HUD's *Fair Housing Planning Guide*, Vol. 1 (#HUD-1582B-FHEO), http://apps.hud.gov/offices/fheo/images/fhpg.pdf

HUD's Office of Affordable Housing has a good chapter summarizing the *Fair Housing Planning Guide*, "Affirmatively Furthering Fair Housing" (page 18) in Fair Housing for HOME Participants, http://portal.hud.gov/hudportal/documents/huddoc?id=19790_200510.pdf

September 2, 2004, Memorandum from HUD's CPD, http://nlihc.org/sites/default/files/finaljointletter.pdf

February 9, 2007, Joint Memorandum from Assistant Secretaries for CPD and FHEO, http://portal.hud.gov/hudportal/documents/huddoc?id=fairhousing-cdbg.pdf

The Community Reinvestment Act

By Josh Silver, National Community Reinvestment Coalition (NCRC)

The Community Reinvestment Act (CRA) of 1977 established continuing and affirmative responsibilities for banks to meet the credit needs of low and moderate-income (LMI) neighborhoods in a manner consistent with safety and soundness. Congress has considered updating this critical law to strengthen CRA as applied to banks, and expand CRA to non-bank financial institutions. The federal bank regulatory agencies have made revisions to the CRA regulations in the last few years. The Trump Administration's Treasury Department is currently reviewing the CRA and will issue recommendations to the regulatory agencies.

HISTORY AND PURPOSE

Congress passed the 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, the CRA has expanded access to banking services and increased the flow of private capital into marginalized communities.

PROGRAM AND ADMINISTRATION SUMMARY

Three bank regulatory agencies ensure that banks comply with the CRA: the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. 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 their performance.

Under CRA, large banks with assets exceeding $1 billion are evaluated with three tests that measure performance in LMI communities:

- **The lending test** evaluates a bank's record of meeting credit needs of its assessment area(s) through home mortgage, small business, and small farm lending, as well as financing of community development projects such as the construction of rental units.
- **The investment test** evaluates the number and responsiveness of investments, including Low Income Housing Tax Credits and equity investments in small businesses.
- **The service test** evaluates the availability of bank branches, basic banking services, and community development services in low- and moderate-income communities.

Banks with less than $1 billion in assets are evaluated primarily on lending, with mid-sized banks also receiving an examination of their community development performance. Exams for smaller institutions below $250 million in assets occur every four to five years, depending on the bank's asset size and previous performance. Banks with assets exceeding $250 million are examined once every two to three years.

CRA exams issue one of four ratings: outstanding, satisfactory, needs-to-improve, or substantial noncompliance. The last two ratings are considered failing ratings. In a particular assessment area, a bank can also receive a low or high satisfactory rating. Even a passing rating, such as satisfactory or low satisfactory, can motivate a bank to do better since ratings influence banks' public relations and business strategies.

The federal agencies also 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 a merger application subject to specific conditions around improving CRA and fair lending performance.

RESULTS

Because it holds lenders publicly accountable and empowers citizens and communities to engage in the regulatory process, the CRA has been effective in increasing access to credit and capital for traditionally underserved communities.

For example, Fifth Third Bank recently received a needs-to-improve rating, which motivated it to work with NCRC and is members to agree to a $30 billion, 5-year community benefits agreement. Key provisions include $11 billion in mortgage lending to low and moderate-income (LMI) borrowers, $10 billion in small business lending, and $9 billion in community development financing including affordable rental housing. In 2016, NCRC and its members also worked with KeyBank and Huntington to negotiate agreements of similar size. In 2017, NCRC and its members negotiated agreements with Iberiabank, First Financial Bank, and Santander. The agreements made during 2016 and 2017 totaled more than $80 billion in loans and investments for low and moderate-income communities.

A recent HUD publication reviewed the CRA's accomplishments over its 40 year history. Studies in the publication 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 recent report published by the Federal Reserve Bank of Philadelphia concludes that home purchase lending in low and moderate-income tracts would have declined by about 20 percent had the CRA not existed.

The Federal Reserve has demonstrated that CRA-covered banks are less likely to issue high-cost and risky loans than independent mortgage companies not covered by the CRA. Studies found that only 6 percent of all high-cost loans were issued by banks during the years leading up to the Great Recession and financial crisis. CRA exams encourage safe and sound lending by penalizing banks for illegal and abusive loans, and awarding banks for counseling and foreclosure prevention.

RECENT REGULATORY AND LEGISLATIVE ACTIVITY

In the summer of 2016, the regulatory agencies updated an interagency Question and Answer (Q&A) document that is an important guide helping CRA examiners and the public implement the CRA. The new Q&As:

- Retained the emphasis on bank branches as the primary way of providing service to LMI communities.
- Encouraged the use of alternative credit histories, such as rental or utility payments, for borrowers with thin credit files in programs to help them qualify for loans.
- Specified that renewable energy or energy savings in affordable housing will be viewed favorably on CRA reviews.
- Clarified that banks can earn favorable consideration for Historic Tax Credit projects that finance affordable housing, provide space for small businesses, and final community development projects benefiting low- and moderate-income people and communities.

On the legislative front, the most recent action to strengthen the CRA occurred during the 111th Congress: Representatives Roland Gutierrez (D-TX), Maxine Waters (D-CA), Al Green (D-TX), and Eddie Bernice Johnson (D-TX) introduced H.R. 6334, the "American Community Investment Reform Act of 2010." H.R. 6334 would have applied CRA to a variety of non-bank institutions including independent mortgage companies, mortgage company affiliates of banks, and securities firms. Applying CRA to a large segment of the financial industry would increase responsible lending and investing in communities by hundreds of billions of dollars, while discouraging unsafe and unsound lending, which the CRA penalizes.

The Treasury Department is currently reviewing the CRA and is concerned about delays in CRA examinations and the merger application process. The Trump Administration is also reviewing examination procedures regarding geographical coverage on exams and how community development investments receive CRA consideration. It is hoped that the administration proceeds carefully and develops recommendations to the regulatory agencies that represent a consensus among stakeholders for improving CRA's effectiveness.

TIPS FOR LOCAL SUCCESS

The CRA is vital to promoting safe and sound lending and investing in communities. 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.

WHAT TO SAY TO LEGISLATORS

Legislative efforts to weaken the CRA may arise at any time. Your member should:

- Oppose bills that would weaken or repeal the

CRA. Representative Jeb Hensarling (R-TX), chairman of the House Financial Services Committee, introduced a bill in the 111th Congress that would repeal the CRA. Expect similar bills in the future from opponents of the CRA.

- Support any proposed bills that update and strengthen the CRA, especially expanding it to apply to mortgage companies, investment banks, and insurance companies.

WHAT TO SAY TO REGULATORS

An important means to preserving and strengthening the 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.

FOR MORE INFORMATION

National Community Reinvestment Coalition, 202-628-8866, www.ncrc.org

For CRA exam results, www.ffiec.gov

Consolidated Planning Process

By Ed Gramlich, Senior Advisor, National Low Income Housing Coalition

Administering agency: HUD's Office of Community Planning and Development (CPD)

Year Program Started: 1990 as Comprehensive Housing Affordability Strategy (CHAS), and significantly modified in 1994 as the Consolidated Plan.

See also: *Public Housing Agency Plan*, *The National Housing Trust Fund*

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: the Community Development Block Grant (CDBG) program, HOME Investment Partnerships (HOME) program, Emergency Solutions Grants (ESG) program, Housing Opportunities for Persons With AIDS (HOPWA) program, 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. The CHAS established a state and local planning process that determined housing needs and assigned priorities to those needs. In order to receive CDBG, HOME, ESG or HOPWA dollars, jurisdictions had to have a CHAS. In 1994, 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 interim regulations implementing the HTF require 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 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 *Congressional District Housing Profiles* 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:

- Victims of domestic violence;
- Persons with disabilities;
- Persons with HIV/AIDS and their families; and;
- Persons who were formerly homeless and receiving rapid re-housing assistance about to expire.

The ConPlan must 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 group.
- 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.

3. **Strategic Plan**: This long-term plan must be done at least every five years. It needs to 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 households. Although the regulations do not specifically require it, past HUD guidance has 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 and 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 need; 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 day care 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). For most jurisdictions in 2018, this means that it has an Analysis of Impediments (AI) to fair housing choice, is taking appropriate action 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 Affirmatively Furthering Fair Housing articles.

   On July 16, 2015, HUD issued new AFFH regulations intended to improve jurisdictions' obligation to AFFH. These regulations replace the AI with an Assessment of Fair Housing (AFH), a framework that jurisdictions must use to identify fair housing issues, determine which to prioritize, and state steps they will take to address those fair housing issues. The AFH must be approved by HUD before a ConPlan is approved so that a jurisdiction can receive CPD and other HUD funds. The new AFFH rule establishes a clearer and more direct incorporation of fair housing strategies and actions to inform the ConPlan process. Most jurisdictions will not have to comply with the new AFFH rule until 2019. See *Affirmatively Furthering Fair Housing articles.*
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 the reasons these areas have priority.

Local jurisdictions' Action Plans must describe the activities the jurisdiction will carry out in the upcoming year. State Action Plans must describe their method for distributing funds to local governments and nonprofits, or the activities the state will undertake itself. The Action Plan must also describe the reasons for making these allocation priorities. Descriptions of uses of CDBG must include enough detail about each activity, including location, that people can determine the degree to which they could be affected. 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 below 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/Annual Action Plan is published for comment.

2. **Proposed ConPlan/Annual Action Plan**: There must be a notice in the newspaper that a proposed ConPlan/Annual Action Plan is available. Complete copies of the proposed ConPlan/Annual Action Plan must be available in public places such as libraries. A reasonable number of copies of a proposed ConPlan/Annual Action Plan must be provided at no cost. There must be at least one public hearing during the development of the ConPlan/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/Annual Action Plan.

3. **Final ConPlan/Annual Action Plan**: The jurisdiction must consider the public's comments about the proposed ConPlan/Annual Action Plan, attach a summary of the comments to the final ConPlan/Annual Action Plan, and explain in the final ConPlan/Annual Action Plan why any suggestions were not used. A copy of the final ConPlan/Annual Action Plan must be available to the public.

   HUD can disapprove the final ConPlan/Annual Action Plan for several reasons, including that a jurisdiction: did not follow the public participation requirements; did not "satisfy all of the required elements;" or provided an inaccurate certification (for example, 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 below 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 CAPER for local jurisdictions and the

Performance and Evaluation Report for states. 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 GPR, which also goes by the term "IDIS Report PR03." 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.

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 the 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/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/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 income. 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.

Rollout of New 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 them. Some of the data include 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 Census.

Most jurisdictions' ConPlans are posted on the HUD 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. 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 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 the drafting the HTF Allocation Plan (available on HUD's HTF website at https://www.hudexchange.info/programs/htf/grantees). It might not be the same agency that drafts the ConPlan/Annual Action Plan. Advocates should inform the ConPlan agency (if it is different that 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 a ConPlan/Annual Action Plan following the ConPlan rule, which does have public participation requirements.

Action around the HTF Allocation Plan takes place at the state level. For advocates only accustomed to ConPlan/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 the 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.

NLIHC is concerned that the detail advocates need to understand a state's specific proposed uses of HTF dollars will be lost in some state ConPlan Annual Action Plans because Action Plans tend to present information in an aggregate fashion. It might be difficult for advocates to learn what types of projects and populations a state will give priority to in awarding HTF funds in FY18.

FOR MORE INFORMATION

NLIHC, 202-662-1530, 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://www.hudexchange.info/programs/consolidated-plan/con-plans-aaps-capers

End of year reporting, https://www.hudexchange.info/programs/idis/idis-reporting, and https://www.hudexchange.info/resource/3312/hud-memo-caper-for-entitlement-grantees-for-1997-program-year

Continuum of Care Planning

By Kristi Schulenberg, Senior Technical Assistance Specialist, National Alliance to End Homelessness

Administering agency: HUD's Office of Special Needs Assistance Programs within the Office of Community Planning and Development

Year program started: 1994

Population targeted: People experiencing homelessness

See also: McKinney-Vento Homeless Assistance Programs, Ten-Year Plans to End Homelessness, Federal Surplus Property to Address Homelessness.

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). 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 is used in many different 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 led 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 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 as a whole 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, and other programs.

On January 11, 2018, HUD announced over $2 billion to more than 7,300 local homeless housing and service programs in the U.S. HUD's encouragement to applicants to prioritize their funding allocations based on performance data and local needs resulted in $90 million in renewal funding from lower performing projects to new housing projects. All told, between reallocation and bonus funding, HUD awarded $120 million in new projects dedicated to permanent supportive housing and rapid re-housing. In addition, HUD awarded Joint Transitional Housing-Permanent Housing-Rapid Re-Housing funds to 83 new project types. As in previous years, although the available amount of funding was expected to be sufficient to fund eligible renewal projects, applicants for the 2017 CoC NOFA had to prioritize projects, including renewal projects, into two tiers. The 2017 CoC NOFA included a strong preference for performance and effective practices that Congress originally included in the HEARTH Act. CoCs had to place up to 6% of their funds in Tier 2, meaning these funds were at risk of being lost if the CoC was low-performing.

FORECAST FOR 2018

The HEARTH Act placed more of the responsibility for measuring outcomes and overseeing performance on the leaders of local CoCs. Like the previous year, the FY 2017 CoC competition required CoCs to submit data on their system's performance. As CoC data collection and quality improve, it is likely that HUD will use requested data to establish baselines for measuring improvements in future competitions. Demonstrating reductions in homelessness, the time people experience homelessness, and effectiveness of programs in particular will continue to be emphasized.

TIPS FOR LOCAL SUCCESS

The CoC planning process is intended to focus on the needs of homeless people in the community and should focus on the most effective strategies for reducing homelessness. Yet many CoCs struggle to 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.

Advocates play a crucial role in ensuring that the CoC 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, veterans, people with disabilities, youth, and domestic violence survivors are not always adequately represented. Advocates should work to ensure 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 ensure that programs achieve positive 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

National Coalition for the Homeless, 202-462-4822, www.nationalhomeless.org

National Law Center on Homelessness & Poverty, 202-638-2535, www.nlchp.org

HUD Homelessness Resource Exchange, https://www.hudexchange.info

Public Housing Agency Plan

By Ed Gramlich, Senior Advisor, National Low Income Housing Coalition

Administering agency: HUD's Office of Public and Indian Housing

Year Program Started: 1998

See also: *Public Housing*, *Resident Participation in Federally Subsidized Housing*

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). There is 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 more than 3,900 PHAs nationwide. 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.

In June 2004, HUD issued regulations streamlining the Annual Plan requirements for PHAs with fewer than 250 public housing units and any number of voucher units, known as "small PHAs." These PHAs are only required to submit certifications regarding capital improvement needs and civil rights compliance. Congress broadened this regulatory streamlining in 2008, enacting several reforms that greatly diminish the Annual Plan requirements for PHAs administering fewer than 550 units of public housing and vouchers, combined, known as "qualified PHAs." Also in 2008, HUD 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 the 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 together 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 only have to submit a short PHA Plan template to HUD each year.

The 19 Required PHA Plan Components

- **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.
- **Tenant Eligibility, Selection, and Admissions Policies** as well as waiting list procedures, admissions preferences, unit assignment policies, and race and income deconcentration policies.
- **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.
- **Rent Determination** including rent policies for tenants, and for landlords receiving vouchers.
- **Operations and Management** of facilities, including PHA programs, their organization, and policies governing maintenance (including those policies regarding pest infestation).
- **Grievance Procedures** for residents and applicants.
- **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.

- **Demolition and Disposition Plans** that the PHA has applied for, or will apply for, including timetables.
- **Designation of Public Housing for Elderly or Disabled** identified.
- **Conversion of Public Housing** to tenant-based vouchers as specified in Section 33 or Section 22 of the United States Housing Act.
- **Homeownership Programs** described, such as Section 8(y) or Section 5(h).
- **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.
- **Safety and Crime Prevention** including coordination with police.
- **Pets** policy.
- **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.
- **Financial Audit** from the most recent fiscal year.
- **Asset Management** for long-term operating, capital investment, rehabilitation, modernization, or sale of the PHA's inventory.
- **Domestic Violence** activities, services, or programs that prevent or serve victims of domestic violence, dating violence, sexual assault, or stalking as added by the Violence Against Women Act of 2005 as amended in 2013.
- **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 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.

In order to ensure that RABs can be as effective as possible, the 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 get information through the Internet.

The PHA must consider RAB recommendations when preparing a final PHA Plan or any significant amendment to it. A copy of the RAB's recommendations and a description of whether those recommendations were addressed must be included with the final PHA Plan.

