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# Housing Issues in the 116th Congress

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SUMMARY

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# Housing Issues in the 116th Congress

Since the outbreak of the Coronavirus Disease 2019 (COVID-19) pandemic in early 2020 and the resulting economic recession, pandemic relief and response has dominated the housing policy considerations of the second session of the 116th Congress. The CARES Act (P.L. 116-136), enacted in March 2020, contained several housing-related provisions. These included nearly $15 billion in supplemental funding for housing-related COVID-19 relief and response as well as policies such as a temporary eviction moratorium for some properties and forbearance for some mortgages. Since then, the Administration issued an order implementing a nationwide eviction moratorium, and additional relief legislation has been introduced and considered in Congress.

Pandemic relief and response are not the only housing issues that have been considered by the 116th Congress. Others include topics related to housing finance, federal housing assistance programs, and housing-related tax provisions, among other things. Particular issues that have been of interest to Congress include the following:

- The status of Fannie Mae and Freddie Mac, two government-sponsored enterprises (GSEs) that have been in conservatorship since 2008, including administrative actions taken by their regulator, the Federal Housing Finance Agency (FHFA).
- Appropriations for federal housing programs, including programs at the Department of Housing and Urban Development (HUD) and rural housing programs administered by the U.S. Department of Agriculture (USDA).
- Oversight of the implementation of certain changes to federal assisted housing programs that were enacted in prior Congresses, such as expansions of HUD's Moving to Work (MTW) program and Rental Assistance Demonstration (RAD) program, and proposed Administration actions, including a proposed rule to modify noncitizen eligibility for assisted housing programs.
- Considerations related to housing and the federal response to major disasters, including emergency sheltering options that may be implemented during the COVID-19 pandemic, ongoing issues related to oversight of the Federal Emergency Management Agency's (FEMA's) implementation of certain changes to assistance that were enacted in the previous Congress, and a bill to formally authorize the Community Development Block Grant-Disaster Recovery program.
- Consideration of legislation related to certain federal housing programs, including bills related to programs that provide assistance to Native Americans living in tribal areas, to serve youth aging out of foster care, and to further regulate the quality of federally assisted housing.
- Consideration of legislation to extend certain temporary tax provisions that had expired, including housing-related provisions that provide a tax exclusion for canceled mortgage debt and allow for the deductibility of mortgage insurance premiums, respectively.

Housing and mortgage market conditions provide context for these and other issues that Congress may consider, although housing markets are local in nature and national housing market indicators do not necessarily accurately reflect conditions in specific communities. On a national basis, some key characteristics of owner-occupied housing markets and the mortgage market in recent years include increasing housing prices, low mortgage interest rates, and home sales that have been increasing but constrained by a limited inventory of homes on the market. Key characteristics of rental housing markets include an increasing number of renters, low rental vacancy rates, and increasing rents. Rising home prices and rents that have outpaced income growth in recent years have led to policymakers and others increasingly raising concerns about the affordability of both owner-occupied and rental housing. Affordability challenges are most prominent among the lowest-income renter households, reflecting a shortage of rental housing units that are both affordable and available to this population. The housing-related implications of the COVID-19 pandemic and its resulting recession on U.S. markets and households are still unfolding.

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# Introduction

In March 2020, the Coronavirus Disease 2019 (COVID-19) pandemic began having wide-ranging public health and economic effects in the United States. The impacts of the pandemic have implications for housing, including the ability of households experiencing income disruptions to make housing payments. In response, Congress and the Administration have taken a variety of actions related to COVID-19 and housing. However, the pandemic is continuing and the economy is in a recession. Some initial assistance measures have ended, and there have been calls for additional action. The longer-term consequences of the pandemic and associated economic turmoil on housing markets remain unclear.

Outside of pandemic-related housing issues, several other housing-related issues have been active during the 116th Congress. These include issues related to assisted housing programs, such as those administered by the Department of Housing and Urban Development (HUD), and issues related to housing finance, among other things. Specific topics of interest include issues such as the status of two government-sponsored enterprises, Fannie Mae and Freddie Mac; how to prioritize appropriations for federal housing programs in a limited funding environment; oversight of the implementation of changes to certain housing programs that were enacted in prior Congresses; administrative changes to certain affordable housing policies and programs; and the extension of certain temporary housing-related tax provisions.

This report provides a high-level overview of the most prominent housing-related issues that have been of interest during the 116th Congress. It begins with an overview of housing and mortgage market conditions during the Congress to date. While this overview includes some national-level statistics from the months after the pandemic began, it is still too early to know how the pandemic will ultimately affect housing markets in the medium or longer term. The following section discusses housing-related concerns related to the COVID-19 pandemic and federal housing responses. Finally, the report discusses other housing issues that have been active during the 116th Congress.

The discussion in this report provides a broad overview of major issues and is not intended to provide detailed information or analysis. It includes references to more in-depth CRS reports on these issues where possible.

# Housing and Mortgage Market Conditions

This section provides background on housing and mortgage market conditions during the 116th Congress to provide context for the housing policy issues discussed in the remainder of the report. This discussion of market conditions is at the national level. 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.

In general, rising home prices, low interest rates, and rising rental costs have been prominent features of housing and mortgage markets in recent years. Although interest rates have remained low, rising house prices and rental costs that in many cases have outpaced income growth have led to increased concerns about housing affordability for both prospective homebuyers and renters.

As the COVID-19 pandemic took hold in the United States beginning in March 2020, some housing indicators showed notable changes. For example, interest rates fell, and home sales and

construction activity experienced significant declines, although sales and construction indicators rebounded to varying degrees in subsequent months. Other housing market indicators, such as house prices, have shown only relatively slight changes to date. Since these indicators reflect national-level conditions, conditions in specific local housing markets may differ. Going forward, the pandemic's impacts on housing market conditions are highly uncertain and will depend on a variety of factors.

## Owner-Occupied Housing Markets and the Mortgage Market

Most homebuyers take out a mortgage to purchase a home. Therefore, owner-occupied housing markets and the mortgage market are closely linked, 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. The following subsections show current trends in selected owner-occupied housing and mortgage market indicators.

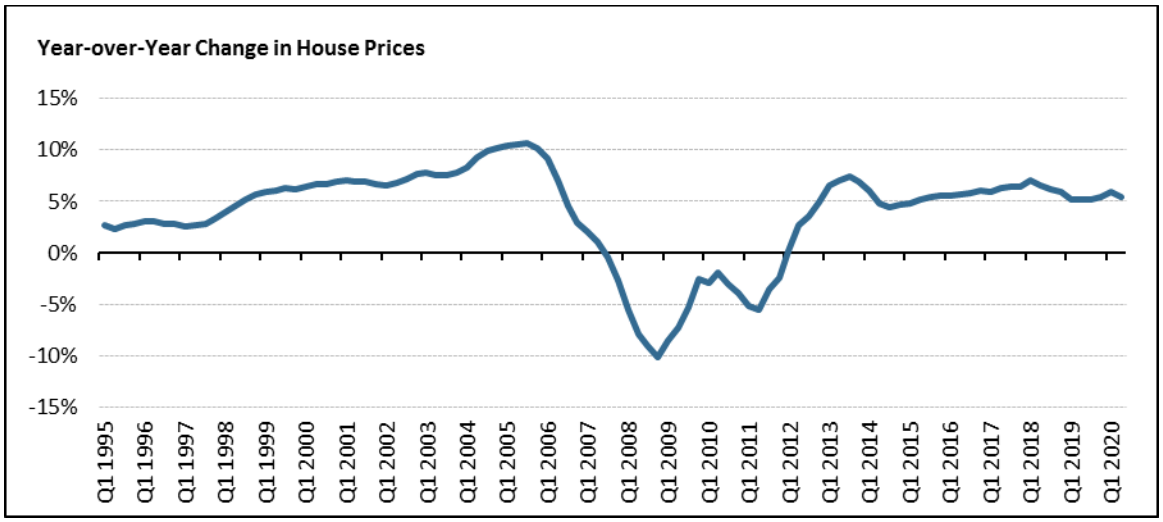
### House Prices

As shown in **Figure 1**, nominal house prices have increased nationally on a year-over-year basis in each quarter since the beginning of 2012, with year-over-year increases exceeding 5% for much of that time period and exceeding 6% at times. These increases followed almost five years of house price declines in the years during and surrounding the economic recession of 2007-2009 and associated housing market turmoil.

Year-over-year house price increases have slowed somewhat but continued to exceed 5% through the second quarter of 2020, despite the onset of the COVID-19 pandemic.[1]

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

Q1 1995–Q2 2020




**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.

[1] See Federal Housing Finance Agency, *House Price Index (HPI) Quarterly Report, 2020Q2 and June 2020*, August 25, 2020, https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2020Q2_HPI.pdf.

House prices, and changes in house prices, vary greatly across local housing markets. Some areas of the country can experience rapid increases in house prices while other areas experience slower or stagnating house price growth. 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 due to 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).

## Interest Rates

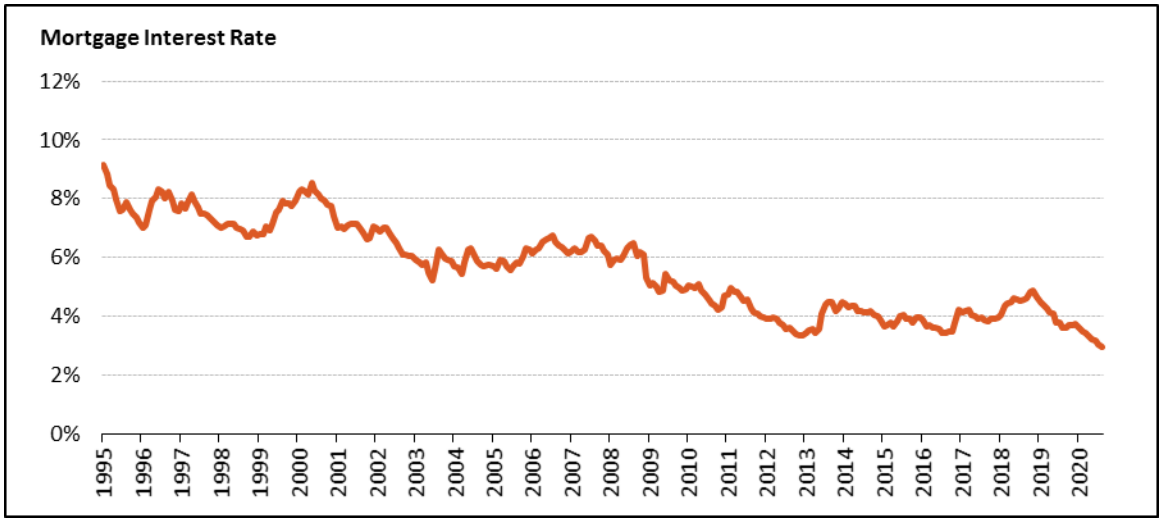
For several years, mortgage interest rates have been low by historical standards. Lower interest rates increase mortgage affordability and make it easier for some households to purchase homes or refinance their existing mortgages.

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. After starting to increase somewhat in late 2017 and much of 2018, mortgage interest rates have been generally declining since late 2018.

Since the COVID-19 pandemic began, interest rates have fallen even further, in part due to federal monetary policy responses to the pandemic. At times, interest rates have been below 3%, their lowest levels since at least 1971.[2] The average mortgage interest rate for August 2020 was 2.94%, compared to 3.02% in the previous month and 3.62% a year earlier.

**Figure 2. Mortgage Interest Rates**

January 1995–August 2020




**Source:** Figure created by CRS based on data from Freddie Mac's Primary Mortgage Market Survey, 30-Year Fixed Rate Historic Tables, available athttp://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.

[2] For example, see Freddie Mac, "Mortgage Rates Drop, Hitting a Record Low for the Eighth Time this Year," press release, August 6, 2020, https://freddiemac.gcs-web.com/node/20476/pdf.

## Homeownership Affordability

House prices have been rising for several years on a national basis, and mortgage interest rates, while low currently, have also risen for certain stretches. While incomes have also been rising in recent years, helping to mitigate some affordability pressures, on the whole house price increases have outpaced income increases.[3] Home price-to-income ratios have been generally trending upwards since around 2012, with the national median sales price for an existing home more than 4.1 times the median household income in 2018.[4] These trends have led to increased concerns about the affordability of owner-occupied housing.

Despite rising house prices, many metrics of housing affordability suggest that owner-occupied housing is currently relatively affordable.[5] 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. Therefore, rising incomes and, especially, interest rates that are still low by historical standards contribute to monthly mortgage payments being considered affordable under these measures despite recent house price increases.

Some factors that affect housing affordability may not be captured by these metrics. For example, several 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, because 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.[6] Some of these factors may have a bigger impact on affordability for specific demographic groups, as income trends and housing preferences are not uniform across all segments of the population.[7]

It is unclear how the COVID-19 pandemic may ultimately impact the affordability of homeownership. The pandemic could have implications for a variety of interrelated factors that affect affordability, including factors related to both the supply of homes on the market and the demand for homes.

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[3] 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).

[4] Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing 2019*, p.12, https://www.jchs.harvard.edu/state-nations-housing-2019.

[5] For example, see U.S. Department of Housing and Urban Development (HUD), *Housing Market Indicators Monthly Update, August 2020*, p.3, https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Market-Indicators-Report-August-2020.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, August 2020*, p. 21,

https://www.urban.org/sites/default/files/publication/102776/august-chartbook-2020.pdf.

[6] 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.

[7] 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.

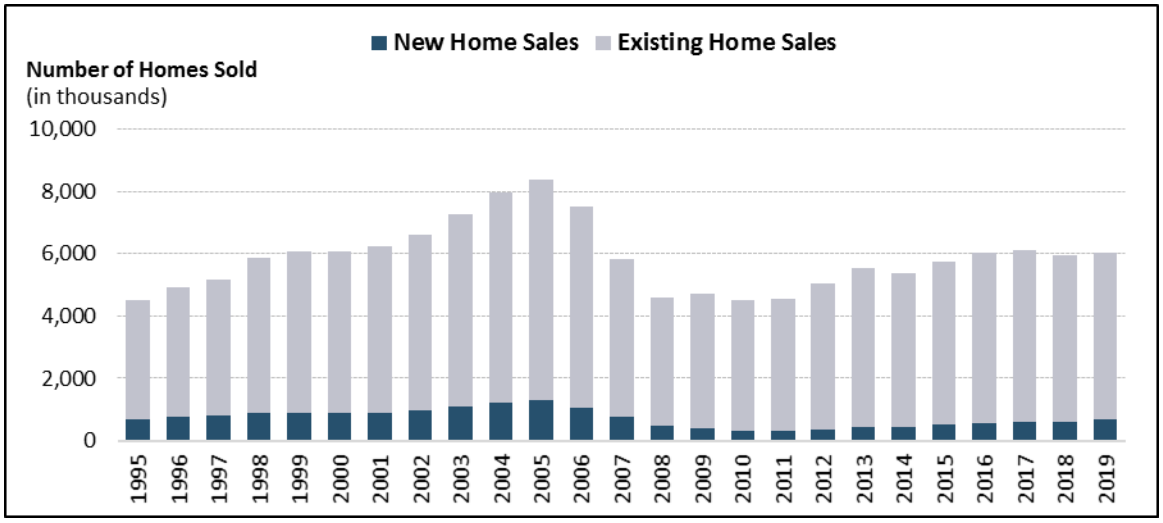
## Home Sales

Annual home sales increased between 2014 and 2017, improving from their levels during the housing market turmoil of the late 2000s. The overall number of home sales declined from the previous year in 2018 and remained steady in 2019. While home sales have been improving somewhat in recent years (prior to falling in 2018), the supply of homes on the market has generally not been keeping pace with the demand for homes, thereby limiting home sales activity and contributing to house price increases.

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 3** shows the annual number of existing and new home sales for each year from 1995 through 2019. Existing home sales numbered about 5.3 million in 2019, steady from the previous year and a decline from 5.5 million in 2017 (existing home sales in 2017 were the highest level since 2006). New home sales numbered about 683,000 in 2019, an increase from 617,000 in 2018 and the highest level since 2007. However, 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.

**Figure 3. New and Existing Home Sales**

Annual, 1995–2019




**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, which use data from the National Association of Realtors for existing home sales and the U.S. Census Bureau for new home sales.

While **Figure 3** shows annual home sales through 2019, monthly home sales have been impacted since the pandemic began. Both new and existing home sales fell sharply in March and April 2020, though both rebounded during the summer months.[8]

[8] HUD, *Housing Market Indicators Monthly Update, August 2020*, pages 1-2, https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Market-Indicators-Report-August-2020.pdf.

## Housing Inventory and Housing Starts

The number and types of homes on the market affect home sales and home prices. On a national basis, the supply of homes on the market has been relatively low in recent years,[9] and in general new construction has not been creating enough new homes to meet demand.[10] However, as noted previously, national housing market indicators are not necessarily indicative of local conditions. While many areas of the country are experiencing low levels of housing inventory that contribute to higher home prices, other areas, particularly those experiencing population declines, face a different set of housing challenges, including surplus housing inventory and higher levels of vacant homes.[11]

On a national basis, the inventory of homes on the market has been below historical averages in recent years, though the inventory of new homes, in particular, has begun to increase somewhat of late.[12] Homes come onto the market through the construction of new homes and when current homeowners decide to sell their existing homes. Existing homeowners' decisions to sell their homes can be influenced by expectations about housing inventory and affordability. For example, current homeowners may choose not to sell if they are uncertain about finding new homes that meet their needs, or if their interest rates on new mortgages would be substantially higher than the interest rates on their current mortgages. New construction activity is influenced by a variety of factors including labor, materials, and other costs as well as the expected demand for new homes.

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 annual number of housing starts would be if the current month's pace continued for an entire year.[13]

**Figure 4** shows the seasonally adjusted annual rate of starts on one-unit homes for each month from January 1995 through July 2020.[14] Housing starts for single-family homes fell during the

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[9] For example, see HUD's *U.S. Housing Market Conditions National Housing Market Summary, 1st Quarter 2020*, June 2020, p. 3, https://www.huduser.gov/portal/sites/default/files/pdf/NationalSummary_1Q20.pdf.

[10] For example, see Freddie Mac, *The Major Challenge of Inadequate U.S. Housing Supply*, Economic & Housing Research Insight, December 2018, http://www.freddiemac.com/fmac-resources/research/pdf/201811-Insight-06.pdf and *The Housing Supply Shortage: State of the States*, Economic & Housing Research Insight, February 2020, http://www.freddiemac.com/fmac-resources/research/pdf/202002-Insight-12.pdf.

