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Housing Issues in the 115th Congress

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SUMMARY

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Housing Issues in the 115th Congress

A variety of housing-related issues have been active during the 115th Congress. These issues include topics related to housing finance, tax provisions related to housing, housing assistance and grant programs administered by the Department of Housing and Urban Development (HUD), and regulatory review efforts underway at HUD. In some cases, the 115th Congress has considered or passed legislation related to certain housing issues, such as mortgage-related provisions enacted as part of broader financial "regulatory relief" legislation and particular housing-related tax provisions. In other cases, Congress has conducted oversight or otherwise expressed interest in actions taken by HUD or other entities involved in housing, such as Fannie Mae and Freddie Mac.

Many of the housing-related topics that have been of interest during the 115th Congress are ongoing issues, though some involve particular actions that have taken place during the 115th Congress. Issues of interest during this Congress include the following:

- Housing finance issues include changes to certain mortgage-related requirements and other housing provisions included in broader financial legislation that became law in May 2018. Congress has also expressed ongoing interest in certain issues related to the Federal Housing Administration (FHA): (1) a forthcoming final rule on FHA's requirements for insuring mortgages on condominiums and (2) the level of the mortgage insurance premiums charged by FHA. Comprehensive housing finance reform that would address the status of Fannie Mae and Freddie Mac is also an ongoing topic of interest, although legislative action appears unlikely by the end of the 115th Congress.
- Tax issues include changes to housing-related tax provisions in the tax revision law enacted at the end of 2017 (P.L. 115-97); extensions of other, temporary housing-related tax provisions through 2017 by the Bipartisan Budget Act of 2018 (P.L. 115-123); and changes to the low-income housing tax credit in the Consolidated Appropriations Act, 2018 (P.L. 115-141).
- Housing assistance issues include considerations related to HUD appropriations, ongoing initiatives or proposed changes to HUD rental assistance programs, legislation to reauthorize the Native American Housing Assistance and Self-Determination Act (NAHASDA), and issues related to the housing response to presidentially declared major disasters.
- HUD has been undertaking a variety of regulatory review efforts in keeping with Executive Order 13777, which directed federal agencies to evaluate existing regulations and identify opportunities for reform. Specific HUD actions have included suspending a rule related to small-area fair market rents (the suspension has since been voided by a preliminary court injunction); initiating a broad review of manufactured housing regulations; suspending certain regulations governing how HUD funding recipients must comply with the requirement to affirmatively further fair housing; and publishing an Advanced Notice of Proposed Rulemaking seeking public comment on whether its regulations related to disparate impact and the Fair Housing Act should be amended.

Housing and mortgage market conditions provide important context for these issues, although housing markets are generally local in nature and national housing market indicators do not necessarily accurately reflect conditions in specific communities. Generally speaking, owner-occupied housing markets in recent years have been characterized by rising house prices, relatively low levels of housing starts and housing inventory, and relatively strong home sales. Rising house prices combined with rising mortgage interest rates have raised concerns about the affordability of buying a home, although interest rates remain low by historical standards. Rental housing markets have also raised affordability concerns. Nearly 21 million renter households are considered to be cost burdened, meaning they spend more than 30% of their incomes on rent. The share of households who rent, rather than own, their homes has increased in the years since the housing market turmoil that began around 2007, contributing to lower rental vacancy rates and increasing rents. Increases in household income in recent years have generally not kept pace with increases in house prices or rents, contributing to affordability concerns.

Contents

Introduction 1
Housing and Mortgage Market Conditions 1
Owner-Occupied Housing Markets and the Mortgage Market 2
Rental Housing Markets 9
Housing Finance Issues in the 115th Congress 13
Financial "Regulatory Relief" Legislation and Housing 13
Housing Finance Reform 15
Federal Housing Administration Mortgage Insurance Premiums 17
FHA Requirements for Insuring Mortgages on Condominium Units 19
Housing-Related Tax Issues in the 115th Congress 20
Housing Provisions in the Tax Revision Law 21
Housing Provisions in Tax Extenders Legislation 22
Changes to the Low-Income Housing Tax Credit 24
Housing Assistance Issues in the 115th Congress 25
HUD Appropriations 25
HUD Rental Assistance Programs 27
Native American Housing Programs 30
Housing and Disaster Response 32
HUD Regulatory Reviews During the 115th Congress 34
Small Area Fair Market Rents 34
Manufactured Housing 36
Affirmatively Furthering Fair Housing 37
Disparate Impact Standard under the Fair Housing Act 39

Figures

Figure 1. Year-over-Year House Price Changes (Nominal) 3
Figure 2. Mortgage Interest Rates 4
Figure 3. Housing Starts 6
Figure 4. New and Existing Home Sales 7
Figure 5. Share of Mortgage Originations by Type 9
Figure 6. Rental and Homeownership Rates 10
Figure 7. Rental Vacancy Rates 11
Figure 8. Share of Cost-Burdened Renter Households by Income 13

Contacts

Author Information 42

Introduction

A variety of issues related to housing have been active during the 115th Congress, including issues related to housing finance, housing-related tax provisions, housing assistance and grant programs (including in response to presidentially declared major disasters), and actions undertaken by the Department of Housing and Urban Development (HUD) as part of its efforts to review existing department regulations. This report provides a high-level overview of the most prominent housing-related issues during this Congress, including brief background on each and discussion of legislative or other relevant activity.

This report is meant to provide a broad overview of major issues and is not intended to provide detailed information or analysis. However, it includes references to more in-depth CRS reports on the issues where possible.

Housing and Mortgage Market Conditions

This section provides background on housing and mortgage market conditions to provide context for the housing policy issues discussed later in the report. This discussion of market conditions is at the national level; however, it is important to be aware that local housing market conditions can vary dramatically, and national housing market trends may not reflect the conditions in a specific area. Nevertheless, national housing market indicators can provide an overall sense of general trends in housing.

For several years since the housing and financial market turmoil of the late 2000s, housing markets have been recovering from house price declines, high rates of mortgage foreclosures, and other symptoms of the housing crisis. While some areas of the country have not fully recovered, most housing market indicators have rebounded. For example, house prices have been increasing for several years, and in many areas have passed their precrisis peaks in nominal terms; foreclosure rates have generally declined to levels similar to the years preceding the housing market turmoil; and housing market activity in general is increasing. As many communities have recovered, other housing market conditions have received increased attention. Some of the most prominent considerations that are often discussed in relation to current housing markets include the following:

- **Affordability of Both Owner-Occupied and Rental Housing:** In many areas of the country, housing affordability has been an ongoing issue for both homebuyers and renters. House prices and rental costs have increased in recent years and have generally increased faster than incomes. Despite concerns about the affordability of owner-occupied housing, many metrics suggest that homeownership is currently relatively affordable by historical standards; however, such measures generally focus on the ability of households to afford monthly mortgage payments and do not consider other costs of purchasing a home, such as saving for a down payment.
- **Housing Inventory:** The available housing inventory is one factor that affects housing affordability, as too few homes available for sale or rent can increase home prices or rents. Limited inventory, particularly of modestly priced housing, appears to be impacting affordability and home sales in many housing markets. Relatively low levels of new home construction is one of the factors contributing to lower levels of housing inventory.

- **Mortgage Access:** The availability of mortgage credit tightened in the aftermath of the housing crisis, for a variety of reasons. While credit is not currently as tight as it was at the peak, some argue that it is still too difficult for some creditworthy households to obtain affordable mortgages. Others, however, argue that mortgage standards are loosening too much for certain types of mortgages.

The following subsections provide an overview of selected indicators reflecting conditions in owner-occupied housing markets and the mortgage market, and rental markets, respectively.

Owner-Occupied Housing Markets and the Mortgage Market

Over the past few years, on a national level, markets for owner-occupied housing have generally been characterized by rising home prices, low inventory levels, housing starts that are increasing but remain relatively low by historical standards, and home buying activity that is beginning to return to precrisis levels. Housing starts remain below the levels seen in the mid-1990s and early 2000s. For the most part, mortgage foreclosures[1] and negative equity,[2] which characterized the housing and economic turmoil that began around 2007, have eased.[3] However, national statistics can mask the experience of local housing markets, and not all communities have recovered equally from the effects of the housing crisis.[4]

Most homebuyers take out a mortgage to purchase a home. Therefore, owner-occupied housing markets are closely linked to the mortgage market, although they are not the same. The ability of prospective homebuyers to obtain mortgages and the costs of those mortgages impact housing demand and affordability.

House Prices

As shown in **Figure 1**, on a national basis, nominal house prices have been increasing on a year-over-year basis in each quarter since the beginning of 2012. Year-over-year house price changes have been above 5% in each quarter since the second quarter of 2015 and over 6% since mid-2017. These increases follow almost five years of house price declines in the years during and surrounding the economic recession of 2007-2009 and associated housing market turmoil.

[1] Foreclosure refers to formal legal proceedings initiated by a mortgage holder to repossess a home after a mortgage borrower has missed a certain number of payments on the mortgage. The foreclosure process is governed by state law. In general, the term "foreclosure" can refer to the foreclosure process or the completion of a foreclosure.

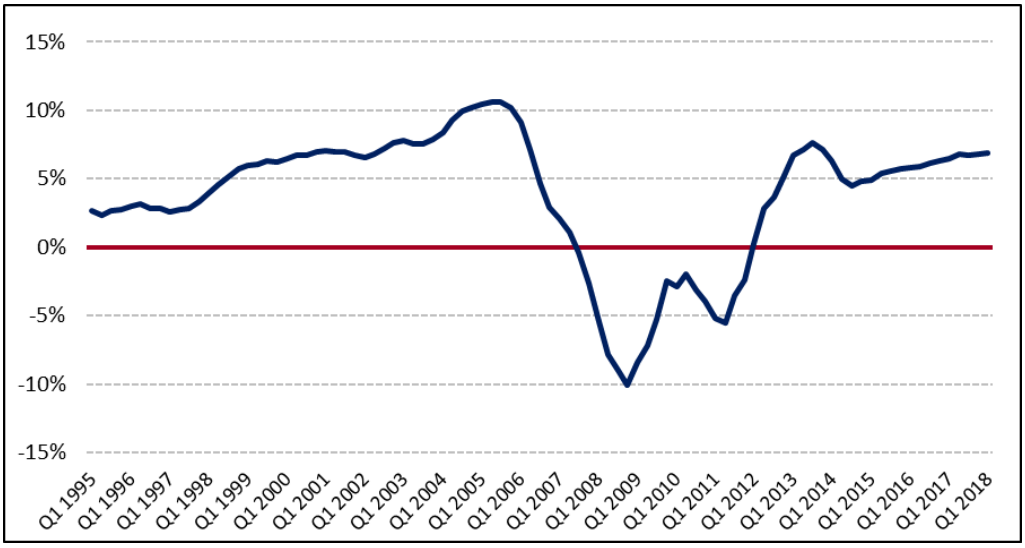
[2] Negative equity refers to a situation where a mortgage borrower owes more on the mortgage than the home is currently worth.

[3] According to CoreLogic, a data and analytics company, the rate of mortgages in the foreclosure process at the end of 2017 was 0.6%, similar to the average rate in the years preceding the housing and economic turmoil. CoreLogic also reports that the national share of mortgaged homes in negative equity was below 5% at the end of 2017, down from a high of over 25% at the end of 2009. See Molly Boesel, "Loan Performance Insights Report Highlights: December 2017," CoreLogic Insights Blog, March 13, 2018, https://www.corelogic.com/blog/2018/03/loan-performance-insights-report-highlights-december-2017.aspx and "Borrower Equity Update: Fourth Quarter 2017," CoreLogic Insights Blog, March 15, 2018, https://www.corelogic.com/blog/2018/03/borrower-equity-update-fourth-quarter-2017.aspx.

[4] For a discussion of variations in house price recovery and negative equity both across and within local areas, see Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 2017*, pp. 10-11, http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/harvard_jchs_state_of_the_nations_housing_2017.pdf.

Figure 1. Year-over-Year House Price Changes (Nominal)

Q1 1995–Q1 2018



Source: Figure created by CRS using data from the Federal Housing Finance Agency House Price Index (Seasonally Adjusted Purchase-Only Index).

Notes: Figure shows the percentage change in nominal house prices compared to the same quarter in the previous year.

House prices vary greatly across local housing markets. In some areas of the country, prices have fully regained or even exceeded their prerecession levels in nominal terms, while in other areas prices remain below those levels.[5] Furthermore, house price increases affect participants in the housing market differently. Rising prices reduce affordability for prospective homebuyers, but they are generally beneficial for current homeowners, who benefit from the increased home equity that accompanies them (although rising house prices also have the potential to negatively impact affordability for current homeowners through increased property taxes).

Mortgage Interest Rates

For several years, mortgage interest rates have been low by historical standards. As shown in **Figure 2**, average mortgage interest rates have been consistently below 5% since May 2010 and have been below 4% for several stretches during that time. Lower interest rates increase mortgage affordability and make it easier for some households to purchase homes or refinance their existing mortgages.

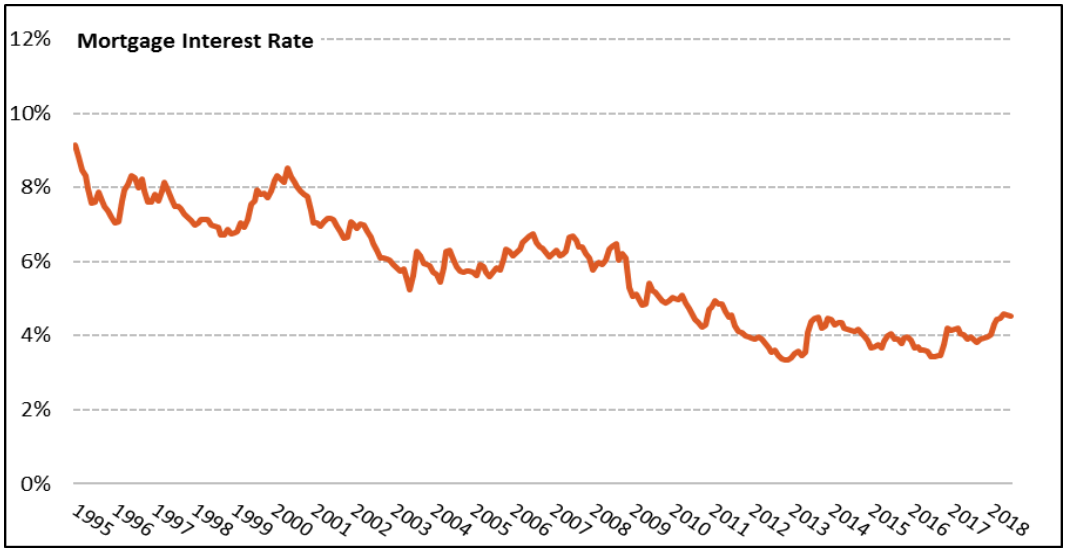
Mortgage interest rates have increased somewhat since the start of 2018, reaching nearly 4.6% in May 2018 before declining slightly in June and July, and could continue to rise.[6] Rising interest rates may make mortgages less affordable for some households, contributing to homeownership affordability pressures.

[5] Joint Center for Housing Studies, *State of the Nation's Housing 2018*, pp. 10-11, http://www.jchs.harvard.edu/state-nations-housing-2018.

[6] For example, see Freddie Mac, "Housing Demand Holding Steady Amidst Rising Mortgage and Home Prices," Outlook Report, May 24, 2018, http://www.freddiemac.com/research/outlook/20180524_housing_demand_steady.html.

Figure 2. Mortgage Interest Rates

January 1995–July 2018



Source: Figure created by CRS based on data from Freddie Mac's Primary Mortgage Market Survey, 30-Year Fixed Rate Historic Tables, available at http://www.freddiemac.com/pmms/.

Notes: Freddie Mac surveys lenders on the interest rates they are charging for certain types of mortgage products. The actual interest rate paid by any given borrower will depend on a number of factors.

Owner-Occupied Housing Affordability

As house prices have been rising for several years on a national basis, and as mortgage interest rates have also begun to rise, concerns about the affordability of owner-occupied housing have increased. Incomes have also been rising in recent years, helping to mitigate some affordability pressures, but in general incomes have not been rising as quickly as house prices.[7]

Despite rising house prices, many metrics of housing affordability suggest that owner-occupied housing is currently relatively affordable. These metrics generally measure the share of income that a median-income family would need to qualify for a mortgage to purchase a median-priced home, subject to certain assumptions.[8] Therefore, rising incomes and, especially, interest rates that are still low by historical standards contribute to homes, and borrowers' monthly mortgage payments in particular, being considered affordable despite recent house price increases.[9]

[7] See Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing 2018*, p. 22, http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf, showing changes in median house prices and median household incomes (in real terms).

