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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

The 116th Congress has been considering a variety of housing-related issues. These 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 during the Congress include the following:

- The status of Fannie Mae and Freddie Mac, two government-sponsored enterprises (GSEs) that have been in conservatorship since 2008. Congress could consider comprehensive housing finance reform legislation to resolve the status of Fannie Mae and Freddie Mac. A new director for the Federal Housing Finance Agency (FHFA), Fannie Mae's and Freddie Mac's regulator and conservator, was sworn in on April 15, 2019. Congress may take an interest in any administrative changes that FHFA makes to Fannie Mae and Freddie Mac under new leadership.
- 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 oversight of the implementation of certain changes related to Federal Emergency Management Agency (FEMA) 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 better regulate the quality of federally assisted housing.
- Consideration of legislation to extend certain temporary tax provisions that are currently 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.

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Introduction

The 116th Congress has been considering a variety of housing-related issues. These involve 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 ongoing issues such as interest in reforming the nation's housing finance system, 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, and the possibility of extending certain temporary housing-related tax provisions. Additional issues may emerge as the Congress progresses.

This report provides a high-level overview of the most prominent housing-related issues that have been of interest during the 116th Congress. It 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 at the beginning of 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. Yet, 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, relatively 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.

Owner-Occupied Housing Markets and the Mortgage Market

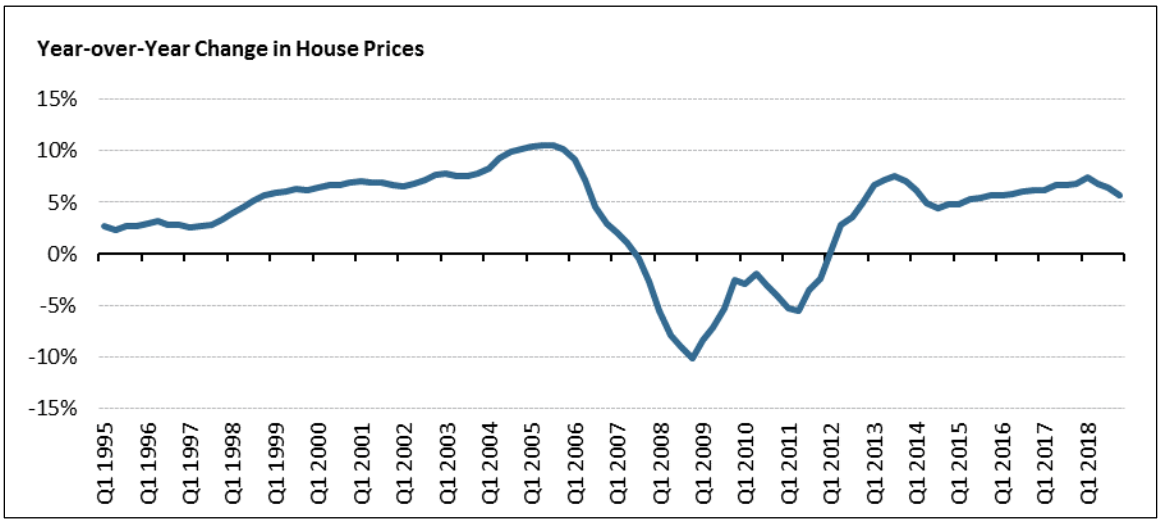
Most homebuyers take out a mortgage to purchase a home. Therefore, owner-occupied housing markets and the mortgage market are closely linked, although they are not the same. The ability of prospective homebuyers to obtain mortgages, and the costs of those mortgages, impact housing demand and affordability.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

House Prices

As shown in **Figure 1**, nationally, nominal house prices have been increasing 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% for most quarters since mid-2016. These increases follow almost five years of house price declines in the years during and surrounding the economic recession of 2007-2009 and associated housing market turmoil. House price increases slowed somewhat during 2018, but year-over-year house prices still increased by nearly 6% during the fourth quarter of 2018.

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

Q1 1995–Q4 2018



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

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

House prices, and changes in house prices, vary greatly across local housing markets. Some areas of the country are experiencing rapid increases in house prices, while other areas are experiencing slower or stagnating house price growth. Similarly, prices have fully regained or even exceeded their pre-recession levels in nominal terms in many parts of the country, but in other areas prices remain below those levels.[1]

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

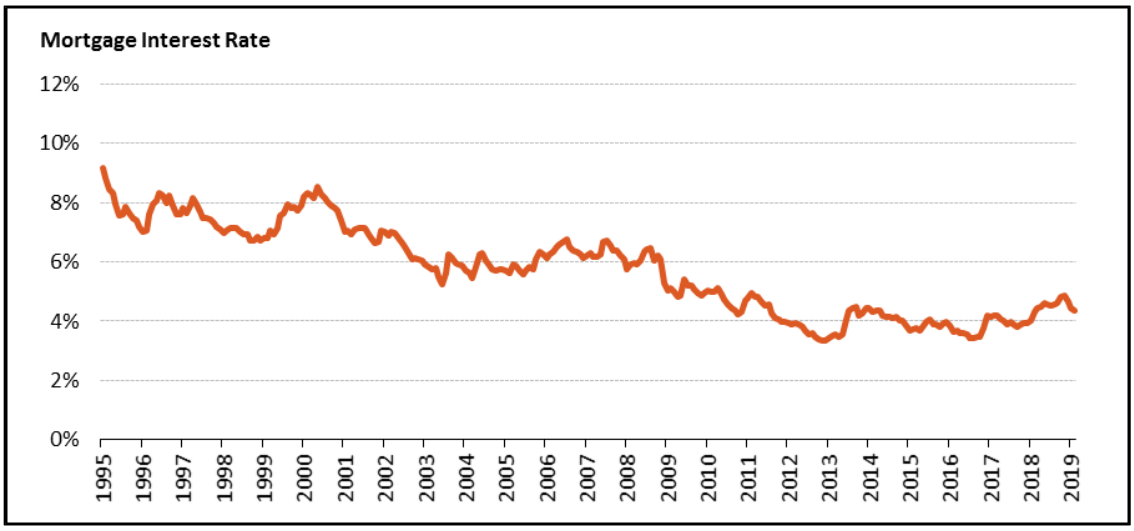
For several years, mortgage interest rates have been low by historical standards. Lower interest rates increase mortgage affordability and make it easier for some households to purchase homes or refinance their existing mortgages.