[11] For example, see Freddie Mac, *The Housing Supply Shortage: State of the States*, Economic & Housing Research Insight, February 2020, p. 3, http://www.freddiemac.com/fmac-resources/research/pdf/202002-Insight-12.pdf; Jenny Schuetz, *The Goldilocks problem of housing supply: Too little, too much, or just right?*, Brookings Institution, December 14, 2018, https://www.brookings.edu/research/the-goldilocks-problem-of-housing-supply-too-little-too-much-or-just-right/; and Alan Mallach, *The Empty House Next Door: Understanding and Reducing Vacancy and Hypervacancy in the United States*, Lincoln Institute of Land Policy, 2018, pp. 22-26, https://www.lincolninst.edu/sites/default/files/pubfiles/empty-house-next-door-full.pdf.

[12] HUD, *U.S. Housing Market Conditions National Housing Market Summary, 1st Quarter 2020*, June 2020, pp. 1-3, https://www.huduser.gov/portal/sites/default/files/pdf/NationalSummary_1Q20.pdf.

[13] 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 U.S. Census Bureau, "New Residential Construction," at https://www.census.gov/construction/nrc/definitions/index.html#s.

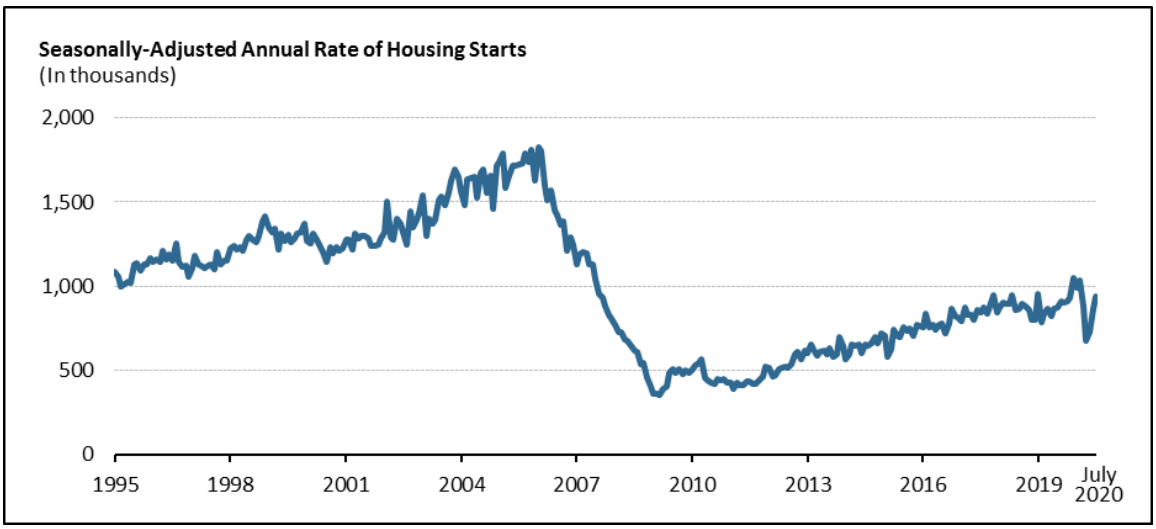
[14] The number of housing starts is consistently higher than the number of new home sales. This is primarily because housing starts include homes that are not intended to be put on the for-sale market, such as homes built by the owner of the land or homes built for rental. See the U.S. Census Bureau,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

housing market turmoil of the late 2000s, reflecting decreased home purchase demand. In recent years, levels of new construction have remained relatively low by historical standards, reflecting a variety of considerations including labor shortages and the cost of building.[15] Housing starts have generally been increasing since about 2012, but remain well below their levels from the late 1990s through the mid-2000s. For 2019, the seasonally adjusted annual rate of housing starts averaged about 893,000. In comparison, the seasonally adjusted annual rate of housing starts exceeded 1 million from the late 1990s through the mid-2000s.

Single-family housing starts showed a significant drop as the pandemic began, though they have begun to recover somewhat in the months since then.[16] Single-family housing starts in July were higher than in the previous July, though not as high as the months in late 2019 and early 2020.[17]

**Figure 4. Housing Starts**

By month; seasonally adjusted annual rate




**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 July 2020.

**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.

High housing construction costs have led to a greater share of new housing being built at the more expensive end of the market over the last several years. To the extent that new homes are

Construction," https://www.census.gov/construction/nrc/salesvsstarts.html.

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

[16] The Census Bureau notes that its data collection methods for this survey were impacted by the pandemic, though it says that " ... processing and data quality were monitored throughout the month [of July] and quality metrics, including response rates, fell within normal ranges for these surveys." For more information on how data collection was impacted, see U.S. Census Bureau, "Frequently Asked Questions (FAQs) COVID-19's Effect on the July 2020 New Residential Construction Indicator," https://www.census.gov/construction/nrc/pdf/newresconst_202007_notes.pdf.

[17] For data on housing starts and other measures of residential construction (both single-family and multifamily), see U.S. Census Bureau, *New Residential Construction*, https://www.census.gov/construction/nrc/index.html.

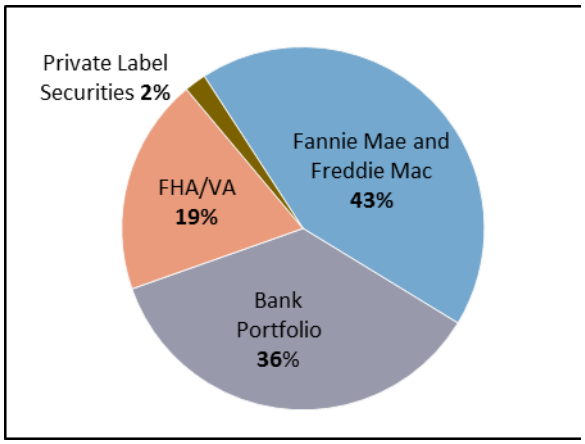
concentrated at higher price points, supply and price pressures may be exacerbated for lower-priced homes.[18]

## Mortgage Market Composition

After a mortgage is originated, it might be held in a financial institution's asset portfolio, or it might be securitized through one of several channels.[19] Two government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, issue mortgage-backed securities and guarantee investors' payments on those securities. Mortgages that are insured or guaranteed by a federal agency, such as the Federal Housing Administration (FHA) or the Department of Veterans Affairs (VA), are eligible to be included in mortgage-backed securities guaranteed by Ginnie Mae, part of the Department of Housing and Urban Development (HUD). Private companies can also issue mortgage-backed securities without a government or GSE guarantee, known as private label securities. The shares of mortgages that are provided through each of these channels may be relevant to policymakers because of their implications for mortgage access and affordability as well as the federal government's exposure to risk.

**Figure 5. Share of Mortgage Originations by Type**

2019




**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*, February 2020, p. 8.

**Notes:** Figure shows share of first-lien mortgage originations by dollar volume.

As shown in **Figure 5**, a little under two-thirds of the total dollar volume of mortgages originated was either backed by Fannie Mae or Freddie Mac (43%) or guaranteed by a federal agency such as FHA or VA (19%) in 2019. Over one-third of the dollar volume of mortgages originated was held in bank portfolios, while close to 2% was included in a private-label security without government backing.

The shares of mortgage originations backed by Fannie Mae and Freddie Mac and held in bank portfolios are roughly similar to their respective shares in the early 2000s. The share of private-label securitization has been, and continues to be, small since the housing market turmoil of the late 2000s, while the FHA/VA share is higher than it was in the early and mid-2000s.[20] The share of mortgages insured by FHA or guaranteed by VA was low by historical standards during that

[18] For example, see Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing, 2019*, p. 8, https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf; and Jung Hyun Choi, Laurie Goodman, and Bing Bai, "Four ways today's high home prices affect the larger economy," Urban Institute, Urban Wire blog, October 11, 2018, https://www.urban.org/urban-wire/four-ways-todays-high-home-prices-affect-larger-economy.

[19] For more information on different types of mortgages and mortgage securitization channels, see CRS Report R42995, *An Overview of the Housing Finance System in the United States*.

[20] See Urban Institute, Housing Finance Policy Center, *Housing Finance at a Glance: A Monthly Chartbook*, July 2020, p. 8, for a graph showing mortgage market composition since 2001.

time period as many households opted for other types of mortgages, including subprime mortgages.

## Rental Housing Markets

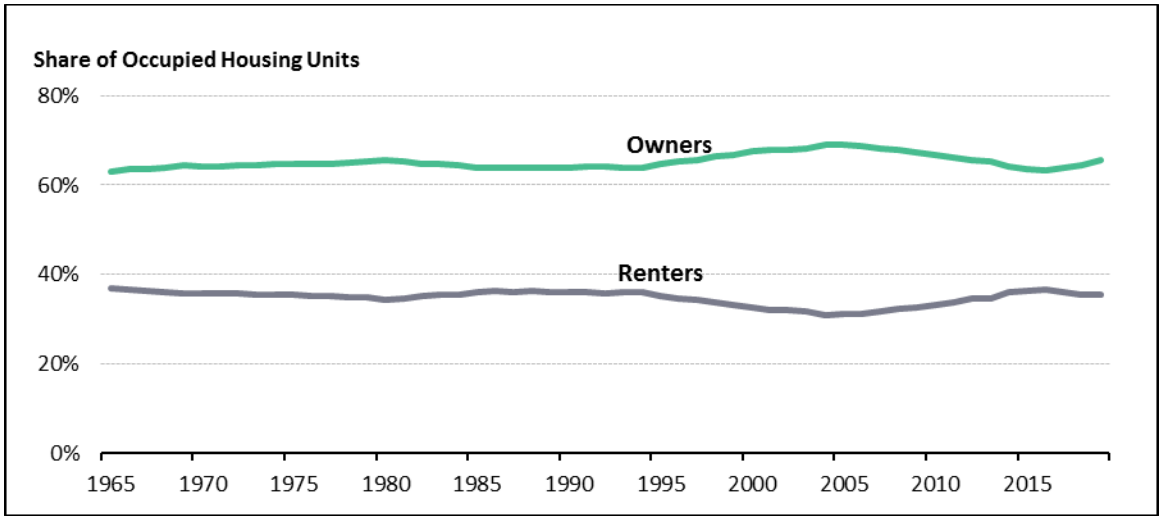
As has been the case in owner-occupied housing markets, affordability has been a prominent concern in rental markets in recent years. In the years since the housing market turmoil of the late 2000s, the number and share of renter households has increased, leading to lower rental vacancy rates and higher rents in many markets. The extent to which these trends in rents and vacancies will continue in light of the pandemic and related policy responses—including the imposition of various eviction moratoria discussed later in this report—is unclear.

### Share of Renters

The housing and mortgage market turmoil of the late 2000s led to a substantial decrease in the homeownership rate and a corresponding increase in the share of renter households. As shown in **Figure 6**, the share of renters increased from about 31% in 2005 and 2006 to a high of about 36.6% in 2016, before beginning to decrease and reaching 35.4% in 2019. The homeownership rate correspondingly fell from a high of 69% in the mid-2000s to 63.4% in 2016, before rising to 64.6% in 2019.[21]

**Figure 6. Rental and Homeownership Rates**

1965–2019




**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."

The overall number of occupied housing units also increased over this time period, from nearly 110 million in 2006 to 123 million in 2019; most of this increase has been in renter-occupied units.[22] The number of renter-occupied units increased from about 34 million in 2006 to about 44

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

[22] 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.

million in 2019. The number of owner-occupied housing units fell from about 75 million units in 2006 to about 74 million in 2014, but has since increased to about 79 million units in 2019.

In general, it is too early to know how the COVID-19 pandemic may influence the share of households who rent or own their homes, as it will take time for the effects of the pandemic on owners and renters to fully play out and be reflected in the data.[23]

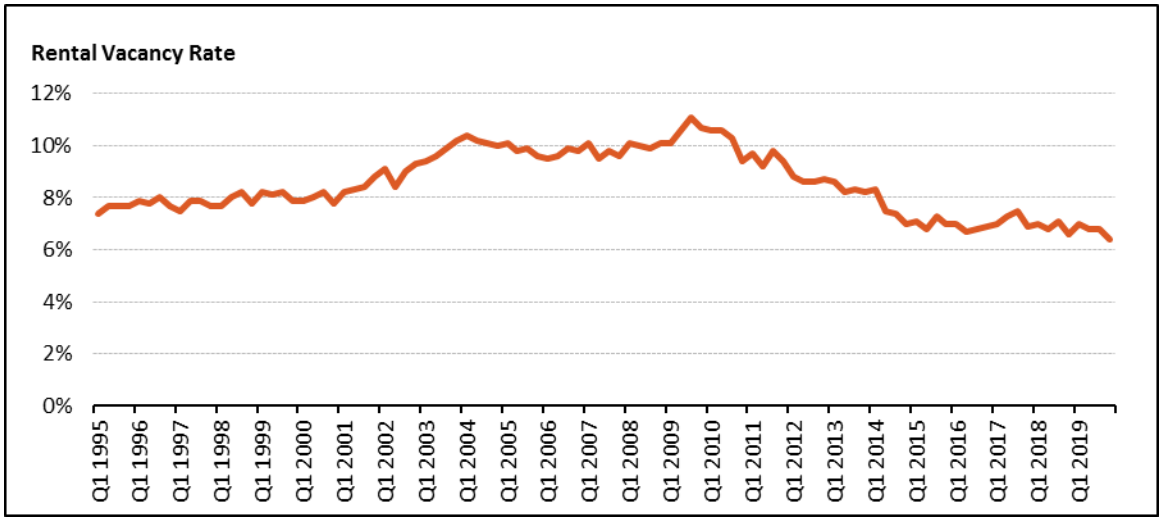
## Rental Vacancy Rates

The higher number and share of renter households has had implications for rental vacancy rates and rental housing costs. More renter households increases competition for rental housing, which may in turn drive up rents if there is not enough new rental housing created (whether through new construction or conversion of owner-occupied units to rental units) to meet the increased demand.

As shown in **Figure 7**, the rental vacancy rate has generally declined in recent years and was 6.4% at the end of 2019. The potential impact of the COVID-19 pandemic on rental vacancy rates is unclear, in part because the pandemic has affected more recent data collection for this survey.[24]

**Figure 7. Rental Vacancy Rates**

Q1 1995–Q4 2019




**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.

[23] The pandemic has impacted data collection for this survey, affecting the comparability of the 2020 quarterly data to previous periods. See, for example, Census Bureau, *Frequently asked questions: The impact of the coronavirus (COVID-19) pandemic on the Current Population Survey/Housing Vacancy Survey (CPS/HVS)*, https://www.census.gov/housing/hvs/files/qtr220/impact_coronavirus_20q2.pdf; and McCue, Daniel, "Buyer Beware: A Cautionary Note on the Most Recent Homeownership Data from HVS," Joint Center for Housing Studies of Harvard University, blog post, August 10, 2020, https://www.jchs.harvard.edu/blog/buyer-beware-a-cautionary-note-on-the-most-recent-homeownership-data-from-hvs/.

[24] See footnote 23 for more on how the pandemic has affected data collection for this survey.

## 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), the demand for available units, and renter incomes. 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. However, the supply of rental housing has not necessarily kept pace with the demand, particularly among lower-cost rental units, and low vacancy rates have been especially pronounced in less-expensive units.[25]

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. Rents have increased faster than renter incomes, reducing rental affordability.[26] Rising rental costs and renter incomes that are not keeping up with rent increases over the long term can contribute to housing affordability challenges, particularly for households with lower incomes.

Under the most commonly used definition, housing is considered to be affordable if a household is paying no more than 30% of its income in housing costs. 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 increased from 14.8 million in 2001 to 20.8 million in 2018, or about 47% of all renters.[27] (Over this time period, the overall number of renter households has increased as well.) While housing cost burdens can affect households of all income levels, and have been growing among middle-income households,[28] they are most prevalent among the lowest-income households. In 2018, 83% of renter households with incomes below $15,000 experienced housing cost burdens, and 72% experienced severe cost burdens.[29] A shortage of lower-cost rental units that are both available and affordable to extremely low-income renter households (households that earn no more than 30% of area median income), in particular, contributes to these cost burdens.[30]

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[25] For example, see Joint Center for Housing Studies of Harvard University, *America's Rental Housing 2020*, pp. 3, https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf.

[26] See HUD, Office of Policy Development and Research, *U.S. Housing Market Conditions National Housing Market Summary 1st Quarter 2020*, June 2020, pp. 5-6, and underlying data available at https://www.huduser.gov/portal/ushmc/quarterly_commentary.html. 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.

[27] Joint Center for Housing Studies, *America's Rental Housing 2020*, Appendix Tables, https://www.jchs.harvard.edu/americas-rental-housing-2020, showing Joint Center for Housing Studies tabulations of American Community Survey data.

[28] See, for example, Whitney Airgood-Obrycki, "America's Rental Affordability Crisis is Climbing the Income Ladder," Joint Center for Housing Studies of Harvard University, blog post, January 31, 2020, https://www.jchs.harvard.edu/blog/americas-rental-affordability-crisis-is-climbing-the-income-ladder/.

[29] Joint Center for Housing Studies, *America's Rental Housing 2020*, Appendix Tables, https://www.jchs.harvard.edu/americas-rental-housing-2020, showing Joint Center for Housing Studies tabulations of American Community Survey data.

[30] See Joint Center for Housing Studies of Harvard University, *America's Rental Housing 2020*, p. 31, https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf; and National Low Income Housing Coalition, *The Gap: A Shortage of Affordable Homes*, March 2020, available at https://reports.nlihc.org/gap.

# The COVID-19 Pandemic and Housing

The COVID-19 pandemic that began in early 2020 is having wide-ranging effects on public health and the economy. The pandemic has led to a number of housing-related concerns, including, among other things, concerns about housing insecurity among both renters and homeowners.

Congress and federal agencies have responded to these concerns by taking a variety of actions. In general, these actions have included providing additional federal funding for several housing programs, establishing temporary protections for certain renters and homeowners, and taking actions intended to support the housing finance system more broadly.

As the economy has entered recession and some temporary assistance measures have begun to expire, many policymakers and others have called for additional federal action. Numerous bills that would further address COVID-19-related housing issues have been introduced and some have been considered.

This section of the report discusses the effects of COVID-19 on housing and federal responses to date.