[8] For example, see HUD's *Housing Market Indicators Monthly Update, May 2018*, p. 3, https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Market-Indicators-Report-May-2018.pdf, showing the National Association of Realtors Housing Affordability Index (HAI) compared to its historical norm. (For more information on the HAI, see the National Association of Realtors website at https://www.nar.realtor/research-and-statistics/housing-statistics/housing-affordability-index/methodology.) See also the Urban Institute's Housing Finance Policy Center's *Housing Finance at a Glance: A Monthly Chartbook, May 2018*, p. 19, https://www.urban.org/sites/default/files/publication/98495/housing_finance_at_a_glance_a_monthly_chartbook_may_2018.pdf, on mortgage affordability.

[9] For example, see the reference to the Joint Center for Housing Studies, *State of the Nation's Housing 2018* report in footnote 7. The same figure shows that homeowners' monthly housing costs are relatively low (although rising in recent years) despite house price increases.

Some factors that affect housing affordability may not be captured by these metrics, however. For example, many of the metrics are based on certain assumptions (such as a borrower making a 20% down payment) that may not apply to many households. Furthermore, since they typically measure the affordability of monthly mortgage payments, they often do not take into account other affordability challenges that homebuyers may face, such as affording a down payment and other upfront costs of purchasing a home (costs that generally increase as home prices rise). Other factors—such as the ability to qualify for a mortgage, the availability of homes on the market, and regional differences in house prices and income—may also make homeownership less attainable for some households.[10] Finally, some of these factors may have a bigger impact on affordability for certain specific demographic groups, as income trends and housing preferences are not uniform across all segments of the population.[11]

To the extent that house prices and interest rates continue to increase, housing affordability could become more of an issue going forward.[12]

Inventory and Housing Starts

Many market observers have pointed to low levels of housing inventory as being a key contributor to rising house prices.[13] One measure of the housing inventory is the months' supply of new and existing homes for sale—that is, how many months it would take for all of the homes that are currently on the market to sell based on the current pace of home sales, assuming no additional homes were placed on the market. According to HUD, using data from the National Association of Realtors and the U.S. Census Bureau, the months' supply of homes for sale is below the historical average of six months, and the inventory of homes for sale has been low for several years.[14]

One factor that affects housing inventory is the decision of existing homeowners to put their homes on the market. A number of considerations may be impacting owners' decisions about whether to sell their homes, including concerns about being able to find a suitable new home to purchase. Another factor that affects the housing inventory is the amount of new construction. In

[10] Freddie Mac Insight, *If Housing Is So Affordable, Why Doesn't It Feel That Way?*, July 19, 2017, http://www.freddiemac.com/research/insight/20170719_affordability.html.

[11] For example, see the discussion of affordability challenges for younger households in Freddie Mac Insight, *Locked Out? Are Rising Housing Costs Barring Young Adults from Buying Their First Homes?*, June 2018, http://www.freddiemac.com/research/pdf/201806-Insight-05.pdf.

[12] For example, see Black Knight, Inc., "Black Knight's April 2018 Mortgage Monitor: Housing Affordability Stretched as Average Monthly Payment to Purchase Median-Priced Home Rises 14 Percent Since Start of Year," press release, June 4, 2018, https://www.blackknightinc.com/black-knights-april-2018-mortgage-monitor/, stating that its modeling suggests that "even with historically strong income growth, the current combination of home price and interest rate increases isn't sustainable."

[13] For example, see National Association of Realtors, "Realtors Midyear Forecast: Home Sales, Prices to Rise Despite Inventory, Affordability Challenges," press release, May 17, 2018, https://www.nar.realtor/newsroom/realtors-midyear-forecast-home-sales-prices-to-rise-despite-inventory-affordability-challenges; Svenja Gudell, "Inventory Remains at Historic Lows; Majority of Homes for Sale are Higher End (March 2018 Market Report)," Zillow, April 26, 2018, https://www.zillow.com/research/low-end-inventory-shortage-19704/; and Robert Abare, "Ten years after the crash, what is the state of the housing market?," The Urban Institute's Urban Wire blog, May 30, 2018, https://www.urban.org/urban-wire/ten-years-after-crash-what-state-housing-market.

[14] See HUD, *Housing Market Indicators Monthly Update, April 2018*, pp. 1-2, https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Market-Indicators-Report-April-2018.pdf.

recent years, levels of new construction have been relatively low by historical standards, reflecting a variety of considerations including labor shortages and the cost of building.[15]

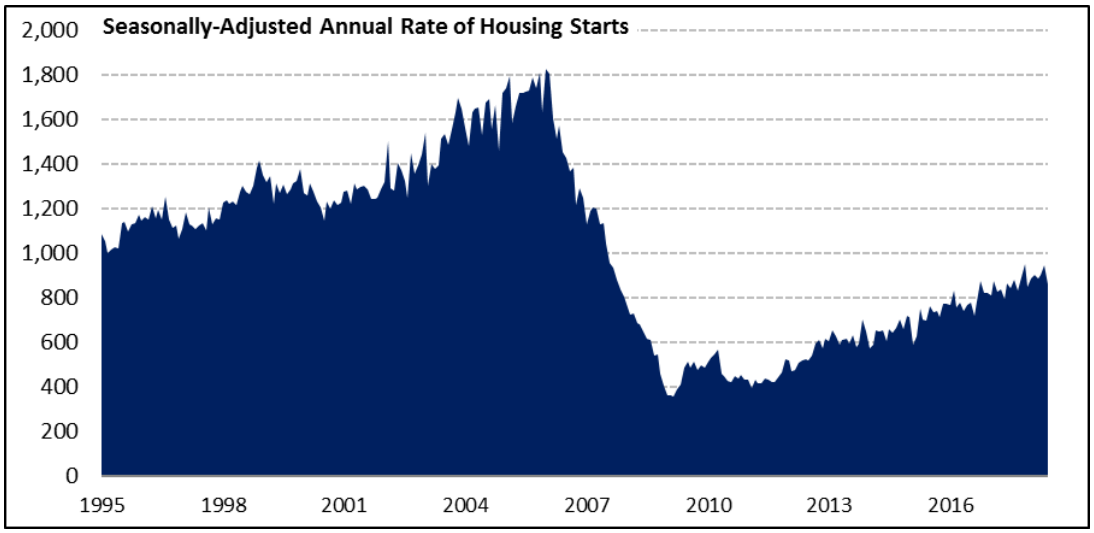
One measure of the amount of new construction is housing starts. Housing starts are the number of new housing units on which construction is started in a given period and are typically reported monthly as a "seasonally adjusted annual rate." This means that the number of housing starts reported for a given month (1) has been adjusted to account for seasonal factors and (2) has been multiplied by 12 to reflect what the total number of housing starts would be if the current month's pace continued for an entire year. That is, the number reported for a given month is the annual number of housing starts that would result if the number of starts per month continued at the current month's rate for 12 months.[16]

Figure 3 shows the seasonally adjusted annual rate of starts on one-unit homes for each month from January 1995 through June 2018.

Figure 3. Housing Starts

By month; seasonally adjusted annual rate

(In thousands)



Source: Figure created by CRS using data from the U.S. Census Bureau, New Residential Construction Historical Data, http://www.census.gov/construction/nrc/historical_data/. Data are through June 2018.

Notes: Figure reflects starts in one-unit structures only, some of which may be built for rent rather than sale. The seasonally adjusted annual rate is the number of housing starts that would be expected if the number of homes started in that month (on a seasonally adjusted basis) were extrapolated over an entire year.

Housing starts for single-family homes fell during the housing market turmoil, reflecting decreased home purchase demand. In recent years, as demand has increased, housing starts have been mostly increasing as well, though they remain below the levels seen in the late 1990s and early 2000s. From 2000 through 2007, the seasonally adjusted annual rate of housing starts in one-unit residential buildings was generally between 1.2 million and 1.8 million each month,

[15] Freddie Mac, "What is Causing the Lean Inventory of Houses?," Outlook Report, July 27, 2017, http://www.freddiemac.com/research/outlook/20170726_lean_inventory_of_houses.html.

[16] The Census Bureau defines the seasonally adjusted annual rate as "the seasonally adjusted monthly value multiplied by 12" and notes that it "is neither a forecast nor a projection; rather it is a description of the rate of building permits, housing starts, housing completions, or new home sales in the particular month for which they are calculated." See https://www.census.gov/construction/nrc/definitions/index.html#s.

before falling to a rate of between 400,000 and 600,000 for each month until about 2013. More recently, housing starts have been trending upward, and the seasonally adjusted annual rate averaged about 850,000 during 2017. In June 2018, the seasonally adjusted annual rate of housing starts was 858,000.

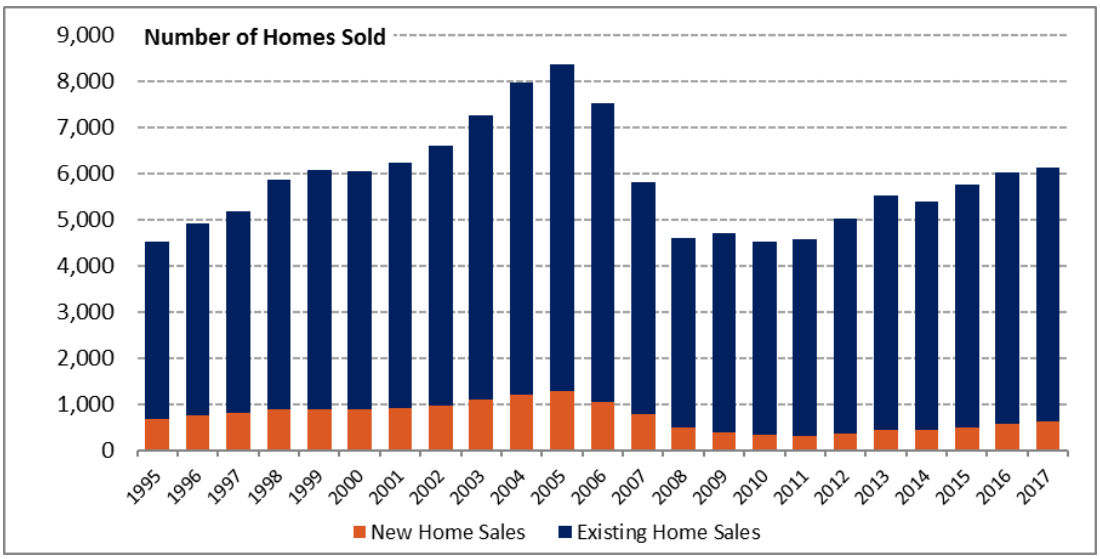
Home Sales

Despite limited inventory and rising home prices, home sales have been increasing in recent years. Home sales include sales of both existing and newly built homes. Existing home sales generally number in the millions each year, while new home sales are usually in the hundreds of thousands.

Figure 4 shows the annual number of existing and new home sales for each year from 1995 through 2017. Existing home sales numbered about 5.5 million in 2017, representing the third straight year of increases and the highest level since 2006. New home sales numbered about 614,000 in 2017. This was the highest level since 2007, but the number of new home sales remains appreciably lower than in the late 1990s and early 2000s, when they tended to be between 800,000 and 1 million per year.[17]

Figure 4. New and Existing Home Sales

(In thousands)



Source: Figure created by CRS using data from HUD's U.S. Housing Market Conditions reports, available at https://www.huduser.gov/portal/ushmc/home.html; the National Association of Realtors *Existing Home Sales Overview Chart* at https://www.nar.realtor/topics/existing-home-sales; and the U.S. Census Bureau, *New Residential Sales Historical Data, Houses Sold (Annual)*, https://www.census.gov/construction/nrs/historical_data/index.html.

Mortgage Credit Access

Some prospective homebuyers may find themselves unable to obtain mortgages due to their credit histories, other financial characteristics, the cost of obtaining a mortgage (such as down payments

[17] The number of housing starts is consistently higher than the number of new home sales. This is primarily because housing starts include homes that are not intended to be put on the for-sale market, such as homes built by the owner of the land or homes built for rental. See the U.S. Census Bureau, "Comparing New Home Sales and New Residential Construction," https://www.census.gov/construction/nrc/salesvsstarts.html.

and closing costs), or other factors. In general, it is beneficial to the housing market when creditworthy homebuyers are able to obtain mortgages to purchase homes. However, access to mortgages must be balanced against the risk of offering them to people who will not be willing or able to repay the money they borrowed. Striking the right balance of credit access and risk management and the question of who is considered to be "creditworthy" are subjects of ongoing debate.

A variety of organizations attempt to measure the availability of mortgage credit. While their methods vary, many experts agree that access to mortgage credit is tighter than it was in the early 2000s, prior to the housing bubble that preceded the housing market turmoil later in the decade, although it has eased somewhat of late. Despite this easing, some have argued that access to mortgage credit is still too tight, and that the mortgage market is taking on less default risk than it did in the years prior to the loosening of credit standards during the housing bubble.[18]

Others have argued that mortgage credit standards are easing too much, focusing on the fact that credit standards for certain types of mortgages, such as those insured by the Federal Housing Administration (FHA), have appeared to loosen somewhat in recent years compared to the immediate aftermath of the housing market turmoil when the standards tightened across the board. They argue that easing credit standards unsustainably increases the risk of certain types of mortgages and contributes to higher house prices by allowing households to leverage higher amounts of mortgage debt.[19] FHA itself has noted that it is monitoring certain trends, such as a larger share of new FHA-insured mortgages with higher debt-to-income ratios and the performance of loans with certain types of down payment assistance, that have the potential to increase risk to FHA.[20]

Mortgage Market Composition

When a lender originates a mortgage, it can choose to hold that mortgage in its own portfolio, sell it to a private company, or sell it to Fannie Mae or Freddie Mac, two congressionally chartered government-sponsored enterprises (GSEs). Fannie Mae and Freddie Mac bundle mortgages into securities and guarantee investors payments on those securities. Furthermore, a mortgage might be insured by a federal government agency, such as the FHA or the Department of Veterans Affairs (VA). Most FHA-insured or VA-guaranteed mortgages are included in mortgage-backed securities that are guaranteed by Ginnie Mae, another government agency.[21]

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[18] For example, see the Urban Institute Housing Finance Policy Center's Housing Credit Availability Index, https://www.urban.org/policy-centers/housing-finance-policy-center/projects/housing-credit-availability-index.

[19] For example, see Edward J. Pinto and Tobias Peter, American Enterprise Institute Center on Housing Markets and Finance, "Mortgage Risk Index release of January 2018 data," April 30, 2018, http://www.aei.org/publication/mortgage-risk-index-release-of-january-2018-data/.

[20] Written Testimony of Dana Wade, then-Acting FHA Commissioner and General Deputy Assistant Secretary for FHA, for a hearing before the House Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, April 25, 2018, p. 6, https://docs.house.gov/meetings/AP/AP20/20180425/108224/HHRG-115-AP20-Wstate-WadeD-20180425.pdf.

[21] Fannie Mae and Freddie Mac purchase eligible mortgages, package them into mortgage-backed securities that they either sell to investors or hold in their own portfolios, and guarantee payments to investors on those mortgage-backed securities. Ginnie Mae, which is part of HUD, guarantees mortgage-backed securities that are made up solely of government-insured mortgages (mostly mortgages insured by FHA or guaranteed by VA). Unlike Fannie Mae and Freddie Mac, Ginnie Mae does not issue the mortgage-backed securities itself, but rather guarantees securities issued by private companies that have been approved to be Ginnie Mae issuers. Private companies can also issue mortgage-backed securities without a Fannie Mae, Freddie Mac, or Ginnie Mae guarantee, but there has been very little private-label securitization in the years since the housing market turmoil.