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 showed declines at the end of 2018 into early 2019. The average mortgage interest rate for February 2019 was 4.37%, compared to 4.46% in the previous month and 4.33% a year earlier.

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

Figure 2. Mortgage Interest Rates

January 1995–February 2019



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.

Homeownership Affordability

House prices have been rising for several years on a national basis, and mortgage interest rates, while still low by historical standards, 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.[2] 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.[3] 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

[2] 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).

[3] For example, see HUD's *Housing Market Indicators Monthly Update, February 2019*, p.3,

https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Market-Indicators-Report-February-2019.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, February 2019*, p. 21,

https://www.urban.org/sites/default/files/publication/99840/february_chartbook_2019.pdf.

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.[4] 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.[5]

Given that house price increases are showing some signs of slowing and interest rates have remained low, the affordability of owner-occupied homes may hold steady or improve. Such trends could potentially impact housing market activity, including home sales.

Home Sales

In general, annual home sales have been increasing since 2014 and have improved from their levels during the housing market turmoil of the late 2000s, although in 2018 the overall number of home sales declined from the previous year. 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.

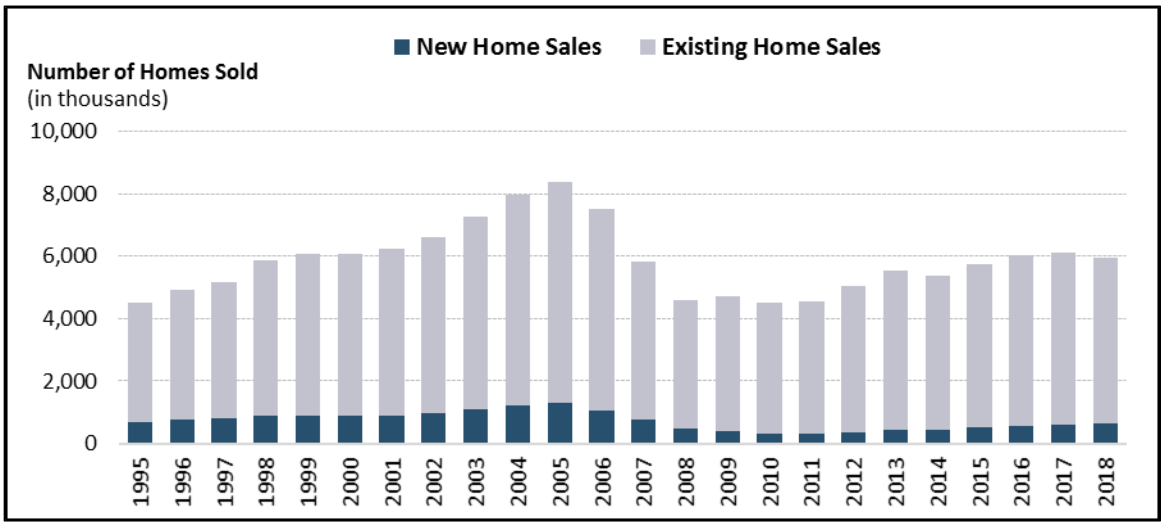
Home sales include sales of both existing and newly built homes. Existing home sales generally number in the millions each year, while new home sales are usually in the hundreds of thousands. **Figure 3** shows the annual number of existing and new home sales for each year from 1995 through 2018. Existing home sales numbered about 5.3 million in 2018, a decline from 5.5 million in 2017 (existing home sales in 2017 were the highest level since 2006). New home sales numbered about 622,000 in 2018, an increase from 614,000 in 2017 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.

[4] 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.

[5] 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.

Figure 3. New and Existing Home Sales

Annual, 1995–2018



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.

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,[6] and in general new construction has not been creating enough new homes to meet demand.[7] 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.[8]

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.[9] 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

[6] For example, see HUD's *U.S. Housing Market Conditions National Housing Market Summary, 4th Quarter 2018*, March 2019, pp. 2-3, https://www.huduser.gov/portal/sites/default/files/pdf/NationalSummary_4Q18.pdf.

[7] 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.

[8] For example, see 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.

[9] HUD, *U.S. Housing Market Conditions National Housing Market Summary, 4th Quarter 2019*, March 2019, pp. 1-3, https://www.huduser.gov/portal/sites/default/files/pdf/NationalSummary_4Q18.pdf.

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.[10]

Figure 4 shows the seasonally adjusted rate of starts on one-unit homes for each month from January 1995 through December 2018.[11] Housing starts for single-family homes fell during the housing market turmoil, 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.[12] Housing starts have generally been increasing since about 2012, but remain well below their levels from the late 1990s through the mid-2000s. For 2018, the seasonally adjusted annual rate of housing starts averaged about 868,000. In comparison, the seasonally adjusted annual rate of housing starts exceeded 1 million from the late 1990s through the mid-2000s.