Resident and Community Participation. The law and regulations provide for a modest public participation process. The PHA must conduct reasonable outreach to encourage broad public participation. The PHA's board of commissioners must invite public comment regarding a proposed PHA Plan and conduct a public hearing to discuss it. The hearing must be held at a location convenient to PHA residents. At least 45 days before the public hearing, the PHA must make the proposed PHA Plan, required attachments, and other relevant information available for public inspection at the PHA's main office during normal business hours. And at least 45 days before the public hearing the PHA must publish a notice indicating the date, time, and location of the public hearing, as well as the availability of the proposed PHA Plan.

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 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 HUD to complain about the PHA Plan might secure attention and relief from HUD:

1. If a RAB claims in writing that the PHA failed to provide adequate notice and opportunity for comment, HUD may make a finding and hold up approval of a PHA Plan until this failure is remedied.

2. Before approving a PHA Plan, HUD will review "any… element of the PHA's Annual Plan that is challenged" by residents or the public.
3. HUD can decide not to approve a PHA Plan if the plan or one of its components:
   - Does not provide all of the required information.
   - Is not consistent with information and data available to HUD.
   - Is not consistent with the jurisdiction's Consolidated Plan.
4. To ensure that a PHA complies with all of the policies adopted in its HUD-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. The PHA Plan must identify the PHA's basic criteria for determining what makes an amendment significant. Significant amendments can only take place after formal adoption by the PHA board of commissioners at a meeting open to the public, and after subsequent approval by HUD. Significant amendments are subject to all of the RAB and public participation requirements discussed above.

Advocates and residents should be alert 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. 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. As of September 30, 2017, HUD reported that there were 2,745 so-called "qualified PHAs." This means that 70% 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 the PHA's goals, objectives, or policies. They must also have RABs and respond to RAB recommendations at the public hearing.

HUD also took action in 2008 that weakened the usefulness of the PHA Plan for larger PHAs. Previously, HUD required public housing agencies to use a computer-based PHA Plan template. This was a helpful outline of all of the PHA Plan components required by the law. But HUD 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, HUD 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 include several modest improvements over the streamlined PHA Plan in use since November 2008; however, they are still far less helpful for residents and advocates than the pre-2008 template.

The Annual PHA Plan templates 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; and the PHA was designated "standard" in its most recent assessments for the Public Housing Assessment System 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-2015-15 introduced a separate template for the Five-Year PHA Plan to be used by all PHAs.

Several modifications are improvements over the 2008 template. Each of the current 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 current templates also require PHAs to indicate where the public can access the information. At a minimum, PHAs are required to post PHA Plan templates at each Asset Management Project (AMP, which is a public housing development or 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-2015-15 adds 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 Current Standard/Troubled PHA Template. The balance of this article focuses on the template for Standard/Troubled PHAs. The current template offers several modest improvement over the 2008 version. In a section titled "Revision of PHA Plan Elements," the template lists 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 current template also directs PHAs to describe any revisions.

The Standard/Troubled PHA Plan template is also improved because it has a "New Activities" section for a PHA to indicate whether or not it intends to undertake a new activity, such as project-based vouchers, convert public housing units under the Rental Assistance Demonstration, or undertake a mixed finance project. Any new activities must be described.

The current template requires PHAs to include any comments received from the RAB, along with the PHA's analysis of the RAB's comments as well as a description of the PHA's decision regarding RAB comments.

One of the changes trumpeted in Notice PIH-2015-15 is that the templates would have descriptions of the PHA's policies or programs to enable a PHA to serve the needs of victims 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 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 HUD to review any such challenge. Although Notice PIH-2015-

15 acknowledges this aspect of the regulations, it removed from the current template the requirement to submit any challenge. HUD writes that it will consider incorporating the requirement in the future.

FORECAST FOR 2018

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, or the description of the process for electing residents to the PHA board.

NLIHC is also concerned that HUD no longer posts a directory of approved PHA Plans by state. HUD 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 the 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 the agency has under lease.
- The PHA's SEMAP ratings, any audits of the agency performed by HUD, and any corrective action the agency took regarding SEMAP or audit findings.

In addition, NLIHC believes 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, which are based on PHAs' fiscal year start dates. Ask the 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, 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 components important to residents and other community members.
- HUD's diminished template for Annual PHA Plan submission should be returned to its original state.

FOR MORE INFORMATION

NHLIC, 202-662-1530, www.nlihc.org

National Housing Law Project, 510-251-9400, https://www.nhlp.org/resources/pha-annual-and-5-year-plans

HUD PHA Plan webpage, including the 2015 templates, http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha

Notice PIH-2015-18 is at http://portal.hud.gov/hudportal/documents/huddoc?id=15-18pihn.pdf

HUD list of Qualified PHAs, http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha/lists

Section 3: Job Training, Employment, and Business Opportunities Related to HUD Funding

By Ed Gramlich, Senior Advisor, National Low Income Housing Coalition

Section 3 of the Housing and Urban Development Act of 1968, titled "Economic Opportunities for Low and Very Low Income Persons," requires recipients of HUD housing and community development funding to provide "to the greatest extent feasible" job training, employment, and contracting opportunities for low and very low income (VLI) residents, as well as eligible businesses.

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 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 Section 3 regulations were published on March 27, 2015, but a final rule had not been sent to the Office of Management and Budget as the Obama Administration drew to a close. The new HUD Secretary, Ben Carson, has publicly expressed support for Section 3. However, the Trump Administration is aggressively attempting to reduce regulations, casting uncertainty on whether an improved final rule will be issued. In the meantime, Section 3 continues to limp along with the interim regulations from 1994.

ADMINISTRATION

Oversight responsibility for Section 3 rests with HUD's Office of Fair Housing and Equal Opportunity (FHEO). HUD is charged with monitoring and determining whether local recipients of HUD housing and community development funds are meeting their obligations. In addition, those local recipients have the responsibility to ensure that the obligations and goals of Section 3 are met by subrecipients and contractors.

HISTORY

The Section 3 obligation was created as part of the Housing and Urban Development Act of 1968, which at the time was described as "the most farsighted, the most comprehensive, the most massive housing program in all of American history." Section 3 was a component of that act which strove to improve the quality of life for all. 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 households. Nevertheless, the potential of this program has largely been ignored throughout its history.

SUMMARY

Section 3 is a federal obligation that is tied to HUD funding. Section 3 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 and VLI residents and "Section 3 businesses." A "recipient" is an entity that receives Section 3-covered funds directly from HUD, such as a public housing agency, a 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 grants, Family Self-Sufficiency grants, and the Rental Assistance Demonstration (RAD) program. Section 3 also applies to other housing and community development funding including Community Development Block Grant (CDBG), HOME Investment Partnerships, National Housing Trust Fund, and Housing Opportunities for Persons with AIDS.

Section 3 Goals and Preferences

HUD regulations set numerical goals for all entities subject to Section 3. Low and VLI individuals should be given a preference for at least 30% of all new hires that arise from the HUD funding. At least 10% of the total dollar amount of all Section 3 contracts for building trades work and 3% of all other contracts should be for Section 3 businesses. A Section 3 business is defined as a business: owned by low income individuals; or which hires a substantial number of low income individuals;

or which commits to contract at least 25% of the dollars awarded to Section 3 businesses. Low income is defined as income less than 80% of the metropolitan area median income (AMI), while VLI is defined as income less than 50% of AMI. Building trades work is not defined, but probably includes obvious professions such as bricklaying, plumbing, and painting; "other" types of contracts might be carpet installation, pest control, or bookkeeping (for the construction company).

The Section 3 regulations spell out orders of preference that should be given to residents and businesses. A preference should mean that if the Section 3 individual meets the job qualifications or a Section 3 business meets the bid requirements, the individual should be hired or the business should get the contract. The order of resident preferences for Section 3 activities at public housing is: residents of the public housing development that is assisted; residents of other public housing developments in the service area of the public housing agency (PHA); YouthBuild participants; and finally, other low income people in the metropolitan area (or nonmetropolitan county). The order of resident preference for other housing and community development activities is: low income people living in the service area or neighborhood where the assisted project is located; YouthBuild participants; homeless people in the service area or neighborhood of the assisted project; and finally, other low income people in the metropolitan area (or nonmetropolitan county). There are also orders of preferences regarding Section 3 businesses pertaining separately to public housing and to other housing and community development projects.

When Does Section 3 Apply?

For both public housing and the other housing and community development funding, the Section 3 obligation applies to the entire project regardless of the amount of funding subject to Section 3. For example, a project may receive funds from many sources, public and private, but if there are any public housing funds in the project, the Section 3 obligation applies to the entire project.

For public and Indian housing funding, Section 3 applies to any jobs and contracting opportunities that arise in administration, management, service, maintenance, and construction. For the other housing and community development funding, Section 3 applies only to jobs that arise in connection with construction or rehabilitation, and only if the funding is more than established thresholds. Examples of eligible types of other housing and community development projects include housing construction or rehabilitation; public works projects, such as waterfront redevelopment; retail and restaurant development; development of entertainment facilities; and, other related infrastructure. The way HUD has established thresholds for contractors enables recipients and contractors to avoid Section 3 by making sure that they break up all construction activities (such as housing rehabilitation) into small contracts less than the $100,000 threshold, even if the contractor is receiving much more HUD money to do the same construction work (for example, rehabilitating many homes).

The HUD Notice implementing the public housing RAD limits Section 3 to construction, rehabilitation, and repair work that arises from the conversions of public housing and Moderate Rehabilitation units to project-based vouchers or to project-based Section 8. Once the conversion is complete, future rehabilitation or repair work is not subject to Section 3.

One HUD administrative decision regarding the program is of special note. In April 2004, HUD issued a decision, finding that the City of Long Beach, California, violated Section 3 because Section 3 new hires worked significantly less than 30% of the hours worked by all new hires. This decision is important because the regulation's standard of 30% of new hires can be easily manipulated with a hiring surge at the end of the contract period, undermining the purpose of Section 3. Using a standard of 30% of the hours worked each year by the new hires would be much better and is consistent with the Section 3 goal of creating employment opportunities for low income individuals to the "greatest extent feasible."

There is a HUD-established complaint procedure for individuals and businesses to use for violations of Section 3. Complaints are filed with FHEO Regional offices. HUD has responded favorably to some complaints that have been filed.

Summary of the Proposed Improvements to the Section 3 Rule

On March 27, 2015, HUD published long-anticipated amendments to the interim Section

3 regulations. In 1994, HUD published an interim rule updating the Section 3 regulations in response to changes made by the Housing and Community Development Act of 1992. As of the close of November 2017, a final rule has not been issued. However, three of the proposed rule's key provisions are discussed here because they illustrate the limitations of the 1994 interim rule.

1. The proposed rule would change the dollar threshold for recipients that directly receive federal housing and community development funds. (Remember, recipients are cities, counties, states, or PHAs.) The text of the existing rule is confusing, leading some recipients to incorrectly apply the $200,000 recipient threshold on a per-project basis rather than on a per-recipient basis. As a result, some recipients avoid Section 3 obligations at projects that have less than $200,000 of HUD assistance. The proposed rule would have unambiguous language and establish a new $400,000 recipient threshold. The proposed rule clearly stated that once the $400,000 threshold is reached, Section 3 obligations apply to all Section 3 projects and activities funded with any amount of HUD housing and community development funds. In addition, the requirements would apply to the entire project, regardless of whether the project is partially or fully funded with HUD funds.
2. The proposed rule would have eliminated the $100,000 threshold for contractors and subcontractors. This improvement could have resulted in greater employment and subcontracting opportunities for Section 3 residents and businesses. Under the existing regulation, contractors and subcontractors do not have to comply with Section 3 if a contract for construction work on a project is less than $100,000. Consequently, it has been HUD policy to exempt contractors and subcontractors awarded significant amounts of Section 3 covered funds in a single year spent on small, discreet activities—such as homeowner housing rehabilitation—from meeting their Section 3 obligations. Cumulatively, such contractors and subcontractors can receive far more than $100,000 in covered funds, yet do not have to hire Section 3 residents or subcontract with Section 3 businesses because each component activity (e.g., rehabilitating a single home) costs less than $100,000.
3. The proposed rule would have revised the definition of "new hire." The existing rule sets a goal of having 30% of new hires at a project to be "Section 3 residents." The rule has no provision concerning how long the Section 3 resident is employed. Advocates have long asserted that the rule's lack of a provision considering hours worked as well as the duration of employment is a loophole, allowing contractors to hire Section 3 residents for a short period of time. In the proposed rule HUD agreed, proposing to redefine a new hire as someone who works a minimum of 50% of the average hours worked for a specific job category for which the person was hired, throughout the duration of time that the work is performed on the project. The preamble offered an example: If a typical painter works 40 hours per week, then a Section 3 new hire must work a minimum of 20 hours per week for as long as a typical painter would work at the project.

   Although advocates welcomed HUD's attempt to address the concern about the duration of employment, the proposed rule insufficiently addressed the first problem (hours worked) and did not address a second concern (duration). For years, advocates have suggested to HUD that the Section 3 employment goal obligation should not be measured by counting the number of Section 3 workers who are "new hires." Using "new hire" as a measure allows contractors and subcontractors to place any new hires on their non-Section 3 covered projects and thus evade Section 3. Instead of "new hire," compliance should be assessed by the number of hours worked by Section 3 residents as a percentage of total hours worked by all employees of a given job category. In other words, to meet Section 3 goals, Section 3 residents for each job category should be working at least 30% of the total number of hours worked by all employees in that job category.

   Advocates commented that if HUD was not willing to accept the above recommendation, HUD's definition of a "new hire" should at least increase from 50% to 100%, the average number hours worked for a specific job category for which the Section 3 resident was hired. The 50% standard would encourage hiring Section 3 residents for part-time work and render Section 3 employees as second-class employees. In addition, this would likely hinder skill building because an employer could rationalize that a Section 3 employee will not be around long enough.

Performance Reporting

Starting in 2009, HUD increased its efforts to get recipients of HUD funds subject to Section 3 to report compliance on form HUD 60002. HUD later reported that nearly 80% of all recipients filed these reporting forms. However as noted by a June 2013 HUD Office of Inspector General (OIG) report, HUD did not verify the accuracy of the forms or follow up on clearly non-compliant information, leading OIG to conclude that for 2011, some 1,650 PHAs "could be falsely certifying compliance."

In December 2013, FHEO announced in a webinar that it had revised the HUD 60002 form to address these problems for PHAs and all HUD grant recipients. FHEO intended to make mandatory, the requirement to explain efforts taken when the statutory and regulatory goals were not met. FHEO also stated that it had created a system that would prevent the submission of clearly non-compliant or inaccurate information. Unfortunately, HUD suspended the roll out in January 2014 due to unforeseen technical difficulties. On August 24, 2015, FHEO announced the relaunch of the Section 3 Performance Evaluation and Registry System (SPEARS) for the submission of form HUD 60002 annual summary reports, requiring retroactive reporting for the 2013 and 2014 reporting periods by December 15, 2015.

The issues for advocates include how HUD will respond to local agency reports that do not reasonably explain why there were no or too few new Section 3 hires, or no or too few dollars under contract with Section 3 businesses. In addition, advocates should be interested in how HUD works to secure compliance from those local agencies that have completely ignored the prior reporting requirements. Will HUD establish, as recommended by the OIG, a system of remedies and sanctions for PHAs (and presumably other HUD grant recipients) that do not submit HUD-60002 forms.

LEGISLATION TO IMPROVE SECTION 3

Representative Nydia Velazquez (D-NY) has repeatedly sought to improve Section 3, but these efforts were not supported by many of her colleagues. It is not likely that things will change in the coming year. In prior years, she held hearings and proposed legislation, such as the Section 3 Modernization and Improvement Act of 2015 (H.R. 3697). H.R. 3697 would ensure that recipients of HUD funding are held accountable for not meeting their Section 3 responsibilities when they fail to spend federal resources in a manner that creates jobs and economic opportunities for low and VLI residents. The bill would also extend Section 3 requirements to PHAs and owners of multifamily properties assisted under the RAD program. Moreover, H.R. 3697 would require HUD to report to Congress each year on Section 3 compliance and provide specific solutions for situations where funding recipients have failed to meet their Section 3 obligations.

FUNDING

There is no independent funding for Section 3. The number of jobs created or contracts provided to Section 3 individuals or businesses depends upon the level of funding for the applicable public housing or housing or community development program.

FORECAST FOR 2018

At the beginning of the Obama Administration, both lawmakers and HUD officials expressed interest in strengthening the program. Proposed improvements to the Section 3 regulations were published on March 27, 2015, but a final rule had not been sent to the Office of Management and Budget as the Obama Administration drew to a close.

The new HUD Secretary, Ben Carson, has publicly expressed support for Section 3. However, the Trump Administration is aggressively attempting to reduce regulations, casting uncertainty on whether an improved final rule will be issued.