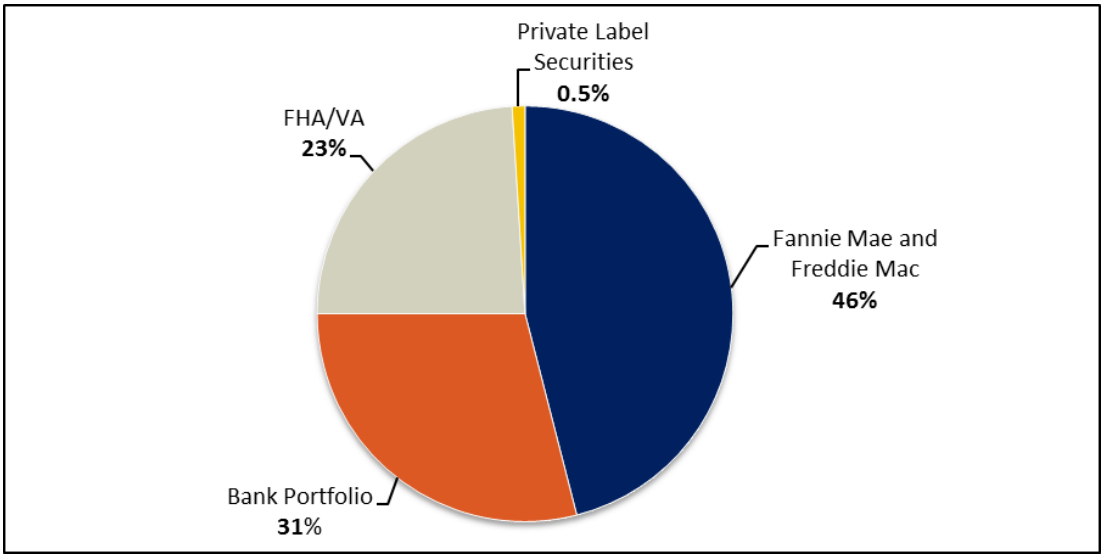
In the years after the housing bubble burst, there was an increase in the share of mortgages that either had mortgage insurance from a government agency or were guaranteed by Fannie Mae or Freddie Mac, leading some to express concern about increased government exposure to risk and a lack of private capital in the mortgage market.

As shown in **Figure 5**, over two-thirds of the total dollar volume of mortgages originated during 2017 were either guaranteed by a federal agency such as FHA or VA (23%) or backed by Fannie Mae or Freddie Mac (46%). Close to one-third of the dollar volume of mortgages originated was held in bank portfolios (31%), while less than 1% was securitized in the private market.

The share of new mortgage originations, by dollar volume, insured by a federal agency or guaranteed by Fannie Mae or Freddie Mac has fallen from a high of nearly 90% in 2009, during the housing market turmoil. Nevertheless, the share of mortgage originations with federal mortgage insurance or a Fannie Mae or Freddie Mac guarantee remains elevated compared to the 2002-2007 period, when FHA and VA mortgages constituted a small share of the mortgage market and the GSE share ranged from about 30% to 50%.[22] The FHA and VA share of mortgages during the 2002-2007 period was low by historical standards, however, as many households opted for other types of mortgages, including subprime mortgages, during that time.

Figure 5. Share of Mortgage Originations by Type

2017



Source: Figure created by CRS based on Inside Mortgage Finance data as reported in Urban Institute, Housing Finance Policy Center, *Housing Finance at a Glance: A Monthly Chartbook, May 2018*, p. 8.

Notes: Figure shows share of first-lien mortgage originations by dollar volume. Numbers do not add to 100% due to rounding.

Rental Housing Markets

In the years since the housing market turmoil began, the homeownership rate has decreased while the percentage of renter households has correspondingly increased. Although new rental housing units have also been created, both through new construction and as some formerly owner-occupied homes are converted to rentals, in many markets the rise in the number of renters

[22] Urban Institute, Housing Finance Policy Center, *Housing Finance at a Glance: A Monthly Chartbook, May 2018*, p. 8.

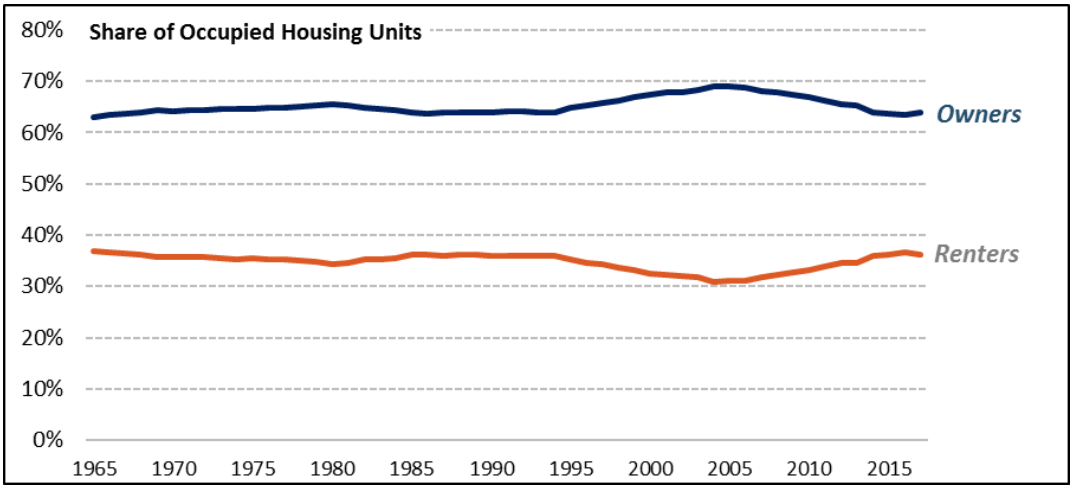
increased competition for rental housing, leading to lower rental vacancy rates and higher rents in recent years.[23] This, in turn, has resulted in more renter households being considered cost-burdened, commonly defined as paying more than 30% of income toward housing costs.

Share of Renters

As shown in **Figure 6**, the share of renters has generally been increasing for the last decade, reaching close to 37% of all occupied housing units in 2016. This was the highest share of renters since the early 1990s. The homeownership rate has correspondingly decreased, falling from a high of 69% in 2004 to just over 63% in 2016.[24] Most recently, in 2017, the share of renters decreased slightly, to about 36%, and the homeownership rate increased slightly, to nearly 64%.

Figure 6. Rental and Homeownership Rates

1965-2017



Source: Figure prepared by CRS based on data from the U.S. Census Bureau, Annual Housing Vacancy and Homeownership Survey, Annual Statistics, Table 14, "Homeownership Rates by Area."

In addition to an increase in the share of households who rent, the overall number of renter households has been increasing as well. In 2016, there were nearly 43.3 million occupied rental housing units, compared to 40 million in 2013 and 35.8 million in 2008. The number of renter households decreased in 2017, to 43.1 million.[25] (In comparison, the number of housing units occupied by an owner decreased somewhat after 2008 before beginning to rise again in recent years. The number of housing units occupied by owners was just over 76 million in 2017, compared to about 75.5 million in 2008.[26])

[23] Joint Center for Housing Studies of Harvard University, *America's Rental Housing 2017*, December 14, 2017, pp. 20-22, http://www.jchs.harvard.edu/research-areas/reports/americas-rental-housing-2017.

[24] U.S. Census Bureau, Housing Vacancies and Homeownership, Annual Statistics, http://www.census.gov/housing/hvs/data/prevann.html.

[25] U.S. Census Bureau, Housing Vacancies and Homeownership, Historical Tables, Table 7, "Annual Estimates of the Housing Inventory: 1965 to Present," http://www.census.gov/housing/hvs/data/histtabs.html.

[26] Ibid.

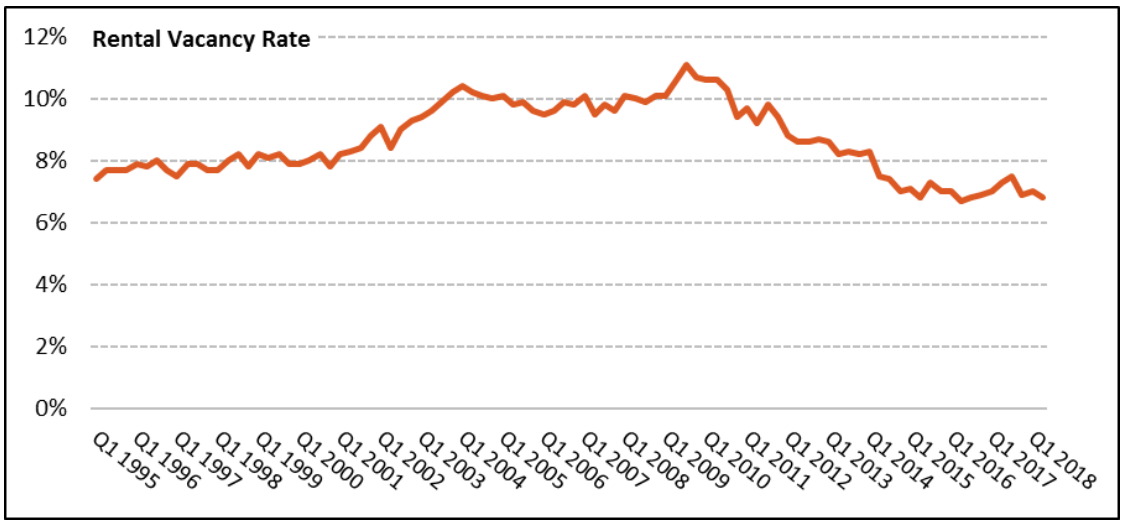
Vacancy Rates

In general, the increase in renters has led to a decrease in rental vacancy rates in many, though not all, areas of the country. This has been the case in many areas despite the creation of new rental units through both new multifamily construction and the conversion of some previously owner-occupied single-family units to rental housing. In many cases, the increase in the rental housing supply has not kept up with the increase in rental housing demand.

As shown in **Figure 7**, on a national basis the rental vacancy rate was over 10% in most quarters from 2008 through 2010. Since then, the rate has mostly declined, reaching about 8% at the end of 2013 and 7% at the end of each year from 2014 through 2017. The rental vacancy rate did increase somewhat throughout 2017 before decreasing back to 7% at the end of the year.[27] Furthermore, the market for affordable rental units has been particularly tight, as many of the rental units that have been constructed in recent years have been at the higher end of the market.[28]

Figure 7. Rental Vacancy Rates

Q1 1995–Q1 2018



Source: Figure created by CRS based on data from U.S. Census Bureau, Housing Vacancies and Homeownership Historical Tables, Table 1, "Quarterly Rental Vacancy Rates: 1956 to Present," http://www.census.gov/housing/hvs/data/histtabs.html.

Rental Housing Affordability

Rental housing affordability is impacted by a variety of factors, including the supply of rental housing units available, the characteristics of those units (e.g., age and amenities), and the demand for available units. As noted previously, new housing units have been added to the rental stock in recent years through both construction of new rental units and conversions of existing owner-occupied units to rental housing. At the same time, however, the demand for rental housing

[27] U.S. Census Bureau, Housing Vacancies and Homeownership, Historical Tables, Table 1, "Quarterly Rental Vacancy Rates: 1956 to Present," http://www.census.gov/housing/hvs/data/histtabs.html.

[28] For example, see Joint Center for Housing Studies of Harvard University, *America's Rental Housing 2017*, pp. 3-4, http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/harvard_jchs_americas_rental_housing_2017.pdf, showing that vacancy rates in professionally managed multifamily apartment buildings were lowest for the lowest-cost rental units and highest for the highest-cost rental units in recent quarters.

has increased as more households have become renters. Furthermore, much of the new rental housing construction in recent years has been higher-end construction rather than lower-cost units.[29]

The increased demand for rental housing, as well as the concentration of new rental construction in higher-cost units, has led to increases in rents in recent years. Median renter incomes have also been increasing for the last several years, at times outpacing increases in rents. However, over the longer term, median rents have increased faster than renter incomes. For example, since 2001, in real terms the median rent (less utilities) for recent movers has risen over 25% while the median renter income has increased about 6%, reducing rental affordability over that time period.[30]

Rising rental costs and renter incomes that are not keeping up with rent increases over the long term can contribute to housing affordability problems, particularly for households with lower incomes. Under one common definition, housing is considered to be affordable if a household is paying no more than 30% of its income in housing costs. Under this definition, households that pay more than 30% are considered to be cost-burdened, and those that pay more than 50% are considered to be severely cost-burdened.

The overall number of cost-burdened renter households has generally increased in recent years, from 15.7 million in 2003 to 20.8 million in 2016, although the number of cost-burdened renter households in 2016 represented a decrease from over 21 million in both 2014 and 2015. (Over this time period, the overall number of renter households has increased as well.)

As shown in **Figure 8**, cost burdens are most prevalent among lower-income renter households. Among renter households with incomes below $30,000, 80% are cost-burdened, with over half experiencing severe cost burdens. However, cost burdens affect households of all incomes: half of renter households with incomes below $45,000 and over 20% of renter households with incomes below $75,000 were cost burdened in 2016. Moderate-income renter households have experienced some of the greatest increases in cost burdens since the early 2000s.[31]

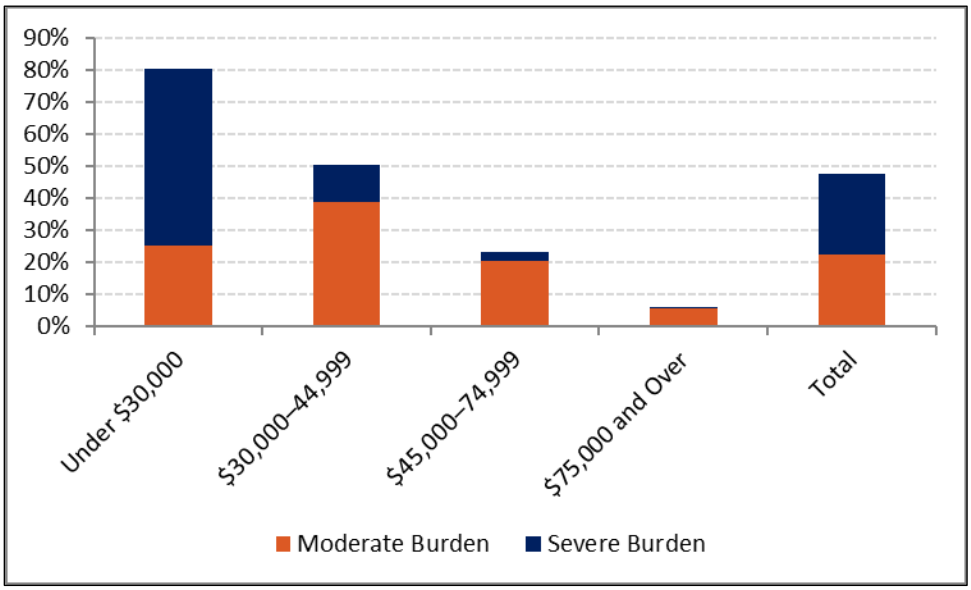
[29] Joint Center for Housing Studies of Harvard University, *America's Rental Housing 2017*, pp. 3 and 17.

[30] See HUD, Office of Policy Development and Research, *U.S. Housing Market Conditions National Housing Market Summary 1st Quarter 2018*, June 2018, pp. 4-5, https://www.huduser.gov/portal/sites/default/files/pdf/NationalSummary_1Q18.pdf. Data on median rents reflect median rents for recent movers less the cost of utilities. For more information on data sources used, see HUD Office of Policy Development and Research, *HUD's New Rental Affordability Index*, https://www.huduser.gov/portal/pdredge/pdr-edge-trending-110716.html. For another comparison of median rents and median renter incomes, see Joint Center for Housing Studies, *America's Rental Housing 2017*, pp. 26-27, http://www.jchs.harvard.edu/sites/default/files/05_harvard_jchs_americas_rental_housing_2017.pdf.

[31] Joint Center for Housing Studies of Harvard University, *America's Rental Housing 2017*, p. 28, http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/harvard_jchs_americas_rental_housing_2017.pdf.

Figure 8. Share of Cost-Burdened Renter Households by Income

2016



Source: Figure created by CRS based on data in Joint Center for Housing Studies, *State of the Nation's Housing* 2018, Appendix Tables, showing Joint Center for Housing Studies tabulations of American Community Survey data.

Furthermore, according to HUD, 8.3 million renter households were considered to have "worst-case housing needs" in 2015 (the most recent data available).[32] Households with worst-case housing needs are defined as renter households with incomes at or below 50% of area median income who do not receive federal housing assistance and who pay more than half of their incomes for rent, live in severely inadequate conditions, or both. The 8.3 million renter households with worst-case housing needs in 2015 represented an increase from 7.7 million in 2013 and was similar to 2011 (8.5 million households). In comparison, the number of renter households with worst-case housing needs in 2005 and 2007 was about 6 million.

Housing Finance Issues in the 115th Congress

Several of the issues that have been of interest during the 115th Congress are related to the financing of housing. In some cases, these issues can impact the financing of both owner-occupied housing and rental housing, though in other cases they are primarily relevant to one or the other.

Financial "Regulatory Relief" Legislation and Housing

Background

The financial crisis of 2007-2009 led to a variety of legislative and regulatory responses intended to address its perceived causes. These responses included new requirements on financial

[32] U.S. Department of Housing and Urban Development, *Worst Case Housing Needs: 2017 Report to Congress*, p. 1, https://www.huduser.gov/portal/sites/default/files/pdf/Worst-Case-Housing-Needs.pdf.

institutions, some of which were related to mortgages. Many of these requirements were enacted in the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) in 2010.[33]

In the years since, there has been ongoing debate about the extent to which the new requirements achieve the right balance of protecting consumers and the financial system from potentially risky mortgage features without unduly restricting access to credit for creditworthy households.