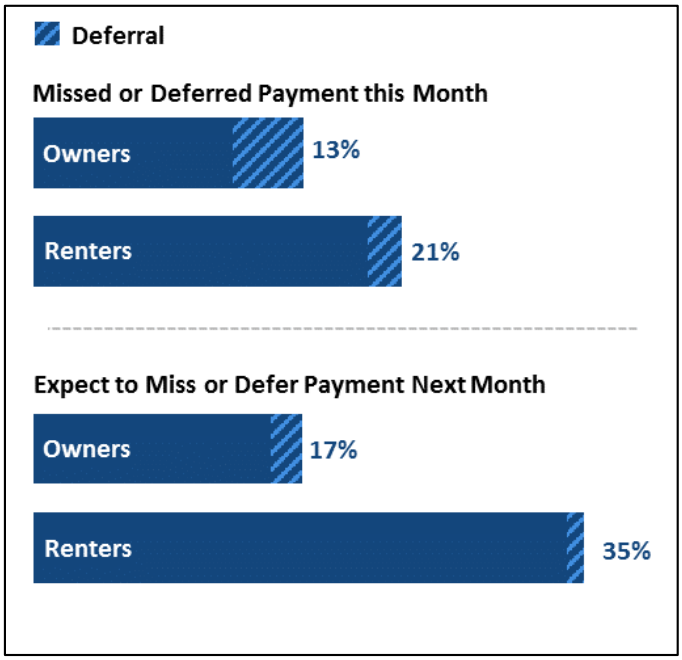
## COVID-19 and Effects on Housing

The pandemic has led to increased housing insecurity as many households experience income disruptions. Such disruptions can lead to difficulties making rent or mortgage payments. According to data from the Census Bureau's Pulse Survey, and as shown in **Figure 8**, 21% of renters and 13% of owners reported having not made the current month's housing payment as of the week that ended on July 21. (These figures include those with deferred payments.) Larger shares (35% and 17%, respectively) expected that they would not be able to pay the following month.[31]

[31] These figures reflect CRS calculations based on data in the Week 12 Household Pulse Survey, available at https://www.census.gov/programs-surveys/household-pulse-survey/data.html. They include those who missed last month's payment or whose last month payment was deferred, and those who have slight or no confidence that they will make next month's payment or anticipate that next month's payment will be deferred.

**Figure 8. Renters and Owners Having Difficulty Making Housing Payments**

For the week ending July 21, 2020




**Source:** Figure created by CRS based on data from the Census Bureau's Household Pulse Survey for Week 12 (July 16-July 21).

Thus far, many households have been protected by federal and state or local eviction or foreclosure moratoriums. It is not yet clear to what extent renters and homeowners will be able to make their rent or mortgage payments or make up missed payments when protections expire. (The end dates for eviction and foreclosure protections depend on a variety of factors, including the specific protection in question and whether any extensions are issued.)

As described in the "Housing and Mortgage Market Conditions" section, data are beginning to emerge about the trajectory of national housing market indicators during the first few months of the pandemic. However, the full effects of COVID-19 on housing markets will not be known for some time. Such effects will depend on a variety of factors, including the duration of the public health threat and the timing and pattern of economic recovery, and involve a high degree of uncertainty. Impacts may vary across the country based on differences in local housing markets as well as geographic variation in the prevalence of COVID-19 and local responses. The impacts are likely to vary across demographic groups, due in part to existing differences in housing conditions as well as the uneven distribution of the health and economic consequences of the pandemic.[32]

[32] For example, see Sharon Cornelissen and Alexander Hermann, *A Triple Pandemic? The Economic Impacts of COVID-19 Disproportionately Affect Black and Hispanic Households*, Joint Center for Housing Studies of Harvard University, July 7, 2020, https://www.jchs.harvard.edu/blog/a-triple-pandemic-the-economic-impacts-of-covid-19-disproportionately-affect-black-and-hispanic-households/; and Michael Neal and Alanna McCargo, *How Economic Crises and Sudden Disasters Increase Racial Disparities in Homeownership*, The Urban Institute's Housing Finance Policy Center, June 1, 2020, https://www.urban.org/research/publication/how-economic-crises-and-sudden-disasters-increase-racial-disparities-homeownership.

# Federal Housing Responses to COVID-19

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136), a COVID-19 response package that included, among many other things, several provisions related to housing. These included certain temporary protections for renters in properties with federal assistance or federal backing and homeowners with federally backed mortgages, as well as increased funding for several housing programs.

Both prior to and since the passage of the CARES Act, federal agencies have taken various administrative actions to address housing concerns related to COVID-19. In addition, on August 8, 2020, President Trump signed an Executive Order related to COVID-19 and housing.[33] The Executive Order directed several federal agencies to examine authorities or resources that they may be able to use to further assist tenants or homeowners affected by COVID-19 to help them avoid eviction or foreclosure. It did not itself provide any new resources or implement any additional actions related to evictions and foreclosures. (For more information on this Executive Order, see CRS Legal Sidebar LSB10532, *President Trump's Executive Actions on Student Loans, Wage Assistance, Payroll Taxes, and Evictions: Initial Takeaways*.) The Executive Order, among other things, directed the Secretary of Health and Human Services (HHS) and the Centers for Disease Control and Prevention (CDC) to consider whether measures to temporarily pause evictions were necessary to prevent the spread of COVID-19 between states. On September 4, 2020, the CDC announced a national eviction moratorium to last until the end of the year.

Lawmakers have also introduced a variety of additional bills to further address housing issues related to COVID-19, though as of the date of this report none has been enacted.

## Federal Interventions Related to Rental Housing

While all types of households may be at risk of housing instability due to COVID-19, renters may be particularly vulnerable. This is both because more financially vulnerable populations are more likely to be renters, and because the process for evicting a household from a rental unit is generally faster than the process of foreclosing on a mortgage. As such, there have been several policy interventions aimed specifically at aiding renters.

### *CARES Act Rental Housing Provisions*

To protect renters experiencing COVID-19-related financial hardships, the CARES Act included a 120-day moratorium on eviction filings for tenants in rental properties with federal assistance or federally related financing, as well as a prohibition on charging late fees for nonpayment of rent for the same time period. These protections were designed to alleviate the economic and public health consequences of tenant displacement during the pandemic. They supplemented temporary eviction moratoria and rent freezes implemented in states and cities by governors and local officials using emergency powers. The CARES Act eviction moratorium expired on July 24, though the law also required that landlords provide tenants with at least 30 days' notice before requiring tenants to vacate a covered property after the moratorium expired. Therefore, tenants should not have been required to leave covered rental units until at least August 23.

[33] *Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners*, issued on August 8, 2020, https://www.whitehouse.gov/presidential-actions/executive-order-fighting-spread-covid-19-providing-assistance-renters-homeowners/.

Separate from the eviction moratorium, the CARES Act also included provisions related to forbearance for federally backed multifamily mortgages (discussed further below). The CARES Act provided that multifamily mortgage borrowers receiving forbearance must provide certain tenant protections during the forbearance period. Namely, owners cannot evict tenants for nonpayment of rent or charge late fees for the duration of the forbearance. Therefore, some tenants may benefit from federal protection from eviction because they live in a property with a federally backed multifamily mortgage subject to a forbearance agreement.

In addition, other assistance provided in the CARES Act, such as federal unemployment insurance supplemental payments (which have now expired), likely helped renters make housing payments and therefore avoid eviction. While this assistance was not specific to housing, households could use it to help maintain housing in light of income disruptions.

For more information on CARES Act protections for renters, see the following:

- CRS Insight IN11320, *CARES Act Eviction Moratorium*.

### *CDC's National Eviction Moratorium*

On September 4, the Centers for Disease Control and Prevention published an order in the Federal Register implementing a national eviction moratorium through December 31, 2020.[34] The moratorium protects certain tenants from eviction for non-payment of rent. The CDC relied on broad authority that it has to take actions to prevent the spread of communicable diseases between states to implement this moratorium.[35] In the Federal Register notice announcing it, the CDC described the public health risks posed by evictions and their effects during a pandemic.

Unlike the CARES Act eviction moratorium, the CDC's eviction moratorium potentially applies to renters in any rental property, not just those with federal financing or federal assistance. While the CARES Act moratorium applied automatically to renters in covered properties, the CDC moratorium requires eligible renters to provide landlords a document that attests to their eligibility. Eligible renters must attest that they

- meet income eligibility criteria; namely, that they either 1) expect to have incomes no higher than $99,000 ($198,000 if filing a joint tax return) in 2020, 2) were not required to report income to the Internal Revenue Service in 2019, or 3) received an Economic Impact Payment under Section 2201 of the CARES Act;
- have made "best efforts to obtain all available government assistance" to pay rent;
- are unable to pay full rent due to certain specified hardships;
- are making "best efforts" to make partial payments as close as possible to the full payment as circumstances permit; and
- would likely become homeless, move to a homeless shelter, or move into housing with others in close quarters if evicted due to a lack of available housing options.

Renters must also attest that they understand that the order does not relieve them of the obligation to pay rent, and does not prohibit landlords from charging fees, penalties, or interest in

[34] Centers for Disease Control and Prevention, Department of Health and Human Services, "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," 85 *Federal Register* 55292-55297, September 4, 2020.

[35] The CDC's order cites its authority under Section 361 of the Public Health Service Act (42 U.S.C. §264) and regulations at 42 CFR 70.2. See the Federal Register notice for the CDC's discussion of the risks that evictions pose to public health.

accordance with applicable contracts. (In contrast, the CARES Act prohibited landlords from charging fees, penalties, or interest during the eviction moratorium.) The CDC moratorium does not supersede state or local eviction moratoria that provide greater protections.

While the CARES Act did not explicitly include any penalties for noncompliance, the CDC's order specifies potential penalties (fines and/or jail time) for landlords who do not comply. Renters who are not truthful in their attestations could be found guilty of perjury and be subject to associated penalties.

The CDC's national eviction moratorium order raises a variety of questions and is the subject of legal challenges.[36] In addition to questions surrounding the CDC's authority to issue such a moratorium, there are questions around issues such as how enforcement is being carried out and how many renters may seek protection. Industry groups representing property owners have raised concerns about the impact of the eviction moratorium on owners, who may have difficulty covering the costs of the property if tenants are unable to pay rent.[37] Tenant advocates, while generally welcoming the moratorium, have also noted that it does not help tenants pay rent and have raised concerns about what happens to renters when the moratorium ends.[38] Both owner and tenant advocates have called for federal rental assistance to help tenants make rent payments.[39]

For more information on the CDC's eviction moratorium, see CRS Insight IN11516, *Federal Eviction Moratoriums in Response to the COVID-19 Pandemic*.

## Federal Interventions Related to Mortgages

The CARES Act requires mortgage servicers to grant forbearance requests for borrowers with federally backed mortgages who are experiencing a financial hardship related to COVID-19.[40] Mortgage forbearance allows a household to reduce or suspend mortgage payments for an agreed-upon period of time, but it does not forgive the amounts owed; borrowers and mortgage servicers must negotiate an agreement for the repayment of the missed amounts.

Under the CARES Act, forbearance for federally backed single-family mortgages can be for up to 360 days (an initial period of up to 180 days, with an extension of up to an additional 180 days). For federally backed multifamily mortgages, the forbearance can be for up to 90 days (an initial period of up to 30 days, with two possible 30-day extensions).[41] Federally backed mortgages

[36] See, for example, Brown v. Azar et al., 1:20-CV-03702, N.D. Ga.

[37] See, for example, National Multifamily Housing Council, "Statement by NMHC President Doug Bibby on Administration's Enactment of Federal Eviction Moratorium," September 1, 2020, https://www.nmhc.org/news/press-release/2020/statement-by-nmhc-president-doug-bibby-on-administrations-enactment-of-federal-eviction-moratorium/.

[38] See, for example, National Low Income Housing Coalition, "Statement from National Low Income Housing Coalition President and CEO Diane Yentel on the White House Moratorium on Evictions for Nonpayment of Rent," September 1, 2020, https://nlihc.org/news/statement-national-low-income-housing-coalition-president-and-ceo-diane-yentel-white-house.

[39] Letter from California Housing Consortium et al., August 21, 2020, https://www.irem.org/File%20Library/GlobalNavigation/Advocacy/CoalitionLetters/2020/08212020RentalAssistanceCoalitionLetter.pdf.

[40] Prior to passage of the CARES Act, the federal agencies that back mortgages and the government-sponsored enterprises Fannie Mae and Freddie Mac had each released guidance reminding mortgage servicers of existing options to help borrowers having difficulties making mortgage payments, including forbearance, and encouraging or requiring temporary suspensions on foreclosures. While much of this guidance was similar to the provisions included in the CARES Act, the specifics varied by agency.

[41] FHFA has since announced the availability of forbearance for multifamily mortgages backed by Fannie Mae or Freddie Mac for up to an additional three months; tenant protections must apply for the duration of the forbearance. See FHFA, "FHFA Provides Tenant Protections," press release, June 29, 2020, https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Provides-Tenant-Protections.aspx. HUD has also stated that FHA-insured multifamily mortgages in

include those insured, guaranteed, or originated by a federal agency, such as HUD, USDA, or VA, or purchased or securitized by two government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac. They are estimated to constitute approximately 70% of outstanding single-family mortgages.[42]

The CARES Act also temporarily suspended foreclosures on federally backed single-family mortgages. The CARES Act foreclosure moratorium was in effect for 60 days from March 18, 2020; however, the federal agencies that back mortgages and Fannie Mae and Freddie Mac have all since announced extensions. As of the date of this report, these entities had extended the foreclosure moratorium for mortgages they back through December 31, 2020.[43]

Federal agencies that back mortgages, such as the Federal Housing Administration, and GSEs such as Fannie Mae and Freddie Mac (along with their regulator, the Federal Housing Finance Agency, or FHFA[44]) have also taken additional steps to assist borrowers and other mortgage market participants.[45] These steps have included the following:

- **Assistance for Mortgage Borrowers:** One question following mortgage forbearance is how the borrower will be required to repay missed payments. The CARES Act was silent on this question. Several of the federal entities involved in mortgages have stated that borrowers with mortgages they back who are not able to repay the missed amounts in a lump sum at the end of the forbearance will be

forbearance may be able to have forbearance periods extended, and that tenant protections will apply during any extended forbearance. See HUD Housing Notice H 20-07, "Coronavirus Aid, Relief, and Economic Security (CARES) Act Eviction Moratorium," issued July 1, 2020, p. 3, https://www.hud.gov/sites/dfiles/OCHCO/documents/20-07hsgn.pdf.pdf.

[42] See, for example, Karan Kaul and Laurie Goodman, "The Price Tag for Keeping 29 Million Families in Their Homes: $162 Billion," The Urban Institute's Housing Finance Policy Center, March 27, 2020, https://www.urban.org/urban-wire/price-tag-keeping-29-million-families-their-homes-162-billion.

[43] FHA Mortgagee Letter 2020-27, https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-27hsgml.pdf; FHFA, "FHFA Extends Foreclosure and REO Eviction Moratoriums," https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-REO-Eviction-Moratoriums.aspx; VA Circular 26-20-30, https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-20-30.pdf; USDA, "USDA Implements Immediate Measures to Help Rural Residents, Businesses and Communities Affected by COVID-19," updated August 28, 2020, https://www.rd.usda.gov/sites/default/files/COVID19_CUMULATIVE_StakeholderNotification_WEEKLY_Aug28.pdf; and HUD Office of Public and Indian Housing Dear Lender Letter 2020-10, https://www.hud.gov/sites/dfiles/PIH/documents/DLL_2020-10_Eviction_Moratorium_and_Loan_Processing_Flexibilities_Extension.pdf.

[44] The Federal Housing Finance Agency is the regulator and conservator for Fannie Mae and Freddie Mac as well as the regulator of a third housing GSE, the Federal Home Loan Bank (FHLB) system. The FHLBs have also taken steps to address COVID-19-related issues; see the FHLB website at https://fhlbanks.com/covid-19/. For more information on the FHLBs in general, see CRS Report R46499, *The Federal Home Loan Bank (FHLB) System and Selected Policy Issues*.

[45] Administrative actions and guidance related to the pandemic continue to evolve. Many federal agencies involved in housing post pandemic-related guidance in a centralized location. For example, see HUD's webpage on coronavirus resources at https://www.hud.gov/coronavirus, the Federal Housing Finance Agency's webpage on coronavirus assistance information at https://www.fhfa.gov/Homeownersbuyer/MortgageAssistance/Pages/Coronavirus-Assistance-Information.aspx, and USDA's Rural Development COVID-19 response page at https://www.rd.usda.gov/coronavirus.

offered other repayment options,[46] and have announced specific options for deferring the missed amounts to the end of the loan term.[47]

- **Temporary Mortgage Origination Flexibilities:** Certain aspects of the mortgage origination process present challenges during the pandemic. In response, federal entities have made temporary changes to certain requirements for mortgages that they back in order to minimize the effects on mortgage origination and home buying. These changes include allowing for alternatives to interior home appraisals in some circumstances and providing flexibilities related to the process for re-verifying a borrower's employment before closing.[48] FHA and Fannie Mae and Freddie Mac have each also announced temporary policies that allow them to insure or purchase, respectively, mortgages that otherwise meet their requirements but are in forbearance.[49] (Usually, mortgages that are already in forbearance are not eligible for FHA insurance or purchase by Fannie Mae or Freddie Mac.) To help balance the increased risk that these mortgages pose to these entities, their acceptance of these mortgages is subject to certain conditions.[50] Some lawmakers have raised concerns about these conditions, however, and their potential impact on mortgage credit access.[51]
- **Support for Mortgage Servicers:** Mortgage servicers are often required to advance payments to investors in mortgage-backed securities even if the borrower has not made their payments on time, including in the case of

[46] See "CARES Act Forbearance Fact Sheet for Borrowers with FHA, VA, or USDA Loans," https://www.hud.gov/sites/dfiles/SFH/documents/IACOVID19FBFactSheetConsumer.pdf; and FHFA, "'No Lump Sum Required at the End of Forbearance' says FHFA's Calabria," press release, April 27, 2020, https://www.fhfa.gov/Media/PublicAffairs/Pages/No-Lump-Sum-Required-at-the-End-of-Forbearance-says-FHFAs-Calabria.aspx.