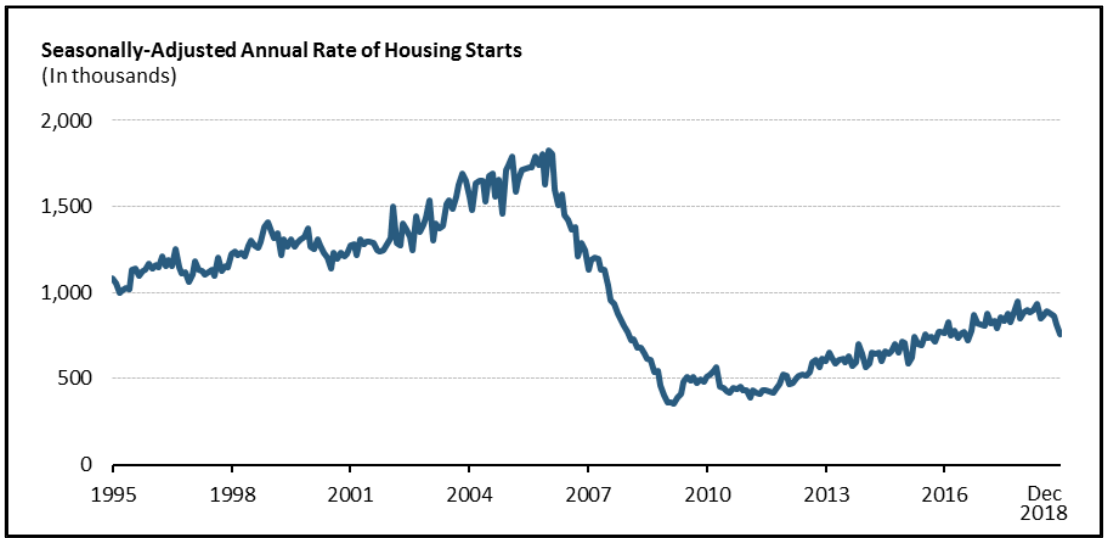
[10] The Census Bureau defines the seasonally adjusted annual rate as "the seasonally adjusted monthly value multiplied by 12" and notes that it "is neither a forecast nor a projection; rather it is a description of the rate of building permits, housing starts, housing completions, or new home sales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

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

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

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 December 2018.

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

High housing construction costs have led to a greater share of new housing being built at the more expensive end of the market. To the extent that new homes are concentrated at higher price points, supply and price pressures may be exacerbated for lower-priced homes.[13]

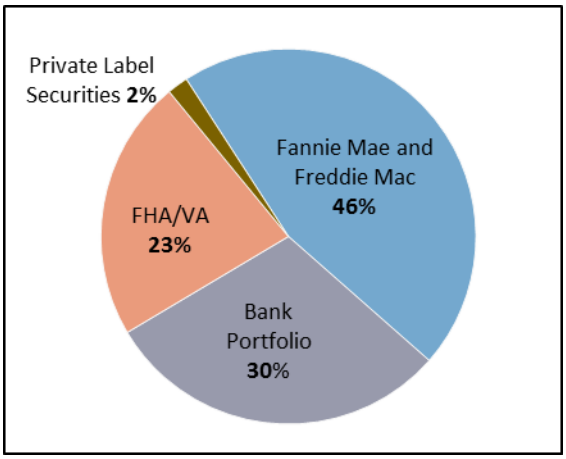
[13] For example, see Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing, 2018*, pp. 8 and 10, https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf; and Jung Hyun Choi, Laurie Goodman, and Bing Bai, "Four ways today's 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.

Mortgage Market Composition

When a lender originates a mortgage, it can choose to hold that mortgage in its own portfolio, sell it to a private company, or sell it to Fannie Mae or Freddie Mac, two congressionally chartered government-sponsored enterprises (GSEs). Fannie Mae and Freddie Mac bundle mortgages into securities and guarantee investors' payments on those securities. Furthermore, a mortgage might be insured by a federal government agency, such as the Federal Housing Administration (FHA) or the Department of Veterans Affairs (VA). Most FHA-insured or VA-guaranteed mortgages are included in mortgage-backed securities that are guaranteed by Ginnie Mae, another government agency.[14] 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

2018



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, April 2019*, p. 8.

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

As shown in **Figure 5**, over two-thirds of the total dollar volume of mortgages originated was either backed by Fannie Mae or Freddie Mac (46%) or guaranteed by a federal agency such as FHA or VA (23%) in 2018. Nearly 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.[15] The share of mortgages insured by FHA or guaranteed by VA was low by historical standards during that time period as many households opted for other types of mortgages, including subprime mortgages.

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

[15] See Urban Institute, Housing Finance Policy Center, *Housing Finance at a Glance: A Monthly Chartbook*, April 2019, p. 8, for a graph showing mortgage market composition since 2001.

Rental Housing Markets

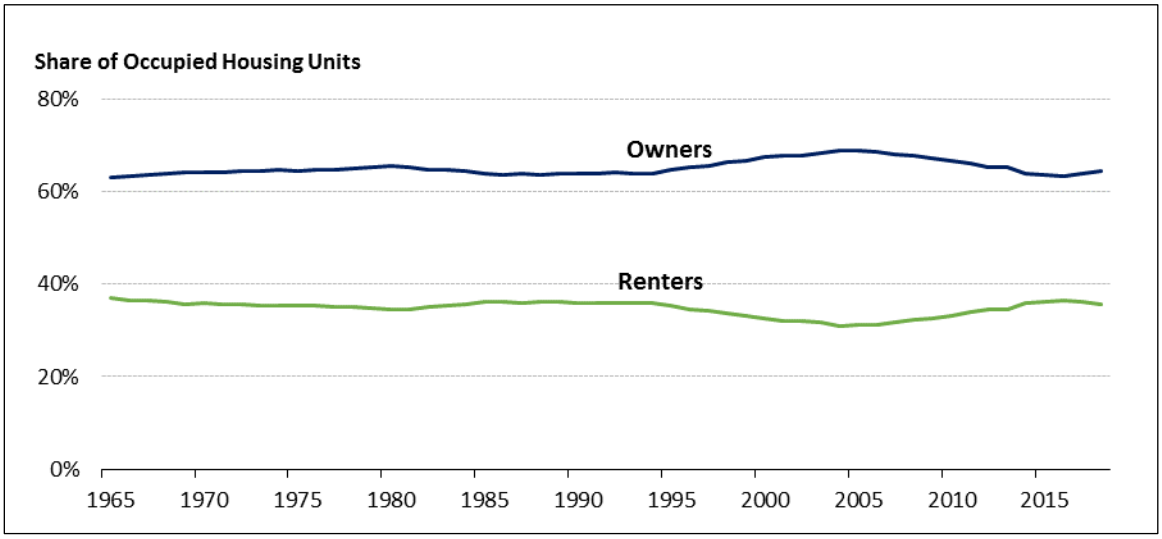
As has been the case in owner-occupied housing markets, affordability has been a prominent concern in rental markets in recent years. In the years since the housing market turmoil of the late 2000s, the number and share of renter households has increased, leading to lower rental vacancy rates and higher rents in many markets.