Recent Developments

During the 115th Congress, a variety of bills have been considered to amend certain financial regulatory requirements, including requirements related to mortgages. Most notable among these for housing is the Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174), which became law in May 2018.[34] The act includes a variety of provisions related to financial regulatory requirements, including some mortgage-related requirements. In general, it modifies these mortgage-related requirements rather than eliminating them entirely. The act also includes some additional provisions related to housing.

Provisions of the act that modify mortgage-related requirements that were put in place after the housing market turmoil include the following:

- allowing certain mortgages originated and held in portfolio by small depository institutions to be considered "qualified mortgages" for the purposes of complying with the ability-to-repay rule;[35]
- making changes to requirements related to certain property appraisals;
- exempting some banks and credit unions that make fewer than a particular number of mortgage loans from specified new reporting requirements under the Home Mortgage Disclosure Act (HMDA);
- providing grace periods for mortgage originators to obtain the proper licensing to originate mortgages in their new positions when they move from banks to nonbanks or across state lines;
- expanding the circumstances under which manufactured home retailers and their employees can be excluded from the definition of mortgage originators, and therefore exempt from certain requirements that apply to mortgage originators, subject to specified conditions; and
- waiving the waiting period between receipt of particular mortgage-related disclosures and the mortgage closing when a borrower is offered a lower interest rate after initial receipt of the disclosures.

While supporters of the act argue that these are targeted changes that will help to ease unnecessarily burdensome regulations and increase the availability of mortgage credit, opponents argue that they weaken or eliminate certain protections that were put in place in response to practices that harmed consumers and ultimately the broader mortgage market.

[33] For an overview of the Dodd-Frank Act, see CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Background and Summary*.

[34] The bill was passed by the Senate in March 2018. It was passed by the House and subsequently signed by the President in May 2018.

[35] For more information on the ability-to-repay rule, see CRS Report R42056, *Ability to Repay, Risk-Retention Standards, and Mortgage Credit Access*.

The act also includes several other mortgage- or housing-related provisions. These include the following:

- requirements intended to address concerns about certain refinancing practices related to some mortgages guaranteed by the Department of Veterans Affairs;
- making permanent specified protections for renters in foreclosed properties that had been put in place by the Protecting Tenants at Foreclosure Act (Title VII of the Helping Families Save Their Homes Act, P.L. 111-22) in 2009 but had since expired;
- making permanent a one-year protection against foreclosure for active duty servicemembers under particular circumstances;
- requiring Fannie Mae and Freddie Mac to consider alternative credit scoring models for mortgages purchased by those institutions;
- making Property Assessed Clean Energy (PACE) loans, which allow some homeowners to finance specified energy improvements through property tax assessments, subject to the ability-to-repay requirements that apply to most mortgages;
- certain changes related to small public housing agencies;
- changes to HUD's Family Self-Sufficiency program, an asset-building program for residents of public and assisted housing; and
- requiring certain reports, including a report by HUD on lead paint hazards and abatement and a Government Accountability Office (GAO) report on foreclosures in Puerto Rico in the aftermath of Hurricane Maria.

Additional information:

- For an expanded discussion of the provisions of P.L. 115-174, see CRS Report R45073, *Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) and Selected Policy Issues*.

Housing Finance Reform

Background

The U.S. housing finance system supports about $10 trillion in outstanding single-family residential mortgage debt and over $1 trillion in multifamily residential mortgage debt.[36] Two major players in the housing finance system are Fannie Mae and Freddie Mac, government-sponsored enterprises (GSEs) that were created by Congress to provide liquidity to the mortgage market. By law, Fannie Mae and Freddie Mac cannot make mortgages; rather, they are restricted to purchasing mortgages that meet certain requirements from lenders. Once the GSEs purchase a mortgage, they either package it with others into a mortgage-backed security (MBS), which they guarantee and sell to institutional investors, or retain it as a portfolio investment. Fannie Mae and Freddie Mac are involved in both single-family and multifamily housing, though their single-family businesses are much larger.

[36] Board of Governors of the Federal Reserve System, *Mortgage Debt Outstanding*, https://www.federalreserve.gov/data/mortoutstand/current.htm.

In 2008, during the housing and mortgage market turmoil, Fannie Mae and Freddie Mac entered voluntary conservatorship overseen by their regulator, the Federal Housing Finance Agency (FHFA). As part of the legal arrangements of this conservatorship, the Department of the Treasury contracted to purchase over $200 billion of new senior preferred stock from each of the GSEs; in return for this support, Fannie Mae and Freddie Mac pay dividends on this stock to Treasury.[37] To date, Treasury has purchased a total of over $191 billion of senior preferred stock from the two GSEs and has received a total of nearly $280 billion in dividends.[38] These funds become general revenues. Since the first quarter of 2012, the only time Fannie Mae and Freddie Mac have drawn on their lines of credit with Treasury was in the fourth quarter of 2017 due to changes in the value of deferred tax assets as a result of the tax revision law that was enacted in late 2017 (P.L. 115-97).[39]

Recent Developments

Since Fannie Mae and Freddie Mac were placed in conservatorship in 2008, policymakers have largely agreed on the need for comprehensive housing finance reform legislation that would transform or eliminate the GSEs' role in the housing finance system. While there is broad agreement on certain principles of housing finance reform—such as increasing the private sector's role in the mortgage market and maintaining access to affordable mortgages for creditworthy households—there is disagreement over how best to achieve these objectives and over the technical details of how a restructured housing finance system should operate.

The 113th Congress considered, but did not enact, housing finance reform legislation.[40] The 114th Congress considered a number of more-targeted reforms to Fannie Mae and Freddie Mac, but did not actively consider comprehensive housing finance reform legislation.[41] During the 115th Congress, although Members on the House and Senate committees of jurisdiction and Administration officials have indicated that housing finance reform is a priority,[42] no comprehensive housing finance reform legislation has been formally introduced to date. In July

[37] To conserve cash, FHFA ordered Fannie Mae and Freddie Mac to stop paying dividends on all other stock.

[38] Federal Housing Finance Agency, *Treasury and Federal Reserve Purchase Programs for GSE and Mortgage-Related Securities*, data as of June 29, 2018, https://www.fhfa.gov/DataTools/Downloads/Pages/Treasury-and-Federal-Reserve-Purchase-Programs-for-GSE-and-Mortgage-Related-Securities.aspx.

[39] For more information on this draw in the fourth quarter of 2017, see CRS In Focus IF10851, *Housing Finance: Recent Policy Developments*.

[40] In the 113th Congress, H.R. 2767, the Protecting American Taxpayers and Homeowners Act of 2013, was ordered to be reported out of the Financial Services Committee, while S. 1217, the Housing Finance Reform and Taxpayer Protection Act of 2014, was reported out of the Senate Banking Committee. For more information on these bills from the 113th Congress, see archived CRS Report R43219, *Selected Legislative Proposals to Reform the Housing Finance System*.

[41] For a discussion of congressional action related to Fannie Mae and Freddie Mac in the 114th Congress, see CRS Report R44304, *Housing Issues in the 114th Congress*.

[42] For example, see the House Financial Services Committee, "Hensarling Lays Out Principles for Housing Finance Reform, Expresses Support for Bipartisan Approach," press release, December 6, 2017, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=402755; Senate Banking Committee, Statement of Chairman Mike Crapo at a hearing on "Ten Years of Conservatorship: The Status of the Housing Finance System," May 23, 2018, https://www.banking.senate.gov/hearings/ten-years-of-conservatorship-the-status-of-the-housing-finance-system; and the written statement of Treasury Secretary Mnuchin at a House Financial Services Committee hearing on "The Annual Testimony of the Secretary of the Treasury on the State of the International Finance System," July 27, 2017, p. 3, https://financialservices.house.gov/uploadedfiles/hhrg-115-ba00-wstate-smnuchin-20170727.pdf.

2018, Treasury Secretary Steven Mnuchin suggested at a House Financial Services Committee hearing that housing finance reform would be a focus in the 116th Congress.[43]

In addition to considering the role of the GSEs in the housing finance system, any housing finance reform legislation could also consider changes to the Federal Housing Administration (FHA). FHA is a part of the Department of Housing and Urban Development (HUD) and insures certain mortgages made by private lenders against the possibility of borrower default. By insuring these mortgages, FHA helps to make affordable mortgages more available to borrowers who might otherwise not be well-served by the private mortgage market, such as borrowers with low down payments.

Apart from comprehensive reform of the housing finance system, several additional issues related to Fannie Mae and Freddie Mac have received attention during the 115th Congress. These include (1) an FHFA decision to allow Fannie Mae and Freddie Mac to each retain $3 billion in capital (under the terms of the Treasury support agreements, the amount of capital they are allowed to retain was scheduled to fall to zero at the beginning of 2018), (2) the need for both Fannie Mae and Freddie Mac to draw on their lines of credit with Treasury in the fourth quarter of 2017 due to a reduction in the value of deferred tax assets as a result of the tax revision law passed in late 2017, and (3) FHFA directing Fannie Mae and Freddie Mac to continue to make required contributions to certain affordable housing funds despite the draw from Treasury. For more information on these issues in particular, see CRS In Focus IF10851, *Housing Finance: Recent Policy Developments*.

Additional information:

- For background on the housing finance system in general, see CRS Report R42995, *An Overview of the Housing Finance System in the United States*.
- For information on Fannie Mae and Freddie Mac and their conservatorship, see CRS Report R44525, *Fannie Mae and Freddie Mac in Conservatorship: Frequently Asked Questions*.
- For background on FHA, see CRS Report RS20530, *FHA-Insured Home Loans: An Overview*.

Federal Housing Administration Mortgage Insurance Premiums

Background

The Federal Housing Administration (FHA), part of HUD, insures certain mortgages made by private lenders against the possibility of the borrower defaulting. FHA insurance protects the lender in the event of borrower default, which is intended to increase the availability of affordable mortgage credit to households who might otherwise be underserved by the private mortgage market.

FHA charges borrowers both upfront and annual fees, referred to as mortgage insurance premiums, in exchange for this insurance. These fees are supposed to cover the costs of paying a claim to a lender if an FHA-insured mortgage defaults and goes to foreclosure. By law, the HUD Secretary has a responsibility to ensure that the FHA single-family mortgage insurance fund

[43] Secretary Mnuchin made this comment in response to a question during a hearing before the House Financial Services Committee on "The Annual Testimony of the Secretary of the Treasury on the State of the International Financial System," July 12, 2018.

remains financially sound[44] and that the fund is in compliance with a requirement that it maintain a capital ratio of at least 2%.[45]

FHA raised the premiums it charges several times in the years during and following the housing market turmoil in response to concerns about rising mortgage delinquency rates and FHA's ability to maintain compliance with the capital ratio requirement. It then lowered the annual premiums in 2015 as mortgage delinquency rates began to decrease and its financial position stabilized. The level of the premiums charged by FHA is often a topic of interest. The premiums have implications for the affordability and availability of FHA-insured mortgages for certain homebuyers, on the one hand, and for the financial health of the FHA insurance fund, on the other; setting the appropriate premium level involves balancing these considerations.

Recent Developments

Early in January 2017, HUD announced that it planned to decrease the annual mortgage insurance premium it charged for new mortgages that closed on or after January 27, 2017.[46] However, on January 20, 2017, the first day of the Trump Administration, HUD suspended the planned decrease before it went into effect, citing a need to further analyze the potential impact that a mortgage insurance premium decrease could have on the FHA insurance fund.[47]

In its Annual Report to Congress on the Financial Status of the Mutual Mortgage Insurance Fund (MMI Fund) in November 2017, FHA stated that had the planned premium decrease gone into effect, the estimated capital ratio for the MMI Fund would have fallen below the statutorily mandated capital ratio requirement of 2% for FY2017.[48] (The actual estimated capital ratio for FY2017 was lower than FY2016, but remained above 2%.) The estimated lower capital ratio would have been due to a combination of less premium revenue coming into the fund as a result of the lower premiums and an increase in the total dollar amount of mortgages that would have been insured as a result of more borrowers obtaining FHA-insured mortgages due to the lower premiums. The report also suggests, however, that reverse mortgages insured by FHA are having a disproportionately negative impact on the insurance fund, raising questions about the extent to which the performance of the reverse mortgage portfolio may, or should, impact decisions about the premiums charged to forward-mortgage borrowers.[49]

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[44] 12 U.S.C. 1708 (a)(3)

[45] 12 U.S.C. 1711(f). The capital ratio is defined as the economic value of the MMI Fund divided by the total dollar volume of mortgages insured under the MMI Fund. Economic value, in turn, is defined as the capital resources that the MMI Fund currently has on hand plus the net present value of the estimated future cash inflows and outflows on the mortgages that are currently insured under the MMI Fund. It is essentially a measure of how much money the MMI Fund would expect to have available to pay for additional, unexpected losses on its currently insured mortgages beyond the losses it currently anticipates. The capital ratio is defined in statute at 12 U.S.C. 1711(f)(4).

[46] FHA Mortgagee Letter 2017-01, "Reduction of Federal Housing Administration (FHA) Annual Mortgage Insurance Premium Rates," January 9, 2017, https://www.hud.gov/sites/documents/17-01ML.PDF.

[47] FHA Mortgagee Letter 2017-07, "Suspension of Mortgagee Letter 2017-01 – Reduction of Federal Housing Administration (FHA) Annual Mortgage Insurance Premium (MIP) Rates," January 20, 2017, https://www.hud.gov/sites/documents/17-07ML.PDF.

[48] Department of Housing and Urban Development, *Annual Report to Congress Regarding the Financial Status of the FHA Mutual Mortgage Insurance Fund, Fiscal Year 2017,* November 15, 2017, pp. 57-58, https://www.hud.gov/sites/dfiles/Housing/documents/2017fhaannualreportMMIFund.pdf.

[49] Reverse mortgages allow older homeowners to borrow against the equity in their homes and repay the loans at a later time, after they sell the home or pass away. FHA-insured reverse mortgages are called Home Equity Conversion Mortgages (HECMs). For more information on HECMs, see CRS Report R44128, *HUD's Reverse Mortgage Insurance Program: Home Equity Conversion Mortgages*.

Additional information:

- For more information on FHA-insured mortgages in general, including the current premium levels, see CRS Report RS20530, *FHA-Insured Home Loans: An Overview*.
- For more information on the financial status of FHA's single-family mortgage insurance fund, see CRS Report R42875, *FHA Single-Family Mortgage Insurance: Financial Status of the Mutual Mortgage Insurance Fund (MMI Fund)*.

FHA Requirements for Insuring Mortgages on Condominium Units

Background

FHA-insured mortgages can be used to purchase condominium units as well as other types of single-family homes. However, HUD places specific requirements on FHA-insured mortgages for condominiums that may affect the eligibility of a condominium mortgage for the insurance.

In order for FHA to insure a mortgage on a condominium unit, HUD requires that the entire condominium project where the unit is located have FHA approval. In order for the condominium project to be approved, it must meet a variety of requirements. These include, among others, a minimum percentage of units that must be owner-occupied, and limits on the amount of nonresidential space and the percentage of units that are behind on their association dues. Condominium buildings seeking FHA approval must go through a certification process and a periodic recertification process to maintain FHA approval.

In 2009, HUD made a number of changes related to condominium mortgage insurance.[50] In addition to tightening several requirements, it ended a practice known as "spot approval," in which a mortgage on a condominium located in a project that did not have FHA approval could qualify for FHA insurance on a case-by-case basis. Requirements placed on condominium projects seeking FHA approval are intended to ensure that the buildings themselves are well-managed and financially stable, which in turn is thought to make mortgages on individual units in the building less risky. However, some industry groups and others have argued that many of the changes that FHA made are too strict and unnecessarily reduce access to FHA-insured mortgages for prospective condominium buyers and for condominium owners who seek FHA-insured reverse mortgages.[51]

While the specifics of debates around individual requirements related to FHA approval of condominium buildings may vary, in general the debate around these requirements is usually framed as a question of how to balance access to FHA-insured mortgages with making sure that insured mortgages do not pose an undue risk to the financial health of the FHA insurance fund.

[50] FHA's current requirements for approving condominium buildings are included in the *Condominium Project Approval and Processing Guide*, available at https://www.hud.gov/sites/documents/11-22MLGUIDE.PDF, subject to certain temporary changes that were most recently extended by FHA Mortgagee Letter 2017-13, *Extension of Temporary Approval Provisions for the Federal Housing Administration (FHA) Condominium Project Approval Process*, August 30, 2017, https://www.hud.gov/sites/documents/17-13ML.PDF.