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 the goals.

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 goals and preferences to increase employment and contracting opportunities for the targeted low and VLI individuals and Section 3 businesses.

In addition, advocates should meet with local 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 CDBG, HOME, and RAD programs. Advocates should create or improve upon a local plan to fully implement Section 3. Seek information on the number of low and VLI individuals trained and hired in accordance with Section 3, and the dollar amounts contracted with Section 3 businesses. Advocates should ask local recipients of HUD funds or HUD for copies of the submitted form HUD 60002 and take the necessary action. 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 or meet Section 3 goals should consider filing an official complaint with HUD.

WHAT TO SAY TO LEGISLATORS

Advocates should speak to legislators about the connection between HUD funding and jobs. Advocates should recommend that the Section 3 requirements that currently apply to PHAs be extended to properties that convert to RAD beyond any initial rehabilitation or construction.

FOR MORE INFORMATION

HUD's FHEO Section 3 website is at: http://1.usa.gov/YJPOIi

HUD's Section 3 Frequently Asked Questions are at: http://portal.hud.gov/hudportal/documents/huddoc?id=11secfaqs.pdf

NLIHC's Outline of Section 3 Obligations are at: http://bit.ly/2hsa7v5

National Housing Law Project, http://bit.ly/2j0oSLs, especially "An Advocate's Guide to the HUD Section 3 Program: Creating Jobs and Economic Opportunity" from the National Housing Law Project is at: http://nhlp.mayfirst.org/files/03%20Sec.%203%20Guide.pdf

Chapter 8:
COMMUNITY DEVELOPMENT RESOURCES

Capital Magnet Fund

By Shannon Ross, Director, Government Relations, Housing Partnership Network

Administering agency: Community Development Financial Institutions (CDFI) Fund at the U.S. Department of the Treasury

Year program started: 2008 (two funding rounds awarded in FY10 and FY16, FY17 has yet to be awarded as of this drafting)

Number of persons/households served: 6,800 homes, 15 community facilities

Population targeted: Households with incomes less than 120% area median income (AMI); at least 51% with incomes less than 80% AMI

Funding: In FY16, $91.47 million was awarded to 32 organizations. $119.5 million was available in FY17.

See also: *Community Development Financial Institutions Fund*

The Capital Magnet Fund (CMF) provides competitive 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 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 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 Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). However, in the fall of 2008, financial losses at Fannie Mae and Freddie Mac 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 Fannie Mae and Freddie Mac was lifted at the end of 2014; contributions began on January 1, 2015, and were distributed to the CMF and HTF in March 2016.

The legislation creating the CMF also allowed it to be capitalized 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, 9 were CDFIs, and 1 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 $12 in other capital for affordable housing. Thus, $80 million in CMF grants created upwards of $1 billion in investment in affordable housing and community facilities, creating more than 6,800 homes.

PROGRAM SUMMARY

The CMF is administered by Treasury's CDFI Fund as a competitive grant program to attract private capital for high-performing nonprofits 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 below 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. 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. Assisted housing must meet the above affordability requirements for at least 10 years.

In order to leverage funds, CMF dollars may be used to provide loan loss reserves, 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 it. No institution can be awarded more than 15% of all CMF funds available for grants in a given year, and those receiving grants must spend the funds within 2 years of the date they were received.

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.

The secretary of the Treasury must submit a periodic report describing the activities for which these funds are being used to the Senate Committee on Banking, Housing, and Urban Affairs as well as to the House Committee on Financial Services.

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%. These assessments were 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 two calendar years. Sixty days after the close of 2017, Treasury is to distribute funds to the CMF and HTF.

FORECAST FOR 2018

The overwhelming interest from applicants in the first round of funding demonstrated the appeal of this capital magnet model for expanding the nation's supply of housing for low and moderate income families in a cost-effective manner. If there is housing finance reform in 2018, the CMF could be affected.

WHAT TO SAY TO LEGISLATORS

If housing finance reform debate returns in 2018, advocates need to support provisions like those in the 2014 legislation drafted by former Senate Banking Committee Chair Tim Johnson (D-SD) and former Ranking Minority Member Mike Crapo (R-ID), which would have significantly increased funds for the CMF and the HTF.

FOR MORE INFORMATION

The CDFI Fund, 202-622-6355, www.cdfifund.gov

Housing Partnership Network, 202 677-4292, http://www.housingpartnership.net

Community Development Block Grant Program

By Ed Gramlich, Senior Advisor, National Low Income Housing Coalition

Administering agency: HUD's Office of Community Planning and Development

Year program started: 1974

Population targeted: Households with income below 80% area median income (AMI)

Funding: FY17 funding was $3 billion. As of the time this goes to print, all housing programs have been operating under a Continuing Resolution (CR) in FY18 at FY17 levels.

See also: *Consolidated Plan*

The Community Development Block Grant (CDBG) program is a federal program intended to strengthen communities by providing funds to improve housing, the living environment, and economic opportunities, principally for persons with low and moderate incomes. At least 70% of CDBG funds received by a jurisdiction must be spent to benefit people with low and moderate incomes (less than 80% of the AMI).

HISTORY

The CDBG program was established under Title I of the Housing and Community Development Act of 1974, which combined several existing programs, such as Urban Renewal and Model Cities, into one block grant. This change was designed 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, the living environment, and economic opportunities principally for persons with low and moderate incomes. 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 victims of domestic violence; 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 income 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. Seventy percent of each annual appropriation is automatically distributed to cities with populations of more than 50,000 and counties with populations of more than 200,000. Those are called entitlement jurisdictions. The remaining 30% goes to states for distribution to their 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 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, or earthquake needs are generally addressed by special Congressional appropriations referred to as CDBG-DR that usually have much less rigorous provisions regarding eligible uses and income targeting.

Low and moderate income is defined as household income below 80% of the AMI, which can be quite high. In FY17, for instance, 80% of AMI in Chicago was $63,200. AMI in some jurisdictions is so high—as in the Lowell, MA, metropolitan area where the AMI was $96,300—that HUD caps the qualifying household income at the national median income, which in FY17 was $68,000 for a 4-person household. However, HUD does make adjustments upward in high-cost areas such as the Boston metropolitan area which had an AMI of $103,400 in FY17, allowing CDBG to benefit 4-person households with incomes up to $78,150.

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 FY17, a typical year, only 25% of CDBG was allocated for some type of housing program. Key housing-related uses included 12% for single-unit rehabilitation, 3% for code enforcement, 3% for rehabilitation administration, 2.3% for multi-unit rehabilitation, and 0.5% for new construction.
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 the 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 the 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 incomes. The three most common ways to meet this test are to: (a) limit participation to people with lower incomes; (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 victims, 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 low income.
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 incomes. "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 incomes 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 incomes. Public hearings are required at all stages of the CDBG process. Hearings must give residents a chance to articulate community needs, review the 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 1994, the CDBG public participation process is the statutory basis for and is merged into the ConPlan public participation process. In particular, 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; 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.

FUNDING

The FY17 appropriation for the CDBG formula program was $3 billion, the same as FY15 and FY16, but less than the FY14 amount of $3.03 billion. The FY17 amount was a 25% reduction from FY10's $3.99 billion.

For FY18, the president proposed eliminating CDBG, but the House proposed $2.9 billion and the Senate proposed $3 billion. As of the date this *Advocates' Guide* went to press, Congress has not enacted its final FY18 spending bills.

TIPS FOR LOCAL SUCCESS

Because only 70% of CDBG funds must benefit people with low or moderate income, and because all of the 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 incomes and can strive to have more of the dollars used to benefit people with extremely low incomes.

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 the jurisdiction's Annual Action Plan, which lists how a jurisdiction plans to spend CDBG funds in the upcoming year, and the Grantee Performance Report (C04PR03), which lists 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.

FOR MORE INFORMATION

NLIHC, 202-662-1530, www.nlihc.org

There are two HUD CDBG web platforms. One is the traditional site, http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment

More information is now generally available through the HUD Exchange site: https://www.hudexchange.info/programs/cdbg

- The Entitlement Program page is at: https://www.hudexchange.info/programs/cdbg-entitlement and
- The State Program page is at: https://www.hudexchange.info/programs/cdbg-state

Community Development Financial Institutions Fund

By Shannon Ross, Director, Government Relations, Housing Partnership Network

Administering agency: U.S. Department of the Treasury (Treasury)

Year program started: 1994

FY17 funding: $248 million

See also: *Capital Magnet Fund*

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

To understand the CDFI Fund it is first necessary to describe CDFIs and what they do. CDFIs are specialized private sector financial institutions that serve economically disadvantaged communities and consumers. As of the publication of this Advocates' Guide, the most current information available was as of September 2016. There were 1,049 CDFIs, according to the CDFI Fund at Treasury. CDFIs assume many different forms, including banks (124), credit unions (288), depository institution holding companies (74), loan funds (548), and venture capital funds (15). CDFI customers include small business owners, nonprofits, affordable housing developers, and low income individuals. Nearly 70% of CDFI customers are low income persons, 59% are racial minorities, and 52% 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 seven 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, and the CDFI Bond Guarantee program. 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 their target market through the acquisition of goods and services such as consulting services, technology purchases, and staff or board training. The FY17 funding level for this program was $161.5 million.

Native Initiatives Program. This program is the cornerstone of the CDFI Fund's Native Initiatives, which 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.

Despite being 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 FY17 funding level for this program was $15.5 million.

Bank Enterprise Award Program. The Bank Enterprise Award (BEA) program was created in 1994 to support FDIC-insured financial institutions around the country that are 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 FY17 funding level for this program was $23 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 investors to make 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 7-year period that equals 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 912 awards totaling $43.5 billion in allocation authority. Awards for the 2015/2016 round were announced in November 2016. On December 18, 2015, Congress extended the authorization of the NMTC program for $3.5 billion per year through 2019.

Capital Magnet Fund Program. (*See separate Advocates' Guide article for more detail*.) The 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 are able to 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 incomes below 120% of the AM); at least 51% of housing eligible project costs must be for units for households with incomes below 80% of AMI. If CMF finances rental housing, then at least 20% of the units must be occupied by households with incomes 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 the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (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; contributions began January 1, 2015, and the CMF received $91.5 million for 2016 and $119.5 million in 2017.

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 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 FY17 funding level for this program was $22 million.

CDFI Bond Guarantee Program. Enacted through the Small Business Jobs Act of 2010, the 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 $1.1 billion in bond loans. The CDFI Bond Guarantee Program is authorized through FY17 at $500 million, but advocates are encouraging Congress to extend it to $1 billion as allowed by the statute.

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.

FUNDING

The appropriation for the CDFI Fund in FY17 was $248 million. The administration's FY18 budget requested $23 million, a $225 million decrease from the FY17 enacted level. Considering the austere budget environment for all domestic discretionary funds, these funding levels represents a dramatic turnaround from budgets only a few years ago that called for elimination of the CDFI Fund. The George W. Bush Administration demonstrated opposition to the continued existence of the CDFI Fund, but with broad bipartisan support, the CDFI Fund remained funded, although at lower appropriations levels.

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 238 applications for the 2015/2016 round of the NMTC Program, representing $17.6 billion in NMTCs, five times the available funding.

FORECAST

Given the fiscally constrained environment, it is good news that the FY17 CDFI Fund appropriation was higher than the previous year.

WHAT TO SAY TO LEGISLATORS

Advocates should contact members of Congress, especially members of the Senate and House Financial Services and General Government Appropriations Subcommittees, to encourage continued support for at least $248 million in FY18 and FY19 for the CDFI Fund and an extension of the CDFI Bond Guarantee Program, to help meet the demand for financial services and capital in low income communities.

Finally, CDFIs design innovative below-market products that banks would not offer, providing homeownership and financial opportunities to underserved individuals and communities. Advocates can play an active role in helping to communicate the positive role of CDFIs in low-wealth markets.

FOR MORE INFORMATION

The CDFI Fund, 202-653-0300, www.cdfifund.gov

CDFI Coalition, 202-393-5225, www.cdfi.org

Opportunity Finance Network, 215-923-4754, www.ofn.org

Housing Partnership Network, 617-720-1999, http://www.housingpartnership.net

Chapter 9:
INCOME PROGRAMS AND LAWS

Earned Income Tax Credit

Roxy Caines, EITC Campaign Director, Center on Budget and Policy Priorities

Administering agency: Internal Revenue Service (IRS)

Year program started: 1975

Number of persons/households served: 26 million tax filers in 2017

Population targeted: low and moderate income workers

The Earned Income Tax Credit (EITC) is a federal tax credit that benefits low and moderate income workers. EITC benefits are particularly valuable for workers raising children. Very low income workers not raising children may also qualify for a smaller credit.

HISTORY

Congress established the EITC in 1975 under Section 32 of the Internal Revenue Code. Congress has expanded the EITC several times with the support of both Republican and Democratic presidents. In 2009, a substantial expansion of the EITC was enacted in the American Recovery and Reinvestment Act (ARRA). Important expansions of the Child Tax Credit and a higher education credit were also enacted through ARRA. The Protecting Americans from Tax Hikes (PATH) Act of 2015 made all of those expansions permanent.

The EITC was designed to offset the payroll and income tax burdens of low income workers raising children. Expansion of the EITC now also delivers an income supplement to such workers earning very low wages, therefore providing a work incentive.

PROGRAM SUMMARY

According to analyses of Census data by the Center on Budget and Policy Priorities (CBPP), in 2016 the EITC lifted 5.8 million people above the poverty line, including 3 million children. The EITC lifts more children in working families out of poverty than any other single program or category of programs. It also enables near-poor parents and children to maintain incomes above the poverty line.

The EITC is received as a refund from the IRS. The amount of the EITC varies according to workers' earnings and number of children. Below are guidelines for work performed in 2017.

Workers who claim children for the EITC must file tax form 1040 or 1040A, with the IRS "Schedule EIC." In addition to sons and daughters, qualifying children for the EITC may include grandchildren, step children, adopted children, brothers and sisters (or their descendants), and foster children officially placed with workers.

Workers who do not claim children for the EITC must be between 25 and 64 years old at the end of 2017. They are not required to file Schedule EIC with their tax forms.

To claim the EITC, workers cannot have investment income (such as taxable interest, tax-exempt interest, or capital gain distributions) greater than $3,450 in 2017.

Claiming public benefits like cash assistance, Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), Medicaid, or federal housing assistance does not affect eligibility for the EITC. The EITC is not counted as income to determine eligibility for any

NUMBER OF CHILDREN:	SINGLE WORKERS WITH INCOME LESS THAN:	MARRIED WORKERS WITH INCOME LESS THAN:	EITC UP TO:
3 or more children	$48,340	$53,930	$6,318
2 children	$45,007	$50,597	$5,616
1 child	$39,617	$45,207	$3,400
No children	$15,010	$20,600	$510

federally funded programs and does not count against resource limits for 12 months after receipt. In 2017, 3 states enacted new state EITCs, bringing the total to 29 states—including the District of Columbia. Additionally, three localities—New York City, San Francisco, and Montgomery County, MD—offer a local EITC.

Child Tax Credit. Many workers who claim the EITC may also qualify for the Child Tax Credit (CTC), worth up to $1,000 for each qualifying child under age 17. To be eligible for the "additional CTC" in 2017, workers must have taxable earned income above $3,000. As with the EITC, CTC refunds are not counted as income in determining eligibility for any federally funded program and do not count toward resource limits for 12 months after receipt.

Higher Education Tax Credit. The American Opportunity Tax Credit was first enacted by ARRA as a revised version of the HOPE credit for higher education expenses and made permanent as part of the PATH Act in December 2015. It is worth a total of $2,500—compared to $1,800 for the HOPE credit. Up to $1,000 of the credit can be claimed even if the individual does not earn enough to owe income tax, benefitting lower income parents of college students and adult students. Such filers could not claim the HOPE credit.

Premium Tax Credit. This credit can help some individuals and families with incomes between 100% and 400% of the federal poverty line pay for health insurance purchased through the federal marketplace or through state marketplaces. The amount of the credit is figured on a sliding scale, so people do not have to pay more than 2.04% – 9.69% of their adjusted gross income in 2017.