[47] See FHA Mortgagee Letter 2020-06, "FHA's Loss Mitigation Options for Single Family Borrowers Affected by the Presidentially-Declared COVID-19 National Emergency in Accordance with the CARES Act," April 1, 2020, https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf; FHA Mortgagee Letter 2020-22, "FHA's COVID-19 Loss Mitigation Options," https://www.hud.gov/sites/dfiles/OCHCO/documents/20-22hsgml.pdf; and FHFA, "FHFA Announces Payment Deferral as New Repayment Option for Homeowners in COVID-19 Forbearance Plans," press release, May 13, 2020, https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Payment-Deferral-as-New-Repayment-Option-for-Homeowners-in-COVID-19-Forbearance-Plans.aspx.

[48] See, for example, FHFA, "FHFA Directs Enterprises to Grant Flexibilities for Appraisal and Employment Verifications," press release, March 23, 2020, https://www.fhfa.gov/media/PublicAffairs/Pages/FHFA-Directs-Enterprises-to-Grant-Flexibilities-for-Appraisal-and-Employment-Verifications.aspx; and HUD, "Re-verification of Employment and Exterior-Only and Desktop-Only Appraisal Scope of Work Options for FHA Single Family Programs Impacted By COVID-19," FHA Mortgagee Letter 2020-05, March 27, 2020, https://www.hud.gov/sites/dfiles/OCHCO/documents/20-05hsgml.pdf. The flexibilities provided in each of these documents were subsequently extended.

[49] FHFA, "FHFA Announces that Enterprises will Purchase Qualified Loans in Forbearance to Keep Lending Flowing," press release, April 22, 2020, https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-that-Enterprises-will-Purchase-Qualified-Loans.aspx; and FHA Mortgagee Letter 2020-16, "Endorsement of Mortgages under Forbearance for Borrowers Affected by the Presidentially-Declared COVID-19 National Emergency consistent with the Coronavirus Aid, Relief, and Economic Security (CARES) Act," https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-16hsngml.pdf. As of the date of this report, FHA's policy is in effect through November 30, 2020, and FHFA's policy had been extended through October 31, 2020.

[50] Ibid. Fannie Mae and Freddie Mac charge additional fees for purchasing mortgages in forbearance, while FHA requires a lender to continue to bear some of the risk of such mortgages by signing a partial indemnification agreement.

[51] Letter from House Financial Services Committee Chairwoman Maxine Waters et al. to HUD Secretary Benjamin S. Carson and FHFA Director Mark Calabria, June 25, 2020, https://financialservices.house.gov/uploadedfiles/ltr_to_hud_and_fhfa_re_ef_6-25-20.pdf. Bills introduced in the House (H.R. 6794) and Senate (S. 4260) would prohibit FHA and Fannie Mae and Freddie Mac from imposing additional costs or other terms on such mortgages solely based on their forbearance status.

forbearance. Large volumes of delinquent payments or mortgage forbearances can therefore cause liquidity issues for some servicers.[52] In response, Ginnie Mae and Fannie Mae and Freddie Mac have each taken certain steps to address potential servicer liquidity issues for mortgages that they back.[53]

In addition, the Federal Reserve has agreed to purchase mortgage-backed securities to help provide liquidity and stability in the mortgage market.[54] These purchases can facilitate the funding of mortgages, even if investors' demand for mortgage-backed securities declines during the pandemic.

For more information, see the following:

- CRS Insight IN11334, Mortgage Provisions in the Coronavirus Aid, Relief, and Economic Security (CARES) Act.
- CRS Insight IN11316, COVID-19: Support for Mortgage Lenders and Servicers.
- CRS Insight IN11385, The Impact of COVID-19-Related Forbearances on the Federal Mortgage Finance System.

## Increased Funding for Housing Programs

The CARES Act appropriated an additional $12.4 billion for HUD housing programs in FY2020. These funds were directed to several HUD programs to provide additional resources to address emerging housing needs caused by COVID-19, to help cover increased costs in rental assistance programs, and for administrative capacity and oversight. The CARES Act also provides the HUD Secretary broad waiver authority in most accounts to expedite or facilitate the use of these funds to respond to the coronavirus.

The majority of the funds—about $9.4 billion—were for several HUD grant programs, many of which provide relatively flexible funding to state and local governments or other entities for eligible affordable housing, community development, or related activities. Because these programs generally fund a range of allowable activities, they can be used to address a variety of emerging needs related to the pandemic. The largest amounts were for the Community Development Fund, the account that funds Community Development Block Grants (CDBG) ($5 billion), and Emergency Solutions Grants (ESG) ($4 billion). States and local governments can use CDBG funds for a range of housing and community development activities, while ESG, one of the Homeless Assistance Grants, can be used for a range of services for those who are homeless or at risk of homelessness. The law also provided funds to grant programs that assist tribes, fair housing programs, and the Housing Opportunities for Persons with AIDS (HOPWA) program.

[52] For more information on mortgage servicing considerations, see CRS Insight IN11377, *Mortgage Servicing Rights and Selected Market Developments*.

[53] Ginnie Mae expanded access to the Pass Through Assistance Program (PTAP), through which Ginnie Mae lends money to servicers to make required advances if they cannot obtain funding through other sources. FHFA announced that Fannie Mae servicers would only be required to advance four months of principal and interest payments (this was already the policy for Freddie Mac servicers). See Ginnie Mae, "Ginnie Mae Announces Changes to its Pass-Through Assistance Program in Response to COVID-19 National Emergency," press release, April 10, 2020, https://ginniemae.gov/newsroom/Pages/PressReleaseDispPage.aspx?ParamID=196; and FHFA, "FHFA Addresses Servicer Liquidity Concerns, Announces Four Month Advance Obligation Limit for Loans in Forbearance," press release, April 21, 2020, https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Addresses-Servicer-Liquidity-Concerns-Announces-Four-Month-Advance-Obligation-Limit-for-Loans-in-Forbearance.aspx.

[54] Board of Governors of the Federal Reserve System, "Federal Reserve Issues FOMC Statement," March 23, 2020, https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323a.htm.

The CARES Act also provided about $3 billion to maintain existing rental assistance in several HUD programs. HUD rental assistance programs subsidize the difference between tenant contributions toward rent and a unit's rent (or operating expenses). When tenants' incomes are reduced—such as by rising unemployment triggered by the pandemic—their rent contributions decrease, which increases federal subsidy costs. The CARES Act provided supplemental funding to help cover those anticipated increased costs in several HUD programs, including the public housing, Housing Choice Voucher, and project-based Section 8 programs.

The CARES Act also provided $50 million for HUD administrative offices and $5 million for the HUD Office of the Inspector General for oversight of activities funded under the CARES Act.

For more information, see the following:

- CRS Insight IN11319, *Funding for HUD in the CARES Act*.
- CRS Insight IN11315, *Community Development Block Grants and the CARES Act*.
- CRS Insight IN11277, *Responding to the COVID-19 Pandemic with Community Development Block Grant (CDBG) Authorities*

## Proposals for Additional Action

As the pandemic continues, there have been calls for additional federal policy interventions. Dozens of bills have been introduced in Congress that would address various housing-related issues caused by the pandemic.

Some calls have been for additional assistance to renters and homeowners so they do not fall behind on their payments and risk eviction or foreclosure, and possibly homelessness, when moratoria or forbearance periods end. Such assistance could take various forms. Some have proposed expansions or extensions of existing eviction or foreclosure moratoria or additional protections related to CARES Act mortgage forbearance requirements. Others have proposed other types of assistance, such as direct payments to help households make their rental or mortgage payments for a period of time. For example, even before the national eviction moratorium was announced, a broad coalition of low-income housing advocates, real estate interests, and other stakeholders had come together to call for emergency rental assistance.[55]

Some have also called for additional assistance for other housing market participants that are affected when renters or mortgage borrowers miss payments; namely, landlords and mortgage servicers. (Proposals to assist households by providing direct financial assistance to help with rent or mortgage payments would also benefit landlords and servicers, respectively, by reducing the amount of missed payments.) In addition to experiencing a loss of income, which could be particularly significant for landlords whose rental properties represent their primary source of income, some landlords may have difficulty sustaining mortgage payments, operating costs, or other expenses related to maintaining rental housing if tenants are unable to pay rent. Tenants who work in industries at higher risk of job loss may be more likely to rent units in single-family homes or small multifamily properties, and many of the smaller landlords of these properties, in particular, may struggle to withstand months without rental income.[56] Some owners of rental

[55] Letter from Aeon et al. to Congressional Leadership, May 4, 2020, https://nhc.org/wp-content/uploads/2020/05/FinalHousingCoalitionERALetter2020-05-04.pdf.

[56] For example, see Whitney Airgood-Obrycki and Alexander Hermann, "COVID-19 Rent Shortfalls in Small Buildings," Joint Center for Housing Studies of Harvard University, May 26, 2020, https://www.jchs.harvard.edu/blog/covid-19-rent-shortfalls-in-small-buildings/; and Jung Hyun Choi and Caitlin Young, "Owners and Renters of 6.2

properties were eligible for Small Business Administration Economic Injury Disaster Loans as authorized under the CARES Act,[57] but there have been calls for additional or more targeted assistance. Similarly, while Ginnie Mae and FHFA have taken some administrative actions to address concerns about mortgage servicer liquidity, some have called for additional actions to provide additional financial support for mortgage servicers.[58]

A variety of bills introduced in Congress would address these or other pandemic-related housing issues, and some have been considered. The Heroes Act (H.R. 6800), which the House passed in May, includes several housing-related provisions in Division K. These include additional funding for some existing housing programs as well as for certain new programs to respond to pandemic-related housing needs; extensions, expansions, and changes to the CARES Act eviction moratorium, foreclosure moratorium, and mortgage forbearance provisions; and access to financial support for landlords and mortgage servicers.[59] These provisions were also included in a standalone bill, the Emergency Housing Protections and Relief Act of 2020 (H.R. 7301), which has also passed the House. The House passed a revised version of the Heroes Act (H.R. 925) on October 1; the broad contours of the housing-related provisions in H.R. 925 are largely similar to those in H.R. 6800, though there are some differences in the details and in the specific provisions that are included.

For more information, see the following:

- CRS Report R46434, *HEROES Act, Division K—COVID-19 Housing, Economic Relief, and Oversight Act*.

# Other Housing Issues in the 116th Congress

Outside of the pandemic, a variety of other housing-related issues have been of interest during the 116th Congress, including issues related to housing finance, housing assistance programs, administrative actions related to affordable housing, housing and disaster relief, and housing-related tax provisions.

## Housing Finance

### Status of Fannie Mae and Freddie Mac

Fannie Mae and Freddie Mac are two government-sponsored enterprises (GSEs) chartered by Congress to provide liquidity to the secondary markets for single-family and multifamily residential mortgages. The GSEs purchase mortgages from loan originators, retain the *credit (default) risk* from the mortgages they purchase, and subsequently issue mortgage-backed securities (MBS). Investors who purchase the MBS are guaranteed to get their initial principal

Million Units in Small Buildings Are Particularly Vulnerable during the Pandemic," Urban Institute Housing Finance Policy Center, August 10, 2020, https://www.urban.org/urban-wire/owners-and-renters-62-million-units-small-buildings-are-particularly-vulnerable-during-pandemic.

[57] For more information on these loans, see https://www.sba.gov/funding-programs/loans/coronavirus-relief-options.

[58] For example, see Karen Kaul and Ted Tozer, *The Need for a Federal Liquidity Facility for Government Loan Servicing*, Urban Institute Housing Finance Policy Center, July 2020, https://www.urban.org/sites/default/files/publication/102580/the-need-for-a-federal-liquidity-facility-for-government-loan-servicing_0.pdf.

[59] The Heroes Act, as passed by the House, would also continue the UI expansion and provide a second $1,200 relief payment for most households. While not specific housing provisions, such assistance could potentially be used to address housing-related needs.

investment returned, but they assume the risk that borrowers may choose to repay their mortgages ahead of schedule (e.g., by refinancing or selling the home), known as *prepayment risk*.[60] In short, the GSEs' securitization process detaches two mortgage risks into separate components.[61] The GSEs retain the default risk component for a fee and transfer the prepayment risk component to MBS investors.

The Federal Housing Finance Agency (FHFA), an independent federal government agency created by the Housing and Economic Recovery Act of 2008 (HERA; P.L. 110-289), regulates the GSEs for prudential safety and soundness and ensures they meet their affordable housing mission goals. In September 2008, the GSEs experienced losses that exceeded their statutory minimum capital requirement levels due to the high rate of mortgage defaults. The GSEs also experienced losses following spikes in short-term borrowing rates that occurred while they were funding long-term assets held in their portfolios. The GSEs subsequently agreed to be placed under conservatorship by FHFA, which now has the powers of management, boards, and shareholders.[62]

Since Fannie Mae and Freddie Mac entered conservatorship in 2008, policymakers have expressed interest in comprehensive housing finance reform legislation that would resolve the conservatorships of these GSEs and address the underlying issues that are perceived to have led to their financial trouble and conservatorships. Previous Congresses have considered housing finance reform legislation to varying degrees, but none has been enacted. Early in the 116th Congress, Senate Committee on Banking, Housing, and Urban Affairs Chairman Mike Crapo released an outline for potential housing finance reform legislation.[63] The committee held hearings on it shortly thereafter.[64]

In March 2019, President Trump issued a *Memorandum on Federal Housing Finance Reform* directing the Treasury and HUD secretaries to develop plans to achieve certain housing finance reform goals, including both legislative and administrative reforms.[65] Treasury and HUD released these plans on September 5, 2019.[66] Both plans include a variety of legislative recommendations,

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[60] Prepayment risk is one type of the broader category of risks linked to changes in interest rates. Following interest rates changes, the market value of a loan (or bond) asset can change; for assets that give borrowers the option to prepay their loans ahead of schedule, the prepayment risk may offset market value changes. On the liability side, interest rate changes affect the lenders' costs to borrow funds used to finance assets held in their portfolios. Hence, lenders can take advantage of the GSEs' securitization process to reduce the various interest rate risks associated with holding highly interest-sensitive assets such as 30-year fixed rate mortgages.

[61] For more on default and prepayment risk, see CRS In Focus IF10993, *Consumer Credit Markets and Loan Pricing: The Basics*.

[62] For more background on the conservatorship of Fannie Mae and Freddie Mac, see CRS Report R44525, *Fannie Mae and Freddie Mac in Conservatorship: Frequently Asked Questions*; and FHFA, "Conservatorship," at https://www.fhfa.gov/Conservatorship.

[63] U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, "Chairman Crapo Releases Outline for Housing Finance Reform," press release, February 1, 2019, https://www.banking.senate.gov/newsroom/majority/chairman-crapo-releases-outline-for-housing-finance-reform.

[64] U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Chairman's Housing Reform Outline: Part 1*, 116th Cong., 1st sess., March 26, 2019; and U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Chairman's Housing Reform Outline: Part 2*, 116th Cong., 1st sess., March 27, 2019.

[65] Presidential Memorandum, *Memorandum on Federal Housing Finance Reform*, March 27, 2019, https://www.whitehouse.gov/presidential-actions/memorandum-federal-housing-finance-reform/.

[66] Department of the Treasury, *Housing Reform Plan Pursuant to the Presidential Memorandum Issued March 27, 2019*, September 2019, https://home.treasury.gov/system/files/136/Treasury-Housing-Finance-Reform-Plan.pdf; and Department of Housing and Urban Development, *Housing Finance Reform Plan Pursuant to the Presidential Memorandum Issued March 27, 2019*, September 2019, https://home.treasury.gov/system/files/136/HUD-Housing-Finance-Reform-Plan-September-2019.pdf.

as well as recommendations for steps that the agencies could take administratively in the absence of legislation. The Senate Banking Committee and the House Financial Services Committee each held a hearing on the plans.[67]

Outside of any legislative efforts related to housing finance reform, FHFA has taken a variety of administrative and regulatory actions related to Fannie Mae and Freddie Mac in its dual roles as their regulator and conservator.

### *Status of FHFA Administrative Requirements for GSEs While Under Conservatorship*

Since conservatorship, the FHFA has focused on initiatives to standardize many aspects of the GSEs' operations, which include their mortgage data collection processes, securitization processes, mortgage servicing policies (e.g., resolving delinquencies), and MBS issuances. Such standardization arguably increases transparency, reduces the length of the single-family mortgage origination and securitization processes, and ultimately increases the liquidity and uniform pricing of the GSEs' issued securities.[68] These efforts have resulted in the GSEs issuing two types of securities to facilitate lending in the single-family mortgage market. The GSEs continue to transfer prepayment risks but via a new financial instrument (the uniform mortgage-backed security); and they now transfer default risks (credit risk transfers, CRT) to private investors.

#### Uniform Mortgage-Backed Security

The FHFA, under the single security initiative, directed the GSEs to align their key contractual and business practices by acquiring mortgages with similar prepayment speeds along with other features.[69] Each GSE continues to separately purchase conforming mortgages and guarantee the credit risks linked to the MBS trusts it creates. The prepayment speeds, however, are now required to align such that they do not diverge by more than 2% over a three-month interval.[70] With similar prepayment characteristics, Fannie Mae's and Freddie Mac's MBS trusts would generate similar cash-flow predictability and prepayment speeds and, therefore, facilitate the creation of uniform securities. Rather than separate MBS issuances, the FHFA directed the GSEs to issue one common security—the uniform mortgage-backed security (UMBS). However, the GSEs would continue to separately issue and guarantee MBS that do not meet the standardization requirements for UMBS.

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[67] U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Housing Finance Reform: Next Steps*, 116th Cong., 1st sess., September 10, 2019; and U.S. Congress, House Committee on Financial Services, *The End of Affordable Housing? A Review of the Trump Administration's Plans to Change Housing Finance in America*, 116th Cong., 1st sess., October 22, 2019.

[68] For more information on the mortgage servicing and loss mitigation initiatives, see FHFA, "Mortgage Servicing," at https://www.fhfa.gov/PolicyProgramsResearch/Policy/Pages/Mortgage-Servicing.aspx; and Karan Kaul et al., *The Case for Uniform Mortgage Servicing Data Standards*, Urban Institute, November 2018, at https://www.urban.org/sites/default/files/publication/99317/uniform_mortgage_servicing_data_standards_0.pdf. The standardization of servicing may enhance the attractiveness of CRT investments by clarifying the procedures for handling nonperforming mortgages, thus clarifying how losses will be distributed among the various tranche classes. For more information, see Basel Committee on Banking Supervision: The Joint Forum, *Report on Asset Securitisation Incentives*, July 2011, at https://www.bis.org/publ/joint26.pdf; and Patricia A. McCoy, *Barriers to Federal Home Mortgage Modification Efforts During the Financial Crisis*, Joint Center for Housing Studies: Harvard University, August 2010, at https://www.jchs.harvard.edu/sites/default/files/mf10-6.pdf.