[51] For example, see the National Association of Realtors, *Condominium Resource Book*, https://www.nar.realtor/condominiums/condominium-resource-book.

Recent Developments

In July 2016, towards the end of the 114th Congress, the Housing Opportunity Through Modernization Act (HOTMA, P.L. 114-201) was enacted. While most of the provisions of HOTMA affected HUD rental assistance programs, there were four provisions related to FHA's requirements for insuring mortgages on condominium units. These provisions directed the HUD Secretary to (1) streamline the recertification process for FHA approval of condominium buildings to make it less burdensome, (2) make changes to the process for granting exceptions for exceeding FHA's limits on commercial space, (3) adopt Federal Housing Finance Agency (FHFA) regulations related to transfer fees and condominiums,[52] and (4) issue new guidance, and a justification, addressing the required percentage of owner-occupied units in the building.[53]

In September 2016, during the 114th Congress, HUD issued a comprehensive proposed rule related to approval of condominium projects.[54] While this rulemaking takes the HOTMA provisions into account, it is broader than just the areas addressed by HOTMA and had been in the development stages prior to the passage of the act. Among other things, it proposed a single-unit approval process, similar to the previous spot approval process, to provide a way for FHA-insured mortgages to be approved for condominiums in buildings that are not FHA-approved, subject to certain conditions.

As of August 2018, HUD had not yet issued a final rule, although it has indicated that the final rule is expected to be issued later in 2018.[55] In June, over a hundred Members of Congress signed a letter to HUD urging it to finalize the rule.[56]

Additional information:

- For more information on the condominium-related provisions included in HOTMA, see CRS Report R44358, *Housing Opportunity Through Modernization Act (H.R. 3700)*.

Housing-Related Tax Issues in the 115th Congress

During the 115th Congress, a number of housing-related tax provisions have been modified or extended through different pieces of enacted legislation: a broad tax revision law that included changes to housing-related tax provisions, tax extenders legislation that extended temporary tax

[52] According to the *Spring 2018 Unified Agenda of Regulatory and Deregulatory Actions*, HUD expects to issue a notice of proposed rulemaking that will address these transfer fee requirements in 2019. See https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=2502-AJ41.

[53] HUD issued guidance related to owner-occupancy requirements in FHA Mortgagee Letter 2016-15, *Federal Housing Administration (FHA) Condominium Project Approval – Owner Occupancy Requirement*, October 26, 2016, https://www.hud.gov/sites/documents/16-15ML.PDF. This guidance generally maintained FHA's existing owner-occupancy requirements of 50% for existing projects and 30% for new projects, but it did provide for lower owner-occupancy percentages for buildings that meet specified conditions. HOTMA had provided that if HUD did not issue its guidance within 90 days, the owner-occupancy percentage would be set at 35%. Since HUD did issue guidance within the required time period, the 35% requirement did not go into effect.

[54] Department of Housing and Urban Development, "Project Approval for Single-Family Condominiums," 81 *Federal Register* 66565-66576, September 28, 2016, https://www.federalregister.gov/documents/2016/09/28/2016-23258/project-approval-for-single-family-condominiums.

[55] See the hearing transcript for House Financial Services Committee, *Oversight of the Department of Housing and Urban Development*, Full Committee Hearing, June 27, 2018.

[56] Ibid.

provisions related to housing, and an appropriations law that included changes to the low-income housing tax credit.

Housing Provisions in the Tax Revision Law

Background

Two of the largest and most well-known tax incentives available to homeowners are the mortgage interest deduction and the deduction for property taxes.

Homeowners are allowed to deduct interest paid on a mortgage that finances the acquisition of a primary or secondary residence as long as the homeowner itemizes their tax deductions. Historically, the amount of interest that was allowed to be deducted was limited to the interest incurred on the first $1 million of combined mortgage debt and the first $100,000 of home equity debt ($1.1 million total). If a taxpayer's mortgage debt exceeded $1 million, they were still allowed to claim a deduction for a percentage of interest paid.[57] Homeowners also benefit from the ability to deduct state and local property taxes. Historically, homeowners were allowed to claim an itemized deduction equal to the full amount of state and local property taxes paid.

Not all homeowners claim these deductions. Some have no mortgage, and hence no interest to deduct. Others may be toward the end of their mortgage repayment period, and thus paying relatively little interest, so the deduction for interest is not worth much. Some homeowners live in states with low state and local taxes, and may find the standard deduction to be more valuable. Some may also live in low-cost areas and therefore have a relatively small mortgage and property taxes. There may also be interactions with other drivers of itemization. For example, itemization rates tend to be lower in states with an income tax, which can also lead to fewer homeowners claiming the deductions for mortgage interest and property taxes.

Among households that do claim the deductions, the majority of their advantages tend to benefit those with higher income. This is in part because these households are more likely to have a financial incentive to itemize their taxes and claim the deductions. It is also because higher-income households are more likely to have more expensive homes with larger mortgages, and therefore more likely to have higher property taxes and larger amounts of mortgage interest to deduct, and because the tax benefits increase with higher marginal tax rates in higher income brackets.

Some have argued that the ability to deduct mortgage interest and property taxes incentivize homeownership and have pointed to several perceived benefits of homeownership as a rationale for these tax benefits. However, some researchers have suggested that these deductions have little effect on the homeownership rate, in part because they do not reduce the upfront cost of buying a home, which is one of the biggest barriers to homeownership for many households. This research suggests that the tax benefits may incentivize homebuyers to purchase larger homes than they otherwise would, however, because they increase households' purchasing power and the benefit of the deductions increases with more expensive homes and larger mortgages.

The above discussion draws from CRS Report R41596, *The Mortgage Interest and Property Tax Deductions: Analysis and Options*. Readers can refer to that report for a fuller exploration of

[57] The percentage of interest that was deductible was equal to $1 million divided by the mortgage balance (a similar calculation was made separately in cases where home equity debt exceeds $100,000). For example, a homeowner with a mortgage of $1.25 million would have been permitted to deduct 80% ($1 million divided by $1.25 million) of their interest payments.

these tax benefits, including the rationales put forward for them, an economic analysis of their effects, and a discussion of research related to their impact.

Recent Developments

In late 2017, a broad tax revision law (P.L. 115-97) that substantively changed the federal tax system was signed into law by President Trump. The legislation temporarily reduced the maximum amount of mortgage debt for which interest can be deducted to $750,000 ($375,000 for married filing separately) for debt incurred after December 15, 2017. For mortgage debt incurred on or before December 15, 2017, the combined mortgage limit remains $1 million ($500,000 for married filing separately). Refinanced mortgage debt will be treated as having been incurred on the date of the original mortgage for purposes of determining which mortgage limit applies ($750,000 or $1 million). The interest on a home equity loan that is secured by a principal or second residence and is used to buy, build, or substantially improve a taxpayer's home is still deductible, but the home equity loan amount counts towards the maximum eligible mortgage amount ($750,000 or $1 million). After 2025, the mortgage limit for all new and existing qualifying mortgage interest will revert to $1 million, plus $100,000 in home equity indebtedness (regardless of its use).

The 2017 tax revision also limits the deduction for state and local property and income taxes to $10,000 until the end of 2025. Additionally, P.L. 115-97 increased the standard deduction to $12,000 (single) or $24,000 (married), which is expected to further reduce the number of taxpayers who itemize deductions generally.

The increase in the standard deduction will mitigate the impact of the changes to the mortgage interest and property tax deductions for many households, though some will pay more in taxes as a result of these changes. The limit to the deduction for property taxes could have implications for some states and localities with high property taxes, and to the extent that the value of the mortgage interest deduction has been capitalized into home prices, the lower limits on the amount of mortgage interest that can be deducted could exert downward pressure on home prices in some areas. However, at this point the size and scope of any effects these changes may have is unclear.

Additional information:

- For more on how the tax revision law affected the mortgage interest deduction, see CRS Insight IN10845, *P.L. 115-97: The Mortgage Interest Deduction*.

Housing Provisions in Tax Extenders Legislation

Background

In the past, Congress has regularly extended a number of temporary tax provisions that address a variety of policy issues, including housing. This set of temporary provisions is commonly referred to as "tax extenders." Two housing-related provisions that have been included in tax extenders packages in the recent past are the exclusion for canceled mortgage debt, and the deduction for mortgage insurance premiums.

Exclusion for Canceled Mortgage Debt

Historically, when all or part of a taxpayer's mortgage debt has been forgiven, the forgiven amount has been included in the taxpayer's gross income for tax purposes.[58] This income is typically referred to as canceled mortgage debt income.

During the housing market turmoil of the late 2000s, some efforts to help troubled borrowers avoid foreclosure resulted in canceled mortgage debt.[59] The Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142), signed into law in December 2007, temporarily excluded qualified canceled mortgage debt income that is associated with a primary residence from taxation. The provision was originally effective for debt discharged before January 1, 2010, and was subsequently extended several times.

Rationales put forward for extending the exclusion have included minimizing hardship for distressed households, lessening the risk that nontax homeownership retention efforts will be thwarted by tax policy, and assisting in the recoveries of the housing market and overall economy. Arguments against the exclusion have included concerns that it makes debt forgiveness more attractive for homeowners, which could encourage homeowners to be less responsible about fulfilling debt obligations, and concerns about fairness as the ability to realize the benefits depends on a variety of factors.[60] Furthermore, to the extent that housing markets and the economy have improved in recent years, and foreclosure rates have returned to more typical levels, some may argue that the exclusion is less necessary now than it may have been during the height of the housing and mortgage market turmoil.

Deductibility of Mortgage Insurance Premiums

As described earlier, homeowners traditionally have been able to deduct the interest paid on their mortgage, as well as property taxes they pay, as long as they itemize their tax deductions. Beginning in 2007, homeowners could also deduct qualifying mortgage insurance premiums as a result of the Tax Relief and Health Care Act of 2006 (P.L. 109-432).[61] Specifically, homeowners could effectively treat qualifying mortgage insurance premiums as mortgage interest, thus making the premiums deductible if homeowners itemized and their adjusted gross incomes were below a specified threshold ($55,000 for single, $110,000 for married filing jointly). Originally, the deduction was to be available only for 2007, but it was subsequently extended several times.

Two rationales that have been put forward for allowing the deduction of mortgage insurance premiums are the promotion of homeownership and the recovery of the housing market. However, it is not clear that the deduction has an effect on the homeownership rate, nor is it clear that the deduction is still needed to assist in the recovery of the housing market, given that housing market indicators suggest that it is stronger as a whole than when the provision was originally enacted (although some areas have not fully recovered from the housing market

[58] Generally, any type of cancelled debt is to be included in a taxpayer's gross income. Several permanent exceptions to this general tax treatment of canceled debt exist. They are discussed in CRS Report RL34212, *Analysis of the Tax Exclusion for Canceled Mortgage Debt Income*.

[59] For example, canceled mortgage debt is common in a "short sale," when the lender allows the borrower to sell the home for less than the remaining amount owed on the mortgage and may forgive the remaining debt.

[60] For example, being able to take advantage of the exclusion depends on whether or not a homeowner is able to negotiate a debt cancelation, the income tax bracket of the taxpayer, and whether or not the taxpayer retains ownership of the house following the debt cancellation.

[61] In general, lenders require mortgage insurance for mortgages where the borrower makes a down payment of less than 20%. Mortgage insurance protects the lender in the event that the borrower defaults on the mortgage. Mortgage insurance fees, or premiums, are paid by the borrower.

turmoil). Furthermore, to the degree that owner-occupied housing is over subsidized, extending the deduction could lead to a greater misallocation of resources that are directed toward the housing industry. Extending the deduction, however, may assist some households who are in financial distress because of burdensome housing payments.

Recent Developments

Congress most recently enacted tax extenders legislation in the Bipartisan Budget Act of 2018 (P.L. 115-123). The legislation extended the exclusion for canceled mortgage debt and the ability to deduct mortgage insurance premiums, each of which had previously expired at the end of 2016, through the end of 2017.

The 115th Congress could consider additional tax extenders legislation related to these and other expired tax provisions. Any such consideration would be done in the context of the tax revision legislation enacted at the end of 2017.

Additional information:

- For more on the tax extenders in the Bipartisan Budget Act, see CRS Report R44925, *Recently Expired Individual Tax Provisions ("Tax Extenders"): In Brief*.
- For background on the tax exclusion for canceled mortgage debt, see CRS Report RL34212, *Analysis of the Tax Exclusion for Canceled Mortgage Debt Income*.

Changes to the Low-Income Housing Tax Credit

Background

The low-income housing tax credit (LIHTC) is one of the primary sources of federal funding that is used for affordable rental housing development, which it incentivizes with federal tax credits administered through the Internal Revenue Service. The tax credits are provided to states based on population, and states award the credits to housing developers that agree to build or rehabilitate housing where a certain percentage of units will be affordable to low-income households. Housing developers then sell the credits to investors and use the proceeds to help finance the housing developments.

Historically, LIHTC-assisted developments have had to meet one of two income tests: either a "20-50" test or a "40-60" test. Under the former, 20% of units have to be occupied by households with incomes at or below 50% of the area's median gross income (area median income, or AMI), adjusted for family size. Under the latter, at least 40% of the units have to be occupied by individuals with incomes at or below 60% of the area's median gross income, adjusted for family size.

Recent Developments

The Consolidated Appropriations Act, 2018 (P.L. 115-141) made two changes to the LIHTC program. The first change added a third option for complying with the income test for LIHTC developments in addition to the 20-50 or 40-60 tests. This option allows for income averaging, and the income test is satisfied if at least 40% of the units are occupied by tenants with an *average* income of no greater than 60% of AMI, and no individual tenant has an income exceeding 80% of AMI. Thus, for example, renting to someone with an income equal to 80% of AMI would also require renting to someone with an income no greater than 40% of AMI, so the tenants would have an average income equal to 60% of AMI. Proponents of income averaging

have argued that it will have a variety of benefits, including potentially making it easier for LIHTC developments to include more deeply income-targeted units for households with the lowest incomes, increasing the number of households that are eligible to live in LIHTC properties, and making it easier to use LIHTC for mixed-income housing.[62]

The second change made by P.L. 115-141 increased the amount of LIHTC credits available to states by 12.5% per year for each of FY2018-FY2021.

The broader tax revision law (P.L. 115-97) did not make any changes directly to the LIHTC program. However, certain changes that were included in the law—such as reductions in corporate tax rates—could affect the demand for LIHTCs and the price that investors are willing to pay for them. If investors pay less for tax credits, then the credits would generate less money for affordable housing development, all else equal. The increase in tax credits included in P.L. 115-141 may help to alleviate concerns about the potential impact of the tax revision law on the price for LIHTCs.

Additional information:

- For more information on the low-income housing tax credit in general, and these recent changes to the program, see CRS Report RS22389, *An Introduction to the Low-Income Housing Tax Credit*.

Housing Assistance Issues in the 115th Congress

Some of the housing-related issues that are active in the 115th Congress have to do with federal programs or activities that provide housing assistance to low-income households or other households with particular housing needs.

HUD Appropriations

Background

For several years, concern in Congress about federal budget deficits has led to increased interest in reducing the amount of discretionary funding provided each year through the annual appropriations process. This interest was most manifest by the enactment of the Budget Control Act of 2011 (P.L. 112-25), which set enforceable limits for both mandatory and discretionary spending.[63] The limits on discretionary spending, which have been amended and adjusted since they were first enacted,[64] have implications for HUD's budget, the largest source of funding for direct housing assistance, because it is made up almost entirely of discretionary appropriations.[65]

More than three-quarters of HUD's appropriations are devoted to three rental assistance programs serving more than 4 million families: the Section 8 Housing Choice Voucher (HCV) program,

[62] For example, see Michael Novogradac, "Income Averaging Option Creates More Opportunities for Affordable Housing," Novogradac & Company, June 1, 2018, https://www.novoco.com/periodicals/articles/income-averaging-option-creates-more-opportunities-affordable-housing.

[63] For more information, see CRS Report R44874, *The Budget Control Act: Frequently Asked Questions*.

[64] Ibid.

[65] Funding levels for HUD are determined by the Transportation, HUD, and Related Agencies (THUD) appropriations subcommittee, generally in a bill by the same name. While HUD's budget is generally smaller than the Department of Transportation's, it makes up the largest share of the discretionary funding in the THUD appropriations bill each year because the majority of DOT's budget is made up of mandatory funding.