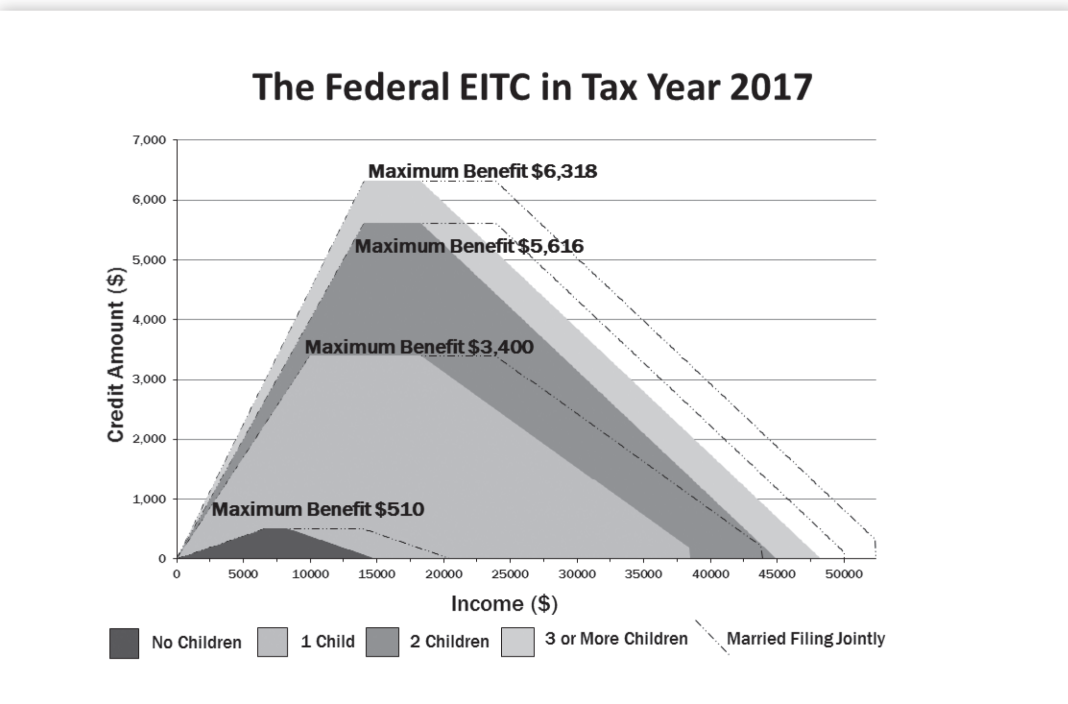
FUNDING

The EITC and other tax credits are components of the Internal Revenue Code. Consequently, the benefits of those credits do not require annual appropriations decisions. Funding for EITC administration is part of the IRS budget and is not separately appropriated. In 2017, about 26 million lower- and moderate-income workers received nearly $64 billion from the EITC.

FORECAST FOR 2018

For the second year a major change to the tax filing process will likely impact a substantial number of EITC claimants. The PATH ACT of 2015 calls upon the IRS to delay release of tax refunds that include the EITC or the refundable part of the CTC (the ACTC) until February 15, 2018. This will enable the IRS to verify income reported on those returns to help prevent identity theft and erroneous refunds. The IRS warns that refunds released on February 15 may not reach taxpayers until about two weeks later, due to holidays and bank processing of direct deposits.

In 2017, proposals to expand the EITC for low-wage childless workers were again advanced. This is the only group of people who are taxed into poverty through the federal tax system. Proposals were made to lower the eligibility age from 25 to 21 and raise the maximum credit to $1,000. Although the proposals have garnered some bipartisan support in Congress, such an expansion was not included in the tax reform legislation proposed in either the House or the Senate at the end of 2017.



TIPS FOR LOCAL SUCCESS

CBPP closely monitors congressional action on the EITC and the other tax credits, publishes analyses of proposals, and issues legislative action alerts to advocates.

Although participation in the EITC is higher than in public benefit programs with more burdensome eligibility procedures, each year several million eligible workers do not claim their EITC. More than half of EITC recipients pay commercial tax preparers to do their tax returns, draining hundreds of dollars from their refunds and risking exposure to predatory refund loan practices.

Resources for helping people to claim their EITC include:

- The IRS sponsors the Volunteer Income Tax Assistance (VITA) and the Tax Counseling for the Elderly (TCE) programs to provide free tax filing assistance by trained community volunteers at local community sites. Search for VITA and TCE locations by ZIP code at http://irs.treasury.gov/freetaxprep
- CBPP's Get It Back Campaign provides local organizations with training and technical assistance in building tax credit outreach campaigns and VITA programs. The campaign annually updates its tax credit outreach kit with facts about the EITC and the CTC and strategies to promote them, and its customizable outreach materials. The outreach kit, flyers in 24 languages, an EITC Estimator, and other tools are available at www.eitcoutreach.org
- Prosperity Now coordinates a Taxpayer Opportunity Network that provides support to organizations running VITA programs. Learn more at www.prosperitynow.org
- Resources are also available from the IRS (www.eitc.irs.gov). The IRS and HUD partner to promote tax credits and the VITA program.
- Community organizations and local agencies may qualify to apply for annual Community VITA grants, a matching grant program administered by the IRS to expand VITA to underserved communities (search for "VITA Grants" at www.irs.gov).

WHAT TO SAY TO LEGISLATORS

The EITC is designed to encourage and reward work. Beginning with the first dollar, a worker's EITC grows with each additional dollar of earnings until the credit reaches the maximum value. This creates an incentive for people to work and for lower-wage workers to increase their work hours.

The EITC reduces poverty by supplementing the earnings of workers who have low wages and low earnings. There has been broad bipartisan agreement that a two-parent family with two children with a full-time, minimum-wage worker should not have to raise its children in poverty. At the federal minimum wage's current level, such a family can move above the poverty line for an average family of four only if it receives the EITC as well as SNAP (food stamp) benefits.

For young children, moving out of poverty is particularly important. Research has found that lifting income in early childhood not only tends to improve a child's immediate educational outcomes, but also is associated with improved health outcomes, greater college attendance, and higher earnings in adulthood.

The EITC needs to be strengthened for low-wage childless workers who are the only group that the federal tax system taxes into poverty. A full-time, minimum-wage childless worker who earns $14,500 annually, will receive an EITC of only $37 after filing his or her 2017 tax return. This does little to offset the more than $1,000 he or she owes in income and payroll taxes.

FOR MORE INFORMATION

Center on Budget and Policy Priorities, 202-408-1080, www.cbpp.org

The Minimum Wage

By David Cooper, Senior Economic Analyst, Economic Policy Institute

The Federal Minimum Wage: $7.25 (effective July 24, 2009)

State Minimum Wages for 2017: State minimum wages range from $5.15 in Wyoming and Georgia (where the federal minimum wage applies) to $11 in Massachusetts and Washington. Washington's minimum wage will increase to $11.50 on January 1, 2018. Five states (Alabama, Louisiana, Mississippi, South Carolina, and Tennessee) have no state minimum wage; the federal minimum wage applies in these states. The District of Columbia has a minimum wage of $12.50 that will increase to $13.25 on July 1, 2018.

Several other states have passed additional minimum wage increases that will take effect in the coming years – the most notable being California, where the statewide minimum wage will reach $15 in 2022, and Washington, where the statewide minimum wage will reach 13.50 in 2020. New York and Oregon enacted state minimum wage increases, with separate wage floors for different regions of each state. In New York City, the minimum wage will be $15 in 2019 and in the urban area encompassing Portland, Oregon, the minimum wage will reach $14.75 in 2022.

As of January, 2018, some 46 cities and counties had also adopted minimum wages ordinances that established wage floors above their state minimum wages.[1] However, in Alabama, Missouri, and Iowa, minimum wage ordinances that were passed at the local level were subsequently reversed by the state legislature. There are now 25 states that have enacted "preemption" laws prohibiting local governments from establishing a minimum wage that differs from the state minimum.[2]

The federal minimum wage, established by the Fair Labor Standards Act, is a labor standard that ensures a basic level of compensation for workers in the United States. Yet as prices go up and the minimum wage is left unchanged, its buying power is eroded, resulting in millions of workers who struggle to afford their basic needs, including food and housing. Increasing the minimum wage not only improves affected workers' well-being, it also puts more money in the hands of people likely to spend those additional earnings quickly, thereby spurring additional economic activity and promoting growth. The 2008 and 2009 increases to the federal minimum wage boosted consumer spending by approximately $8.6 billion.

Most recently raised in 2009, the federal minimum wage is currently set at $7.25 per hour. Because of the ongoing impact of inflation, eight years of inflation have already significantly eroded the real value of the minimum wage. Today's minimum wage is worth more than 10% less than it was worth when it was last increased in 2009, and more than 25% less than at its inflation-adjusted peak value in 1968.

The U.S. Department of Labor enforces federal minimum wage laws, while state labor departments handle enforcement of state wage laws. However, states with minimum wages equal to the federal minimum wage often defer enforcement to the U.S. Department of Labor, and not all states—even those with higher minimum wages—have a state department of labor. Researchers estimate that violations of minimum wage laws cost low-wage workers more than $15 billion in unpaid wages each year.[3]

HISTORY AND PURPOSE

The federal minimum wage was established in 1938 during the Great Depression as a measure to prevent the exploitation of workers and to limit income inequality.

Although the nominal level of the minimum wage has increased over the course of time, prices have also increased, eroding the wage's buying power

1 Details on all state and city minimum wage laws can be found at epi.org/minimum-wage-tracker/

2 Details on all state preemption of local minimum wage laws can be found at epi.org/preemption-map/

3 Cooper, D. (2017). *Employers steal billions from workers' paychecks each year*. Economic Policy Institute. http://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/

throughout the years. This buying power peaked in 1968 at $9.90 in 2017 dollars [inflation adjusted using the Consumer Price Index Research Series Using Current Methods (CPI-U-RS)]. In 2007, after 10 years of inaction on this issue, Congress passed a 3-step increase to the federal minimum wage, raising it from $5.15 to $5.85 in 2007, to $6.55 in 2008, and to $7.25 in 2009. This restored some of the buying power of the minimum wage, but it remained well below the peak value reached in 1968, and its real value has eroded with each passing day since then. At the start of 2018, the federal minimum wage is worth more than 25% less in purchasing power than the minimum wage in 1968.

ISSUE SUMMARY

Federal minimum wage legislation ensures that employers, both private and public, provide their employees with a minimum level of compensation for each hour worked. Almost all workers are covered by this law, with exemptions for teenagers during their first 90 days of employment, some seasonal workers, workers at businesses with gross receipts of less than $500,000 that do not engage in interstate commerce, and a number of other small occupational groups.

A full-time minimum wage worker takes home just $15,080 a year—an annual income below the federal poverty line for any worker with at least one child. According to a study by the Economic Policy Institute (EPI), there are about 2.4 million workers who earn at or near the federal minimum wage, with 75% of this group 20 years old or older. In addition, more than 25% of these workers have children; more than one million children depend on parents who are earning close to the minimum wage. More than 60% of minimum wage workers have a family income of less than $50,000 a year. A 2016 U.S. Bureau of Labor Statistics report shows that more than three-quarters (78.3%) of those earning the federal minimum wage or less have completed high school, with more than a third (33.6%) having completed some college or an associate's degree.

As NLIHC's report, *Out of Reach*[4], shows there is no jurisdiction in the United States in which a worker earning the federal minimum wage can afford even a one-bedroom apartment at the fair market rent (FMR). According to the 2017 edition of *Out of Reach*, a minimum wage worker would have to work 117 hours a week, the equivalent to 2.9 full-time jobs, in order to afford a two-bedroom apartment at the national average FMR.

FORECAST FOR 2018

A lot has happened since President Obama indicated in the 2013 State of the Union address that he supported raising the federal minimum wage to $9. Since then, 26 states and the District of Columbia have passed state minimum wage increases, many of which will reach or exceed $10 within the next 2 years. Additionally, 46 cities and counties have passed local wage floors as of January 2018 (although some of these have been subsumed by state increases or reversed by state legislatures). These local ordinances have set minimum wages as high as $15.64 in SeaTac, WA.

In 2017, Congressional leaders in the House and Senate introduced legislation to raise the federal minimum wage in 8 steps to $15 by 2024. Representative Bobby Scott (D-CA) and Senator Patty Murray (D-WA) garnered more initial co-sponsors for their proposal (The Fair Minimum Wage Act of 2017) than any previous minimum wage legislation since the last federal minimum wage bill was passed in 2007; however, the bill was not put to a floor vote in either house of Congress. The longer that Congress waits to approve any increase, inflation will reduce the real value of the eventual target wage level. For this reason, lawmakers may ultimately target an even higher minimum than the current proposal, phased-in over the course of a longer time period, in order to achieve the desired inflation-adjusted value. Lawmakers are also expected to call for an increase in the federal tipped minimum wage, which has remained unchanged at $2.13 since 1991.

Indexing the Minimum Wage: The lack of an adequate minimum wage contributes to growing wage inequality. Workers today are better educated and more productive than ever before, but real wages for minimum-wage workers are now lower than they were 50 years ago. Although the purchasing power of the minimum wage has fallen, it can be restored to help working families support themselves.

Eighteen states and the District of Columbia have ensured that the real value of the minimum wage

4 National Low Income Housing Coalition, *Out of Reach 2016*. Retrieved on March 2017: http://nlihc.org/oor

will not decline over the course of time by indexing it to inflation, and Congress should follow their lead. This is an improvement compared to the current system in which the minimum wage is raised only when it is politically expedient. In addition to maintaining a constant purchasing power of the minimum wage, indexing also ensures that each increase is small and predictable. Rather than simply indexing to changes in prices, the minimum wage could also be indexed to changes in wages. For example, indexing the minimum wage to 50% of average, non-supervisory workers' wages, as suggested in a 2009 EPI paper, *Fix it and Forget it: Index the Minimum Wage to Growth in Average Wages*[5], would help combat the growth in inequality by ensuring that the wages for lowest paid workers never fall too far from the wage for the average worker.

Strengthening Government Assistance Programs: Many low-wage workers (many of whom work full time) are paid so little that they must turn to public assistance programs in order to make ends meet. As the value of the minimum wage is left to erode and more workers' wages slip to levels that are insufficient to afford basic necessities, it places greater stress on government assistance programs that must take up the slack in workers' earnings. Accordingly, if the minimum wage were raised, it would lift the labor earnings of many low-wage workers such that they would no longer need public assistance or would still be better off even if their benefits were reduced. An EPI study, Balancing paychecks and public assistance[6], describes how raising the federal minimum wage would generate billions in annual savings to public assistance programs–funds that could then be used to strengthen anti-poverty programs or make long-needed investments in education, public infrastructure, or other key policy priorities.

TIPS FOR LOCAL SUCCESS

As the federal minimum wage stagnated from 1984 to 2007, several states decided to take up this issue themselves and set their own minimum wages higher than the federal minimum. In 1984, only one state, Alaska, had a minimum wage higher than the federal minimum. By the end of 2007, some 31 states and the District of Columbia had set their minimum wages above the federal level. In addition, many of these states have indexed their minimum wage to inflation so that the purchasing power of the minimum wage does not decline throughout time. This strategy has proven successful at the state level, and should be adopted at the federal level as well.

Advocates interested in fair wages in their states or localities can contact the groups listed below to connect with campaigns to enact a higher state or local minimum wage. Between 2013 and 2017, there were 22 states – Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New York, New Jersey, Oregon, Rhode Island, South Dakota, Vermont, Washington, and West Virginia that either passed legislation or approved ballot initiatives to increase the minimum wage. There were also successful local campaigns in a multitude of cities and counties throughout California, including Berkeley, Cupertino, Emeryville, Los Altos, Los Angeles, Mountain View, Oakland, Palo Alto, Richmond, San Diego, San Francisco, San Jose, San Mateo, Santa Clara, Santa Monica, Sunnyvale; as well as Chicago, IL.; Johnson, Polk, and Wapello Counties, IA; Montgomery and Prince George's Counties, MD.; Portland, ME; Kansas City, and St. Louis, MO.; Albuquerque, and Las Cruces, NM; SeaTac, Seattle, and Tacoma, WA; and the District of Columbia.

WHAT TO SAY TO LEGISLATORS

Advocates should urge their members of Congress, as well as state elected officials, to increase the minimum wage. Working Americans should be fairly compensated for their labor with a wage that allows them to provide for their families. Even after the latest increase in the minimum wage, its inflation-adjusted value is significantly lower than historic levels, and it is still at a level that makes it nearly impossible for these workers to pay for basic necessities, including housing.

Advocates should tell their federal and state legislators that the way forward has two steps: First, increase the minimum wage to a livable level. Second, index it to protect against inflation.

5 Shierholz, H. (2009). Fix it and Forget it. Index the Minimum Wage to Growth in Average Wages. Economic Policy Institute, 17.

6 Cooper, D. (2016). Balancing paychecks and public assistance. Economic Policy Institute. Retrieved on March 2017: http://www.epi.org/publication/wages-and-transfers/

Increasing the minimum wage, at either the federal or state level, contributes to economic growth. Increasing the minimum wage improves the well-being of low income workers, while improving the economy for all. Increasing the minimum wage is smart public policy.