[69] See FHFA, "Uniform Mortgage-Backed Security," 84 *Federal Register* 7793-7801, March 5, 2019.

[70] See FHFA, "Uniform Mortgage-Backed Security," 84 *Federal Register* 7793-7801, March 5, 2019.

The issuance of UMBS began on June 3, 2019.[71] The combined market for the GSEs' MBS issuances is expected to be more liquid because the UMBSs trade at a single price (rather than at two different prices).[72] FHFA monitors the GSEs to ensure that their underwriting policies remain intact to avoid material misalignment that compromises interchangeability of the underlying mortgages used to create UMBS.[73]

### Credit Risk Transfer

In July 2013, the GSEs initiated new CRT programs to share with the private sector a portion of the default risk linked to their guaranteed single-family mortgages held in the MBS trusts.[74] Investors preferring exposure only to mortgage *prepayment risk* may continue to purchase MBSs; however, the private sector may now purchase CRT issuances, which function similarly to MBSs, to earn revenue in exchange for assuming exposure to the credit risk.[75] The GSEs typically transfer to CRT investors some of the credit risk linked to mortgages with loan-to-values (LTVs) greater than 60% (or borrowers with 40% or less in accumulated home equity, meaning that they are more vulnerable to the possibility of owing more than the value of their homes if housing prices were to fall).[76] When defaults occur, the GSEs reduce the returns paid to CRT investors (similar to reducing the returns to MBSs investors after prepayments occur). Conversely, the GSEs retain the credit risk for mortgages with lower LTVs (or borrowers with 41% or more in accumulated home equity such that their outstanding balances are significantly below the value of their residential properties), which are less likely to default.[77] From 2013 to 2019, the GSEs have transferred a total of $3.479 trillion of credit risk to private investors.[78]

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[71] See FHFA, "Statement of FHFA Deputy Director Robert Fishman on the Launch of the New Uniform Mortgage-Backed Security (UMBS)," press release, June 3, 2019, at https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Deputy-Director-Robert-Fishman-on-the-launch-of-the-new-Uniform-Mortgage-Backed-Security.aspx.

[72] FHFA, *An Update on the Structure of the Single Security*, May 15, 2015, p. 4, at https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Single%20Security%20Update%20final.pdf. For a discussion of the pricing differential that existed between Fannie Mae's and Freddie Mac's MBSs, see CRS Report R45828, *Overview of Recent Administrative Reforms of Fannie Mae and Freddie Mac*; and Laurie Goodman, *The $400 Million Case for a Single GSE Security*, Urban Institute, September 5, 2014, at http://www.urban.org/urban-wire/400-million-case-single-gse-security. For a discussion on the effects of standardization in the mortgage and MBS markets, see Adam J. Levitin and Susan M. Wachter, "Explaining the Housing Bubble," *The Georgetown Law Journal*, vol. 100, no. 4 (April 12, 2012), pp. 1177-1258.

[73] For more information, see CRS Report R45828, *Overview of Recent Administrative Reforms of Fannie Mae and Freddie Mac*.

[74] The GSEs had existing programs to redistribute more than 90% of the credit risk on their multi-family programs. Fannie Mae issues instruments linked to credit risk stemming from its multi-family mortgages through its Delegated Underwriting and Servicing Program (DUS); the corresponding Freddie Mac instruments are known as K-Deals. See U.S. Government Accountability Office (GAO), *Financial Audit: Federal Housing Finance Agency's Fiscal Years 2018 and 2017 Financial Statements*, GAO-19-183R, November 15, 2018, at https://www.gao.gov/assets/700/695479.pdf; and FHFA, *Overview of Fannie Mae and Freddie Mac Credit Risk Transfer Transactions*, August 2015, at https://www.fhfa.gov/aboutus/reports/reportdocuments/crt-overview-8-21-2015.pdf.

[75] Fannie Mae's CRT instruments are known as Connecticut Avenue Securities (CAS); Freddie Mac's CRT instruments are known as Structural Agency Credit Risk (STACR).

[76] See FHFA, *Performance and Accountability Report*, FY2018, at https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA-2018-PAR.pdf.

[77] The GSEs may also transfer the credit risk of mortgages retained in their portfolios (typically because they lack the standardized features that would make them eligible for placement into an MBS trust for securitization).

[78] For more information, see FHFA, "Credit Risk Transfer Progress Report," Fourth Quarter 2019, at https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/CRT-Progress-Report-4Q2019.pdf.

### *Proposed Capital Rule*

Although the exact definition of *capital* for financial firms is determined by law and regulation, it generally refers to common or preferred equity (as a percentage of assets), which can absorb financial losses. The FHFA suspended the GSEs' capital requirements during conservatorship, and they must pay dividends only to Treasury (as opposed to private shareholders) while they are under conservatorship. As a prerequisite for exiting conservatorship, the GSEs must increase their holdings of capital reserves.[79] Given that pre-conservatorship capital levels for the GSEs were not sufficient to avoid conservatorship, HERA gave FHFA the authority to increase capital standards above the statutory minimum as necessary.[80]

On May 20, 2020, FHFA released a proposed rule that would establish a new regulatory capital framework for Fannie Mae and Freddie Mac to be in place once they are returned to stockholder control.[81] The proposed framework borrows concepts from the capital regulatory framework for large banks such as the definition of capital, various capital buffers, and a risk weight capital floor that would be applied for any CRT exposures retained in portfolio.[82] Comments on the proposal were due by August 31, 2020.

### *Multifamily Housing Financing Activities*

Multifamily properties are generally defined as properties that include five or more housing units. FHFA has placed various directives on the GSEs' multifamily programs since conservatorship.[83] Namely, in 2014, it placed annual caps on the overall dollar volume of multifamily mortgages that each GSE can purchase to shrink their multifamily operations and resulting risks to taxpayers.[84] It excluded mission-driven purchases from counting toward the cap to encourage GSE support in the affordable housing and underserved market segments.[85] Beginning in 2016, FHFA also excluded loans that would finance certain energy and water efficiency improvements (i.e., green loans) from the multifamily purchase caps to retain focus on mission goals.

On September 13, 2019, FHFA revised its directive regarding the multifamily purchase caps, increasing them from the previous caps of $35 billion each to $100 billion each for Fannie Mae and Freddie Mac. All multifamily mortgage purchases will now count toward the cap—no exemptions or exclusions for mission-driven or green loans.[86] However, 37.5% of the GSEs' loan

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[79] P.L. 102-550, the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, establishes the statutory minimum leverage (unweighted) capital requirement; P.L. 110-289, the Housing Economic and Recovery Act of 2008, gave FHFA the authority to increase capital standards above the statutory minimum as necessary.

[80] The statutory minimum leverage (unweighted) capital requirement, specified in P.L. 102-550, the Federal Housing Enterprises Safety and Soundness Act of 1992, is equal to 2.5% of on-balance sheet (portfolio) assets and 0.45% of off-balance sheet (MBS trust) obligations.

[81] See FHFA, "FHFA Releases Re-Proposed Capital Rule for the Enterprises," May 20, 2020, at https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Releases-Re-Proposed-Capital-Rule-for-the-Enterprises.aspx.

[82] See FHFA, "Enterprise Regulatory Capital Framework," 85 *Federal Register* 39274-39406, June 30, 2020.

[83] For more information, see CRS Report R46480, *Multifamily Housing Finance and Selected Policy Issues*.

[84] See FHFA, "FHFA Seeks Public Input on Reducing Fannie Mae and Freddie Mac Multifamily Businesses," press release, August 9, 2013, at https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/MultifamilyInput080913Final.pdf; and FHFA, *Conservatorship Strategic Plan: Performance Goals for 2013*, at https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2013EnterpriseScorecard_508.pdf.

[85] See FHFA, "Fact Sheet: New Multifamily Caps for Fannie Mae and Freddie Mac," press release, at https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/newmultifamilycaps-9132019.pdf.

[86] See FHFA, "FHFA Revises Multifamily Loan Purchase Caps for Fannie Mae and Freddie Mac," press release, September 13, 2019, at https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Revises-Multifamily-Loan-Purchase-

purchases must be mission driven. The FHFA Director stated that this revision narrows the scope of the GSEs' multifamily programs to maintain the focus on affordable rental units for low- and moderate-income households and other historically underserved renters.[87]

## CFPB's Proposed Changes to the Qualified Mortgage Rule and the GSE Patch

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act; P.L. 111-203) requires lenders to make a good faith effort to ensure that certain mortgage borrowers have the ability to repay the loans they offer. Lenders that are found to violate the requirement can be required to pay monetary damages.[88] On January 10, 2013, the Consumer Financial Protection Bureau (CFPB) released a final rule implementing these ability-to-repay (ATR) requirements; the rule took effect on January 10, 2014.[89]

The final rule provides multiple ways for a loan originator to comply with the ATR requirements,[90] one of which is by originating a qualified mortgage (QM). QMs are mortgages that meet certain underwriting standards and lack various risky product-features. When a lender issues a QM, it creates a presumption that the lender has complied with its ATR responsibilities, reducing the lender's legal exposure. The level of protection afforded a lender varies according to the loan's pricing.[91] QMs with annual percentage rates (APRs) not exceeding the Average Prime Offer Rate (APOR) by more than 1.5 percentage points qualify for *safe harbor* status. QMs with APRs exceeding the APOR by more than that amount are considered *higher-priced QMs* and benefit from a *rebuttable presumption* of compliance. The CFPB has explained these legal protections in this way:

> Under a safe harbor, if a court finds that a mortgage you originated was a QM, then that finding conclusively establishes that you complied with the ATR requirements when you originated the mortgage. ... Under a rebuttable presumption, if a court finds that a mortgage you originated was a higher-priced QM, a consumer can argue that you violated the ATR rule. However, to prevail on that argument, the consumer must show that based on the information available to you at the time the mortgage was made, the consumer did not have enough residual income left to meet living expenses after paying their mortgage and other debts.[92]

Lenders may be less likely to originate non-QM loans due to the increased legal exposure.

Limiting the borrower's debt-to-income (DTI) ratio to 43% is one of the current underwriting requirements for a loan to receive general QM status. Mortgages with DTIs exceeding 43% may still qualify as QMs if (1) they are eligible to be insured or guaranteed by FHA, USDA, or VA and meet permanent QM standards established by each of those agencies,[93] or (2) they are eligible for

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Caps-for-Fannie-Mae-and-Freddie-Mac.aspx.

[87] See FHFA, "FHFA Revises Multifamily Loan Purchase Caps for Fannie Mae and Freddie Mac," press release, September 13, 2019, at https://www.fhfa.gov/mobile/Pages/public-affairs-detail.aspx?PageName=FHFA-Revises-Multifamily-Loan-Purchase-Caps-for-Fannie-Mae-and-Freddie-Mac.aspx.

[88] 15 U.S.C. §1640

[89] See Bureau of Consumer Financial Protection (CFPB), "Ability-to-repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)," 78 *Federal Register* 6408-6620, January 30, 2013.

[90] For a comparison of the different ways the lenders can comply with the ATR requirements, see https://files.consumerfinance.gov/f/documents/201603_cfpb_atr-and-qm-comparison-chart.pdf.

[91] All QM loans must meet certain underwriting and product feature requirements.

[92] CFPB, *Ability-to-Repay and Qualified Mortgage Rule Small Entity Compliance Guide*, March 2016, pp. 33-34, https://files.consumerfinance.gov/f/documents/bcfp__atr-qm_small-entity_compliance-guide.pdf.

[93] The Dodd-Frank Act allowed federal agencies that guarantee mortgages to issue their own definitions of a QM. The Federal Housing Administration, U.S. Department of Veterans Affairs, and United States Department of Agriculture

purchase by two government sponsored enterprises (GSEs), Fannie Mae or Freddie Mac.[94] The GSE QM option, which is referred to as the *QM patch*, allows the GSEs to operate under their own QM rules for seven years (until January 10, 2021) or until they exit conservatorship, whichever is sooner.[95]

On June 22, 2020, the CFPB proposed revisions to the current QM definition.[96] Some of the proposed revisions include the following:[97]

- For the QM definition, the proposal would remove the 43% DTI ratio requirement and replace it with requirements that are based on the mortgage pricing, which reflects the credit quality of borrowers. The rule would continue to grant safe harbor QM status to a first-lien (primary) mortgage in which the difference between its APR and the APOR is less than 1.5 percentage points.[98] To qualify as a QM with rebuttable presumption, however, the proposal would limit the difference between the APR and APOR for first-lien mortgages to no more than 2 percentage points.[99]
- The CFPB also seeks comments on removing Appendix Q, which creditors are currently required to use to verify borrower debt and income for QMs, and granting safe harbor to creditors that use specified income and debt verification standards such as one or more of the following: Fannie Mae's Single Family Selling Guide, Freddie Mac's Single-Family Seller/Servicer Guide, FHA's Single Family Housing Policy Handbook, the Veteran Administrations Lenders Handbook, and the Field Office Handbook for the Direct Single Family Housing Program and Handbook for the Single Family Guaranteed Loan Program of the U.S. Department of Agriculture (USDA).

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did not adopt a 43% DTI requirement for the mortgages they guarantee. Instead, these agencies adopted their own QM definitions, which included the exclusion of product features they considered would impede repayment from borrowers they predominantly serve—but they did not limit DTIs to 43%. See Department of Housing and Urban Development, "Qualified Mortgage Definition for HUD Insured and Guaranteed Single Family Mortgages," 78 *Federal Register* 75215-75238, December 13, 2013; Department of Veterans Affairs, "Loan Guaranty: Ability-To-Repay Standards and Qualified Mortgage Definition Under the Truth in Lending Act," 79 *Federal Register* 26620-26628, May 9, 2014; and Department of Agriculture, Rural Housing Service, "Single Family Housing Guaranteed Loan Program," 81 *Federal Register* 26461-26465, May 3, 2016.

[94] See CFPB, *Ability-to-Repay and Qualified Mortgage Rule Assessment Report*, January 2019, at https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf.

[95] See CFPB, "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)," 78 *Federal Register* 6049, January 30, 2013; Bing Bai, Laurie Goodman, and Ellen Seidman, *Has the QM Rule Made It Harder to Get a Mortgage?*, Urban Institute, March 2016, at https://www.urban.org/sites/default/files/publication/78266/2000640-Has-the-QM-Rule-Made-It-Harder-to-Get-a-Mortgage.pdf; and Karan Kaul and Laurie Goodman, *What, If Anything, Should Replace the QM GSE Patch?*, Urban Institute, August 2018, at https://www.urban.org/sites/default/files/publication/98949/2018_10_30_qualified_mortgage_rule_finalizedv2_0.pdf.

[96] See CFPB, "Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition," 85 *Federal Register* 41716-41778, July 10, 2020.

[97] For a summary of the proposal, see CFPB, *Summary of Proposed Rule-Makings: June 2020 Proposals to Amend the ATR-QM Rule*, June 22, 2020, at https://files.consumerfinance.gov/f/documents/cfpb_atr-qm_summary-of-proposals_2020-06.pdf.

[98] Consistent with the current rule, the CFPB proposes higher thresholds for loans with smaller loan amounts and for subordinate-lien transactions, which typically have higher APRs. For more information on how the CFPB defines the benchmark APOR, see, CFPB, "What is a 'Higher-Priced Mortgage Loan?'", September 17, 2013, at https://www.consumerfinance.gov/ask-cfpb/what-is-a-higher-priced-mortgage-loan-en-1797/.

[99] Under the current rule, there is no limit on the amount by which the APR exceeds the APOR for the purposes of the QM definition, though only QMs where the difference is no more than 1.5 percentage points (for most first-lien mortgages) qualify for a safe harbor.

- The CFPB is also seeking comments on an alternative proposal to consider a DTI range between 45% and 48% rather than removing the DTI requirement entirely. Higher credit-quality applicants likely to qualify for lower mortgage rates could be approved with DTIs near or at the upper end of the range. In this case, a better credit score may act as a *compensating factor*, a positive risk attribute that may be given additional weight when underwriting applicants with higher DTIs.

On June 22, 2020, in a separate proposed rule, the CFPB also proposed revisions to the current GSE/QM patch.[100] Specifically, the CFPB proposes to extend the sunset date for the GSE Patch such that it corresponds to the earlier of either (1) the effective date of the final amendments to the QM rule revisions or (2) the date that the GSEs exit conservatorship. (The CFPB notes that the QM rule revisions are not expected to become effective prior to April 1, 2021.)

### Department of Veterans Affairs Loan Guaranty and Maximum Loan Amounts

The Department of Veterans Affairs (VA) insures home loans to veterans as part of the VA Loan Guaranty program. To date, the maximum amount a veteran can borrow has been limited by the Freddie Mac conforming loan limit.[101] While veterans can enter into loans that exceed the conforming loan limit, they cannot do so without making a down payment. The fact that VA loans do not ordinarily require a down payment is a popular feature of the program—in FY2018, nearly 80% of loans did not have a down payment.[102]

Congress removed the conforming loan limit for VA loans entered into on or after January 1, 2020, as part of the Blue Water Navy Vietnam Veterans Act of 2019 (P.L. 116-23). After the change takes effect, most veterans will be able to enter into loans of any amount, subject to eligibility, without the need for a down payment. An exception exists for veterans who have outstanding VA loans; they will still be subject to Freddie Mac conforming loan limits.

## Housing Assistance

### Appropriations for Housing Programs

For several years, concern in Congress about federal budget deficits led to increased interest in reducing the amount of discretionary funding provided each year through the annual appropriations process. This interest manifested most prominently in the enactment of the Budget Control Act of 2011 (P.L. 112-25), which set enforceable limits for both mandatory and discretionary spending.[103] The limits on discretionary spending, which have been amended and adjusted since they were first enacted,[104] have implications for HUD's budget, the largest source of funding for direct housing assistance, because it is made up almost entirely of discretionary

[100] See CFPB, "Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Extension of Sunset Date," 85 *Federal Register* 41448-41463, July 10, 2020.

[101] In 2019, the conforming loan limit for most areas of the country was $484,350. However, in certain high-cost areas the conforming loan limit may be as high as 115% of the area median home price, but not to exceed 150% of the conforming loan limit. As a result, in some high-cost areas the 2019 limit is as high as $726,525. (For more information on the conforming loan limit, see CRS Report R44826, *The Loan Limits for Government-Backed Mortgages*.)