Section 8 project-based rental assistance, and the public housing program. Funding for the HCV program and project-based rental assistance has been increasing in recent years, largely because of the increased costs of maintaining assistance for households that are currently served by the programs.[66] Public housing has, arguably, been underfunded (based on studies undertaken by HUD of what it should cost to operate and maintain it) for many years.[67] Despite the large share of total HUD funding these rental assistance programs command, their combined funding levels only permit them to serve an estimated one in four eligible families, which creates long waiting lists for assistance in most communities.[68]

In a budget environment featuring limits on discretionary spending, the pressure to provide increased funding to maintain current services for HUD's largest programs must be balanced against the pressure from states, localities, and advocates to maintain or increase funding for other HUD programs, such as the Community Development Block Grant (CDBG) program, grants for homelessness assistance, and funding for Native American housing.

Recent Developments

The Trump Administration's budget requests for FY2018 and FY2019 each proposed decreases in funding for HUD as compared to the prior year. Both budget requests proposed to eliminate funding for several programs, including multiple HUD block grants (CDBG, the HOME Investment Partnerships Program, and the Self-Help and Assisted Homeownership Opportunity Program (SHOP)), and to decrease funding for most other HUD programs. In proposing to eliminate the block grant programs, the Administration cited budget constraints and proposed that state and local governments should take on more of a role in the housing and community development activities funded by these programs.

In February 2018, Congress enacted the Bipartisan Budget Act of FY2018 (BBA; P.L. 115-123), which, among other things, increased the statutory limits on discretionary spending for FY2018 and FY2019. Following passage of the BBA, the Consolidated Appropriations Act, 2018 (P.L. 115-141) was enacted in March 2018, providing final FY2018 appropriations for HUD. The enacted legislation increased overall funding for HUD by nearly 10% compared to FY2017 and did not adopt the program eliminations proposed in the President's budget request. Most HUD funding accounts saw increases in FY2018 compared to FY2017.

Additional information:

- For more on HUD appropriations trends in general, see CRS Report R42542, *Department of Housing and Urban Development (HUD): Funding Trends Since FY2002*.
- For more on FY2018 HUD appropriations, see CRS Report R44931, *HUD FY2018 Appropriations: In Brief*.

[66] For the Section 8 HCV program, funding has been increasing in part because Congress has created more vouchers each year over the past several years (largely to replace units lost to the affordable housing stock in other assisted housing programs or to provide targeted assistance for homeless veterans), and in part because the cost of renewing individual vouchers has been rising as gaps between low-income tenants' incomes and rents in the market have been growing. For the project-based Section 8 program, the increased funding is due to more long-term rental assistance contracts on older properties expiring and being renewed, requiring new appropriations.

[67] For example, see Meryl Finkel et al., "Capital Needs in the Public Housing Program: Revised Final Report," prepared for the Department of Housing and Urban Development, November 24, 2010, http://portal.hud.gov/hudportal/documents/huddoc?id=PH_Capital_Needs.pdf.

[68] See Figure 6 of Joint Center for Housing Studies of Harvard University, *America's Rental Housing, 2017*, p.6, http://www.jchs.harvard.edu//research-areas/reports/americas-rental-housing-2017.

- For more on the FY2019 HUD budget request, see CRS Report R45166, *Department of Housing and Urban Development (HUD): FY2019 Budget Request Fact Sheet*.

HUD Rental Assistance Programs

Background

As noted, HUD administers three primary direct rental assistance programs: the Housing Choice Voucher program, the public housing program, and project-based rental assistance (including project-based Section 8). Combined, these programs serve more than 4 million families at a cost of nearly $40 billion per year, accounting for the vast majority of HUD's total budget. While the three programs provide different forms of assistance—rental vouchers, publicly owned subsidized apartments, and privately owned subsidized apartments—they all allow low-income individuals and families to pay rent considered affordable (generally 30% of adjusted family income). About half of the families served by the combined programs are headed by persons who are elderly or have disabilities and the other half are primarily other families with children. Although these are the largest federal housing assistance programs for low-income families, they are estimated to serve only approximately one in four eligible families due to funding limitations, and most communities have long waiting lists for assistance.

Recent Developments

The size and scope of HUD's rental assistance programs mean they are often of interest to policymakers. Specifically in the 115th Congress, cost considerations, interest in broader welfare reform ideas such as work requirements, and concerns about administrative efficiencies have led to various policy proposals and debates.

Administration Rent Reform and Work Requirement Proposal

In April 2018, HUD Secretary Carson announced the Administration's Making Affordable Housing Work Act of 2018 (MAHWA) legislative proposal.[69] If enacted, the proposal would make a number of changes to the way tenant rents are calculated in HUD rental assistance programs. These changes would result in rent increases for assisted housing recipients, and corresponding decreases in the cost of federal subsidies. Specifically, MAHWA proposes to eliminate the current income deductions used when calculating tenant rent and establish two rent structures: one for elderly and disabled households, based on 30% of gross income; and one for other families, based on 35% of gross income, with a mandatory minimum rent based on part-time work at the minimum wage. While these changes would result in rent increases for tenants, the language would allow the Secretary to phase in the increases. Additionally, the proposal would authorize the Secretary to establish other rent structures, and would authorize local program administrators to establish still other rent structures, with the Secretary's authorization. Further, the proposal would permit local program administrators or property owners to institute work requirements for recipients. Given the variation that would result from these last two

[69] HUD, "Secretary Carson Proposes Rent Reform: Reforms to make current rent policies simpler, more transparent and predictable," press release, April 25, 2018 https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_033.

elements permitting local discretion, it is difficult to estimate what the consequences of the changes would be for any given family.[70]

In announcing the proposal, HUD described it as setting the programs on "a more fiscally sustainable path," creating administrative efficiency, and promoting self-sufficiency.[71] Low-income housing advocates have been critical of the proposal, particularly the effect increased rent payments may have on families.[72] Thus far, legislation to implement the Administration's proposal has not been introduced in Congress.[73]

Rental Assistance Demonstration

The Rental Assistance Demonstration (RAD) was an Obama Administration initiative initially designed to test the feasibility of addressing the estimated $25.6 billion backlog in unmet capital needs in the public housing program[74] by allowing local public housing authorities (PHAs) to convert their public housing properties to either Section 8 Housing Choice Vouchers or Section 8 project-based rental assistance.[75] PHAs are limited in their ability to mortgage, and thus raise private capital for, their public housing properties because of a federal deed restriction placed on the properties as a condition of federal assistance. When public housing properties are converted under RAD, that deed restriction is removed.[76] As currently authorized, RAD conversions must be cost-neutral, meaning that the Section 8 rents the converted properties may receive must not result in higher subsidies than would have been received under the public housing program. Given this restriction, and without additional subsidy, not all public housing properties can use a conversion to raise private capital, potentially limiting the usefulness of a conversion for some properties.[77]

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[70] Some advocacy groups have attempted to quantify the effect of the rent increases outlined in the proposal (not accounting for the alternative rent models authorized under the bill). For example, see Will Fischer, "Trump, Ross Rent Plans Would Harm Low-Income People in Every State," Center on Budget and Policy Priorities, June 7, 2018, available at https://www.cbpp.org/blog/trump-ross-rent-plans-would-harm-low-income-people-in-every-state.

[71] HUD, "Secretary Carson Proposes Rent Reform: Reforms to make current rent policies simpler, more transparent and predictable," press release, April 25, 2018 https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_033.

[72] For example, see National Low Income Housing Coalition, "Affordable Housing Advocates Tell HUD and Congress – Keep Housing Affordable for Low Income Families," press release, April 25, 2018, http://nlihc.org/press/releases/10642.

[73] A different draft rent reform proposal—the draft "Promoting Resident Opportunity through Rent Reform Act," to be sponsored by Congressman Dennis Ross—was the subject of a hearing by the Housing and Insurance subcommittee of the House Financial Services Committee; U.S. Congress, House Committee on Financial Services, Subcommittee on Housing and Insurance, *HUD's Role in Rental Assistance: An Oversight and Review of Legislative Proposals on Rent Reform*, 115th Cong., 2nd sess., April 25, 2018. https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403333.

[74] The backlog estimate comes from Meryl Finkel, Ken Lam, et al., *Capital Needs in the Public Housing Program* (Cambridge, MA: November 24, 2011).

[75] While most of the focus of RAD has been on public housing conversions, the 2012 law also authorized a separate component of RAD that allows for the conversion of older forms of rental assistance contracts (Rental Assistance Payment and Rent Supplement contracts, which predate the Section 8 program) to Section 8. Absent this conversion, HUD has no authority to renew those old contracts when they expire.

[76] New affordability restrictions are placed on the property as a condition of a RAD conversion, but they do not require the same deep affordability as is required under the public housing deed restriction (called a Declaration of Trust).

[77] While the raising of private capital is the most common incentive for conversion, not all conversions feature it. For more information, see Econometrica, Inc. *Evaluation of HUD's Rental Assistance Demonstration*, Department of Housing and Urban Development, interim report, September 2016, https://www.huduser.gov/portal/sites/default/files/

RAD was first authorized by Congress in the FY2012 HUD appropriations law and was originally limited to 60,000 units of public housing (out of roughly 1 million units).[78] However, Congress has since expanded the demonstration. Most recently, in FY2018, Congress raised the cap so that up to 455,000 units of public housing will be permitted to convert to Section 8 under RAD. Given the most recent expansion, nearly half of all public housing units could ultimately convert.

While RAD conversions have been popular with PHAs,[79] and HUD's initial evaluations of the program have been favorable,[80] a recent GAO study has raised questions about HUD's oversight of it, as well as how much private funding is actually being raised for public housing through the conversions.[81]

Moving to Work Expansion

In the FY2016 HUD appropriations law, Congress mandated that HUD expand the Moving to Work (MTW) demonstration by 100 PHAs.[82] MTW is a waiver program that allows a limited number of participating PHAs to get exceptions from HUD for most of the rules and regulations governing the public housing and voucher programs. MTW has been controversial for many years, with PHAs supporting the flexibility the demonstration provides (e.g., allowing PHAs to move funding between programs), and low-income housing advocates criticizing some of the policies being adopted by PHAs (e.g., work requirements and time limits). Most recently, GAO issued a report raising concerns about HUD's oversight of MTW, including the lack of monitoring of the effects of policy changes under MTW on tenants.[83]

The FY2016 expansion required that HUD phase in the expansion and that it evaluate any new policies adopted by participating PHAs. Following a series of listening sessions, HUD published a notice in the *Federal Register* in January 2017 soliciting comments on the expansion process for MTW. In May 2017, HUD reopened the comment period for that notice. The comment period has since closed, and no additional action on the expansion has been taken.[84]

Other Assisted Housing Legislation

A number of more narrowly targeted housing assistance bills have been approved by committee, considered on the floor, or enacted into law in the 115th Congress. These include the following:

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pdf/RAD-InterimRpt.pdf.

[78] P.L. 112-55; 125 Stat. 673.

[79] For example, see Letter from Sunia Zaterman, Executive Director, CLPHA, Saul Ramirez, Executive Director, NAHRO, and Timothy G. Kaiser, Executive Director, PHADA, to House and Senate Appropriations Committee Chairs and Ranking Members, April 16, 2017, http://www.clpha.org/uploads/Public_Housing/5-16-14IndustryGroupLetteronRADCap.pdf.

[80] For example, see Econometrica, Inc., *Evaluation of HUD's Rental Assistance Demonstration*, Department of Housing and Urban Development, interim report, September 2016, https://www.huduser.gov/portal/sites/default/files/pdf/RAD-InterimRpt.pdf.

[81] U.S. Government Accountability Office, *Rental Assistance Demonstration: HUD Needs to Take Action to Improve Metrics and Ongoing Oversight*, GAO-18-123, February 2018, https://www.gao.gov/products/GAO-18-123.

[82] See Section 239, Title II, Division L of P.L. 114-113.

[83] U.S. Government Accountability Office, *Rental Housing: Improvements Needed to Better Monitor the Moving to Work Demonstration, Including Effects on Tenants*, GAO-18-150, January 25, 2018, https://www.gao.gov/products/GAO-18-150.

[84] For more information about the current status, see https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw.

- P.L. 115-174, the Economic Growth, Regulatory Relief, and Consumer Protection Act, signed into law in May 2018, contains two assisted housing provisions: one making changes to the Family Self Sufficiency program that largely mirrors H.R. 4258, the Family Self Sufficiency Act, which was reported by the House Financial Services Committee in December 2017 and approved by the House in January 2018; and one offering various regulatory streamlining provisions for small PHAs.
- H.R. 5793, the Housing Choice Voucher Mobility Demonstration Act of 2018, ordered reported by the House Financial Services Committee in May 2018 and passed by the House in July 2018 (on a vote of 412-5, Roll no. 22), would authorize HUD to conduct a mobility demonstration to test regional administration of the Housing Choice Voucher program and its effects on encouraging and supporting moves by voucher holders to lower-poverty and higher-opportunity areas.
- H.R. 5735, the THRIVE Act, ordered reported by the House Financial Services Committee in May 2018 and passed by the House in June 2018 (on a vote of 230-173, Roll no. 266), would require HUD to undertake a demonstration program, setting aside up to 10,000 existing Housing Choice Vouchers, to test temporary supportive housing approaches for individuals recovering from opioid and other substance use disorders.
- H.R. 2069, the Fostering Stable Housing Opportunities Act of 2017, ordered to be reported by the House Financial Services Committee in July 2018 (on a vote of 34-23), would create a new federal preference for youth aging out of foster care and at risk of homelessness across most federal housing assistance programs and require that youth accessing assistance via the preference be subject to education, training, or work requirements as set by local program administrators.
- H.R. 1511, the Homeless Children and Youth Act of 2017, ordered to be reported by the House Financial Services Committee in July 2018 (on a vote of 39-18), would expand the definition of homelessness governing the HUD homeless programs, while maintaining existing resources for the programs, to include homeless families with children and youth certified as homeless under other federal programs that have less-restrictive definitions.

Native American Housing Programs

Background

Native Americans living in tribal areas experience a variety of housing challenges. Housing conditions in tribal areas are generally worse than those for the United States as a whole, and factors such as the legal status of trust lands present additional complications.[85]

The main federal program that provides housing assistance to Native American tribes and Alaska Native villages is the Native American Housing Block Grant (NAHBG), which was authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA, P.L. 104-330). NAHASDA reorganized the federal system of housing assistance for tribes while recognizing the rights of tribal self-governance and self-determination. The NAHBG provides

[85] U.S. Department of Housing and Urban Development, *Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, https://www.huduser.gov/portal/native_american_assessment/home.html.

formula funding to tribes for a range of affordable housing activities that benefit primarily low-income Native Americans or Alaska Natives living in tribal areas. A separate block grant program authorized by NAHASDA, the Native Hawaiian Housing Block Grant (NHHBG), provides funding for affordable housing activities that benefit Native Hawaiians eligible to reside on the Hawaiian Home Lands.[86]

Although the NAHBG is the largest source of federal housing assistance to tribes, other federal housing programs also provide tribal housing assistance. One of these is the Tribal HUD-Veterans Affairs Supportive Housing (Tribal HUD-VASH) program, which provides rental assistance and supportive services to Native American veterans who are homeless or at risk of homelessness.[87] Tribal HUD-VASH was initially created and funded through the FY2015 HUD appropriations act (P.L. 113-235), and funds to renew rental assistance were provided in FY2017 and FY2018. No separate authorizing legislation for the program currently exists.

Recent Developments

The most recent authorization for most NAHASDA programs expired at the end of FY2013, although these programs have generally continued to be funded in annual appropriations laws. (The NHHBG has not been reauthorized since its original authorization expired in FY2005, though it has continued to receive funding in most years.[88])

Both the 113th and 114th Congresses considered NAHASDA reauthorization legislation, though none was enacted. In the 115th Congress, NAHASDA reauthorization bills have been introduced in the House and the Senate; these bills are similar, but not identical, to one another. In the House, H.R. 3864 was reported by the Financial Services Committee in March 2018, while in the Senate S. 1895 has been referred to the Committee on Indian Affairs.[89]

As introduced, both the House and the Senate bills would reauthorize the NAHBG and the NHHBG as well as two home loan guarantee programs that benefit Native Americans and Native Hawaiians, respectively.[90] However, as reported by the House Financial Services Committee, H.R. 3864 does not include reauthorization of the Native Hawaiian programs. Both bills would also make certain changes to NAHBG program requirements, authorize a demonstration program intended to allow participating tribes to use their NAHBG funds in specified ways to support more private financing for housing activities in tribal areas, and require the HUD Secretary to set aside at least 5% of HUD-VASH funding for the Tribal HUD-VASH program. In response to

[86] For more information on the Hawaiian Home Lands, and the eligibility requirements for Native Hawaiians to reside on them, see the Department of Hawaiian Home Lands website at http://dhhl.hawaii.gov/about/.