FOR MORE INFORMATION

Economic Policy Institute, 202-775-8810, www.epi.org

National Employment Law Project, 212-285-3025, www.nelp.org

Supplemental Security Income

By Kathleen Romig, Senior Policy Analyst, Center on Budget and Policy Priorities

Supplemental Security Income (SSI) is a means-tested program that provides cash benefits for low income people who are disabled, blind, or elderly.

The Social Security Administration (SSA) runs the program.

HISTORY

Congress created SSI in 1972 to replace the former program of grants to states for aid to the aged, blind, or disabled.

PROGRAM SUMMARY

SSI provides monthly cash assistance to persons who are unable to work due to age or medical conditions and have little income and few assets. In 2018, the basic monthly SSI benefit is $750 for an individual and $1,125 for a couple. Beneficiaries who live in another person's household and receive in-kind maintenance and support receive one-third less than that amount, while beneficiaries who receive long-term care in a Medicaid-funded institution receive $30 per month. Many states supplement the federal SSI benefit, although state budget cuts are severely constraining those additional payments.

SSI benefits are reduced when recipients have other income. Each dollar of earnings exceeding $65 a month (or $85 for someone with no unearned income) reduces SSI benefits by 50 cents, a provision that is meant to encourage work. Each dollar of other income exceeding $20 per month, such as Social Security benefits, pensions, or interest income, reduces SSI benefits by one dollar. SSI benefits are unavailable to people whose assets exceed $2,000 for an individual or $3,000 for a couple (with certain exceptions).

Although run by the same agency, SSI is distinct from the Old-Age, Survivors, and Disability Insurance programs commonly known as Social Security. To collect Social Security, beneficiaries must have worked a certain number of quarters and paid the requisite payroll taxes, besides meeting certain age or disability requirements. Many SSI recipients have worked long enough to collect Social Security but their Social Security benefit is low enough that they also qualify for SSI. Over a quarter of adult SSI recipients under age 65, and more than half of recipients older than 65, also get Social Security.

In most states, anyone who receives SSI benefits is automatically eligible for Medicaid. More than 60 percent of SSI recipients also get SNAP (Supplemental Nutrition Assistance Program, formerly known as food stamps), except in California, which pays an extra cash supplement in lieu of food stamps.

More than 90% of SSI recipients are U.S. citizens. The 1996 welfare reform law eliminated most noncitizens' eligibility for SSI unless they fall into one of three main groups: lawful residents who entered the United States by August 1996; refugees who entered after that date, who can receive SSI only on a temporary basis, currently for 7 years; or immigrants who entered after August 1996 and have earned 40 quarters of coverage under Social Security.

Individuals may apply for SSI online, by phone, or in person at one of SSA's field offices. SSA will verify the applicant's identity, age, work history, and financial qualifications. In the case of disability applications, state agencies called Disability Determination Services (DDSs) weigh the medical and related evidence to judge whether the applicant meets the criteria set out in law; basically, whether he or she suffers from a severe impairment that will last at least 12 months or result in death and that makes it impossible to engage in substantial work. A slightly different definition applies to disabled children under age 18. If DDS initially denies the application, claimants have several levels of appeal, and may choose to be represented by an attorney.

Although SSI benefit levels are low, they are critical to obtaining and maintaining housing for many recipients. SSI benefits enable some homeless recipients to qualify for supportive housing programs, subsidized housing vouchers or units prioritized for people with disabilities. Supportive housing providers may also receive Medicaid reimbursement for certain services provided to clients who qualify for Medicaid via SSI. Still, the benefits are insufficient for many recipients to afford market-rate housing.

Although SSI benefits provide critically needed resources to people with disabilities, they can be difficult to obtain. Nationwide, only about one-quarter of adult disability claims are approved at the initial level; about one-third are approved after all appeals. Allowance rates for disabled children are slightly higher. The process is especially challenging for people who are homeless. Barriers include difficulty obtaining medical documentation and in making and keeping appointments. SSA requires evidence of a disability to come from an "acceptable medical source," such as a physician or psychologist. Starting in 2017, physicians' assistants, audiologists, and advanced practice registered nurses are considered acceptable medical sources with the licensed scope of their practices. The list of acceptable medical sources excludes other providers, such as licensed clinical social workers, although such professionals often provide supporting documentation.

Disability claimants often face an extended wait for a decision. Initial review of a disability application typically takes three to four months, although there is a fast-track program for certain severe conditions; appeals to the Administrative Law Judge level typically take at least a year and a half to be processed. SSA is working hard to eliminate the hearings backlog; however, record numbers of applications and tight resources have hampered progress. Some states and localities offer interim assistance while an applicant awaits a decision on SSI, eventually recouping the money from any retroactive benefits.

Some initiatives have demonstrated success in increasing SSI access for homeless people with disabilities. The Social Security Outreach and Access to Recovery (SOAR) program has used a train-the-trainer model combined with technical assistance to teach caseworkers how to conduct outreach and assist homeless applicants. SOAR is an interagency initiative involving SSA, HUD, and the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration. Through 2016, clients at SOAR-trained sites in 49 states and the District of Columbia had an average initial approval rate of 67%.

As of September 2017, 8.2 million people received SSI benefits: 1.2 million children under age 18, 4.8 million disabled adults aged 18-64, and 2.2 million people 65 or older.

FUNDING

As an entitlement program, SSI is available to anyone who meets its eligibility requirements. Total SSI outlays were about $63.4 billion in 2016, including about $4.2 billion for administrative costs (which are subject to annual appropriation).

FORECAST FOR 2018

Congress may consider cuts to SSI's already meager benefits in 2018. In particular, they may follow regressive tax cuts with a radical overhaul of three core low income assistance programs: Medicaid, SNAP, and SSI. If previous House GOP budgets are a guide, Congress may seek to eviscerate the basic structure of these programs, under which there are minimum federal eligibility and benefit standards and all eligible families who apply for benefits receive them. Instead states would receive fixed, inadequate pots of money (likely block grants), with sweeping state flexibility to respond to the funding reductions by restricting eligibility and cutting benefits.

They may also propose to completely eliminate benefits for the 1.2 million children who receive SSI, as the House GOP poverty plan has already outlined.

WHAT TO SAY TO LEGISLATORS

Advocates should urge Congress to maintain the structure of SSI—not convert it into a block grant or eliminate benefits for children.

If Congress converted SSI into a block grant—as it did to welfare in 1996—the consequences would be dire for poor families. Before the 1996 welfare-reform law, 68 of every 100 poor families with children received cash assistance through Aid to Families with Dependent Children. In 2015, just 23 of every 100 poor families received benefits from its replacement, Temporary Assistance for Needy Families. A comparable shrinking SSI (not to mention Medicaid and SNAP) would take critical benefits away from millions of struggling low income families and children.

SSI is the only source of federal income support for families with disabled children, and it reaches only the poorest and most severely impaired children. Eliminating these crucial benefits would jeopardize these children's health and development and their families' ability to raise them at home in their communities. Families caring for children with disabilities face higher costs, more demands on their time, and more insecurity than other families. SSI's modest benefits help them meet their children's needs while making ends meet. SSI has been proven to reduce children's poverty and hardship today and improve their prospects for tomorrow.

FOR MORE INFORMATION

Center on Budget and Policy Priorities, www.cbpp.org

National Law Center on Homelessness & Poverty, www.nlchp.org

National Health Care for the Homeless Council, www.nhchc.org

National Senior Citizens Law Center, www.nsclc.org

SOAR, www.prainc.com/soar

Social Security Administration, www.socialsecurity.gov

Temporary Assistance for Needy Families

By Elizabeth Lower-Basch, Director, Income and Work Supports, Center for Law and Social Policy; and Sharon McDonald, Director for Families and Youth, National Alliance to End Homelessness

Temporary Assistance for Needy Families (TANF) is a federal block grant program that provides funds for states to assist low income families. TANF was last reauthorized under the Deficit Reduction Act of 2005. The program was scheduled to be reauthorized in 2010. Congress has instead extended authorization for the program under existing statute through periodic short-term extensions.

HISTORY AND PURPOSE

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 replaced Aid to Families with Dependent Children (AFDC, an entitlement program established by the Social Security Act of 1935), with the TANF block grant. TANF is used by states to provide a wide range of benefits and services that promote the four purposes of TANF for low income families with children.

The first purpose of the TANF program is to "provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives." Other purposes include reducing dependence on cash assistance for low income families with children by promoting work, job preparation and marriage; preventing out-of-wedlock pregnancies; and promoting the formation and maintenance of two-parent families.

PROGRAM SUMMARY

TANF dollars are distributed to states based on what states received under AFDC and related programs from 1994-1996. States are required to provide their own funding toward meeting the purposes of the block grant, known as the Maintenance of Effort (MOE). To meet the MOE requirement, states must maintain 75% to 80% of their historical spending on programs that benefit low income families. The programs may be administered by the state- or county-level TANF agency.

Cash Assistance: Under AFDC, states provided monthly cash benefits to poor families with children, primarily single-parent families. All states have continued to operate such programs with their TANF funds, although cash assistance now accounts for only 24% of total TANF and MOE spending.

Eligibility criteria for TANF cash assistance and TANF-funded services are largely determined by the state, or the county. Typically, households with children and very limited incomes are eligible for TANF cash assistance. However, in more than half the states, a family with earnings at half the poverty level earns too much to qualify for TANF assistance. States cannot use federal TANF resources to provide cash assistance to families for more than five years, and many states have adopted shorter time limits. Legal resident immigrant families cannot receive federally funded TANF assistance unless they have resided in the United States for more than five years. Still, states can choose to use MOE funds to support families that don't or no longer qualify for TANF assistance.

All states impose participation requirements in work-related activities on most adults who receive assistance. States have flexibility in determining who to exempt, and what activities to permit, but must meet a federal work participation rate that only counts certain activities. Families that do not meet the required number of hours in work activities may be sanctioned, which reduces or suspends the families' cash assistance grants. Most states will eventually fully sanction families who do not participate in work activities, meaning that those families lose the entire cash benefit.

TANF cash assistance is an important source of financial support for families without other sources of income. However, in all states, benefit levels are well below what families need to pay for housing. The average cash assistance benefit for a family of three leaves them with incomes below 30% of the poverty level. In 34 states and the District of Columbia, a family of three with no other income received less than one-third of the federal poverty line, or $567 a month. Families served by TANF programs have high rates of housing instability and homelessness, likely due to their very low incomes.

The loss of TANF cash assistance due to sanctions or time limits can further increase the risk of housing instability and homelessness.

Nationally, in FY16, a monthly average of 1.5 million families received cash assistance under TANF—39% of those families were "no-parent cases," in which only children received assistance. In 1995, the U.S. Department of Health and Human Services (HHS) estimated that 84% of eligible families received assistance from AFDC. Today, only 23% of eligible families receive assistance from the TANF program, and recent research indicates that some of the poorest families are not receiving assistance. Approximately 40% of families entering homeless shelters report income from TANF cash assistance. Poor families that are not receiving cash assistance include those that have been sanctioned because they have not complied with program requirements, or that have reached their state's time limit. Studies have found that families having lost TANF cash assistance through sanctions are more likely than other families to include a person with a disability that can hinder his or her ability to find or maintain employment.

Use of Funds: States have a great deal of flexibility in the use of TANF funds, with few limitations, as long as they are used to promote the four goals of TANF. In addition to cash assistance, common uses of TANF and MOE funds include child care, work activities, refundable state earned income tax credits, and child-welfare related services.

Some states use TANF resources to help meet the housing needs of low income families, including eviction prevention assistance, security deposit and first month's rent, and short- or medium-term rental assistance ("short-term non-recurrent benefits" that last no longer than four months are not considered "assistance" under TANF, and therefore do not trigger the TANF time limits or work participation requirements). In addition to providing rental assistance that can prevent or end homelessness, TANF resources are also used in states to support shelters and transitional housing programs serving families. In February 2013, HHS issued an Information Memorandum (ACF-2013-01) to TANF administrators outlining how states can use TANF resources to meet the housing needs of homeless families.

FUNDING

The TANF block grant provides $16.5 billion annually to states. States are required to provide their own funding for the purposes of the block grant, known as the MOE. Because the block grant has not been increased to reflect inflation since TANF was first created, its value in real dollars has declined by 33%.

FORECAST FOR 2018

Although there were Congressional discussions about TANF reauthorization in 2015, TANF continues to be incrementally extended without full reauthorization. The current authorization expires at the end of FY18, so there may be reauthorization efforts in Congress this year. Although Congressional leadership has raised the possibility of "welfare reform" in 2018, it appears that this will focus on proposals to apply TANF policies such as time limits and work requirements to other programs, not on major changes to TANF itself.

State-level advocates should look for opportunities to preserve and expand financial support to low income families under the TANF program. Housing advocates should support state and local efforts to improve TANF for low income families because a strong performing income and employment support program can help those families access and maintain housing in their community.

State advocates should also explore opportunities to use TANF resources to meet the housing needs of at-risk and homeless families. Advocates may use information outlined in the HHS Information Memorandum (ACF-2013-01) to educate welfare advocates and TANF administrators about opportunities to use TANF resources more effectively in helping families avoid or escape homelessness.

TIPS FOR LOCAL SUCCESS

Local homelessness and housing advocates should develop partnerships with state and local organizations advocating for improved TANF income and employment supports for low income families. Through collaboration, housing and welfare advocacy organizations can propose solutions that meet the holistic needs of low income families.

WHAT TO SAY TO LEGISLATORS

Local advocates should educate their Congressional delegation about how TANF resources are being used to meet the needs of families in their state and the need for more funding for the TANF block grant.

FOR MORE INFORMATION

Center on Budget and Policy Priorities, 202-408-1080, www.cbpp.org

Center on Law and Social Policy, 202-906-8000, www.clasp.org

National Alliance to End Homelessness, 202-638-1526, www.endhomelessness.org

Additional Resources:

Funders Together to End Homelessness - Temporary Assistance for Needy Families Fails to Meet Basic Needs Interactive Map provides an interactive map outlining the benefit levels within each state and how they measures up against the fair market rent in that state: http://www.funderstogether.org/map_tanf_fails_to_meet_basic_needs

Chapter 10:
ABOUT NLIHC

Make a Difference: Ways to Engage with and Support the National Low Income Housing Coalition

BECOME A MEMBER OF THE COALITION

The best way to demonstrate your commitment to ensuring that the lowest income people in America have access to decent, affordable homes is to become a member of the Coalition. NLIHC's power to influence change is directly proportional to the number and active engagement of our members. NLIHC has been a membership organization since our earliest days, and our large and involved membership is what sets us apart from others.

Anyone can be an NLIHC member. Our membership base is broad and diverse, including low income renters, professionals who work in the housing field, tenant associations, state and local housing advocacy organizations, community development corporations, housing authorities, and individuals who believe in NLIHC's mission and want to support our work. Our members care about a broad array of affordable housing issues, from accessibility and affordability for people with disabilities, to the preservation of resources for homelessness prevention and affordable housing programs, to veterans' housing, fair housing, community development, and more.

WHY OUR MEMBERS ARE CRUCIAL

The modest membership contributions from each individual and organization, when multiplied by our many hundreds of members, is a significant source of revenue to allow NLIHC to continue our work. Members provide us invaluable feedback about the housing issues that low income and homeless people face every day in cities across the country. Most importantly, members are advocates, the people we count on to reach out to their networks, to their local elected officials, to local media, and to members of Congress about the affordable housing needs of low income people. A geographically wide and sizeable membership base brings true power to NLIHC's advocacy efforts.

MEMBERSHIP BENEFITS

In addition to the satisfaction of knowing you are supporting the most effective national organization working to expand affordable housing for extremely low income individuals and families, NLIHC members receive:

- *Memo to Members & Partners*, NLIHC's acclaimed weekly newsletter on federal housing issues.
- Discounted rates to NLIHC's annual Housing Policy Forum and Leadership Awards Reception.
- Free or discounted access to our research publications like *Out of Reach* and *The GAP: A Shortage of Affordable Homes,* educational resources like the *Advocates' Guide* and regular webinars, and tenant resources like the *Tenant Talk* newsletter.
- Consultations with NLIHC staff on how to most effectively use NLIHC research data.
- Periodic "Calls to Action," alerting you to the issues that need attention and action.
- Telephone resource referrals with links to state and regional networks.
- The opportunity to participate in NLIHC's policy-setting decisions.