[102] U.S. Department of Veterans Affairs, *FY2018 Annual Benefits Report*, Home Loan Guaranty section, p. 8, https://www.benefits.va.gov/REPORTS/abr/docs/2018-loan-guaranty.pdf.

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

[104] Ibid.

appropriations.[105] In FY2020, the discretionary spending limits were slated to decrease, after having been increased in FY2018 and FY2019 by the Bipartisan Budget Act of FY2018 (BBA; P.L. 115-123), but they were raised again for FY2020 and FY2021 by the Bipartisan Budget Act of 2019 (P.L. 116-37).[106]

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, 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.[107] 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.[108] 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.[109] A similar dynamic plays out in the U.S. Department of Agriculture's Rural Housing Service budget. Demand for housing assistance exceeds the supply of subsidies, yet the vast majority of the RHS budget is devoted to maintaining assistance for current residents.[110]

In a budget environment with limits on discretionary spending, pressure to provide increased funding to maintain current services for existing rental assistance programs competes with pressure from states, localities, and advocates to maintain or increase funding for other popular programs, such as HUD's Community Development Block Grant (CDBG) program, grants for homelessness assistance, and funding for Native American housing.

### *FY2021 Budget*

The Trump Administration's budget request for FY2021 proposed a 15% decrease in new appropriations for HUD's programs and activities as compared to the prior year.[111] As in prior budget requests, it proposed to eliminate funding for several programs, including multiple HUD

[105] 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.

[106] For more information, see CRS Insight IN11148, *The Bipartisan Budget Act of 2019: Changes to the BCA and Debt Limit*.

[107] 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 Section 8 project-based program, the increased funding is due to more long-term rental assistance contracts on older properties expiring and being renewed, requiring new appropriations, as well as rent inflation.

[108] 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.

[109] 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.

[110] The bulk of the RHS budget for rental housing is devoted to renewing existing Section 521 rental assistance contracts in Section 515 and Section 514/516 rental housing properties. For more information about USDA's rural housing programs, see CRS Report RL31837, *An Overview of USDA Rural Development Programs*.

[111] For more information, see CRS Report R46465, *Transportation, Housing and Urban Development, and Related Agencies (THUD) Appropriations for FY2021: In Brief*.

grant programs (CDBG, the HOME Investment Partnerships Program, the Self-Help and Assisted Homeownership Opportunity Program (SHOP), and the public housing Capital Fund), and to decrease funding for most other HUD programs. In proposing to eliminate the grant programs, the Administration cited budget constraints and proposed that state and local governments take on more of a role in the housing and community development activities funded by these programs. Additionally, the budget referenced policy changes designed to reduce the cost of federal rental assistance programs, including the Making Affordable Housing Work Act of 2018 (MAHWA) legislative proposal, released by HUD in April 2018.[112] If enacted, the proposal would make a number of changes to the way tenant rents are calculated in HUD rental assistance programs, resulting in rent increases for assisted housing recipients, and corresponding decreases in the cost of federal subsidies. Further, it would permit local program administrators or property owners to institute work requirements for recipients. In announcing the proposal, HUD described it as setting the programs on "a more fiscally sustainable path," creating administrative efficiency, and promoting self-sufficiency.[113] Low-income housing advocates were critical of it, particularly the effect increased rent payments may have on families.[114] Thus far, it has not been considered in Congress.

Beyond HUD, the Administration's FY2021 budget request for USDA's Rural Housing Service proposed to eliminate funding for most rural housing programs, except for several loan guarantee programs. It would continue to provide funding to renew existing rental assistance, but also proposes a new minimum rent policy for tenants designed to help reduce federal subsidy costs.

The funding cuts proposed in the President's FY2021 budget requests have been included in prior Trump Administration budget requests, but not adopted by Congress.

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 the FY2021 process, see CRS Report R46465, *Transportation, Housing and Urban Development, and Related Agencies (THUD) Appropriations for FY2021: In Brief*.

## Housing Vouchers for Foster Youth

Policymakers have raised concerns that youth aging out of foster care lack adequate and affordable housing as they transition to adulthood. A recent national study of young people experiencing homelessness found that one-quarter to one-third had a history of having been in foster care.[115] In light of this, both the Administration and Congress have either made or proposed changes to increase access to housing assistance for foster youth.

[112] 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.

[113] 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.

[114] 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.

[115] University of Chicago, Chapin Hall, Voices of Youth Count, Missed Opportunities: Pathways from Foster Care to Youth Homelessness in America, July 2019, https://voicesofyouthcount.org/wp-content/uploads/2019/04/Chapin-Hall_VoYC_Child-Welfare-Brief_2019-1.pdf

Under current law, HUD's Family Unification Program (FUP) offers a limited number of vouchers plus services to (1) child welfare involved families for whom lack of stable housing is a risk for family separation or a primary barrier to reunification and (2) youth aging out of foster care and at risk of homelessness. FUP vouchers for youth are unique, in that they are limited to up to 36 months, unlike other vouchers that are not subject to a time limit. Although foster youth are one of the target populations for FUP, according to HUD, only 5% of FUP vouchers are used for youth.[116]

In July 2019, HUD announced a new Administration initiative called Foster Youth to Independence (FYI). Under FYI, HUD makes additional vouchers, through the tenant protection set-aside in the Housing Choice Voucher Program, available to serve youth in a program modeled after FUP.

In Congress, the House passed via voice vote the Fostering Stable Housing Opportunities Act (FSHO; H.R. 4300). The bill would provide explicit statutory authority to use tenant protection vouchers for foster youth consistent with the FUP program and the new FYI initiative, and would allow for those vouchers to be extended beyond the typical 36-month time limit for youth when a youth is engaged in employment, education, or training activities (or is otherwise exempt from compliance), among other provisions. A companion bill has been introduced in the Senate (S. 2803).[117]

## Implementation of Housing Assistance Legislation

Several pieces of assisted housing legislation that were enacted in prior Congresses have been in the process of being implemented during the 116th Congress.

### *Moving to Work (MTW) Expansion*

In the FY2016 HUD appropriations law, Congress mandated that HUD expand the Moving to Work (MTW) demonstration by 100 public housing authorities (PHAs).[118] MTW is a waiver program that allows a limited number of participating PHAs to receive 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 it 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, the Government Accountability Office (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.[119]

HUD was required to phase in the FY2016 expansion and evaluate any new policies adopted by participating PHAs. Following a series of listening sessions and advisory committee meetings, and several solicitations for comment, HUD issued a solicitation of interest for the first two

[116] See HUD Notice PIH 2019-20(HA), *Tenant Protection Vouchers for Foster Youth to Independence Initiative*, July 26, 2019, https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2019-20.pdf

[117] The bill was discussed during a Senate Banking Committee hearing on November 7, 2019, entitled "Examining Bipartisan Bills to Promote Affordable Housing Access and Safety."

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

[119] 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.

expansion cohorts in December 2018. As of the date of this report, no selections had yet been made for those cohorts.[120]

### *Rental Assistance Demonstration Expansion*

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[121] by allowing local PHAs to convert their public housing properties to either Section 8 Housing Choice Vouchers or Section 8 project-based rental assistance.[122] 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.[123] 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.[124] While RAD conversions have been popular with PHAs,[125] and HUD's initial evaluations of the program have been favorable,[126] a recent GAO study has raised questions about HUD's oversight of RAD, and about how much private funding is actually being raised for public housing through the conversions.[127]

RAD, as first authorized by Congress in the FY2012 HUD appropriations law, was originally limited to 60,000 units of public housing (out of roughly 1 million units).[128] However, Congress has since expanded the demonstration. Most recently, in FY2018, Congress raised the cap so that

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[120] For more information, see HUD's website for Cohort #1: https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw/expansion/cohort1; and Cohort #2: https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw/expansion/cohort2. The Notice for Cohort #1 is PIH Notice 2018-17, as extended by PIH Notice 2019-03. The Notice for Cohort #2 is PIH 2019-04.

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

[122] 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.

[123] 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).

[124] 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/pdf/RAD-InterimRpt.pdf.

[125] 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.

[126] 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.

[127] 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.

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

up to 455,000 units of public housing will be permitted to convert to Section 8 under RAD, and it further expanded the program so that Section 202 Housing for the Elderly units can also convert. Not only is HUD currently implementing the FY2018 expansion, but the President's FY2021 budget request to Congress—and past several budget requests to Congress—proposed that the cap on public housing RAD conversions be eliminated completely.[129]

## Quality of Federally Assisted Housing

The Housing Act of 1949 set as U.S. policy the promotion of "safe" and "decent" housing. In light of this, federally assisted housing is generally subject to minimum physical quality standards as a condition of receiving assistance, and to periodic inspection to ensure that quality is maintained. Those inspection protocols, including the exact standards the property must meet, the frequency of inspection, and the entity that conducts the inspections, can all vary by program. In recent years, news articles highlighting poor conditions at federally assisted properties and concerns raised by tenants and other stakeholders have focused policymakers' attention on the physical condition of the federally assisted housing stock generally, and of HUD-assisted properties in particular. This has led to calls for changes to various elements of the existing protocols. For example, see the following:

- Beginning in FY2014 and continuing each year since, Congress has included language in the annual HUD appropriations laws directing HUD to take specific actions when a Section 8 project-based rental assistance property scores below a certain threshold. These laws have also provided a suite of enforcement tools from which the Secretary can choose. The exact provisions and tools have changed over the years, and legislation has been introduced to codify some or all of them in the law governing the Section 8 PBRA program (including H.R. 3745, the HUD Inspection Oversight Act of 2019).
- Congress has directed the Government Accountability Office to investigate various elements of HUD's inspection process, including the presence of lead-based paint in assisted housing. GAO has issued several reports and a series of recommendations, and has more underway.[130]
- Beginning in early 2019, HUD launched the National Standards for the Physical Inspection of Real Estate (NSPIRE) initiative, which HUD has characterized as a "wholesale reexamination" of the agency's inspection process. It involves a number of administrative changes to the current process (including shortening notice to owners before inspections) as well as a demonstration to test new standards for inspection and collecting information about HUD-assisted properties that launched in August 2019.[131]
- On November 20, 2019, the Subcommittee on Housing, Community Development, and Insurance of the House Financial Services Committee held a hearing entitled "Safe and Decent? Examining the Current State of Residents' Health and Safety in HUD Housing." The hearing featured witnesses from

[129] See Section 219 of the General Provisions portion of the FY2020 President's budget request for HUD.

[130] For a summary, see U.S. Government Accountability Office, *Rental Housing Assistance: HUD Should Strengthen Physical Inspection of Properties and Oversight of Lead Paint Hazards*, GAO-20-277T, November 20, 2019, https://www.gao.gov/products/GAO-20-277T.

[131] For more information about NSPIRE, see https://www.hud.gov/program_offices/public_indian_housing/reac/nspire/concept.

various housing providers and tenant groups and also discussed various draft and introduced bills related to reforms to HUD's inspection and oversight protocols, including H.R. 3745.

- A number of bills have been introduced in the 116th Congress designed to address specific hazards in federally assisted housing, including lead-based paint hazards, lead hazards in drinking water, and carbon monoxide poisoning.[132]

## Native American Housing Programs

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 for housing.[133] In light of these challenges, and the federal government's long-standing trust relationship with tribes, certain federal housing programs provide funding specifically for housing in tribal areas.

### *Tribal HUD-VASH*

The Tribal HUD-Veterans Affairs Supportive Housing (Tribal HUD-VASH) program provides rental assistance and supportive services to Native American veterans who are homeless or at risk of homelessness. Tribal HUD-VASH is modeled on the broader HUD-Veterans Affairs Supportive Housing (HUD-VASH) program, which provides rental assistance and supportive services for homeless veterans. Tribal HUD-VASH was initially created and funded through the FY2015 HUD appropriations act (P.L. 113-235), and funds to renew rental assistance have been provided in subsequent appropriations acts. No separate authorizing legislation for Tribal HUD-VASH currently exists.

In the 116th Congress, a bill to codify the Tribal HUD-VASH program (S. 257) was ordered to be reported favorably by the Senate Committee on Indian Affairs in February 2019 and passed the full Senate in June 2019. An identical bill (H.R. 2999) has been introduced in the House and referred to the Committee on Financial Services. A substantively identical bill also passed the Senate during the 115th Congress (S. 1333), but the House ultimately did not consider it.

For more information on HUD-VASH and Tribal HUD-VASH, see CRS Report RL34024, *Veterans and Homelessness*.

### *NAHASDA Reauthorization*

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 formula funding to tribes that can be used for a range of affordable housing activities that benefit primarily low-income Native Americans or Alaska Natives living in tribal areas. A separate block

[132] For example, the Carbon Monoxide Alarms Leading Every Resident To Safety Act of 2019 (H.R. 1690), which was passed by the House; the Safe Housing for Families Act (S. 755); the Get the Lead Out of Assisted Housing Act of 2019 (H.R. 3721/S. 2087); the Lead-Free Future Act of 2019 (H.R. 4416); and the Public Housing Fire Safety Act (S. 3090/H.R. 5969).

[133] 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.

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.[134] NAHASDA also authorizes a loan guarantee program, the Title VI Loan Guarantee, for tribes to carry out eligible affordable housing activities.

The most recent authorization for most NAHASDA programs expired at the end of FY2013, although NAHASDA 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.[135]) NAHASDA reauthorization legislation was considered in varying degrees in the 113th, 114th, and 115th Congresses but none was ultimately enacted.[136] In general, tribes and Congress have been supportive of NAHASDA, though there has been some disagreement over specific provisions or policy proposals that have been included in reauthorization bills. Some of these disagreements involve debates over specific program changes that have been proposed. Others involve debate over broader issues, such as the appropriateness of providing federal funding for programs specifically for Native Hawaiians and whether such funding could be construed to provide benefits based on race.[137]

In the 116th Congress, a NAHASDA reauthorization bill (H.R. 5319) was introduced in the House in December 2019. A Senate NAHASDA reauthorization bill (S. 4090) was introduced in June 2020 by Senator Hoeven and Senator Udall, Chairman and Vice Chairman, respectively, of the Senate Committee on Indian Affairs. The bills contain many similar provisions but also differ in a number of ways.

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

## Proposed New Investments in Affordable Housing

The 116th Congress has seen proposals to expand federal resources for affordable housing in a manner that is largely unprecedented in scope and scale. Some of these proposals were included in the platforms of various 2020 Democratic Presidential candidates,[138] including the nominee, former Vice President Joe Biden.[139] Some of these proposals have been introduced in Congress and at least two have passed the House.

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[134] 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/.

[135] 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.

[136] In the 113th Congress, a NAHASDA reauthorization bill (H.R. 4329) was passed by the House, while a different bill (S. 1352) was favorably reported out of committee in the Senate. In the 114th Congress, a bill (H.R. 360) was again passed by the House, while a different bill (S. 710) was favorably reported out of committee in the Senate. In the 115th Congress, similar, but not identical, bills were introduced in the House and the Senate (H.R. 3864 and S. 1895, respectively). H.R. 3864 was favorably reported out of committee in the House.

[137] For more information on some of the issues that have been debated in the context of NAHASDA reauthorization in the past, see archived CRS Report R44261, *The Native American Housing Assistance and Self-Determination Act (NAHASDA): Issues and Reauthorization Legislation in the 114th Congress*.

[138] Maggie Astor, "How the Democratic Candidates Would Tackle the Housing Crisis," *The New York Times*, March 3, 2020, https://www.nytimes.com/2020/03/03/us/politics/housing-homelessness-2020-democrats.html.

[139] The proposal offered by candidate Biden is available at https://joebiden.com/housing/ and includes, among other policies, an expansion of the Section 8 Housing Choice Voucher program to serve all eligible households, a new renters tax credit, and creation of a $100 billion affordable housing fund.

These sweeping new affordable housing proposals—some of which are briefly summarized below—can be considered to include one or both of two main approaches: significant new federal funding for the development or rehabilitation of affordable housing; and significant expansions of direct federal assistance for renters. The first approach, a supply-side approach, is meant to address concerns about the rate of growth in renter households outpacing the supply of rental units affordable to them. A recent report from GAO cited the supply of low-cost rental units not keeping up with demand as a key driver of recent affordability challenges.[140] HUD estimates that only 59 affordable units were available per 100 very low-income renters in 2017, noting that total additions to the nation's rental supply have been inadequate to meet growing demand.[141] The second approach, a demand side approach, recognizes that the vast majority of persons facing affordability challenges are housed, but that their housing costs are too high to be considered affordable. A recent report from HUD found a 7% reduction in very low-income renters with severe housing problems from 2015 to 2017, and attributed that decline almost solely to income increases (rather than supply additions).[142]

### *Funding for New Housing Development*

There have been a number of proposals to significantly increase funding for the development of new units of affordable housing and/or the rehabilitation of the existing stock of affordable housing. For example, see the following:

- The Housing is Infrastructure Act of 2019 (H.R. 5187/S. 2951) would authorize over $100 billion for various housing grant programs for the development of affordable housing. For purposes of comparison, the accounts for which these funds would be authorized received less than half that amount in regular appropriations in FY2020. The bill was ordered reported by the House Financial Services Committee in February 2020 and was incorporated into the Moving Forward Act of 2020 (H.R. 2), which passed the House in July.
- The FY2021 HUD appropriations bill reported by the House Appropriations Committee (H.R. 7616) and passed by the House (as a part of a multi-bill appropriations package, H.R. 7617) included a new title appropriating an additional $49 billion in emergency funding for HUD accounts to fund affordable housing-related infrastructure investments. If approved, this would nearly double HUD's budget in FY2021.
- Other legislation that would provide notable increases in funding for affordable housing development includes the American Housing and Economic Mobility Act of 2019 (H.R. 1737/S. 787), which would authorize $44.5 billion per year for 10 years for the Housing Trust Fund (which to date has never received annual funding above $330 million), among other provisions; the Green New Deal for Public Housing (H.R. 5185/S. 2876), which would appropriate "such sums as may be necessary" for 10 years to provide grants for the rehabilitation and energy retrofit needs of public housing, among other provisions; and the Homes for All Act of 2019 (H.R. 5244), which would appropriate $80 billion per year for 10

[140] U.S. Government Accountability Office, *As More Households Rent, the Poorest Face Affordability and Housing Quality Challenges*, GAO-20-427, May 27, 2020, https://www.gao.gov/products/GAO-20-427.

[141] Nicole Elsasser Watson et al., *Worst Case Housing Needs: 2019 Report to Congress*, Department of Housing and Urban Development, Washington, DC, June 2020, https://www.huduser.gov/portal/sites/default/files/pdf/worst-case-housing-needs-2020.pdf.