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 households who rent their homes. 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 decreasing slightly to 36.1% in 2017 and continuing to decline to 35.6% in 2018. The homeownership rate correspondingly fell from a high of 69% in the mid-2000s to 63.4% in 2016, before rising to 63.9% in 2017 and continuing to rise to 64.4% in 2018.[16]

Figure 6. Rental and Homeownership Rates

1965–2018



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 121 million in 2018; most of this increase has been in renter-occupied units.[17] The number of renter-occupied units increased from about 34 million in 2006 to about 43 million in 2018. 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 78 million units in 2018.

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

[17] 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.

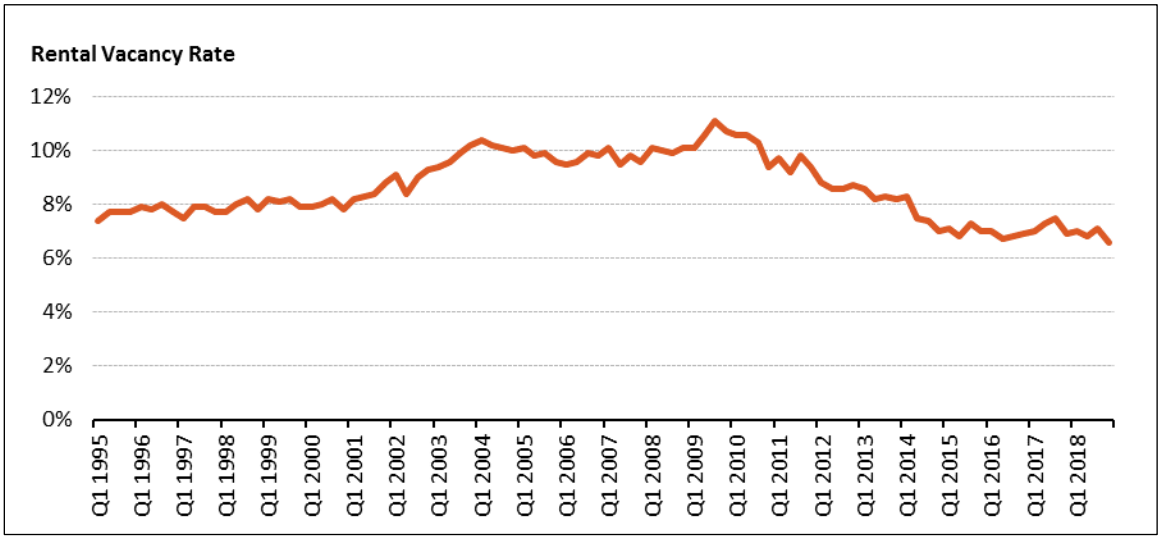
Rental Vacancy Rates

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 under 7% at the end of 2018.

Figure 7. Rental Vacancy Rates

Q1 1995–Q4 2018



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

Rental Housing Affordability

Rental housing affordability is impacted by a variety of factors, including the supply of rental housing units available, the characteristics of those units (e.g., age and amenities), and the demand for available units. 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.[18]

The increased demand for rental housing, as well as the concentration of new rental construction in higher-cost units, has led to increases in rents in recent years. Median renter incomes have also been increasing for the last several years, at times outpacing increases in rents. However, over the

[18] For example, see Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing 2018*, pp. 26-28, https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf.

longer term, median rents have increased faster than renter incomes, reducing rental affordability.[19]

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

The overall number of cost-burdened renter households has increased from 14.8 million in 2001 to 20.5 million in 2017, although the 20.5 million in 2017 represented a decrease from 20.8 million in 2016 and over 21 million in 2014 and 2015.[20] (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, they are most prevalent among the lowest-income households. In 2017, 83% of renter households with incomes below $15,000 experienced housing cost burdens, and 72% experienced severe cost burdens.[21] 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.[22]

Housing Issues in the 116th Congress

A variety of housing-related issues have been of interest to the 116th Congress, including housing finance, housing assistance programs, and housing-related tax provisions, among other things.

Status of Fannie Mae and Freddie Mac

Two major players in the U.S. housing finance system are Fannie Mae and Freddie Mac, government-sponsored enterprises (GSEs) that were created by Congress to provide liquidity to the mortgage market. By law, Fannie Mae and Freddie Mac cannot make mortgages; rather, they are restricted to purchasing mortgages that meet certain requirements from lenders. Once the GSEs purchase a mortgage, they package it with others into a mortgage-backed security (MBS), which they guarantee and sell to institutional investors (which can be the mortgage originator).[23]

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[19] See HUD, Office of Policy Development and Research, *U.S. Housing Market Conditions National Housing Market Summary 4th Quarter 2018*, March 2019, pp. 4-5, 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.

[20] Sean Veal and Jonathan Spader, Joint Center for Housing Studies of Harvard University, "More Than A Third of American Households were Cost-Burdened Last Year," blog post, December 7, 2018, https://www.jchs.harvard.edu/blog/more-than-a-third-of-american-households-were-cost-burdened-last-year/; and Joint Center for Housing Studies, *State of the Nation's Housing* 2018, Appendix Tables, https://www.jchs.harvard.edu/state-nations-housing-2018, showing Joint Center for Housing Studies tabulations of American Community Survey data.