BECOME A MEMBER TODAY

Joining NLIHC is easy. Our membership rates are flexible, and tiered by member type. All rates are suggested—you can join at any contribution amount affordable to you. Join at www.nlihc.org/membership

You can also contact your housing advocacy organizer for assistance, or to learn more about membership by emailing outreach@nlihc.org

MAKE A DONATION TO NLIHC

Contributions to NLIHC directly support our research, education, organizing, policy development, and regulatory efforts. The financial support we receive through donations is crucial to helping us achieve our 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 by sponsoring the Annual Housing Leadership Awards Reception. Your contribution helps subsidize low income membership rates and low income Policy Forum registration rates and allows NLIHC to work to end housing poverty and homelessness. 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 our acclaimed weekly newsletter *Memo to Members & Partners*, conduct research on the housing wage and the housing gap for extremely low income households, and produce our valuable publications like *Out of Reach*, *The GAP: A Shortage of Affordable Homes, Tenant Talk*, and the *Advocates' Guide*. Your contributions support our efforts to ensure success of the national Housing Trust Fund; to build awareness and support for affordable housing; and to keep our members informed about the federal budget and appropriations, changing federal regulations, policy developments, and much more. Each contribution makes a powerful difference. Please donate to NLIHC today.

To donate to NLIHC, visit www.nlihc.org/donate

You can also contact NLIHC's Development Coordinator, Christina Sin, at csin@nlihc.org, for donation questions or assistance.

NLIHC Resources

In addition to the *Advocates' Guide*, NLIHC offers many other resources for advocates, policymakers, students, and others in order to provide 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 members' best direct resource for answers to federal policy or membership questions. The organizers also coordinate responses 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 www.nlihc.org/takeaction/field, or e-mail outreach@nlihc.org

Tenant Talk. *Tenant Talk* is NLIHC's quarterly 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, visit www.nlihc.org/library/tenanttalk/signup

To view past issues of *Tenant Talk*, visit www.nlihc.org/library/tenanttalk

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 www.nlihc.org/issues

NLIHC also convenes a policy advisory committee, comprised of NLIHC board members and individual members. The policy advisory committee informs NLIHC's policy agenda. Committee information is available online at www.nlihc.org/involvement/policycomm

RESEARCH

NLIHC's research team publishes research on housing-related topics throughout the year. Access the latest research and reports in our "Resource Library" online at www.nlihc.org/library

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 amount of money a household must earn in order 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

The Housing Wage for metropolitan area ZIP codes is also available on-line.

The Gap. NLIHC's other 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 http://nlihc.org/research/gap-report

Housing Spotlight. This series of occasional research briefs uses data from different sources to highlight a variety of housing issues. Find them online in the Resource Library at: www.nlihc.org/library/housingspotlight

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 www.nlihc.org/library/CDP

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 www.nlihc.org/library/SHP

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 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

For more information on the database, visit www.preservationdatabase.org or email aaurand@nlihc.org or kstater@housingcenter.com

CONTACT YOUR ELECTED OFFICIALS

To find contact information for your state or federal elected officials, visit www.nlihc.org, click on "Contact Congress," and enter your ZIP code in the search box. Access NLIHC's entire Legislative Action Center at www.cqrcengage.com/nlihc

NLIHC STATE COALITION PARTNERS

NLIHC maintains close ties with our State Coalition Partners, housing and homeless advocacy organizations that serve statewide or regional areas. To find a list of State Coalition Partners, visit www.nlihc.org/partners/state

For information on becoming a State Coalition Partner, visit www.nlihc.org/involvement/state-coalition/apply

ANNUAL HOUSING POLICY FORUM

NLIHC hosts a forum every spring in Washington, DC. The forum offers federal housing policy plenary sessions, keynote speakers, and workshops as well as a Lobby Day, during which advocates have the opportunity to weigh in with members of Congress and their staffs. For more information, visit www.nlihcforum.org

NLIHC ON SOCIAL MEDIA

Facebook. Like NLIHC on Facebook and get instant updates on the latest housing news and information at www.facebook.com/NationalLowIncomeHousingCoalition

Twitter. Follow @NLIHC on Twitter for daily updates at www.twitter.com/NLIHC

Instagram. Follow @NLIHC on Instagram for quick snapshots of information at https://www.instagram.com/nlihc/

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

NLIHC State Coalition Partners

NLIHC's state coalition project seeks to improve and expand the capacity of state housing and homeless coalitions to advocate for change and promote effective solutions that will end the shortage of affordable and available rental homes in America. NLIHC convenes state partners with twice-yearly meetings in DC and monthly conference calls where statewide advocates share new ideas, campaigns, and strategies with one another and stay current on information about efforts at the federal level.

NLIHC's 60 state coalition partners in 41 states and the District of Columbia are an integral part of the work we do. Our state partners are housing and homeless advocacy organizations serving statewide or regional areas, and are the organizations with which we work most closely. Please become a member or an active advocate with the partner organizations where you live, as well as with NLIHC, in order to strengthen state and national advocacy for more affordable housing.

ALABAMA

Low Income Housing Coalition of Alabama (c/o Collaborative Solutions)
205-939-0411
www.lihca.org

Alabama Arise
334-832-9060
www.alarise.org

ALASKA

Alaska Coalition on Housing and Homelessness
907-523-0660
www.alaskahousing-homeless.org

ARIZONA

Arizona Housing Coalition
602-340-9393
http://www.azhousingcoalition.org

ARKANSAS

Arkansas Coalition of Housing and Neighborhood Growth for Empowerment
www.achange.org

Housing Arkansas
www.housingar.org

CALIFORNIA

California Coalition for Rural Housing
916-443-4448
www.calruralhousing.org

California Housing Partnership
415-433-6804
www.chpc.net

Housing California
916-447-0503
www.housingca.org

Non-Profit Housing Association of Northern California
415-989-8160
www.nonprofithousing.org

Southern California Association of Non Profit Housing
213-480-1249
www.scanph.org

COLORADO

Colorado Coalition for the Homeless
303-293-2217
www.coloradocoalition.org

Housing Colorado
303-863-0123
www.housingcolorado.org

CONNECTICUT

Connecticut Housing Coalition
860-563-2943
www.ct-housing.org

DELAWARE

Housing Alliance Delaware
302-678-2286
www.housingforall.org

DISTRICT OF COLUMBIA

Coalition for Nonprofit Housing & Economic Development
202-745-0902
www.cnhed.org

FLORIDA

Florida Housing Coalition, Inc.
850-878-4219
www.flhousing.org

GEORGIA

Georgia Advancing Communities Together
404-586-0740
www.georgiaact.org

ILLINOIS

Housing Action Illinois
312-939-6074
www.housingactionil.org

INDIANA

Prosperity Indiana
317-454-8533
www.prosperityindiana.org

KANSAS

Kansas Statewide Homeless Coalition
785-856-4960
www.kshomeless.com

KENTUCKY

Homeless and Housing Coalition of Kentucky
502-223-1834
www.hhck.org

LOUISIANA

Louisiana Housing Alliance
225-381-0041
www.lahousingalliance.dreamhosters.com

MAINE

Maine Affordable Housing Coalition
207-245-3341
www.mainehousingcoalition.org

MARYLAND

Maryland Affordable Housing Coalition
443-758-6270
www.mdahc.org

MASSACHUSETTS

Citizens' Housing and Planning Association
617-742-0820
www.chapa.org

MICHIGAN

Community Economic Development Association of Michigan
517-485-3588
www.cedam.info

MINNESOTA

Minnesota Coalition for the Homeless
651-645-7332
www.mnhomelesscoalition.org

Minnesota Housing Partnership
651-649-1710
www.mhponline.org

MISSOURI

Empower Missouri
573-634-2901
www.empowermissouri.org

NEBRASKA

Nebraska Housing Developers Association
402-435-0315
www.housingdevelopers.org

NEW HAMPSHIRE

Housing Action New Hampshire
603-828-5916
www.housingactionnh.org

NEW JERSEY

Housing and Community Development Network of New Jersey
609-393-3752
www.hcdnnj.org

NEW MEXICO

New Mexico Coalition to End Homelessness
505-982-9000
www.nmceh.org

Supportive Housing Coalition of New Mexico
505-255-3643
www.shcnmthehousingcoalition.org

NEW YORK

Coalition for the Homeless
212-776-2000
www.coalitionforthehomeless.org

Neighborhood Preservation Coalition of New York State
518-432-6757
www.npcnys.org

New York State Rural Housing Coalition
518-458-8696
www.ruralhousing.org

New York State Tenants & Neighbors Coalition
212-608-4320
www.tandn.org

Supportive Housing Network of New York
646-619-9640
www.shnny.org

NORTH CAROLINA

North Carolina Coalition to End Homelessness
919-755-4393
www.ncceh.org

North Carolina Housing Coalition
919-881-0707
www.nchousing.org

NORTH DAKOTA

North Dakota Coalition for Homeless People
www.ndhomelesscoalition.org

OHIO

Coalition on Homelessness and Housing in Ohio
614-280-1984
www.cohhio.org

OREGON

Oregon Housing Alliance
503-226-3001
www.oregonhousingalliance.org

Housing Oregon
503-223-4041
www.housingoregon.org

PENNSYLVANIA

Housing Alliance of Pennsylvania
215-576-7044
www.housingalliancepa.org

RHODE ISLAND

Housing Network of Rhode Island
401-721-5680
www.housingnetworkri.org

Rhode Island Coalition for the Homeless
401-721-5685
www.rihomeless.org

SOUTH CAROLINA

Affordable Housing Coalition of South Carolina
803-808-2980
www.affordablehousingsc.org

TEXAS

Texas Association of Community Development Corporations
512-916-0508
www.tacdc.org

Texas Homeless Network
512-482-8270
www.thn.org

Texas Low Income Housing Information Service
512-477-8910
www.texashousers.net

UTAH

Utah Housing Coalition
801-364-0077
www.utahhousing.org

VERMONT

Vermont Affordable Housing Coalition
802-660-9484
www.vtaffordablehousing.org

VIRGINIA

Virginia Housing Alliance
www.vahousingalliance.org

WASHINGTON

Washington Low Income Housing Alliance
206-442-9455
www.wliha.org

WEST VIRGINIA

West Virginia Coalition to End Homelessness
304-842-9522
www.wvceh.org

WISCONSIN

Wisconsin Partnership for Housing
Development, Inc.
608-258-5560
www.wphd.org

Chapter 11:
APPENDIX

List of Abbreviated Statutory References

- 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 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, elderly and handicapped housing.
- 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.

- Title V, McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11411-11412, excess federal properties available to assist the homeless.

FOR MORE INFORMATION

HUD's list of programs frequently identified by statute: http://1.usa.gov/13i1mt5

Selected List of Major Housing and Housing-Related Laws

- 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 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.
- 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.

FOR MORE INFORMATION

Key HUD Statutes: http://1.usa.gov/13i1SY1

Glossary

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 FY14 appropriations act would become available for programs in FY15 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 (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 the 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 appropriation 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. Members of the community 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). Spending bill that provides funds for government operations for a short period of time until Congress and the president agree on an appropriations bill.

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 charted 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 charted 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 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.

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 business, 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

MICHAEL ANDERSON

Michael Anderson is the Director of the Center for Community Change's Housing Trust Fund Project. For three decades, the Project has operated as a clearinghouse of information on housing trust funds throughout the country, providing technical and strategic assistance to organizations and agencies working to create or implement these funds.

Based in Portland, Oregon, Michael provides technical assistance and support to state and local coalitions working to establish and strengthen housing trust funds that dedicate public revenue to creating and preserving affordable housing for people with the lowest incomes.

ANDREW AURAND

Andrew Aurand joined NLIHC in July 2015 as Vice President for Research. Andrew has extensive experience in research and affordable housing. He previously served as a faculty member in the Department of Urban and Regional Planning at Florida State University, where he taught graduate courses in research methods and housing policy, and where he completed research on the impact of comprehensive planning and land use principles on the supply of affordable housing for low income households. Andrew received his PhD and MSW from the University of Pittsburgh.

TRISTIA BAUMAN

Tristia Bauman is a senior attorney at the National Law Center on Homelessness & Poverty where she combines litigation, legal education, and legislative advocacy strategies to prevent and end homelessness. Her work focuses on 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 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 Miami-Dade County.

Tristia hails from Auckland, New Zealand, but was raised in Washington State where she attended the University of Washington as an undergraduate and law student. She received her B.A. in Anthropology in 2000 and her J.D. in 2006.

RUSTY BENNET

Dr. Russell Bennett, LGSW PhD, serves as the Chief Executive Officer of Collaborative Solutions, Inc. (CS), with an administrative office in Birmingham, Alabama, providing organizational management and program implementation services. Dr. Bennett currently serves as the Executive Director of the National AIDS Housing Coalition and Executive Director of the Professional Association of Social Workers in HIV & AIDS since the appointment of Collaborative Solutions as those organizations' management agent providing both administrative and program services. As CEO and founding director of CS, Bennett has developed CS as a leader in the delivery of a comprehensive array of services for nonprofit, state, and local government organizations serving the housing and health needs of vulnerable populations. CS is a designated technical assistance (TA) provider for HUD providing national TA in the areas of HIV/AIDS housing, homelessness, health, and behavioral health among populations and in areas that are especially hard to serve. In addition to his national TA work, Dr. Bennett oversees CS's Rural Supportive Housing Initiative and national initiatives integrating housing and health. Dr. Bennett directs CS' research and evaluation efforts with an emphasis in program evaluation, community- and individual- social determinants of health, special needs housing, rural and macro social work practice. Dr. Bennett is an adjunct faculty member with the University of Alabama School of Social Work, teaching in the areas of social work research, program evaluation, and nonprofit management. With nearly 20 years of experience working with issues related to homelessness, housing, and health for vulnerable populations, he has experience in working with nonprofit organizations and the federal government. In his role with the federal government, first as a President Management Intern and as a career employee, he worked at HUD's Office of HIV/AIDS Housing, which administers the Housing Opportunities for Persons with AIDS (HOPWA) program that provides more than $330 million in funding to local communities. Dr. Bennett received his doctorate from the University of Alabama's School of Social Work in 2009.

ROXY CAINES

Roxy Caines leads Earned Income Tax Credit outreach efforts as the Get It Back Campaign Director for the Center on Budget and Policy Priorities, a Washington-based nonprofit organization that conducts research and policy analysis on issues that impact lower-income Americans. The Center has spearheaded a national public education campaign on tax credits for lower-income workers each year since 1989. Roxy helps local agencies and community groups across the country to organize outreach efforts and promote free tax filing assistance programs.

JUDITH CHAVIS

Judith Chavis, Executive Vice President at the American Association of Service Coordinators (AASC), has more than 25 years of association, legislative and administrative policy experience related to programs and services for low income people. At AASC, she is responsible for the development and promotion of recommended standards of practice for service coordinators and provides technical assistance and training on service coordination fundamentals and policies. Judith also spearheads the organization's legislative and regulatory advocacy efforts at the state and federal levels.

Prior to starting at AASC, Judith was the Assistant Executive Director of the Ohio Job and Family Services Directors' Association where she co-directed governmental relations for the organization. She also provided policy development and advocacy; technical assistance; training on public assistance and social services "safety net" programs (e.g., Medicaid, Food Stamps, child care, TANF, etc.); and, issues affecting low income families including workforce development, adult protective services, child support enforcement, and child protective services. Judith holds a Master's degree in Public Administration from Ohio University and a Bachelor's degree with honors in Political Science/Sociology from Ohio State University.

DAVID COOPER

David Cooper is the Senior Economic Analyst with the Economic Policy Institute and the Deputy Director of the Economic Analysis and Research Network (EARN) in Washington, DC. He conducts national and state-level research, with a focus on the minimum wage, employment and unemployment, poverty, and wage and income trends. He also coordinates and provides support to EARN, a national network of more than 60 state-level policy research and advocacy organizations.

David has testified in a half dozen states on the challenges facing low-wage workers and low income families. His research on the minimum wage has been used by policymakers in city halls and statehouses across the country, as well as in Congress and the White House. David has been interviewed and cited by numerous local and national media, including *The New York Times, The Washington Post,* and NPR. He holds a Bachelor's and a Master of Public Policy degree from Georgetown University.

LINDA COUCH

Linda is the Vice President, Housing Policy, for LeadingAge, an organization of more than 6,000 nonprofits representing the entire field of aging services. Linda focuses her work on expanding and preserving affordable housing options for very low income seniors. After 12 years with the National Low Income Housing Coalition, Linda rejoined LeadingAge in 2016 to identify and advocate for solutions to America's aging population, which is rapidly growing and becoming poorer. Linda has testified before House and Senate committees, and has a special interested in the federal budget and appropriations processes. Linda received her undergraduate degree in philosophy from the George Washington University and a Master's of Public Affairs degree from the University of Connecticut.