[87] Tribal HUD-VASH is modeled on the broader HUD-Veterans Affairs Supportive Housing (VASH) program, which provides rental assistance and supportive services for homeless veterans. For more information on HUD-VASH and Tribal HUD-VASH, see CRS Report RL34024, *Veterans and Homelessness*.

[88] In FY2016, no funding was appropriated for the NHHBG. However, HUD's budget justification for FY2016 (as well as other years) indicated that HUD would have sufficient carryover balances from prior-year appropriations to continue to carry out activities under the program without a new appropriation.

[89] Another Senate bill, the Bringing Useful Initiatives for Indian Land Development (BUILD Act, S. 1275), would also make certain changes to NAHASDA and reauthorize the NAHBG and an Indian housing loan guarantee program. The Indian Affairs Committee held a hearing on the BUILD Act in June 2017.

[90] These programs are HUD's Indian Home Loan Guarantee Program (the Section 184 Program) and the Native Hawaiian Housing Loan Guarantee Program (the Section 184A program). They are authorized under the Housing and Community Development Act of 1992 (P.L. 102-550), as amended, rather than by NAHASDA. For more information on these programs, see https://www.hud.gov/program_offices/public_indian_housing/ih/homeownership/184 and https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/onap/program184a, respectively.

concerns about certain tribes not spending their NAHBG funds in a timely fashion, both bills also include a provision to reduce funding to tribes with annual allocations of $5 million or more who have large balances of unexpended NAHBG funds. (The vast majority of tribes receive annual allocations below $5 million.)

While tribes and Congress are generally supportive of NAHASDA, there has been some disagreement in Congress over specific provisions or policy proposals that have been included in reauthorization bills, such as a provision that would allow tribes to set maximum rents for NAHASDA-assisted housing units that exceed 30% of tenant incomes. There has also been disagreement over the Native Hawaiian housing programs for many years. This disagreement reflects a broader debate about the appropriate relationship of the federal government to Native Hawaiians and whether programs that solely benefit Native Hawaiians could be construed to provide benefits based on race.[91] Supporters of the Native Hawaiian housing programs argue that the funding is necessary due to housing conditions on the Hawaiian Home Lands and the history of the federal government's involvement with Native Hawaiians.[92]

Separately from NAHASDA, a stand-alone Senate bill (S. 1333) would codify the Tribal HUD-VASH program.[93] The Senate passed S. 1333 in May 2018.

Additional information:

- For more on NAHASDA and the NAHBG, see CRS Report R43307, *The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA): Background and Funding*.

Housing and Disaster Response

Background

During the 115th Congress, several major disasters struck the United States (including Hurricanes Harvey, Irma, and Maria and significant wildfires in California) that resulted in presidential disaster declarations. These declarations trigger aid that protects property, public health, and safety, primarily provided through the Federal Emergency Management Agency (FEMA). FEMA's housing-related assistance may include, depending on the needs created by the specific disaster, emergency shelter, temporary housing assistance, and assistance with long-term housing recovery. In many cases, Congress will also provide supplemental funding, often through HUD's Community Development Block Grant-Disaster Recovery (CDBG-DR) grant program, to further support long-term recovery efforts following major disasters.

[91] For example, see debate on the NHHBG during the consideration of a NAHASDA reauthorization bill in 2007 in "Native American Housing Assistance and Self-Determination Reauthorization Act of 2007," *Congressional Record*, vol. 153 (September 6, 2007), pp. H10187-H10190, https://www.congress.gov/crec/2007/09/06/CREC-2007-09-06-pt1-PgH10182.pdf.

[92] For example, see the minority views in U.S. Congress, House Committee on Financial Services, *Native American Housing Assistance and Self-Determination Reauthorization Act of 2017*, report to accompany H.R. 3864, 115th Cong., 2nd sess., March 8, 2018, H.Rept. 115-591 (Washington, DC: GPO, 2018), p. 101, https://www.congress.gov/115/crpt/hrpt591/CRPT-115hrpt591.pdf.

[93] An identical House bill, H.R. 4359, has been referred to the House Committee on Financial Services.

Recent Developments

CDBG-DR

The 115th Congress has provided substantial supplemental appropriations, including nearly $36 billion in total supplemental CDBG-DR funding in FY2017 and FY2018 combined, to aid disaster-affected communities with long-term recovery.[94]

While CDBG-DR has had a significant role in funding recovery efforts from past disasters, and is slated to play a major role in the recovery from the 2017 hurricanes, the program is not formally authorized, meaning the rules that govern the funding use and oversight vary with HUD guidance accompanying each allocation. Some Members of the 115th Congress have expressed interest in formally authorizing the CDBG-DR program, in part in response to concerns about HUD's oversight of CDBG-DR funding. The House Financial Services Committee's Subcommittee on Oversight and Investigations held a hearing on CDBG-DR oversight and potential for future reforms, including authorization of the program.[95] The House Financial Services Committee later ordered to be reported H.R. 4557, the Reforming Disaster Recovery Act of 2017. The bill would authorize the CDBG-DR program and includes a number of provisions to codify financial controls over program funds.

Disaster Housing Assistance Program

Advocates for low-income housing[96] and some Members of Congress[97] have been critical of FEMA's housing response to the 2017 hurricanes, and they have called for HUD to play a larger role, particularly for residents of Puerto Rico displaced as a result of Hurricane Maria. Specifically, they have called for FEMA to enter into an interagency agreement with HUD to provide longer-term temporary rental assistance. This was done after Hurricanes Katrina and Ike in 2005 and 2008, and to a more limited extent after Hurricane Sandy in 2012. The program of assistance to residents resulting from those interagency agreements was referred to as the Disaster Housing Assistance Program (DHAP). DHAP was structured somewhat differently after each of those past disasters (in terms of who was eligible, how long they received rental assistance, how they were transitioned off of assistance, etc.), but it generally featured FEMA-funded rental assistance administered by local PHAs and modeled after Section 8 Housing Choice Vouchers.[98]

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[94] For the allocation of these funds, see https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-grantee-contact-information/#all-disasters. While the bulk of the funding was provided in response to the 2017 hurricanes, other 2017 disasters were also eligible for funding, and a portion of the money provided was set aside for disaster mitigation and made available to a broader set of communities (all who had received CDBG-DR funding since FY2014).

[95] U.S. Congress, House Financial Services Committee, Oversight and Investigations Subcommittee, "Community Development Block Grant-Disaster Recovery Program – Stakeholder Perspectives" hearing, 115th Cong., 2nd Sess., May 17, 2018.

[96] For example, see letter from the Hurricane Housing Recovery Coalition (led by the National Low Income Housing Coalition, representing over 500 organizations and local governments) to Majority Leader McConnell, Minority Leader Schumer, Speaker of the House Ryan, and Minority Leader Pelosi, recommending DHAP, among other changes in response to the 2017 disasters, available at http://nlihc.org/sites/default/files/Congressional-Disaster-Recovery-Recommendations_092017.pdf.

[97] For example, see the Housing Victims of Major Disasters Act of 2018 (H.R. 5474/S. 2996), which would require FEMA to enter into a DHAP contract with HUD.

[98] For more information about DHAP-Katrina, see Gretchen Locke and Larry Buron, *Study of Household Transition from the Disaster Housing Assistance Program (DHAP-Katrina)*, Abt Associates, Inc., final report, March 2013, https://www.huduser.gov/portal/publications/destech/DHAP.html. For more information on DHAP-Ike, see https://www.hud.gov/program_offices/public_indian_housing/publications/ike. For more information on DHAP-Sandy,

The structure of a future DHAP would depend on what was negotiated between FEMA and HUD, unless otherwise specified by Congress.

Although the governor of Puerto Rico explicitly requested in December 2017 that FEMA initiate a DHAP in response to Hurricane Maria, FEMA denied that request in May of 2018, arguing DHAP was neither necessary nor cost effective.[99] Instead, FEMA has made various forms of temporary housing assistance available for Puerto Ricans displaced to the mainland United States, primarily funding extended hotel and motel stays. Those temporary programs have been slated to expire several times but have repeatedly been extended, including by court order.[100]

Additional information:

- For more information on 2017 disaster supplemental funding, see CRS Report R45084, *2017 Disaster Supplemental Appropriations: Overview*.

HUD Regulatory Reviews During the 115th Congress

The Trump Administration took office in January 2017, at the beginning of the 115th Congress. In February 2017, President Trump issued Executive Order 13777 directing agencies to establish a Regulatory Reform Task Force to evaluate existing agency regulations and identify regulations that should potentially be modified or repealed.[101] In accordance with the order, in May 2017 HUD issued a *Federal Register* notice requesting public comments "to assist in identifying existing regulations that may be outdated, ineffective, or excessively burdensome."[102]

HUD has since suspended, withdrawn, or considered modifying a variety of regulations and policy decisions. Not all of these actions have been directly related to the regulatory review required by Executive Order 13777, though HUD has often described its actions as consistent with that review or noted public comments received as part of that review in explaining its decisions. The regulations and policy decisions that have been withdrawn or suspended or that are under review impact a range of HUD programs and policies. Some of the more high-profile actions that HUD has taken are discussed in the following sections.

Small Area Fair Market Rents

Background

Fair Market Rents (FMRs) are estimated annually by HUD for use in various HUD programs, including for setting subsidy levels in the Section 8 Housing Choice Voucher (HCV) program.

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see https://www.hud.gov/program_offices/public_indian_housing/programs/ph/sandy.

[99] See http://nlihc.org/sites/default/files/DHAP_FEMA-answer.pdf.

[100] FEMA, "Statement on Court Order Extending Transitional Sheltering Assistance Program for Puerto Rico by William Booher, Public Affairs Director," press release, July 3, 2018, https://www.fema.gov/news-release/2018/07/03/statement-court-order-extending-transitional-sheltering-assistance-program.

[101] Executive Order 13777 of February 24, 2017, "Enforcing the Regulatory Reform Agenda," 82 *Federal Register* 12285-12287, March 1, 2017, https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda.

[102] Department of Housing and Urban Development, "Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777," 82 *Federal Register* 22344-22346, May 15, 2017, https://www.federalregister.gov/documents/2017/05/15/2017-09730/reducing-regulatory-burden-enforcing-the-regulatory-reform-agenda-under-executive-order-13777.

FMRs are set at the 40th percentile gross rent of standard-quality housing in a community. HUD uses Census data and inflation estimates to establish FMRs for the geographies of metropolitan areas and nonmetropolitan counties. It has long been understood that housing markets are often more localized than metropolitan areas or counties, but given data limitations these were the smallest geographies for which HUD would produce regular estimates.

With the introduction of the American Community Survey to replace the decennial Census long form, more-frequently updated data became available at smaller geographies. Thus, HUD is now able to calculate FMRs for smaller geographic areas. HUD released its first hypothetical Small Area FMRs (SAFMRs), with FMRs at the zip code level, in FY2011 and has published them annually since. With the release of the SAFMRs, HUD also announced a demonstration to test the use of SAFMRs on the HCV program in selected communities.[103]

Recent Developments

In June 2016, during the 114th Congress, HUD published a notice in the *Federal Register* proposing to require certain PHAs to use SAFMRs in the administration of their HCV programs if they had high levels of vouchers concentrated in high-poverty areas.[104] Some commenters expressed support, citing the opportunity SAFMRs present to promote mobility and accuracy in subsidy determination, among other reasons; other commenters opposed the change, expressing concern about the potential for cost increases in the program resulting in fewer families being served, among other reasons.[105] The rule was finalized in November 2016, at the end of the Obama Administration.[106] Under the final rule, 24 communities[107] would be mandated to use SAFMRs for their HCV programs and any other PHA could choose to use them, beginning on October 1, 2017.

Following the transition to the Trump Administration, HUD Secretary Carson announced in the summer of 2017 that he was suspending the mandatory use of SAFMRs for two fiscal years,

[103] For more information about the SAFMR demonstration, see Meryl Finkel et al., *Small Area Fair Market Rent Demonstration Evaluation*, Department of Housing and Urban Development, interim report, Washington, DC, August 2017, https://www.huduser.gov/portal/publications/SAFMR-Interim-Report.html.

[104] See Department of Housing and Urban Development, "Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (SAFMRs) in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs," 81 *Federal Register* 116, June 2016. As discussed in the background to this proposed rule, prior to this proposed change, PHAs with high concentrations of voucher holders in high poverty communities were given 50th percentile FMRs, rather than 40th percentile FMRs, in an attempt to promote deconcentration. However, HUD research had found the 50th percentile FMRs not to be effective in achieving that goal.

[105] See the discussion of public comments in "Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs," 81 *Federal Register* 221 (November 16, 2016).

[106] Ibid.

[107] The affected areas are Atlanta-Sandy Springs-Roswell, GA HUD Metro FMR Area; Bergen-Passaic, NJ HUD Metro FMR Area; Charlotte-Concord-Gastonia, NC-SC HUD Metro FMR Area; Chicago-Joliet-Naperville, IL HUD Metro FMR Area; Colorado Springs, CO HUD Metro FMR Area; Dallas, TX HUD Metro FMR Area (Dallas-Plano-Irving, Texas Metro Division); Fort Lauderdale, FL HUD Metro FMR Area; Fort Worth-Arlington, TX HUD Metro FMR Area; Gary, IN HUD Metro FMR Area; Hartford-West Hartford-East Hartford, CT HUD Metro FMR Area; Honolulu, HI MSA; Jackson, MS HUD Metro FMR Area; Jacksonville, FL HUD Metro FMR Area; Monmouth-Ocean, NJ HUD Metro FMR Area; North Port-Sarasota-Bradenton, FL MSA; Palm Bay-Melbourne-Titusville, FL MSA; Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA; Pittsburgh, PA HUD Metro FMR Area; Sacramento—Roseville—Arden-Arcade, CA HUD Metro FMR Area; San Antonio-New Braunfels, TX HUD Metro FMR Area; San Diego-Carlsbad, CA MSA; Tampa-St. Petersburg-Clearwater, FL MSA; Washington-Arlington-Alexandria, DC-VA-MD HUD Metro FMR Area; West Palm Beach-Boca Raton, FL HUD Metro FMR Area. Note that Dallas-Plano-Irving, TX Metro area is subject to the use of SAFMRs as the result of a legal settlement, not due to HUD policy changes.

citing interim findings from the SAFMR demonstration that raised concerns about the availability of units for voucher holders, negative public comments during the rulemaking process, and the need for more guidance and technical assistance for PHAs.[108] In response to the suspension, fair housing advocates sued HUD, and in December 2017 the U.S. District Court for the District of Columbia entered a preliminary injunction voiding the suspension, thus putting the mandatory use of SAFMRs into effect. In light of the injunction, HUD issued a notice for the 24 mandatory communities to begin using SAFMRs "as expeditiously as possible and no later than April 1, 2018."[109] Other PHAs may also voluntarily begin using SAFMRs to administer their HCV programs.

Manufactured Housing

Background

Manufactured housing—housing that is assembled in a factory setting and transported to a home site on a permanent chassis—is required to be built in accordance with HUD's Manufactured Housing Construction and Safety Standards.[110] HUD issues regulations governing the standards, with the input of the Manufactured Housing Consensus Committee.[111] HUD also develops model manufactured home installation standards;[112] states that implement their own manufactured home installation programs must have standards that at least meet the HUD model standards.

Recent Developments

In January 2018, HUD issued a *Federal Register* notice stating that, consistent with Executive Order 13777 and the Regulatory Reform Task Force, it was undertaking a broad review of HUD's regulations related to manufactured housing and inviting public comment on regulations that may warrant review. [113] While HUD rules are generally intended to ensure that manufactured housing is high quality and safe, some have argued that certain HUD rules are unnecessary or too inflexible and that they therefore drive up the cost of manufactured housing and reduce access to it as an affordable housing option. Rules or guidance that have attracted particular attention in recent years include a final rule related to on-site completions of manufactured homes,[114] a memorandum related to the construction of certain add-on features (such as attached garages) at the home site and the applicability of HUD alternative construction procedures in those circumstances,[115] and an interpretative bulletin related to foundation requirements in areas subject

[108] Secretary of HUD, *Suspension of Small Area Fair Market Rent (FMR) Designations*, August 2017, https://www.huduser.gov/portal/portal/sites/default/files/pdf/SecretarysDetermination.pdf.

[109] HUD Notice PIH-2018-01.

[110] 42 U.S.C. §§5401 et. seq.

[111] 24 C.F.R. Chapter XX includes HUD regulations related to manufactured housing (including regulations on construction and safety standards, installation, enforcement, fees, and dispute resolution). The Manufactured Home Construction and Safety Standards are at 24 C.F.R. Part 3280.

[112] The model installation standards are in regulation at 24 C.F.R. Part 3285.