[21] Ibid.

[22] See Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing 2018*, p. 28, https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf; and National Low Income Housing Coalition, *The Gap: A Shortage of Affordable Homes*, March 2019, https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2019.pdf.

[23] The advantage of holding MBS instead of the underlying mortgages is the MBS have Fannie Mae's or Freddie Mac's guarantee of timely payment of principal and interest. Banks are required to hold less capital against these MBS than they would be against the underlying mortgages.

They retain a relatively small amount of MBS as a portfolio investment. Fannie Mae and Freddie Mac are involved in both single-family and multifamily housing, though their single-family businesses are much larger.

In 2008, in the midst of housing and mortgage market turmoil, Fannie Mae and Freddie Mac experienced financial trouble and entered voluntary conservatorship overseen by their regulator, the Federal Housing Finance Agency (FHFA). As part of the legal arrangements of this conservatorship, the Department of the Treasury contracted to purchase a maximum of $200 billion of new senior preferred stock from each of the GSEs; in return for this support, Fannie Mae and Freddie Mac pay dividends on this stock to Treasury.[24] These funds become general revenues.

Several issues related to Fannie Mae and Freddie Mac could be of interest to the 116th Congress. These include the potential for legislative housing finance reform, new leadership at FHFA and the potential for administrative changes to Fannie Mae and Freddie Mac, and certain issues that could affect Fannie Mae's and Freddie Mac's finances and mortgage standards, respectively.

For more information on Fannie Mae and Freddie Mac, see CRS Report R44525, *Fannie Mae and Freddie Mac in Conservatorship: Frequently Asked Questions*.

Potential for Legislative Housing Finance Reform

Since Fannie Mae and Freddie Mac entered conservatorship in 2008, policymakers have largely agreed on the need for 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. Such legislation could eliminate Fannie Mae and Freddie Mac, possibly replacing them with other entities; retain the companies but transform their role in the housing finance system; or return them to their previous status with certain changes. In addition to addressing the role of Fannie Mae and Freddie Mac, housing finance reform legislation could potentially involve changes to the Federal Housing Administration (FHA)[25] or other federal programs that support the mortgage market.

While there is generally broad agreement on certain principles of housing finance reform—such as increasing the private sector's role in the mortgage market, reducing government risk, and maintaining access to affordable mortgages for creditworthy households—there is disagreement over how best to achieve these objectives and over the technical details of how a restructured housing finance system should operate. Since 2008, a variety of housing finance reform proposals have been put forward by Members of Congress, the Trump and Obama Administrations, think tanks, and industry groups.[26] Proposals differ on structural questions as well as on specific

[24] To conserve cash, FHFA ordered Fannie Mae and Freddie Mac to stop paying dividends on all other stock. As of December 31, 2018, Treasury had purchased a total of over $191 billion of senior preferred stock from the two GSEs and received a total of over $292 billion in dividends. See FHFA, Treasury and Federal Reserve Purchase Programs for GSE and Mortgage-Related Securities, https://www.fhfa.gov/DataTools/Downloads/Pages/Treasury-and-Federal-Reserve-Purchase-Programs-for-GSE-and-Mortgage-Related-Securities.aspx. Since the first quarter of 2012, the only time Fannie Mae and Freddie Mac have drawn on their lines of credit with Treasury was in the fourth quarter of 2017; this draw was attributed to changes in the value of deferred tax assets as a result of the tax revision law that was enacted in late 2017 (P.L. 115-97).

[25] FHA is a part of the Department of Housing and Urban Development (HUD) and insures certain mortgages made by private lenders against the possibility of borrower default. By insuring these mortgages, FHA helps to make affordable mortgages more available to borrowers who might otherwise not be well-served by the private mortgage market, such as borrowers with low down payments.

[26] For example, a 2019 GAO report examines 14 housing finance reform proposals and categorizes them according to

implementation issues, such as whether, and how, certain affordable housing requirements that currently apply to Fannie Mae and Freddie Mac would be included in a new system.

In the 116th Congress, Senate Committee on Banking, Housing, and Urban Affairs Chairman Mike Crapo has released an outline for potential housing finance reform legislation.[27] The committee held hearings on March 26 and March 27, 2019, on the outline.[28]

Previous Congresses have also considered housing finance reform legislation in varying degrees. In the 113th Congress, the House Committee on Financial Services and Senate Committee on Banking, Housing, and Urban Affairs considered different versions of comprehensive housing finance reform legislation, but none were ultimately enacted.[29] The 114th Congress considered a number of more-targeted reforms to Fannie Mae and Freddie Mac, but did not actively consider comprehensive housing finance reform legislation.[30] At the end of the 115th Congress, the House Committee on Financial Services held a hearing on a draft housing finance reform bill released by then-Chairman Jeb Hensarling and then-Representative John Delaney, but no further action was taken on it.[31]

New FHFA Director and Possible Administrative Changes to Fannie Mae and Freddie Mac

FHFA, an independent agency, is the regulator for Fannie Mae, Freddie Mac, and the Federal Home Loan Bank System and is the conservator for Fannie Mae and Freddie Mac. The director of FHFA is appointed by the President, subject to Senate confirmation, for a five-year term. The term of FHFA Director Mel Watt expired in January 2019. President Trump nominated Mark Calabria to be the next FHFA director. The Senate confirmed the nomination on April 4, 2019, and Dr. Calabria was sworn in on April 15, 2019.

FHFA has relatively wide latitude to make many changes to Fannie Mae's and Freddie Mac's operations without congressional approval, though it is subject to certain statutory constraints. In recent years, for example, FHFA has directed Fannie Mae and Freddie Mac to engage in risk-sharing transactions, develop a common securitization platform for issuing mortgage-backed

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certain models. See U.S. Government Accountability Office, *Housing Finance: Prolonged Conservatorships of Fannie Mae and Freddie Mac Prompt Need for Reform*, GAO-19-239, January 2019, https://www.gao.gov/products/GAO-19-239.