JAMIE L. CROOK

As an associate attorney at Relman, Dane & Colfax, Jamie practices in civil rights litigation with an emphasis on housing, lending, and employment discrimination. Ms. Crook's better-known cases include *Central Alabama Fair Housing Center v. Magee*, 835 F. Supp. 2d 1165 (M.D. Ala. 2011) and *Anderson Group LLC v. City of Saratoga Springs*, 805

F.3d 34 (2d Cir. 2015). Following her graduation from Boalt Hall (Berkeley Law School), Jamie clerked for the Honorable Richard A. Paez, Ninth Circuit Court of Appeals, and completed a fellowship with Altshuler Berzon LLP and the Natural Resources Defense Counsel in San Francisco. Before joining Relman, Dane & Colfax PLLC, Jamie also worked in Johannesburg, South Africa, as a law clerk to Pius Langa, former Chief Judge of the Constitutional Court, and as a volunteer attorney with the Southern Africa Litigation Centre. She also served as counsel for the Fair Housing and Community Development Project at the Lawyers' Committee for Civil Rights Under Law.

DAN EMMANUEL

Dan Emmanuel joined the NLIHC staff in November 2013. Dan completed his Master of Social Work degree from Saint Louis University in May 2013 with a concentration in community and organization practice. Since 2008, he has worked in a range of housing and community development contexts involving program evaluation and community needs assessment. Prior to his role as Research Analyst, he served as a Senior Organizer for Housing Advocacy at the Coalition. Dan earned his B.A. in Philosophy and Psychology from the College of William & Mary.

ELLEN ERRICO

Ellen is NLIHC's Creative Services Manager. She joined NLIHC in July 2014, with not only extensive graphic design and website management experience, but also Capitol Hill experience. Prior to joining NLIHC, Ellen served as a Graphic Designer for the United States Senate Printing, Graphics, and Direct Mail Office. She comes to NLIHC with more than a decade of graphic design experience, and has lent her talents to other organizations such as the National Association of Insurance and Financial Advisors, the National Council of Teachers of Mathematics, and the American Trucking Associations. Ellen is a recipient of the 2014 Excellence in Achievement Award for her work on various projects while at the Senate. She is also the recipient of seven APEX Awards—highly prestigious advertising industry awards—for her branding, logo, advertising, and website designs. Ellen received her Bachelor of Arts degree from High Point University and a Web Design certificate from Northern Virginia Community College.

WILL FISCHER

Will Fischer is a Senior Policy Analyst who joined the Center on Budget and Policy Priorities in 2002. His work focuses on federal low income housing programs, including Section 8 vouchers, public housing, and the Low Income Housing Tax Credit. This analytic work has been cited in numerous media publications.

Before coming to the Center, he held a position as an analyst at Berkeley Policy Associates, where he worked on evaluations of state TANF programs and several U.S. Department of Labor workforce development initiatives. Earlier, he worked on economic development and other issues at the International City/County Management Association.

Fischer holds a Bachelor of Art from Yale University and a Master's in Public Policy from UC Berkeley's Goldman School of Public Policy.

DEBBIE FOX

Debbie Fox, Senior Policy and Practice Specialist at the National Network Against Domestic Violence (NNEDV), leads national domestic violence related housing policy and provides technical assistance and training to NNEDV's coalition membership and as a part of the Domestic Violence Housing and Technical Assistance Consortium. Debbie has more than 20 years in the field with a focus on fundraising, organizational development, nonprofit administration, and domestic violence population-specific housing and economic justice programming. Prior to joining NNEDV, she shared community leadership in the systems planning and implementation process for the DV 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.

LANCE GEORGE

Lance George is the Director of Research and Information at the Housing Assistance Council (HAC). Prior to becoming the HAC's Research Director, Lance served as the organization's Senior Research Associate for 10 years. Before HAC, Lance worked for Frontier Housing, Inc., a nonprofit organization that builds affordable homes for low income families in Appalachian Eastern Kentucky.

Lance's research and policy analysis at HAC encompasses a wide array of issues and topics related to rural housing, including manufactured housing, poverty and high need rural areas, rural definitions and classifications, mortgage access and finance, and general demography, mapping, and data analysis of rural people and their housing conditions.

MATTHEW GOODRO

Matthew Goodro is the Policy & Program Manager for the National Housing Resource Center (NHRC), a national advocacy organization for the nonprofit housing counseling community. Matthew's work at NHRC is focused on advocating for housing counseling agencies and housing counseling clients at the federal level, including in Congress and with administrative agencies, such as HUD, the Federal Housing Finance Agency, and the Consumer Financial Protection Bureau. Matthew is a graduate of Hobart and William Smith Colleges in Geneva, NY and New York Law School.

ED GRAMLICH

Ed Gramlich has been at NLIHC since October 2005. For his first two years Ed, staffed the 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 October 2007 and January 2010 he was the Director of Outreach. Since 2010 he has led NLIHC's efforts related to affordable housing regulations and has been NLIHC's expert on regulations related to the national Housing Trust Fund and Affirmatively Furthering Fair Housing. Prior to joining the staff of the Coalition, he worked for 26 years at the Center for Community Change (CCC), where his primary function was to provide 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 community.

ETHAN HANDELMAN

Ethan Handelman was the former vice president for policy and advocacy with the National Housing Conference. In this role he directed NHC's policy and advocacy agenda and focused on advancing federal housing policy to assist low and moderate-income people, strengthening the nation's housing finance system, connecting people to opportunity through housing, advocating for housing policy during tax and budgetary reforms, and building stronger communities that coordinate housing, transportation, health, education, technology and energy policy. He has testified before Congress and speaks and writes regularly on housing issues.

ELLEN LURIE HOFFMAN

Ellen Lurie Hoffman joined the National Housing Trust in May 2014 as the Federal Policy Director. NHT is a national leader in preserving and improving affordable housing, ensuring that privately owned rental housing remains in our affordable housing stock and is sustainable. Ms. Lurie Hoffman is responsible for federal housing policy spanning the HUD Budget, maintaining and improving the Low Income Housing Tax Credit, housing finance reform, and fair housing. She represents the Trust before congressional staff, federal officials, and other housing advocates and stakeholders. Ms. Lurie Hoffman facilitates the National Preservation Working Group, a coalition of more than 40 nonprofit organizations dedicated to the preservation of affordable rental housing.

Prior to joining the Trust, Ms. Lurie Hoffman worked for the National Council of State Housing Agencies (NCSHA) for nine years, where she analyzed and advocated for federal multifamily housing policy issues on behalf of the nation's state Housing Finance Agencies (HFAs). NCSHA is the leading national nonprofit organization created by state HFAs to coordinate and leverage their federal advocacy efforts for affordable housing. Ms. Lurie Hoffman led NCSHA's legislative campaign to advocate for congressional authorization of Ginnie Mae securitization within the FHA-HFA Risk-Sharing program. Ms. Lurie Hoffman has been engaged on the HUD budget, housing finance reform, HUD's Rental Assistance Demonstration, and FHA and USDA multifamily programs. She also promoted a primary role for state agencies in the Section 8 Performance-Based Contract Administration program with HUD and Congress.

Ms. Lurie Hoffman holds a Master in Public Policy degree from Harvard University's John F. Kennedy School of Government and a B.A. in Political Science from Vassar College.

DAVID JACOBS

Dr. David Jacobs is the Chief Scientist at the National Center for Healthy Housing. He also serves as Director of the US Collaborating Center for Research and Training on Housing Related Disease and Injury for the World Health Organization/Pan American Health Organization, an adjunct associate professor at the University of Illinois at Chicago School of Public Health, and a 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 many peer-reviewed publications. Dr. Jacobs is the former director of HUD's Office of Lead Hazard Control and Healthy Homes, 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. He is a Certified Industrial Hygienist and has degrees in political science, environmental health, technology and science policy, and a doctorate in environmental engineering.

DAVID JEFFERS

David Jeffers is Executive Vice President of Policy and Public Affairs for the Council of Federal Home Loan Banks. The Council is the public voice of America's Federal Home Loan Banks. Before joining the Council, Mr. Jeffers was President and CEO of Collingwood Communications. Previously Mr. Jeffers was Fannie Mae's Vice President for Corporate Relations.

PAUL KEALEY

Paul Kealey is the chief operating officer at the National Low Income Housing Coalition, leading the Coalition's planning and evaluation, financial and human resources management, resource development, field outreach and organizing, and communications. Prior to joining NLIHC as its COO in 2014, Mr. Kealey occupied a number of leadership positions, developing and directing programs and operations in international and domestic community development and affordable housing, human services, volunteer service, environmental conservation, and professional development and training. Paul served for 12 years as a senior vice president and division director for NeighborWorks America, overseeing its affordable housing and community development training programs (the NeighborWorks Training Institute), the Achieving Excellence leadership program with Harvard University, the Success Measures enterprise, and other programs and services. He has also held leadership positions with the Corporation for National and Community Service/AmeriCorps VISTA, World Wildlife Fund, and Peace Corps. After serving as a Peace Corps volunteer with his wife in Guatemala in the 1980s, Mr. Kealey joined the Peace Corps staff as a chief of field operations in Washington, DC, deputy country director in Costa Rica and Paraguay, and country director in Paraguay. Paul earned an MA in Geography at the University of California, Davis, and a B.A. in International Relations at San Francisco State University. Paul is also a graduate of the Harvard University Kennedy School/NeighborWorks 18-month Achieving Excellence Program.

LAUREN BANKS KILLELEA

Lauren Banks Killelea is the Housing Policy Specialist at Collaborative Solutions and the National AIDS Housing Coalition. She leads the National AIDS Housing Coalition's federal policy and advocacy work focusing on the Housing Opportunities for Persons with AIDS (HOPWA) program and other housing and healthcare initiatives. Lauren began working on housing issues with the homeless community on the Boston Common and subsequently spent time organizing around economic justice issues in Alabama and serving as Executive Director for a youth-based community service organization. Recently she was also the Director of Policy and Advocacy for AIDS Alabama, working on federal, state, and local legislation, implementation of the Affordable Care Act, and advocacy around HOPWA modernization. She also currently serves as the co-chair of the Structural Interventions Working Group of the Federal AIDS Policy Partnership. She obtained her B.S. from the University of Alabama and her MFA from Vermont College of Fine Arts.

REBEKAH KING

Rebekah King leads the National Housing Conference's (NHC) policy agenda, working to advance federal housing policy to better serve the housing needs of low and moderate-income people as well as strengthen the housing finance system and connect people to opportunity through housing. Rebekah directs NHC's advocacy around affordable housing in appropriations, tax, regulatory, and other policy areas, and represents NHC in policy forums. She leads NHC's task forces and working groups to develop new policy solutions in affordable housing and works with NHC members and coalition partners to connect with agency and legislative policymakers. She writes and produces NHC policy materials including regulatory comments, coalition statements, blog posts, publications, and the Washington Wire—NHC's weekly update to its members. Rebekah King joined NHC as a policy associate in August 2014. Before joining NHC, Rebekah worked with Howard County, Maryland's HOME program, primarily on Community Housing Development Organization and compliance issues. She also worked as a research associate at Energy Programs Consortium, drafting briefs and policy materials on residential energy efficiency finance. Rebekah started her career as a policy and program analyst with the North Carolina Housing Finance Agency, supporting the agency's foreclosure prevention programs, annual reporting, policy initiatives and program oversight. Rebekah believes in affordable housing as a platform for families to improve their lives and the important role of federal policy in supporting affordable housing. She received her Master's degree in city and regional planning from the University of North Carolina at Chapel Hill in May 2008, and her Bachelor of Arts from James Madison University in May 2006.

JOSEPH LINDSTROM

Joseph Lindstrom first worked with NLIHC in 2000 while organizing Wisconsin advocates in support of the National Housing Trust Fund Campaign. He led campaigns in Madison, WI, on issues such as the local minimum wage, funding for homeless services, and eliminating housing discrimination against Housing Choice Voucher recipients. In addition to his advocacy and campaign work, Joseph has also worked in various direct service capacities, including as a homeless outreach coordinator, tenant's rights counselor, and workforce development professional. Joseph received his Bachelor's Degree from the University of Wisconsin with majors in political science and religious studies.

ELIZABETH LOWER-BASCH

Elizabeth Lower-Basch directs the Income and Work Supports team at the Center for Law and Social Policy. Her expertise is federal and state welfare policy, other supports for low income working families (such as refundable tax credits) and systems integration. From 1996 to 2006, Ms. Lower-Basch worked for HUD's Office of the Assistant Secretary for Planning and Evaluation. Ms. Lower-Basch received a Master of Public Policy from the Kennedy School of Government at Harvard University.

LISA MARLOW

Lisa Marlow joined NLIHC in October 2016 as the communications specialist. Lisa worked previously with the American Association of Blood Banks (AABB) as a communications coordinator for the CEO. In this role, she focused on messaging and presentations for the CEO, and revamping the brand of the organization. Prior to AABB, Lisa served as a program associate for PICO National Network—a faith-based, grassroots, nonprofit, where she assisted with web development, managed social media, and coordinated organization-wide events. Lisa also worked at The Endocrine Society as manager of public policy and public affairs where she started the Society's clinical practice guidelines program and published 15 guidelines at the end of her tenure. Lisa graduated from American University with a Master's degree in Strategic Communication after receiving her Bachelor's degree in Mass Communication from Towson University.

KEVIN MARTONE

Kevin Martone is Executive Director at the Technical Assistance Collaborative (TAC), a national nonprofit organization that provides technical assistance on behavioral health, Medicaid, affordable and supportive housing, and other human services to government agencies, national associations, and direct service providers. Kevin has 20 years of experience in executive leadership at the national, state government, and nonprofit levels, with expertise in public mental health and human services administration. He specializes in a range of issues related to behavioral health, including policy strategy, system financing and design, Olmstead and community integration, health reform, and the design and delivery of permanent supportive housing. Prior to joining TAC, Kevin served as President of the National Association of State Mental Health Program Directors where he advanced key policy issues on behalf of the nation's public mental health systems before Congress and federal agencies, including the U.S. Centers for Medicare and Medicaid Services, HUD, and the Substance Abuse and Mental Health Services Administration. Kevin also served as Deputy Commissioner of the New Jersey Department of Human Services, overseeing the state mental health and substance abuse system. Upon his arrival, Kevin negotiated the state's Olmstead Settlement Agreement and led a statewide transformation of the public behavioral health system that included a significant expansion of supportive housing. Previously, Kevin was CEO for Advance Housing, a nonprofit supportive housing provider, and Vice President for the Supportive Housing Association of New Jersey. He has taught at the Tufts University School of Medicine and the Rutgers University School of Social Work on mental health policy and various social work issues.

SHARON MCDONALD

Sharon McDonald is the Senior Fellow for Families and Children at the National Alliance to End Homelessness, where her primary focus is on policy and program strategies to prevent and end family and child homelessness. Before joining the Alliance in 2001, Sharon was a direct practitioner in a Richmond, Virginia, community-based service center for people experiencing homelessness. She has experience providing and supervising the delivery of social work services to families in service-enriched subsidized housing development for low income families. Sharon was the 1999 National Association of Social Workers/Council on Social Work Education Congressional Fellow and served in Senator Paul D. Wellstone's office, where she focused on welfare and housing issues. Sharon holds an M.S.W and a PhD in Social Work and Social Policy from Virginia Commonwealth University.

MONICA MCLAUGHLIN

Monica McLaughlin is the Deputy 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 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 with 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.

SARAH MICKELSON

Sarah Mickelson joined NLIHC as Director of Public Policy in June 2016. Sarah previously worked with Enterprise Community Partners as a Senior Analyst. In that role, she focused on building Congressional support for federal affordable housing and community development appropriations, including funding for programs administered by HUD and U.S. Department of Agriculture. Prior to Enterprise, Sarah served as Policy Counsel at Rapoza Associates, a government affairs and lobbying firm specializing in affordable housing and community development, where she focused largely on rural development. While working as a Legislative and Policy Analyst at the National Community Reinvestment Coalition, Sarah's portfolio included expanding access to affordable mortgage and small business credit in low income communities. 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.

MINDY MITCHELL

Mindy Mitchell is a Program and Policy Analyst at the National Alliance to End Homelessness. Her work focuses on HUD homeless assistance programs, youth homelessness, and affordable housing. Prior to joining the Alliance, she worked as a case manager for homeless families in Mobile, Alabama. That work with homeless families inspired Mindy to go to law school in the hopes of one day working to end homelessness at a more structural level. After law school, she completed a Legislative Fellowship with the New York State Senate, focusing primarily on affordable housing and emergency mortgage assistance legislation. Mindy received her sociological education at the University of South Alabama and her legal education at the City University of New York School of Law.