[113] Department of Housing and Urban Development, "Regulatory Review of Manufactured Housing Rules," 83 *Federal Register* 3635-3636, January 26, 2018, https://www.federalregister.gov/documents/2018/01/26/2018-01276/regulatory-review-of-manufactured-housing-rules.

[114] Department of Housing and Urban Development, *On-Site Completion of Construction of Manufactured Homes*, 80 *Federal Register* 53712-53732, September 8, 2015, https://www.federalregister.gov/documents/2015/09/08/2015-21774/on-site-completion-of-construction-of-manufactured-homes.

[115] Department of Housing and Urban Development, *Construction of On-Site Installation of Add-ons, such as an*

to ground freezing.[116] HUD specifically requested comments on these and other selected topics, in addition to requesting comments generally on any of its manufactured housing regulations.[117]

The House-passed FY2018 consolidated appropriations bill that included HUD appropriations would have prohibited funds provided in that bill from being used for the three HUD directives mentioned above.[118] While that provision was not included in the enacted FY2018 appropriations law, the explanatory statement directed HUD to review those specific directives, develop a solution that balances consumer safety with costs and burdens placed on both manufacturers and consumers, and report on whether state and local agencies should have jurisdiction over on-site completion of manufactured homes.[119]

Affirmatively Furthering Fair Housing

Background

The Fair Housing Act requires HUD to administer its programs in a way that affirmatively furthers fair housing,[120] and statutes or regulations governing specific HUD programs also require that funding recipients affirmatively further fair housing (AFFH). For many years, public housing authorities and state and local governments that receive HUD block grant funds satisfied their obligation to affirmatively further fair housing by certifying to HUD that they conducted an Analysis of Impediments (AI) to fair housing and were taking appropriate actions to overcome impediments. However, both HUD and GAO had identified certain weaknesses in the AI process.[121]

In July 2015, during the 114th Congress, HUD published a final rule (AFFH rule) that more specifically defines what it means to affirmatively further fair housing and requires that program participants submit a new Assessment of Fair Housing (AFH) to HUD rather than an AI.[122] The rule also provides that HUD will supply data for program participants to use in preparing their AFHs and will publish tools that help them through the process.

Attached Garage, memorandum, June 12, 2014, https://www.hud.gov/sites/documents/MEMOONSITEINSTALLADDON.PDF. HUD regulations related to alternative construction procedures for manufactured homes in general are at 24 C.F.R. §3282.14.

[116] Department of Housing and Urban Development, Interpretive Bulletin for Model Manufactured Home Installation Standards Foundation Requirements in Freezing Temperature Areas Under 24 C.F.R. 3285.312(b), Notice of proposed installation Interpretive Bulletin I-1-17, June 21, 2017, https://www.federalregister.gov/documents/2017/06/21/2017-12964/interpretative-bulletin-for-model-manufactured-home-installation-standards-foundation-requirements.

[117] 83 *Federal Register* 3636.

[118] See Section 424 of H.R. 3354.

[119] U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2018, H.R. 1625/*P.L. 115-141 *[Legislative Text and Explanatory Statement]*, committee print, 115th Cong., 2nd sess. (Washington, DC: GPO, 2018), p. 1945, https://www.gpo.gov/fdsys/pkg/CPRT-115HPRT29457/pdf/CPRT-115HPRT29457.pdf.

[120] 42 U.S.C. §3608(e)(5).

[121] U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Analysis of Impediments Study: Draft*, January 27, 2009, https://ia801002.us.archive.org/20/items/365748-hud-reporting-compliance-report/365748-hud-reporting-compliance-report.pdf; and U.S. Government Accountability Office, *Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans*, GAO-10-905, September 2010, http://www.gao.gov/new.items/d10905.pdf.

[122] Department of Housing and Urban Development, "Affirmatively Furthering Fair Housing," 80 *Federal Register* 42272, July 16, 2015, https://www.federalregister.gov/documents/2015/07/16/2015-17032/affirmatively-furthering-fair-housing.

Recent Developments

On January 5, 2018, HUD issued a notice stating that it would extend the deadline for local governments receiving more than $500,000 in CDBG funding to submit their AFHs until after October 31, 2020.[123] Under the AFFH rule, these local governments had begun submitting AFHs starting in 2016. In extending the deadline, HUD stated that, based on reviews of AFHs that had been submitted so far, it believed that program participants needed more time and technical assistance to produce acceptable AFHs.[124]

On May 23, 2018, HUD issued three more notices that effectively suspend indefinitely the implementation of the AFFH rule and return to the previous AI process. The three notices (1) withdrew the January 2018 notice that delayed implementation of the AFFH rule for local governments,[125] (2) withdrew the final assessment tool that had been released to assist local governments in preparing their AFHs,[126] and (3) directed program participants that have not already submitted an AFH under the AFFH rule to comply with the previous AI requirements.[127]

Withdrawing the local government assessment tool delays the AFH submission dates for local governments because the AFFH rule provides for at least nine months between publication of the final assessment tool and the AFH due date. HUD states that it withdrew the assessment tool because it had identified "significant deficiencies" that made the tool "unduly burdensome" for program participants to use, and that it does not have the personnel to provide technical assistance that the jurisdictions would need.[128] The notice provides that HUD will produce a "more effective and less burdensome" tool in the future and that it will accept public input on improving the tool.[129]

In the 115th Congress, the Restoring Fair Housing Protections Eliminated by HUD Act of 2018 (H.R. 6220) would require HUD to reinstate the assessment tool for local governments and require them to submit AFHs. The bill has been referred to committee but no further action has been taken as of the date of this report.

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[123] U.S. Department of Housing and Urban Development, "Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants" 83 *Federal Register* 683-685, January 5, 2018.

[124] In response to HUD's actions, on May 8, 2018, a group of organizations filed a complaint in federal court alleging that by delaying implementation of the rule, HUD had violated the Administrative Procedures Act. A copy of the complaint, filed in the U.S. District Court for the District of Columbia, is available at http://prrac.org/pdf/NFHA_v_Carson_complaint.pdf. However, on August 17, 2018, the case was dismissed. The opinion dismissing the case is available at the U.S. District Court website, https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2018cv1076-47.

[125] Department of Housing and Urban Development, "Affirmatively Furthering Fair Housing: Withdrawing of Notice Extending the Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants," 83 *Federal Register* 23928, May 23, 2018, https://www.federalregister.gov/documents/2018/05/23/2018-11143/affirmatively-furthering-fair-housing-withdrawal-of-notice-extending-the-deadline-for-submission-of.

[126] Department of Housing and Urban Development, "Affirmatively Furthering Fair Housing: Withdrawal of the Assessment Tool for Local Governments," 83 *Federal Register* 23922-23927, May 23, 2018, https://www.federalregister.gov/documents/2018/05/23/2018-11146/affirmatively-furthering-fair-housing-withdrawal-of-the-assessment-tool-for-local-governments.

[127] U.S. Department of Housing and Urban Development, "Affirmatively Furthering Fair Housing (AFFH): Responsibility to Conduct Analysis of Impediments," 83 *Federal Register* 23927, May 23, 2018, https://www.federalregister.gov/documents/2018/05/23/2018-11145/affirmatively-furthering-fair-housing-affh-responsibility-to-conduct-analysis-of-impediments.

[128] 83 *Federal Register* 23923.

[129] 83 *Federal Register* 23926.

Most recently, on August 13, 2018, HUD announced an Advance Notice of Proposed Rulemaking (ANPR) stating that it "has determined that a new approach towards AFFH is required" and requesting public comments on potential changes to the AFFH regulations. The ANPR states that "HUD is committed to its mission of achieving fair housing opportunity for all," but that it believes that the current rule "is not fulfilling its purpose to be an efficient means for guiding meaningful action by program participants."[130]

Additional information:

- For more on HUD and fair housing, including HUD's obligation to affirmatively further fair housing, see CRS Report R44557, *The Fair Housing Act: HUD Oversight, Programs, and Activities*.

Disparate Impact Standard under the Fair Housing Act

Background[131]

The Fair Housing Act (FHA) was enacted "to provide, within constitutional limitations, for fair housing throughout the United States."[132] It prohibits discrimination on the basis of race, color, religion, national origin, sex, physical and mental handicap, and familial status.[133] Subject to certain exemptions,[134] the FHA applies to all sorts of private and public housing, including single family homes, apartments, condominiums, and manufactured homes.[135] It also applies to "residential real estate-related transactions," which include both the "making [and] purchasing of loans … secured by residential real estate [and] the selling, brokering, or appraising of residential real property."[136]

In June 2015, the Supreme Court, in *Texas Department of Housing Community Affairs v. Inclusive Communities Project*,[137] confirmed the long-held interpretation that, in addition to outlawing intentional discrimination, the FHA prohibits certain housing-related decisions that have a disparate impact[138] on a protected class.[139]

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[130] See HUD, "HUD Seeks to Streamline and Enhance 'Affirmatively Furthering Fair Housing' Rule," press release, August 13, 2018, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_079 and Department of Housing and Urban Development, "Affirmatively Furthering Fair Housing: Streamlining and Enhancements," 83 *Federal Register* 40713-40715, August 16, 2018, https://www.gpo.gov/fdsys/pkg/FR-2018-08-16/pdf/2018-17671.pdf.

[131] This section is adapted from CRS Report R44203, *Disparate Impact Claims Under the Fair Housing Act*.

[132] 42 U.S.C. §3601. The FHA, 42 U.S.C. §§3601-31, was originally enacted as Title VIII of the Civil Rights Act of 1968. For a legal analysis of the FHA, see CRS Report 95-710, *The Fair Housing Act (FHA): A Legal Overview*.

[133] 42 U.S.C. §§3604-06, 3617.

[134] Ibid. at §3607.

[135] Ibid. at §§3604-06, 3617.

[136] Ibid. at §3605.

[137] 135 S. Ct. 2507 (2015). The Supreme Court had granted *certiorari* in two similar disparate impact cases in each of the previous two terms; however, in both those cases the parties reached settlement agreements before the Court had the opportunity to issue an opinion on whether disparate impact claims are cognizable under the FHA. See Magner v. Gallagher, 132 S. Ct. 1306 (2012) and Twp. of Mt. Holly v. Mt Holly Garden Citizens in Action, Inc., 134 S. Ct. 636 (2013).

[138] In the context of the FHA, the term "disparate impact" is used interchangeably with the term "discriminatory effect."

[139] *Inclusive Communities*, 135 S. Ct. at 2525.

Historically, courts have generally recognized two types of disparate impacts resulting from "facially neutral decision[s]" that can result in liability under the FHA.[140] First, courts have recognized disparate impact when a "decision has a greater adverse impact on one [protected] group than on another."[141] Second, courts consider the "effect which the decision has on the community involved; if it perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups."[142]

The Supreme Court's holding in *Inclusive Communities* that "disparate-impact claims are cognizable under the [FHA]"[143] mirrors previous interpretations of HUD[144] and all 11 federal courts of appeals[145] that had ruled on the issue as of June 2015. However, HUD and these courts had not all applied the same criteria for determining when a neutral policy that causes a disparate impact violates the FHA.[146] In a stated attempt to harmonize disparate impact analysis across the country, HUD finalized regulations in 2013 that established uniform standards for determining when such practices violate the act.[147] The *Inclusive Communities* Court did not expressly adopt the standards established in HUD's disparate impact regulations, but instead embraced a similar, but not identical, three-step burden-shifting test for assessing disparate impact liability under the FHA.[148]

At step one, the plaintiff has the burden of establishing evidence that a housing decision or policy caused a disparate impact on a protected class.[149] At step two, defendants can counter the plaintiff's prima facie showing by establishing that the challenged policy or decision is "necessary to achieve a valid interest."[150] The defendant will not be liable for the disparate impact

[140] Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 558 F.2d 1283, 1290 (7th Cir. 1977).

[141] Ibid.

[142] Ibid. See also *Inclusive Communities*, 135 S. Ct. at 2522 ("Rather, the FHA aims to ensure that those [valid governmental] priorities can be achieved without arbitrarily creating discriminatory effects or perpetuating segregation.").

[143] *Inclusive Communities*, 135 S. Ct. at 2525.

[144] Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 *Federal Register* 11460 (February 15, 2013).

[145] *Vill. of Arlington Heights*, 558 F.2d at 1290; Resident Advisory Bd. v. Rizzo, 564 F.2d 126, 149-50 (3d Cir. 1977); Betsey v. Turtle Creek Assocs., 736 F.2d 983, 988-89 (4th Cir. 1984); Keith v. Volpe, 858 F.2d 467, 484 (9th Cir. 1988); Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 938 (2d Cir. 1988), judgment aff'd, 488 U.S. 15 (1988); Jackson v. Okaloosa Cty., Fla., 21 F.3d 1531, 1543 (11th Cir. 1994); Simms v. First Gibraltar Bank, 83 F.3d 1546, 1555 (5th Cir. 1996); Langlois v. Abington Hous. Auth., 207 F.3d 43, 49-50 (1st Cir. 2000); Charleston Hous. Auth. v. U.S. Dep't of Agric., 419 F.3d 729, 740-41 (8th Cir. 2005); Graoch Assocs. #33, L.P. v. Louisville/Jefferson Cty. Metro Human Relations Comm'n, 508 F.3d 366, 374 (6th Cir. 2007); Reinhart v. Lincoln Cty., 482 F.3d 1225, 1229 (10th Cir. 2007).

[146] See the "Disparate Impact Analysis Before Inclusive Communities" section of CRS Report R44203, *Disparate Impact Claims Under the Fair Housing Act*.

[147] 78 *Federal Register* 11460. HUD's regulations were subsequently vacated by the U.S. District Court for the District of Columbia, in a ruling that was issued prior to, and that is at odds with, the Supreme Court's *Inclusive Communities* decision. Am. Ins. Assoc. v. Dept. of Hous. and Urban Dev., 74 F. Supp. 3d 30 (D.D.C. 2014) (interpreting the FHA as only prohibiting intentional discrimination, not discriminatory effects, and vacating HUD's Disparate Impact Rule). The district court's decision was subsequently vacated and remanded for reconsideration in accordance with the Supreme Court's *Inclusive Communities* ruling. Am. Ins. Assoc. v. Dept. of Hous. and Urban Dev. 2015 U.S. App. LEXIS 16894 (D.C. Cir. 2015) (*per curiam*).

[148] See the "Significance of the Inclusive Communities Decision" section of CRS Report R44203, *Disparate Impact Claims Under the Fair Housing Act*.

[149] *Inclusive Communities*, 135 S. Ct. at 2523.

[150] Ibid.

resulting from a "valid interest" unless, at step three, the plaintiff proves "that there is an available alternative … practice that has less disparate impact and serves the entity's legitimate needs."[151] In addition, the Supreme Court outlined a number of limiting factors that lower courts and HUD should apply when assessing disparate impact claims.[152] The Court stressed that lower courts and HUD should rigorously evaluate plaintiffs' claims to ensure that evidence has been provided to support not only a statistical disparity, but also causality.[153] Additionally, the Court emphasized that claims should be disposed of swiftly in the preliminary stages of litigation if plaintiffs have failed to establish a prima facie case of disparate impact.[154]

Recent Developments

On June 20, 2018, HUD published an Advance Notice of Proposed Rulemaking in the *Federal Register* seeking public comment on whether the 2013 disparate impact regulations should be amended in light of the *Inclusive Communities* decision.[155] The Advance Notice of Proposed Rulemaking noted that the request for comments was "consistent with HUD's efforts to carry out the Administration's regulatory reform efforts" and that HUD had received "numerous" comments related to this rule in response to its May 2017 *Federal Register* notice seeking comment on its regulatory reform agenda.

With the June 2018 Advanced Notice of Proposed Rulemaking, HUD specifically seeks public feedback on, among other issues, whether the regulations

- "strike the proper balance in encouraging legal action for legitimate disparate impact cases while avoiding unmeritorious claims";
- sufficiently detail the causality requirements for establishing a prima facie disparate impact case;
- should establish safe harbors from or defenses to disparate impact claims; and
- could be amended to "add [] clarity, reduce uncertainty, decrease regulatory burden, or otherwise assist the regulated entities and other members of the public in determining what is lawful."[156]

The public comment period closed on August 20, 2018.[157]

[151] Ibid. at 2518 (*quoting* Ricci v. DeStefano, 557 U. S. 557, 578 (2009)).

[152] Ibid. at 2523-24.

[153] Ibid.

[154] *Inclusive Communities*, 135 S. Ct. at 2523-24.

[155] Reconsideration of HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 83 *Federal Register* 28560 (June 20, 2018).

[156] Ibid. at 28561.

[157] Ibid. at 28560.

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