[27] 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.

[28] 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.

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

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

[31] U.S. Congress, House Committee on Financial Services, *A Legislative Proposal to Provide for a Sustainable Housing Finance System: The Bipartisan Housing Finance Reform Act of 2018*, 115th Cong., 2nd sess., December 21, 2018. See also U.S. Congress, House Committee on Financial Services, "Chairman Hensarling Delivers Opening Statement, Unveils Bipartisan GSE Reform Bill," press release, September 6, 2018, https://republicans-financialservices.house.gov/news/documentsingle.aspx?DocumentID=403883.

securities, and undertake certain pilot programs.[32] The prospect of new leadership at FHFA led many to speculate about possible administrative changes that FHFA could make to Fannie Mae and Freddie Mac going forward.[33] Any such changes could potentially lead to congressional interest and oversight.

FHFA could make many changes to Fannie Mae and Freddie Mac, including changes to the pricing of mortgages they purchase, to their underwriting standards, or to certain product offerings. It could also make changes to pilot programs, start laying the groundwork for a post-conservatorship housing finance system, or take a different implementation approach to certain affordable housing initiatives required by statute, such as Duty to Serve requirements.[34] Because the new FHFA director has been critical of certain aspects of Fannie Mae and Freddie Mac in the past, some believe that the new leadership could result in the agency taking steps to reduce Fannie Mae's and Freddie Mac's role in the mortgage market.[35] In March 2019, nearly 30 industry groups sent a letter to Acting Director Otting urging that FHFA proceed cautiously with any administrative changes to ensure that they do not disrupt the mortgage market.[36]

Also 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.[37] Treasury and HUD released these plans on September 5, 2019.[38] Both plans include a variety of legislative recommendations, 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.[39]

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[32] For a discussion of the risk-sharing transactions and common securitization platform, see CRS Report R44506, *FHFA's Administrative Reform of Fannie Mae, Freddie Mac, and the Housing Finance System*.

[33] For example, see Jim Parrott, "What to expect from Calabria's leadership of the Federal Housing Finance Agency," Urban Institute blog post, December 20, 2018, https://www.urban.org/urban-wire/what-expect-calabrias-leadership-federal-housing-finance-agency.

[34] Duty to Serve is a statutory requirement that Fannie Mae and Freddie Mac develop plans to expand access to the secondary market for mortgages for low- and moderate-income borrowers in specific underserved markets (rural housing, manufactured housing, and affordable housing preservation). For more information, see FHFA's website at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/Duty-to-Serve.aspx.

[35] For example, at the nomination hearing, several Senators asked Mark Calabria about his past statements related to Fannie Mae and Freddie Mac and possible actions that he could take as FHFA director. See U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Nomination Hearing*, 116th Cong., 1st sess., February 14, 2019.

[36] See "Administrative Reforms to Fannie Mae and Freddie Mac: Priorities for Preserving Access and Affordability," at https://narfocus.com/billdatabase/clientfiles/172/3/3325.pdf.

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

[38] 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.

[39] 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.

Other Issues Related to Fannie Mae and Freddie Mac

Certain other issues related to Fannie Mae and Freddie Mac may be of interest during the 116th Congress. A new accounting standard (current expected credit loss, or CECL) that could require the GSEs to increase their loan loss reserves goes into effect in 2020.[40] CECL could result in Fannie Mae and Freddie Mac needing to draw on their support agreements with Treasury.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) requires mortgage lenders to document and verify a borrower's ability to repay (ATR). If a mortgage lacks certain risky features and a lender complies with the ATR regulations, the mortgage is considered to be a qualified mortgage (QM), which provides the lender certain protections against lawsuits claiming that the ATR requirements were not met. Mortgages purchased by Fannie Mae or Freddie Mac currently have an exemption (known as the QM Patch) from the debt-to-income ratio requirement in the ATR rule. This exemption expires in early 2021 (or earlier if Fannie Mae and Freddie Mac exit conservatorship before that date).[41]

Housing Assistance

Appropriations for Housing Programs

For several years, concern in Congress about federal budget deficits has led to increased interest in reducing the amount of discretionary funding provided each year through the annual appropriations process. This interest 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.[42] The limits on discretionary spending, which have been amended and adjusted since they were first enacted,[43] have implications for HUD's budget, the largest source of funding for direct housing assistance, because it is made up almost entirely of discretionary appropriations.[44] 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 by the Bipartisan Budget Act of 2019 (P.L. 116-37).[45]

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.[46] Public housing has, arguably, been underfunded (based on studies undertaken by

[40] For details about CECL, see CRS Report R45339, *Banking: Current Expected Credit Loss (CECL)*.

[41] See CRS Report R43081, *The Ability-to-Repay Rule: Possible Effects of the Qualified Mortgage Definition on Credit Availability and Other Selected Issues*.

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

[43] Ibid.

[44] 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.

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

[46] 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

HUD of what it should cost to operate and maintain it) for many years.[47] 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.[48] 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.[49]

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.

FY2020 Budget

The Trump Administration's budget request for FY2020 proposed an 18% decrease in funding for HUD's programs and activities as compared to the prior year.[50] It proposed to eliminate funding for several programs, including multiple HUD grant programs (CDBG, the HOME Investment Partnerships Program, and the Self-Help and Assisted Homeownership Opportunity Program (SHOP)), and to decrease funding for most other HUD programs. In proposing to eliminate the 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.[51] 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.[52] Low-income housing advocates have been critical of it,

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.

[47] 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.

[48] 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.

[49] 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*.

[50] For more information, see CRS Report R45660, *Department of Housing and Urban Development (HUD): FY2020 Budget Request Fact Sheet*.

[51] 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.

[52] 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/

particularly the effect increased rent payments may have on families.[53] Thus far, it has not been considered in Congress.