KATHRYN MONET

Kathryn is the Chief Executive Officer of the National Coalition for Homeless Veterans (NCHV). In this role, she focuses on executing NCHV's strategic policy and technical assistance agenda, and expanding NCHV's strategic partnerships to more effectively end veteran homelessness. Kathryn has spent eight-plus years in the public and nonprofit sectors working to address housing instability and homelessness among veterans. Prior to joining NCHV, she was with the National Alliance to End Homelessness focusing on the promotion of data-driven, evidence-based interventions to end homelessness, particularly among veterans. Kathryn also was involved in veteran homelessness in a legislative capacity during her time at the Senate Committee on Veterans' Affairs.

GARTH B. RIEMAN

Garth Rieman is the interim executive director of the National Council of State Housing Agencies (NCSHA), effective January 1, 2018. Garth has worked at NCSHA since 1993. Most recently, Garth was NCSHA's director of housing advocacy and strategic initiatives.

From 1989 to 1993, Garth served as a professional staff member and the Republican staff director for the United States Senate Housing Subcommittee. He also worked at HUD, the National Association of Realtors, and the U.S. Office of Management and Budget.

Garth graduated from Pomona College and received a Master's Degree in Public Policy from the John F. Kennedy School of Government at Harvard University.

KATHLEEN ROMIG

Kathleen Romig is a Senior Policy Analyst at the Center on Budget and Policy Priorities. She works on Social Security, Supplemental Security Income, and other budget issues. Romig previously worked at the Social Security Administration, Social Security Advisory Board, and Congressional Research Service. She began her career as a Presidential Management Fellow, during which time she completed an assignment at the Office of Management and Budget. Ms. Romig has a Master's degree in Social Policy from University College Cork, Ireland, where she was a George J. Mitchell Scholar, and a B.A. from Michigan State University's James Madison College.

JAIMIE A. ROSS

Jaimie Ross, Attorney at Law, is the President and CEO of the Florida Housing Coalition. In 1991, Ms. Ross initiated, and continues to facilitate, the broad-based coalition that successfully advocated the passage of the William E. Sadowski Affordable Housing Act, creating a dedicated revenue source for affordable housing in Florida. Her work includes all forms of legislative and administrative advocacy and education related to the planning and financing of affordable housing. She is the author of "Creating Inclusive Communities in Florida: a Guidebook for Local Elected Officials and Staff on Avoiding and Overcoming the NIMBY Syndrome" and speaks nationally on avoiding and overcoming NIMBY. She serves on the Board of Grounded Solutions Network, a national nonprofit that promotes inclusionary housing policies. Ms. Ross is the founder of the Florida Community Land Trust Institute, 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.

SHANNON ROSS

Shannon Ross is the Vice President, Government Relations, for the Housing Partnership Network (HPN). In that role, she advocates on behalf of HPN's members and policy priorities with Congress, the administration, and other policy makers. Immediately prior to joining HPN, Shannon was the Vice President, Public Policy, for Opportunity Finance Network, the leading national network of Community Development Financial Institutions (CDFIs) where she lobbied on issues involving the CDFI Fund and affordable housing. Shannon has also previously worked as a Congressional staffer for the Senate Committee on Banking Housing and Urban Affairs and Congressman John Tierney (D-MA), and practiced law at the Washington, DC, office of O'Melveny and Myers LLP. Shannon holds a Bachelor of Arts degree from Georgetown University and a law degree from the University of Virginia School of Law.

BARBARA SARD

Barbara Sard rejoined the Center on Budget and Policy Priorities as Vice President for Housing Policy in 2011 after 18 months as Senior Advisor on Rental Assistance to HUD Secretary Shaun Donovan. She previously held the director's position at the Center between 1997 and 2009. She has written extensively on welfare, homelessness, and housing issues, and is considered a leading expert on the housing voucher program, rental assistance, and issues concerning the intersection of housing and welfare policy. *Housing Policy Debate,* the leading journal of housing research, named her to its editorial advisory board in 2015. Prior to working at the Center, she was the Senior Managing Attorney of the Housing Unit at Greater Boston Legal Services, where she worked for more than 19 years. Ms. Sard has a B.A. in Social Studies from Radcliffe College/Harvard University and a J.D. from the Harvard Law School.

JAMES SAUCEDO

James joined NLIHC as a Housing Advocacy Organizer in 2015. Prior to joining the Coalition, James worked as a research associate for a commercial real estate company based in Washington, DC. He credits his time in real estate with introducing him to the connections between gentrification, the shrinking supply of affordable housing, and homelessness; and with stimulating his belief in the power of community organizing to correct social and political inequities. James earned his Bachelor of Science degree from Georgetown University, where he led the campus LGBTQ+ students' organization and facilitated a social justice-oriented intergroup dialogue program. James is originally from Las Cruces, New Mexico.

GINA SCHAAK

Gina Schaak is senior associate for Housing Group at the Technical Assistance Collaborative (TAC). She has over fifteen years' experience helping nonprofit housing and service agencies to navigate federal, state, and local programs in order to access and create more permanent supportive housing for the most vulnerable populations. In addition to being a skilled TA and training provider with extensive experience providing support and consultation to nonprofit homeless and housing organizations, Gina serves as TAC's national policy researcher and public liaison. In this role, she tracks federal congressional activity related to relevant homeless and housing legislation, and disseminates information to the public.

KRISTI SCHULENBERG

Kristi Schulenberg is a Senior Technical Assistance Specialist at the National Alliance to End Homelessness. Ms. Schulenberg has more than 20 years of experience in the nonprofit sector, specifically in the areas of organizational planning and development, community outreach/capacity building, government relations, and program implementation/evaluation. As a Technical Assistance Specialist, Ms. Schulenberg develops and delivers training and technical assistance on best practices on ending homelessness, including re-designing emergency shelter, diversion, rapid rehousing, system performance measures, and redesigning and building capacity for coordinated crisis response systems. Prior to joining the Alliance, Ms. Schulenberg served as the Staff Attorney/Project Manager for the Veterans Legal Assistance Project at the Neighborhood Legal Services Program in Washington, DC. Prior to coming to DC, Ms. Schulenberg served as the Deputy Director, Federal Programs, and as a Staff Attorney at HomeBase, The Center for Common Concerns, a national nonprofit public interest law firm dedicated to combating and ending homelessness.

JOSH SILVER

Josh Silver has more than 25 years of experience in the housing and community development field. He is a Senior Advisor at the National Community

Reinvestment Coalition (NCRC). He produces white papers on the Community Reinvestment Act and fair lending policy and issues. He serves as an expert and provides advice and resources internally and externally. He came back to NCRC after serving as a Development Manager engaged in fundraising and research at Manna, Inc., a housing nonprofit developer and counseling agency serving the District of Columbia. He also previously served as Vice President of Research and Policy at NCRC for 19 years.

Prior to NCRC, Mr. Silver worked at the Urban Institute for five years. Mr. Silver holds a Master's degree in public affairs from the Lyndon Johnson School of Public Affairs at the University of Texas in Austin, and earned a Bachelor's degree in economics from Columbia University in New York City.

LISA SLOANE, M.P.A.

Lisa Sloane is senior policy advisor for Housing Group at the Technical Assistance Collaborative (TAC). She has over 30 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 of individuals and families experiencing homelessness. At TAC, she manages complex consulting projects for state and federal government agencies, including technical assistance for the U.S. Department of Housing and Urban Development's (HUD) Section 811 Project Rental Assistance program. Lisa has worked with the states of Pennsylvania, Louisiana, and Maryland to develop and implement permanent supportive housing programs for people with disabilities and people who are homeless. 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.

JORGE ANDRES SOTO

Jorge Andres Soto is director of public policy with the National Fair Housing Alliance (NFHA). Jorge leads NFHA's federal relations and advocates on behalf of its member organizations before Congress and federal agencies and coordinates efforts with advocacy and industry groups on civil rights matters concerning housing and housing finance. Prior to NFHA, Jorge was at Relman, Dane & Colfax PLLC where he worked as a civil rights paralegal on the development and litigation of several housing, lending, and public accommodations cases involving discrimination, as well as on public policy matters concerning employment and contracting diversity in federal financial regulatory agencies. Jorge also previously worked as a labor organizer at Service Employees International Union and community organizer with CRECEN/American Para Todos, Houston, Texas. Jorge earned his B.A. in History and American Studies from Wesleyan University.

LESLIE STRAUSS

Leslie Strauss is senior housing analyst at the Housing Assistance Council (HAC). She began working at HAC in 1991 as Research and Information Director and has also served as HAC's Communications Director. Currently she is responsible for a variety of policy and information activities, including much of HAC's work on rental housing preservation. She has 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 currently serves as senior attorney with the National Law Center on Homelessness & Poverty. Before coming to the Law Center, Mr. Tars 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. Mr. Tars 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. Mr. Tars received his J.D. as a Global Law Scholar at the Georgetown University Law Center, his B.A. in Political Science from Haverford College, and studied international human rights at the Institute for European Studies, Vienna, and at the University of Vienna.

ANTHONY WALTERS

Anthony Walters is the Executive Director of the National American Indian Housing Council (NAIHC). Since 1974, NAIHC has provided training and technical assistance to hundreds of Native American Housing Authorities across the country. NAIHC also serves as a primary advocate for all tribal housing issues and initiatives, working with Congress, federal agencies, nonprofits and industry partners.

OLIVIA WEIN

Olivia Wein is a staff attorney at the National Consumer Law Center (NCLC) focusing on affordable energy and utility service for low income consumers. 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." She has advocated for a strong Low Income Home Energy Assistance Program for more than 18 years. Ms. Wein serves on the Federal Communication Commission's Consumer Advisory Committee, and the Board of Directors for the Universal Services Administrative Company. She was an Economic Justice Fellow at Consumers Union prior to her work at NCLC.

ELAYNE WEISS

Elayne Weiss joined the NLIHC staff in November 2014. For the last three years, Elayne served as a legislative assistant for the American Civil Liberties Union Washington Legislative Office where her work concentrated on reproductive and women's rights. In her position at the ACLU, Elayne helped craft and implement strategies to meet the organization's advocacy goals, and worked on a broad range of issues, including housing protections for survivors of domestic and sexual violence. Recently, Elayne played a critical role in helping plan and manage the successful legislative campaign expanding reproductive health coverage for U.S. servicewomen and military families. Elayne holds a JD from the Drexel University Thomas R. Kline School of Law, and a B.A. in economics from Brandeis University. Elayne is originally from Philadelphia.

RUTH ANNE WHITE

Ruth White, MSSA, 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 CWLA, she co-edited the 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 White's advocacy, $50 million in new funding for the Family Unification Program has been made available for families and youth in child welfare since 2009. White is also certified as an Assisted Housing Manger.

White 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 and doctoral candidate at the Catholic University of America.

RENEE M. WILLIS

Renee Willis joined NLIHC in June 2015 as the new Vice President for Field and Communications. In this role, Renee leads all of NLIHC's field and communications efforts in support of our mission, goals, and objectives. Renee brings more than 15 years of experience in affordable housing, including establishing and leading successful community and region-wide initiatives. Renee has extensive experience in strategic planning, financial management, marketing, organizational development, staff management, and program operations. Renee served as Housing Services Chief with Arlington County, VA, from 2008 to 2015. Prior to her work in Arlington, she served as the Administrator of the Office of Landlord-Tenant Affairs for Montgomery County, MD, from 1999 to 2004, and as an Advocate and Manager for the Public Justice Center's Tenant Advocacy Project in Baltimore, MD, from 1993 to 1999. 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.

DIANE YENTEL

Diane Yentel is the President and CEO of the National Low Income Housing Coalition, a membership organization dedicated solely to achieving socially just public policy that assures people with the lowest incomes in the United States have affordable and decent homes. This is Diane's second stint at NLIHC, having previously worked as a policy analyst from 2005 to 2008. Diane is a veteran affordable housing policy expert and advocate with nearly two decades of work on affordable housing and community development issues. Before rejoining NLIHC, Diane was Vice President of Public Policy and Government Affairs at Enterprise Community Partners, where she led federal, state, and local policy, research and advocacy programs. Prior to Enterprise, Diane was the director of HUD's Public Housing Management and Occupancy Division, where she managed a team overseeing the development and implementation of nationwide public housing policies, procedures, and guidelines. She also worked to advance affordable housing policies with Oxfam America and the Massachusetts Coalition for the Homeless, and was a community development Peace Corps volunteer in Zambia. Diane has a Master's degree in social work from the University of Texas at Austin.

Membership Form

NATIONAL LOW INCOME HOUSING COALITION

MEMBERSHIP INFORMATION

❑ New Membership ❑ Membership Renewal

MEMBER TYPE	SUGGESTED DUES AMOUNT
❑ Low income individual or student	$5.00
❑ Individual	$110.00
❑ Resident/Tenant Association or Student Organization	$15.00
❑ Organization, <$250,000 operating budget	$225.00
❑ Organization, $250K – $499,999	$375.00
❑ Organization, $500K – $999,999	$550.00
❑ Organization, $1,000,000 – $2,000,000	$1,100.00
❑ Organization, $2,000,000 – $5,000,000	$2,200.00
❑ Organization, > $5,000,000	$3,000.00
❑ Other Amount	$ _____________

Memo to Members & Partners

NLIHC members can receive our weekly *Memo to Members & Partners* newsletter, which features the most up-to-date housing information and news! Please fill out the opposite side of this form or provide a separate list of additional contacts at your organization who should receive *Memo* and other NLIHC messages. Please specify how you would like to receive *Memo*:

❑ Please send me *Memo to Members & Partners* by email

❑ I do not have an email address, please send me *Memo to Members & Partners* via mail

❑ I do not wish to receive *Memo to Members & Partners*

Advocates' Guide

If you are joining NLIHC for the first time, would you like us to send you NLIHC's *Advocates' Guide* free of charge? The *Advocates' Guide* is a comprehensive resource providing information on housing and community development programs, and other vital tools for advocates. The full *Advocates' Guide is also available* online at http://nlihc.org/library/guides

❑ Yes, please mail me an *Advocates' Guide* ❑ No thank you

Did someone refer you for NLIHC Membership?

Name:______________________ or Organization Name: ________________________

CONTACT INFORMATION

❑ Mr. ❑ Ms. ❑ Other: ________________________

Name:____

Title: ____

Organization: ____

Address: ____

City: ____________________________________ State: _______ Zip: ___________

Email: ____

Phone: _____________________________ Twitter: @_________________________

PAYMENT INFORMATION

❑ Check Enclosed ❑ Visa ❑ MC ❑ Discover ❑ AmEx Exp. Date: ________

Credit Card Number:_________________________________ CVV*: _______________

Cardholder Name (printed):____

Cardholder Signature:____

❑ Would you like to cover our 2.5% credit card processing fee? This will ensure that 100% of your contribution reaches NLIHC.

❑ Would you like to make this an annual recurring contribution? This helps give us a dependable base of membership support. You can cancel at anytime.

**Three-digit code on back of card.*

NLIHC is a membership organization open to individuals, organizations, corporations, and government agencies.

EVERY MEMBERSHIP MAKES A DIFFERENCE.

BENEFITS OF MEMBERSHIP

Memo to Members & Partners: Receive the nation's most respected housing policy newsletter in your email inbox—or your mailbox—every week.

Calls to Action: Members receive email notification of significant policy developments warranting constituent calls or letters to Congress.

Discounted Forum Registration: NLIHC hosts an annual policy forum and leadership reception in Washington, DC, which members can attend at a discounted rate. The forum brings together advocates, researchers, academics, government experts, organizers, and individuals to share expertise and insights on the latest federal housing policy initiatives.

Discounted Publications: NLIHC produces numerous publications each year, including the *Advocates' Guide* and *Out of Reach*. Members can order print copies at a discounted rate.

BECOME A MEMBER ONLINE AT **WWW.NLIHC.ORG/MEMBERSHIP**

Questions? Call 202-662-1530 or e-mail outreach@nlihc.org

NATIONAL LOW INCOME
HOUSING COALITION

DO YOU KNOW FRIENDS OR COLLEAGUES WHO SHOULD BE A MEMBER OF NLIHC?

Let us know and we'll send them free membership materials.

Name:______________________________
Organization: ______________________________
Address: ______________________________
City: ____________ State: ________ Zip:________
Telephone:____________ Email: ____________

Name:______________________________
Organization: ______________________________
Address: ______________________________
City: ____________ State: ________ Zip:________
Telephone:____________ Email: ____________

DOES YOUR ORGANIZATION HAVE ADDITIONAL CONTACTS WHO SHOULD RECEIVE NLIHC MESSAGES?

Please fill out the address if it does not match that of the primary contact.

Name:______________________________
Organization: ______________________________
Address: ______________________________
City: ____________ State: ________ Zip:________
Telephone:____________ Email: ____________

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Telephone:____________ Email: ____________

The PNC Financial Services Group

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HOUSING COALITION

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