[142] Ibid.

years to build new public housing units and would authorize appropriations of $20 billion per year for 10 years to fund privately owned affordable housing units, among other provisions.

### *Aid to Renters*

Federal rental assistance programs are funded to serve roughly one in four eligible households currently, meaning there are long waiting lists for assistance in most communities. Some proposals have included significant expansions of existing rental assistance (i.e., Housing Choice Vouchers); others the creation of new direct subsidies for renters (i.e., refundable tax credits). For example, see the following:

- The Pathway to Stable and Affordable Housing for All Act (H.R. 5813/S. 2946) would provide new mandatory appropriations intended to fund Housing Choice Vouchers for all eligible households. The program currently receives a fixed amount of discretionary appropriations each year, primarily to continue assistance to currently assisted families. (Additionally, it would appropriate $40 billion per year for 10 years for the Housing Trust Fund, in addition to providing other mandatory appropriations for homeless assistance.)
- The Rent Relief Act of 2019 (H.R. 2169/S. 1106) would create a new refundable tax credit for renters paying more than 30% of their gross income towards rent, which phases out for renters with higher incomes.

Nearly all of these proposals were released before the onset of the global pandemic and its related housing challenges. Depending on how the economic crisis triggered by the pandemic unfolds, interest in these sweeping approaches to address affordable housing challenges may increase; or, given their cost and the state of national budget deficits, interest may wane.

## Selected Administrative Actions Related to Affordable Housing

### HUD Noncitizen Eligibility and Documentation Proposed Rule

On May 10, 2019, HUD released a proposed rule to end eligibility for "mixed status" families in its major rental assistance programs (public housing, Section 8 Housing Choice Vouchers, Section 8 project-based rental assistance).[143] Mixed status families comprise both citizens (or eligible noncitizens) and ineligible noncitizens. Under current HUD regulations, mixed status families are eligible to receive prorated assistance, meaning that the household can receive federal housing assistance but their benefit must be reduced proportionally to avoid assisting ineligible noncitizens (generally, nonimmigrants such as those in the country illegally as well as those with temporary status, such as tourists and students). Additionally, the proposed rule would establish new requirements that citizens provide documentation of their citizenship status.[144] (For more information, see CRS Insight IN11121, *HUD's Proposal to End Assistance to Mixed Status Families*.)

[143] U.S. Department of Housing and Urban Development, "Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980," 84 *Federal Register* 20589, May 10, 2019.

[144] For more information, see CRS Insight IN11121, *HUD's Proposal to End Assistance to Mixed Status Families*.

Low-income housing advocates[145] and stakeholder groups representing program administrators[146] have publicly opposed the proposed rule change, citing its potential disruptive effect on the roughly 25,000 currently assisted mixed status families, as well as the increases in both subsidy costs (estimated at $200 million per year by HUD) and administrative costs it would cause. Legislative language to block implementation of the rule was included in the House-passed FY2021 HUD appropriations bill (H.R. 7616, as incorporated into H.R. 7617); H.R. 2763, as ordered reported by the House Financial Services Committee; and S. 1904, as introduced in the Senate. (Identical appropriations language was included in the House-passed FY2020 HUD appropriations bill, but was not included in the final FY2020 HUD appropriations law, P.L. 116-94.) As of the date of this report, HUD has not promulgated a final rule.

## Equal Access to Housing

On July 24, 2020, HUD released a proposed rule that would make changes to its Equal Access to Housing rule.[147] HUD initially published an Equal Access to Housing rule in 2012, stating that housing provided through HUD programs must be made available regardless of a person's sexual orientation, gender identity, or marital status.[148] Another Equal Access to Housing rule—specifically targeted to HUD Community Planning and Development (CPD) programs, where funding can be used to fund shelters for people experiencing homelessness—was published in 2016.[149] The 2016 Equal Access to Housing rule requires that placement in facilities with shared sleeping and/or bath accommodations occur in conformance with a person's gender identity.

The 2020 proposed rule would allow CPD program grant recipients that operate single-sex facilities to consider biological sex in admissions determinations, as long as each recipient's policy is applied consistently. For example, a single-sex shelter for women could not "decline to accommodate a person who identifies as male but who is a biological female."[150] Where a shelter provider "has a good faith basis to doubt the consistency of the sex asserted with the sex served by the shelter," then the proposed rule would allow the provider to ask for such documents as birth certificates or other identification and medical records.[151] If a shelter provider were to deny admission to a client based on its single-sex policy, the proposed rule would require that the

[145] For example, see "Housing, Faith, Civil Rights, Social Justice, and Immigration Leaders Rally to Oppose HUD Rule That Would Separate Families or Evict Them," May 10, 2019, a joint press statement, available at https://nlihc.org/news/housing-faith-civil-rights-social-justice-and-immigration-leaders-rally-oppose-hud-rule-would.

[146] For example, see "CLPHA Strongly Opposes HUD's Non-Citizen Proposal," Council of Large Public Housing Authorities, May 2, 2019, available at https://clpha.org/news/2019/clpha-strongly-opposes-hud%E2%80%99s-non-citizen-proposal.

[147] U.S. Department of Housing and Urban Development, "Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs," 85 *Federal Register* 44811, July 24, 2020.

[148] U.S. Department of Housing and Urban Development, "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity," 77 *Federal Register* 5662-5676, February 3, 2012, http://portal.hud.gov/hudportal/documents/huddoc?id=12lgbtfinalrule.pdf.

[149] U.S. Department of Housing and Urban Development, "Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs," 81 *Federal Register* 64763-64782, September 21, 2016.

[150] 85 *Federal Register* 44812.

[151] Ibid., p. 44815.

provider provide a recommendation for another shelter.[152] Providers could also choose to continue admissions based on a client's gender identity.[153]

Legislation to prohibit HUD from implementing a rule making changes to admissions at single-sex shelters was approved by the House Financial Services Committee on June 11, 2019.[154] (See the Ensuring Equal Access to Shelter Act of 2019, H.R. 3018.) In addition, the FY2020 House-passed HUD appropriations bill (Section 236 of Division E of H.R. 3055) would have prevented HUD from making changes to either the 2012 or 2016 Equal Access to Housing rules. (The language from H.R. 3055 was not included in the final FY2020 HUD appropriations law, P.L. 116-94.) The FY2021 House-passed appropriations bill for multiple agencies, including HUD, would not allow funds to be used to implement, administer, or enforce the proposed rule (Section 235 of HUD General Provisions in H.R. 7617 ).

For more information about the Equal Access to Housing rules, see CRS Report R44557, *The Fair Housing Act: HUD Oversight, Programs, and Activities*.

## Regulatory Barriers Council

On June 25, 2019, President Trump signed an Executive Order establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing.[155] The council is to be chaired by the HUD Secretary, but will include members from eight federal agencies. The council is charged with assessing federal, state, and local regulations and the effect they are having on developing new affordable housing; taking action to reduce federal regulatory barriers; and supporting state and local efforts to reduce regulatory barriers.

On November 22, 2019, HUD published a Request for Information in the *Federal Register* seeking input from the public on "Federal, State, local and Tribal laws, regulations, land use requirements, and administrative practices that artificially raise the costs of affordable housing development and contribute to shortages in housing supply."[156]

## Affirmatively Furthering Fair Housing

The Fair Housing Act requires HUD to administer its programs in a way that affirmatively furthers fair housing.[157] In addition, statutes or regulations governing specific HUD programs require that funding recipients affirmatively further fair housing (AFFH). On July 16, 2015, HUD published a final rule that more specifically defined what it means to affirmatively further fair housing, and required that local communities and Public Housing Authorities (PHAs) receiving HUD funding assess the needs of their communities and ways in which they could improve access to housing, and submit reports, called Assessments of Fair Housing, to HUD.

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[152] Ibid., p. 44818.

[153] Ibid., p. 44812.

[154] The legislation was introduced and considered prior to publication of the proposed rule. As a result, the bill refers to HUD's proposed new rule as described in the Federal Register Unified Agenda in Spring 2019. See https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=2506-AC5.

[155] Executive Order 13878, "Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing," 84 *Federal Register* 30853-30856, June 28, 2019.

[156] Department of Housing and Urban Development (HUD), "White House Council on Eliminating Regulatory Barriers to Affordable Housing; Request for Information," 84 *Federal Register* 64549, November 22, 2019.

[157] 42 U.S.C. §3608(e)(5).

After the AFFH rule began to be implemented, on May 23, 2018, HUD effectively suspended its implementation. Several months later, on August 13, 2018, HUD announced an Advance Notice of Proposed Rulemaking stating that it "has determined that a new approach towards AFFH is required" and requesting public comments on potential changes to the AFFH regulations.[158] On January 14, 2020 HUD released a new proposed AFFH rule;[159] the comment period for the proposed rule closed on March 16, 2020. The proposed rule would have instituted a new definition of what it means to affirmatively further fair housing and allowed communities to certify their adherence to requirements through the consolidated planning process. The process would not have applied to PHAs.

Before the January 14, 2020 proposed rule could be finalized, HUD issued a different final rule on August 7, 2020, "Preserving Community and Neighborhood Choice."[160] The final rule states that HUD need not go through the notice and comment process normally required of rulemaking under the Administrative Procedure Act (APA) due to an APA exception for matters "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts."[161] The final rule states that fair housing "means housing that, among other attributes, is affordable, safe, decent, free of unlawful discrimination, and accessible as required under civil rights laws," and that AFFH is "to take any action rationally related to promoting any attribute or attributes of fair housing … "[162] Communities are to certify that they have satisfied the requirement to affirmatively further fair housing as part of their consolidated plans; the rule does not apply to PHAs. The rule is to take effect 30 days from its publication in the federal register.

The FY2021 House-passed appropriations bill for multiple agencies, including HUD, would not allow funds to be used to implement, administer, or enforce the final rule (Section 506 of the General Provisions for Additional Infrastructure Investments in H.R. 7617).

For more information about the AFFH rule, see CRS Report R44557, *The Fair Housing Act: HUD Oversight, Programs, and Activities*.

## Housing and Disaster Response and Recovery

When disasters occur, the President may authorize an emergency or major disaster declaration[163] under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act; P.L. 93-288, as amended). The presidential declaration may authorize the Federal Emergency Management Agency (FEMA) to provide various short-term and interim housing assistance programs.[164]

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[158] U.S. Department of Housing and Urban Development, "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 U.S. 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.

[159] U.S. Department of Housing and Urban Development, "Affirmatively Furthering Fair Housing," 85 *Federal Register* 2041, January 14, 2020.

[160] U.S. Department of Housing and Urban Development, "Preserving Community and Neighborhood Choice," 85 *Federal Register* 47899, August 7, 2020.

[161] Ibid.. p. 47904 citing the APA at 5 U.S.C. §553(a)(2).

[162] 85 *Federal Register* 47905.

[163] For more information about the disaster declaration process, see CRS Report R43784, *FEMA's Disaster Declaration Process: A Primer*.

[164] A presidential declaration authorizing Individual Assistance makes Small Business Administration (SBA) Disaster

Emergency sheltering may be authorized under Stafford Act Section 502[165] following an emergency declaration, and Stafford Act Section 403[166] following a major disaster declaration or Fire Management Assistance Grant declaration (FMAG).[167] This assistance is commonly referred to as Public Assistance (PA) Category B—Emergency Protective Measures. When PA is authorized, FEMA will reimburse state, tribal, territorial, and local governments, as well as eligible nonprofits (PA Applicants) for at least 75% of eligible costs incurred while performing eligible work.[168] FEMA's regulations on emergency sheltering are limited, though program guidance may be issued for a specific incident. Short-term, emergency sheltering accommodations[169] can include congregate and non-congregate sheltering solutions. Although congregate solutions (i.e., sheltering in facilities with large, open spaces, such as schools and community centers) are typically provided, during the ongoing COVID-19 pandemic, non-congregate solutions (i.e., sheltering that affords privacy, such as dormitories, hotels, and motels) may be provided, per FEMA policy.[170] For example, the Transitional Sheltering Assistance (TSA) program may be used to provide short-term hotel/motel accommodations to eligible disaster survivors transitioning from congregate or non-congregate shelters to temporary or permanent housing solutions.[171]

Interim housing needs may be met through the Individuals and Households Program (IHP), which may be authorized under Stafford Act Section 408 following an emergency or major disaster declaration.[172] The federal share of eligible costs associated with IHP housing assistance is 100%.[173] IHP housing assistance may include financial assistance (e.g., assistance to rent alternate housing accommodations or repair a homeowner's primary residence) and/or direct assistance (e.g., a FEMA-provided Manufactured Housing Unit (MHU)) to eligible individuals and

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Loans available (SBA, A Reference Guide to the SBA Disaster Loan Program, May 2015, p. 4, https://www.sba.gov/sites/default/files/files/SBA_Disaster_Loan_Program_Reference_Guide.pdf). For more information on SBA Disaster Loans, see CRS Report R41309, *The SBA Disaster Loan Program: Overview and Possible Issues for Congress*.

[165] 42 U.S.C. §5192.

[166] 42 U.S.C. §5170b.

[167] FEMA, *Fire Management Assistance Grant Program Guide*, FEMA P-954, February 2014, p. 20, https://www.fema.gov/media-library-data/1581017232216-74156de976d581852e91b9826c2968c2/FMAG_Guide_Feb_2014_508.pdf.

[168] 42 U.S.C. §5170b(b).

[169] Short-term sheltering may be authorized under Stafford Act Section 403—Essential Assistance.

[170] FEMA, "Emergency Non-Congregate Sheltering during the COVID-19 Public Health Emergency (Interim)," FEMA Policy 104-009-18, June 17, 2020, https://www.fema.gov/media-library-data/1592489053244-179ccfba96c36d22d32f9cbbea0108bf/fema_public_assistance_non_covid-19_NCS_Policy.pdf (hereinafter FEMA, "Interim Emergency Non-Congregate Sheltering Policy").

[171] FEMA's Transitional Sheltering Assistance (TSA) program is intended to provide short-term hotel/motel accommodations to individuals and families who are unable to return to their pre-disaster primary residence because a declared disaster rendered it uninhabitable or inaccessible. The initial period of TSA assistance is 5-14 days, and it can be extended in 14-day intervals for up to six months from the date of the disaster declaration. 42 U.S.C. §5170b; see also Federal Emergency Management Agency (FEMA), *Individuals and Households Program Unified Guidance (IHPUG)*, FP 104-009-03, September 2016, pp. 123-125, https://www.fema.gov/media-library-data/1483567080828-1201b6eebf9fbbd7c8a070fddb308971/FEMAIHPUG_CoverEdit_December2016.pdf (note that FEMA's *IHPUG* applies to any disaster declared on or after September 30, 2016); and FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, FP 104-009-03, March 2019, p. 40, https://www.fema.gov/media-library-data/1551713430046-1abf12182d2d5e622d16accb37c4d163/IAPPG.pdf (hereinafter FEMA, *IAPPG*) (note that FEMA's *IAPPG* applies to any disaster declared on or after March 1, 2019).

[172] 42 U.S.C. §5174. It is uncommon for the Individuals and Households Program to be authorized following an emergency declaration (FEMA, "How a Disaster Gets Declared," https://www.fema.gov/disasters/how-declared).

[173] 42 U.S.C. §5174(g)(1).

households who, as a result of an emergency or disaster, have uninsured or under-insured necessary expenses and serious needs that cannot be met through other means or forms of assistance.[174] IHP assistance is intended to be temporary and is generally limited to a period of 18 months following the date of the declaration, but it may be extended by FEMA.[175]

In addition to FEMA assistance, following a disaster, Congress may appropriate funds through HUD's Community Development Block Grant for disaster recovery (CDBG-DR) to assist communities in long-term rebuilding (see the "Community Development Block Grants-Disaster Recovery (CDBG-DR)" section for more information).

## Emergency Sheltering Options During the COVID-19 Pandemic

According to FEMA, state, local, tribal, and territorial governments (SLTTs) are responsible for coordinating emergency sheltering support after a Stafford Act emergency or major disaster declaration.[176] However, the ongoing COVID-19 pandemic may complicate efforts to provide sheltering in typical congregate settings due to the need to ensure appropriate social distancing. To that end, FEMA issued an interim policy for non-congregate sheltering in the event of a Stafford Act declaration through the end of 2020 (this guidance may apply to presidential declarations for hurricanes, wildfires, or other incidents).[177]

FEMA may authorize non-congregate sheltering as an eligible emergency protective measure when needed, if it is the legal responsibility of the PA Applicant (generally, SLTTs are responsible for protecting public health and safety).[178] The policy is applicable for all Stafford Act declared incidents between June 1 and December 31, 2020, beginning six days prior to and up to thirty days following an incident (unless FEMA approves an extension).[179] PA Applicants requesting reimbursement must provide sufficient documentation and must follow FEMA's procurement policies when contracting to carry out emergency protective measures, including the provision of non-congregate sheltering.[180] Additionally, PA Applicants may not receive assistance that duplicates assistance from other sources or federal agencies.[181] FEMA will review its policy by December 31, 2020.

For more information, see CRS Insight IN11440, *Potential FEMA Emergency Sheltering Options During the COVID-19 Pandemic*; and CRS Report R46326, *Stafford Act Declarations for COVID-19 FAQ*.

[174] 42 U.S.C. §5174. For more information, see CRS Report R46014, *FEMA Individual Assistance Programs: An Overview*.

[175] 44 C.F.R. §206.110(e).

[176] FEMA, Mass Care/Emergency Assistance Pandemic Planning Considerations For State, Local, Tribal, Territorial and Non-Government Organizational Planners, Providers and Support Agencies, June 2020, p. 1, https://www.fema.gov/media-library-data/1591805537743-dd381cfb5c45eea9999dac1637815716/MCEA_Pandemic_Planning_Considerations_Guide_508.pdf.

[177] FEMA, "Interim Emergency Non-Congregate Sheltering Policy."

[178] FEMA, "Interim Emergency Non-Congregate Sheltering Policy," pp. 2-3.

[179] FEMA, "Interim Emergency Non-Congregate Sheltering Policy," p. 2.

[180] FEMA, "Interim Emergency Non-Congregate Sheltering Policy," p. 4.

[181] FEMA, "Interim Emergency Non-Congregate Sheltering Policy," p. 5.