Beyond HUD, the Administration's FY2020 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.

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 FY2020 process, see CRS Report R45774, *Transportation, Housing and Urban Development, and Related Agencies (THUD) Appropriations for FY2020: 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.[54] In light of this, both the Administration and Congress have either made or proposed changes to increase access to housing assistance for foster youth.

Under current law, HUD's Family Unification Program (FUP) offers 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.[55]

In July 2019, HUD announced a new Administration initiative called Foster Youth to Independence (FYI). Under FYI, HUD will make 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 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).[56]

HUD_No_18_033.

[53] 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.

[54] 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

[55] 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

[56] 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."

Implementation of Housing Assistance Legislation

Several pieces of assisted housing legislation that were enacted in prior Congresses are to be 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).[57] 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, 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.[58]

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 expansion cohorts in December 2018. As of the date of this report, no selections had yet been made for those cohorts.[59]

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[60] by allowing local PHAs to convert their public housing properties to either Section 8 Housing Choice Vouchers or Section 8 project-based rental assistance.[61] 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.[62] 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

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

[58] 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.

[59] 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.

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

[61] 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.

[62] 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).

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.[63] While RAD conversions have been popular with PHAs,[64] and HUD's initial evaluations of the program have been favorable,[65] 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.[66]

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).[67] However, Congress has since expanded the demonstration. Most recently, in FY2018, Congress raised the cap so that up to 455,000 units of public housing will be permitted to convert to Section 8 under RAD, 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 FY2020 budget request to Congress requests that the cap on public housing RAD conversions be eliminated completely.[68]

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

[63] 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.

[64] 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.

[65] 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.

[66] 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.

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

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

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 (GAO) 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.[69]
- 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.[70]
- 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 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 current Congress designed to address specific hazards in federally assisted housing, including lead-based paint hazards, lead hazards in drinking water, and carbon monoxide.[71]

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).[72] 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

[69] 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.

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

[71] 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); and the Lead-Free Future Act of 2019 (H.R. 4416).

[72] 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.

new requirements that citizens provide documentation of their citizenship status.[73] (For more information, see CRS Insight IN11121, *HUD's Proposal to End Assistance to Mixed Status Families*.)

Low-income housing advocates[74] and stakeholder groups representing program administrators[75] 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 FY2020 HUD appropriations bill (Section 234 of Division E of H.R. 3055); H.R. 2763, as ordered reported by the House Financial Services Committee; and S. 1904, as introduced in the Senate. (The language from H.R. 3055 was not included in the final FY2020 HUD appropriations law, P.L. 116-94.)

Equal Access to Housing

In spring 2019, as part of the Unified Agenda of Federal Regulatory and Deregulatory Actions published by OMB, HUD announced that it would release a Notice of Proposed Rulemaking (NPRM) in fall 2019 that would make changes to its Equal Access to Housing rule.[76] 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.[77] 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.[78] 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.

HUD states that the forthcoming NPRM would allow CPD program grant recipients and shelter operators to determine how people experiencing homelessness are admitted to sex-segregated shelters. Among the factors that could be considered are "privacy, safety, practical concerns, religious beliefs, any relevant considerations under civil rights and nondiscrimination authorities, the individual's sex as reflected in official government documents, as well as the gender which a person identifies with."

Legislation to prohibit HUD from implementing a rule based on the proposal published in the Unified Agenda passed the House Financial Services Committee on June 11, 2019. (See the Ensuring Equal Access to Shelter Act of 2019, H.R. 3018.) In addition, the FY2020 House-passed

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

[74] 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.

[75] 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.

[76] See Revised Requirements Under Community Planning and Development Housing Programs (FR-6152), https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=2506-AC53.

[77] 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.

[78] 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.

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.)

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.[79] 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."[80]

Affirmatively Furthering Fair Housing

The Fair Housing Act requires HUD to administer its programs in a way that affirmatively furthers fair housing.[81] 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 (AFFH rule) that more specifically defined what it means to affirmatively further fair housing, and required that local communities and Public Housing Authorities receiving HUD funding assess the needs of their communities and ways in which they could improve access to housing.

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.[82] HUD has not yet released a proposed rule.

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

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

[80] 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.

[81] 42 U.S.C. §3608(e)(5).

[82] 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.

Housing and Disaster Response and Recovery

When major disasters occur, the President may authorize an emergency or major disaster declaration[83] under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act; P.L. 93-288, as amended).[84] The presidential declaration makes various housing assistance programs, including programs provided by the Federal Emergency Management Agency (FEMA), available to disaster survivors. FEMA-provided housing assistance may include short-term, emergency sheltering accommodations[85] (e.g., the Transitional Sheltering Assistance (TSA) program, which is intended to provide short-term hotel/motel accommodations).[86] Interim housing needs may be met through the Individuals and Households Program (IHP).[87] IHP housing assistance may include financial assistance (e.g., assistance to rent alternate housing accommodations) and/or direct assistance (e.g., Transportable Temporary Housing Units (TTHUs)[88]) to eligible individuals and 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.[89] 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.[90]

Additionally, 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).

Most recently, to assist certain areas of California that were impacted by natural disasters in 2017 and 2018, the Further Consolidation Appropriations Act, 2020 (P.L. 116-94) increases California's 2020 Low Income Housing Tax Credit (LIHTC) allocation by the lesser of the state's 2020

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

[84] 42 U.S.C. §§5121 et seq.

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

[86] 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).

[87] Interim housing assistance may be authorized under Stafford Act Section 408—Federal Assistance to Individuals and Households.

[88] Examples of Transportable Temporary Housing Units (TTHUs) include Recreational Vehicles (RVs) or Manufactured Housing Units (MHUs), which is defined in 24 C.F.R. §3280.2 as "a structure, transportable in one or more sections ... and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities." FEMA, *IAPPG*, p. 113.