## Implementation of Housing-Related Provisions of the Disaster Recovery Reform Act (DRRA)

The Disaster Recovery Reform Act of 2018 (DRRA, Division D of P.L. 115-254), which was enacted on October 5, 2018, near the end of the 115th Congress, is the most comprehensive reform of FEMA's disaster assistance programs since the passage of the Sandy Recovery Improvement Act of 2013 (SRIA, Division B of P.L. 113-2) and the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA, P.L. 109-295). The DRRA legislation focuses on improving pre-disaster planning and mitigation, response, and recovery, and increasing FEMA accountability. As such, it amends many sections of the Stafford Act and includes new standalone authorities. In addition, DRRA requires reports to Congress,[182] rulemaking, and other actions.

The 116th Congress has expressed interest in the oversight of DRRA's implementation, including sections that amend FEMA's temporary housing assistance programs under Stafford Act Section 408, the Individuals and Households Program. These sections include the following:

- DRRA Section 1211—State Administration of Assistance for Direct Temporary Housing and Permanent Housing Construction—amended Stafford Act Section 408(f)—Federal Assistance to Individuals and Households, State Role—to allow state, territorial, or tribal governments to administer Direct Temporary Housing Assistance and Permanent Housing Construction, in addition to Other Needs Assistance (ONA).[183] It also provides a mechanism for state and local units of government to be reimbursed for locally implemented housing solutions.[184] This provision may allow states to customize disaster housing solutions and expedite disaster recovery. On July 28, 2020, FEMA announced the publication of the *State-Administered Direct Housing Grant Guide*, making "[s]tate, local, tribal and territorial governments ... eligible to receive grants in order to provide disaster housing missions to disaster survivors [for a limited period of time]."[185] FEMA will offer the grant, which allows states, territories, and Indian tribal governments to administer Direct Temporary Housing Assistance and Permanent Housing Construction, under a pilot program that runs until October 5, 2020, and FEMA will then work to develop and issue final regulations to implement this authority.[186]

[182] Examples include requirements for the FEMA Administrator to review program processes or progress in completing tasks and reporting specific information to the House and Senate committees of jurisdiction (e.g., see DRRA Section 1245—Review of Assistance for Damaged Underground Water Infrastructure, and Section 1242—FEMA Updates on National Preparedness Assessment); and requirements for the Inspector General of the Department of Homeland Security to conduct audits and report on audit findings and recommendations (e.g., see DRRA §1226—Inspector General Audit of FEMA Contracts for Tarps and Plastic Sheeting).

[183] §1211(a) of DRRA, P.L. 115-254. Other Needs Assistance (ONA) provides a grant of financial assistance for other disaster-related necessary expenses and serious needs. ONA may provide assistance to repair or replace items, such as personal property or a vehicle damaged by a disaster, and also may provide assistance with relocating and storing personal property while home repairs are made, Group Flood Insurance policies, and funding to assist with expenses related to funerals, medical and dental care, childcare, as well as miscellaneous expenses, in addition to other things. For more information, see CRS Report R46014, *FEMA Individual Assistance Programs: An Overview*.

[184] §1211(b) of DRRA, P.L. 115-254.

[185] FEMA, "FEMA Bulletin Week of July 27, 2020." https://content.govdelivery.com/accounts/USDHSFEMA/bulletins/297b876. The *State-Administered Direct Housing Grant Guide* provides guidance to allow states, territories, and Indian tribal governments to receive grant funds under a cooperative agreement.

[186] FEMA stated that it is developing a *State-Administered Direct Housing Grant Guide* that will serve as interim guidance and will provide the guidance that enables implementation of the pilot program, which will end after two

- DRRA Section 1212—Assistance to Individuals and Households—amended Stafford Act Section 408(h)—Federal Assistance to Individuals and Households, Maximum Amount of Assistance—to separate the cap on the maximum amount of financial assistance eligible individuals and households may receive for housing assistance and ONA.[187] Prior to the enactment of DRRA, there was a cap on the maximum amount of financial assistance an individual or household could receive. Financial assistance for both the financial forms of housing assistance and Other Needs Assistance (ONA) combined to count towards the "cap"—or maximum amount of financial assistance. Post-DRRA, financial assistance for housing-related needs may not exceed $35,500 (FY2020; adjusted annually), and separate from that, financial assistance for ONA may not exceed $35,500 (FY2020; adjusted annually). DRRA Section 1212 also removed financial assistance to rent alternate housing accommodations from the cap, and created an exception for accessibility-related costs.[188] This may better enable FEMA's disaster assistance programs to meet the recovery-related needs of individuals, including those with disabilities and others with access and functional needs, and households who experience significant damage to their primary residence and personal property as a result of an emergency or major disaster.
- DRRA Section 1213—Multifamily Lease and Repair Assistance—amended Stafford Act Section 408(c)(1)(B)—Federal Assistance to Individuals and Households, Direct Assistance—to expand the eligible areas for multifamily lease and repair, and remove the requirement that the value of the improvements or repairs not exceed the value of the lease agreement.[189] This may increase housing options for disaster survivors. The Inspector General of the Department of Homeland Security must assess the use of FEMA's direct assistance authority to justify this alternative to other temporary housing options, and submit a report to Congress.[190]

Congress may wish to track the implementation of DRRA to review the effectiveness and impacts of FEMA's DRRA-related regulations and policy guidance, including assessing the effects of DRRA-related changes to federal disaster housing assistance for past and future disasters. For

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years and will then require a rulemaking. As of the date of publication of this report, FEMA stated that the interim guidance had been transmitted to the Department of Homeland Security for clearance (email correspondence from FEMA Congressional Affairs staff, November 19, 2019). See also FEMA, *Disaster Recovery Reform Act (DRRA) Annual Report*, October 2019, p. 13, https://www.fema.gov/media-library-data/1573222648380-b2fc54c82eb3b03c0724cbc696a94613/DRRAAnnualReport_FINAL_PUBLISHED.pdf (hereinafter FEMA, *DRRA Annual Report*).

[187] §1212 of DRRA, P.L. 115-254. Prior to DRRA, an individual or household could receive up to $33,300 (FY2017; adjusted annually) (see FEMA, DHS, "Notice of Maximum Amount of Assistance Under the Individuals and Households Program," 81 *Federal Register* 70431, October 12, 2016, https://www.govinfo.gov/content/pkg/FR-2016-10-12/pdf/2016-24626.pdf). Post-DRRA, financial assistance for housing-related needs may not exceed $35,500 (FY2020; adjusted annually), and separate from that, financial assistance for ONA may not exceed $35,500 (FY2020; adjusted annually) (see §1212 of DRRA, P.L. 115-254; FEMA, "Notice of Maximum Amount of Assistance," 84 *Federal Register* 55323-55324).

[188] §1212 of DRRA, P.L. 115-254.

[189] §1213 of DRRA, P.L. 115-254. FEMA is updating its *IAPPG* to implement this provision, and, per the *DRRA Annual Report*, "[i]n the interim, FEMA will implement this provision, as warranted by disaster impacts, through policy waivers." FEMA, *DRRA Annual Report*, p. 18.

[190] §1213(c) of DRRA, P.L. 115-254. This must be completed within two years of the enactment of DRRA (i.e., it is due by October 5, 2020).

more information on DRRA, including a more detailed analysis of the changes to the Individuals and Households Program and tables of deadlines associated with the implementation actions and requirements of DRRA, see CRS Report R45819, *The Disaster Recovery Reform Act of 2018 (DRRA): A Summary of Selected Statutory Provisions*.

## FEMA Short-term, Emergency Housing Program Change

FEMA has also made a change to the available assistance options that may be provided under Stafford Act Section 403—Essential Assistance—to meet short-term, emergency sheltering needs. In October 2019, FEMA publicly announced that it was ending the Sheltering and Temporary Essential Power (STEP) pilot program.[191] The STEP pilot program provided an alternative emergency sheltering option that allowed disaster survivors to shelter at home. STEP-funded work allowed FEMA to fund "minimal, temporary protective repairs … to private homes," the intent being to "quickly make damaged homes habitable in the short term until homeowners could complete more permanent repairs independently through other FEMA programs or using private insurance payments."[192]

The justification provided by FEMA for ending the STEP program was that it "was not meeting its established objectives" based on FEMA's analysis of the program, which was used following several disasters.[193] Specifically, "FEMA found that repairs under the STEP pilot program generally could not be made quickly enough to effectively serve as shelter under section 403 of the Stafford Act."[194] For example, in the U.S. Virgin Islands, although the program was authorized in October 2017, initial repairs did not begin until March 2018, and eligible work was not completed until April 2019. So although the program was intended to run for the three to four months following the disaster, the STEP pilot program operated for 18 months.[195] An additional challenge identified related to limiting the scope of the program to performing minimal, emergency repairs.[196] As an example of how the program's scope shifted, FEMA expanded the STEP pilot program it conducted in the U.S. Virgin Islands to also allow for permanent repair or replacement of damaged roofs.[197]

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[191] FEMA, "Bulletin Week of October 21, 2019," https://content.govdelivery.com/accounts/USDHSFEMA/bulletins/2679511. In a report by GAO, it was noted that, "In May 2019, FEMA's Chief Counsel stated that FEMA had decided to discontinue the STEP pilot program due to significant challenges and lessons learned from prior experiences implementing the program." U.S. Government Accountability Office, *U.S. Virgin Islands Recovery: Additional Actions Could Strengthen FEMA's Key Disaster Recovery Efforts*, GAO-20-54, November 2019, p. 31, https://www.gao.gov/assets/710/702744.pdf (hereinafter, GAO, *U.S. Virgin Islands Recovery*).

[192] U.S. Government Accountability Office, *U.S. Virgin Islands Recovery*, pp. 27-28; see also FEMA, "Recovery Program Guidance: Sheltering and Temporary Essential Power (STEP) Pilot Program for FEMA-4336-DR-PR and FEMA-4339-DR-PR," October 25, 2017.

[193] FEMA, "Bulletin Week of October 21, 2019," https://content.govdelivery.com/accounts/USDHSFEMA/bulletins/2679511. Although the FEMA Bulletin cites seven disasters, GAO reported that FEMA authorized the STEP pilot program following eight disasters (GAO, *U.S. Virgin Islands Recovery*, pp. 34-35). The GAO report includes an overview of the STEP pilot programs that FEMA implemented. STEP was first used in 2012 following Hurricane Sandy. It has also been used in 2016 (Louisiana following severe storms), 2017 (Texas following Hurricane Harvey, Puerto Rico following Hurricane Irma and Hurricane Maria, U.S. Virgin Islands following Hurricane Irma and Hurricane Maria), and 2018 (North Carolina following Hurricane Florence). The GAO report includes brief descriptions of the past STEP pilot programs (GAO, *U.S. Virgin Islands Recovery*, pp. 33-34).

[194] FEMA, "Bulletin Week of October 21, 2019," https://content.govdelivery.com/accounts/USDHSFEMA/bulletins/2679511; GAO, *U.S. Virgin Islands Recovery*, p. 31.

[195] GAO, *U.S. Virgin Islands Recovery*, p. 32.

[196] GAO, *U.S. Virgin Islands Recovery*, p. 31.

[197] GAO, *U.S. Virgin Islands Recovery*, p. 28.

Despite the challenges FEMA faced with implementing the STEP pilot program, there may still be a need for a short-term disaster housing program that can serve as an alternative to existing emergency sheltering solutions such as congregate care shelters or the TSA program. In November 2019, GAO published a report noting that "FEMA used the STEP pilot program to supplement other FEMA sheltering programs and provide necessary additional capacity to help address the emergency sheltering needs of disaster-affected communities."[198] The report also noted that "conducting a broad evaluation of FEMA's emergency sheltering programs and the agency's options for addressing emergency sheltering needs … would help FEMA understand its ability to provide sheltering options and to properly plan for the provision of effective emergency sheltering assistance to disaster-affected communities."[199] The Department of Homeland Security concurred with GAO's recommendation that the FEMA Administrator evaluate FEMA's options for providing future emergency sheltering assistance,[200] and as of August 2020, FEMA has fully implemented the GAO's suggestion and the GAO considers the recommendation "closed as implemented."[201] Specifically, FEMA determined that it could provide emergency sheltering to disaster survivors by "using a combination of existing capabilities and building capacity for specialized teams tasked with coordinating with state, local, tribal, and territorial governments to identify viable sheltering options."[202] Congress may still wish to monitor FEMA's efforts to implement emergency sheltering assistance programs to meet the short-term emergency housing needs of disaster survivors—particularly those disaster survivors who reside in areas with limited housing stock.

Congress may also wish to explore disaster housing solutions that provide the flexibility needed to support disaster survivors when the existing solutions are infeasible or impractical (e.g., there are not enough hotels/motels to shelter people through the TSA program, or there is not space available to deploy MHUs).[203] To accomplish this, Congress may consider requiring FEMA to collaborate with disaster housing partners to identify and outline emergency, short-term, interim, and long-term disaster housing solutions. Additionally, this may require an update to the *National Disaster Housing Strategy*[204] to reflect the findings of FEMA's evaluation. An update to the *National Disaster Housing Strategy* may also present the opportunity to update the roles and responsibilities of housing partners, disaster housing practices, and solutions for meeting the housing needs of disaster survivors across all phases of disaster recovery. Congress may also consider pursuing legislative solutions, including by consolidating, eliminating, or revising existing authorities and programs; or creating new programs that address congressionally identified unmet needs.

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[198] GAO, *U.S. Virgin Islands Recovery*, p. 33.

[199] GAO, *U.S. Virgin Islands Recovery*, p. 36.

[200] GAO, *U.S. Virgin Islands Recovery*, p. 44.

[201] GAO, *U.S. Virgin Islands Recovery: Additional Actions Could Strengthen FEMA's Key Disaster Recovery Efforts*, GAO-20-54, November 2019, "Recommendations for Executive Action," https://www.gao.gov/products/GAO-20-54?mobile_opt_out=1#summary_recommend (hereinafter GAO, *U.S. Virgin Islands Recovery: Additional Actions*, "Recommendations for Executive Action"). See Recommendation 1 "Status" and "Comments." This involved "review[ing] a range of existing documentation, including findings from after action reports conducted following prior disasters and the agency's Continuous Improvement Program."

[202] GAO, *U.S. Virgin Islands Recovery: Additional Actions*, "Recommendations for Executive Action." See Recommendation 1 "Status" and "Comments."

[203] GAO, *U.S. Virgin Islands Recovery*, p. 35.

[204] The *National Disaster Housing Strategy* describes how disaster housing is provided, but it was last published in 2009. The strategy and appendices are available on FEMA's website. FEMA, "The National Disaster Housing Strategy," last updated May 1, 2014, https://www.fema.gov/media-library/assets/documents/20294.

### Community Development Block Grants-Disaster Recovery (CDBG-DR)

HUD provides CDBG-DR grants to states and localities to assist their recovery efforts following a presidentially declared disaster. Generally, grantees must use at least half of these funds for activities that principally benefit low- and moderate-income persons or areas. The program is designed to help communities and neighborhoods that otherwise might not recover due to limited resources.[205] CDBG-DR is not available for all major disasters because it is generally subject to Congress passing CDBG supplemental appropriations.

In the 116th Congress, CDBG-DR has been provided $2.4 billion to aid disaster-affected communities with long-term recovery, including the restoration of housing, infrastructure, and economic activity.[206] This follows the provision of $37 billion for CDBG-DR in the 115th Congress.[207]

While CDBG-DR has had a significant role in funding recovery efforts from past disasters, and continues to play a major role in the recovery from the 2017 hurricanes, it is not a formally authorized program, meaning the rules that govern the funding use and oversight vary with HUD guidance accompanying each allocation. Some Members of Congress have expressed interest in formally authorizing CDBG-DR, in part in response to concerns about HUD's oversight of CDBG-DR funding. In July 2019, the House Financial Services Committee ordered to be reported H.R. 3702, the Reforming Disaster Recovery Act of 2019, which would authorize CDBG-DR and includes a number of provisions to codify financial controls over program funds. The House passed the bill in November 2019.

For more information on CDBG-DR, see CRS Report R46475, *The Community Development Block Grant's Disaster Recovery (CDBG-DR) Component: Background and Issues*.

## Housing-Related Tax Extenders

In the past, Congress has regularly extended a number of temporary tax provisions that address a variety of policy issues, including certain provisions related to 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 recently are (1) the exclusion for canceled mortgage debt, and (2) the deduction for mortgage insurance premiums, each of which is discussed further below.

The most recently enacted tax extenders legislation was included in the Further Consolidation Appropriations Act, 2020 (P.L. 116-94) in the 116th Congress. That law extended the exclusion for canceled mortgage debt and the ability to deduct mortgage insurance premiums through the end of 2020 (each had previously expired at the end of 2017).

For more information on tax extenders, see CRS Report R46243, *Individual Tax Provisions ("Tax Extenders") Expiring in 2020: In Brief* .

[205] U.S. Department of Housing and Urban Development, *Community Development Block Grant Disaster Recovery Program*, HUD Exchange, 2014, https://www.hudexchange.info/programs/cdbg-dr/.

[206] P.L. 116-20.

[207] For the allocation of these funds, see https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-grantee-contact-information/#all-disasters.

## 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.[208] 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.[209] 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 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 forth when the provision was originally enacted included minimizing hardship for distressed households, lessening the risk that nontax homeownership retention efforts would be thwarted by tax policy, and assisting in the recoveries of the housing market and overall economy. Arguments against the exclusion at the time 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 given that the ability to realize the benefits depends on a variety of factors.[210] More recently, because the economy, housing market, and foreclosure rates have improved significantly since the height of the housing and mortgage market turmoil (at least prior to the onset of the COVID-19 pandemic), the exclusion may no longer be warranted.

For more information on the exclusion for canceled mortgage debt, see CRS Report RL34212, *Analysis of the Tax Exclusion for Canceled Mortgage Debt Income*.

## Deductibility of Mortgage Insurance Premiums

Traditionally, homeowners 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.[211] 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).[212] 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.

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[208] Generally, any type of canceled 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*.

[209] 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.

[210] 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.

[211] P.L. 115-97, often referred to as "The Tax Cuts and Jobs Act," temporarily changed how homeowners treat mortgage interest and property taxes for tax years 2018 through 2025. The deductions are still available but may be limited for some homeowners.

[212] 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 usually paid by the borrower.

Two possible rationales for allowing the deduction of mortgage insurance premiums are that it assisted in the recovery of the housing market, and that it promotes homeownership. The housing market, however, has largely recovered from the market turmoil of the late 2000s, and it is not clear that the deduction has an effect on the homeownership rate. To the degree that owner-occupied housing is over subsidized, extending the deduction could lead to a greater misallocation of the resources that are directed toward the housing industry.

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