[89] 42 U.S.C. §5174. For more information, see CRS Report R46014, *FEMA Individual Assistance Programs: An Overview*.

[90] 44 C.F.R. §206.110(e).

LIHTC allocations to buildings located in qualified 2017 and 2018 California disaster areas, or 50% of the state's combined 2017 and 2018 total LIHTC allocations.

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, 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,[91] 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—amends 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).[92] It also provides a mechanism for state and local units of government to be reimbursed for locally implemented housing solutions.[93] This provision may allow states to customize disaster housing solutions and expedite disaster recovery. FEMA is developing a *State-Administered Direct Housing Grant Guide*, which will serve as interim guidance for state, territorial, or tribal governments seeking to administer these programs as part of a two-year pilot program.[94]

[91] 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).

[92] §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*.

[93] §1211(b) of DRRA, P.L. 115-254.

[94] 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 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*).

- DRRA Section 1212—Assistance to Individuals and Households—amends 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.[95] Prior to DRRA, an individual or household could receive financial assistance for housing (including assistance to rent alternate housing accommodations) and ONA—combined—up to the 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 removes financial assistance to rent alternate housing accommodations from the cap, and creates an exception for accessibility-related costs.[96] 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. However, there is also the potential that this change may disincentivize sufficient insurance coverage because of the new ability for eligible individuals and households to receive separate and increased housing and ONA awards that more comprehensively cover disaster-related real and personal property losses. In March 2019, FEMA began processing retroactive payments to applicants who either reached or exceeded the financial cap for disasters declared on or after August 1, 2017,[97] and FEMA stated that, in April 2019, it would begin evaluating applications to assess whether some survivors may be eligible for additional rental assistance, which may enable eligible applicants to receive additional funds.[98]
- DRRA Section 1213—Multifamily Lease and Repair Assistance—amends 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.[99] This may increase housing options for disaster survivors. The Inspector General of the Department of Homeland Security must assess the use of

[95] §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).

[96] §1212 of DRRA, P.L. 115-254.

[97] §1202 of DRRA, P.L. 115-254. Amendments to the Stafford Act apply to major disasters and emergencies declared on or after August 1, 2017. See also FEMA, *DRRA Annual Report*, p. 17.

[98] FEMA, "FEMA Bulletin Week of March 18, 2019: FEMA Announces Retroactive Payments to Disaster Survivors," press release, March 19, 2019, https://content.govdelivery.com/accounts/USDHSFEMA/bulletins/237ddd7. FEMA's website that tracks its implementation of DRRA includes an implementation update for Section 1212, which states that "[r]etroactive payments began in March 2019" and that it "[a]utomatically applied to new disasters as of April 2019" (FEMA, "Disaster Recovery Reform Act of 2018," last updated June 11, 2019, https://www.fema.gov/disaster-recovery-reform-act-2018).

[99] §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.

FEMA's direct assistance authority to justify this alternative to other temporary housing options, and submit a report to Congress.[100]

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 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.[101] 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."[102]

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.[103] 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."[104] 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

[100] §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).

[101] FEMA, "Bulletin Week of October 21, 2019," https://content.govdelivery.com/accounts/USDHSFEMA/bulletins/2679511. In a report by the U.S. Government Accountability Office (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*).

[102] 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.

[103] 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).

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

months following the disaster, the STEP pilot program operated for 18 months.[105] An additional challenge identified related to limiting the scope of the program to performing minimal, emergency repairs.[106] 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.[107]

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."[108] 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."[109] The Department of Homeland Security concurred with GAO's recommendation that the FEMA Administrator evaluate FEMA's options for providing future emergency sheltering assistance.[110]

Depending on the results of FEMA's evaluation of its emergency sheltering programs, Congress may 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 TTHUs).[111] To accomplish this, Congress may consider requiring FEMA to collaborate with disaster housing partners to identify and outline emergency, short-, interim, and long-term disaster housing solutions. Additionally, this may require an update to the *National Disaster Housing Strategy*[112] 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.

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

HUD's CDBG-DR program provides 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

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

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

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

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

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

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

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

[112] 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.

program is designed to help communities and neighborhoods that otherwise might not recover due to limited resources.[113] 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.[114] This follows the provision of $37 billion for CDBG-DR in the 115th Congress.[115]

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, the program is not formally authorized, meaning the rules that govern the funding use and oversight vary with HUD guidance accompanying each allocation. Some Members of Congress have expressed interest in formally authorizing the CDBG-DR program, in part in response to concerns about HUD's oversight of CDBG-DR funding. 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 the CDBG-DR program and includes a number of provisions to codify financial controls over program funds. The House passed the bill in November 2019 and it has been received in the Senate.

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.[116] 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. However, 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.

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[113] 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/.

[114] P.L. 116-20.

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

[116] 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.

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 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.[117] 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.[118]) NAHASDA reauthorization legislation has been considered in varying degrees in the 113th, 114th, and 115th Congresses but none was ultimately enacted.[119] 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.[120]

In the 116th Congress, a NAHASDA reauthorization bill (H.R. 5319) was introduced in the House in December 2019.

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

[117] 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/.

[118] 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.

[119] 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.

[120] 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*.

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.[121] 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.[122]

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-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 the Bipartisan Budget Act of 2018 (P.L. 115-123) in the 115th Congress. That law extended the exclusion for canceled mortgage debt and the ability to deduct mortgage insurance premiums through the end of 2017 (each had previously expired at the end of 2016). As of the date of this report, these provisions had not been extended beyond 2017.

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 in general, see CRS Report R45347, *Tax Provisions That Expired in 2017 ("Tax Extenders")*.

[121] 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*.)

[122] 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.

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.[123] 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.[124] 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.[125] More recently, because the economy, housing market, and foreclosure rates have improved significantly since the height of the housing and mortgage market turmoil, 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.[126] 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).[127] 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.

[123] 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*.

[124] 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.

[125] 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.

[126] 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.

[127] 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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