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Housing Issues in the 117th Congress

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SUMMARY

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Housing Issues in the 117th Congress

The 117th Congress has been considering a variety of housing-related issues, with housing challenges presented by the COVID-19 pandemic remaining a primary concern. As the Congress began, the COVID-19 pandemic was ongoing, as were concerns about some households' ability to maintain rent or mortgage payments due to the effects of the pandemic. In March 2021, Congress passed the American Rescue Plan Act (P.L. 117-2), a wide-ranging pandemic relief and response law that included funding for several new and existing housing programs to help address the effects of the pandemic.

Through hearings and legislative proposals, the 117th Congress has also indicated interest in a variety of other housing-related issues, including proposals to address housing affordability concerns, to include housing funding in proposed infrastructure packages, and to address racial disparities in housing outcomes. Other potential issues of interest include certain housing-related rulemakings issued under the Trump Administration that the Biden Administration has revisited, including rulemakings by the Consumer Financial Protection Bureau and fair housing regulations promulgated by the Department of Housing and Urban Development. In addition, the status of two government-sponsored enterprises important to the housing finance system, Fannie Mae and Freddie Mac, has been of ongoing interest for over a decade.

Housing market conditions provide context for the 117th Congress's deliberations, although conditions vary locally and national indicators may not reflect the conditions in a specific local community. During the pandemic, house prices have risen, but mortgage interest rates have fallen, helping to spur homebuyer demand. Housing supply, which was low before the pandemic began, has become even more constrained, contributing to price increases. Concerns about high housing costs, limited supply, and the potential for increased evictions and foreclosures as pandemic-related protections expire have been prominent housing market considerations during the 117th Congress, though uncertainty remains about market trends going forward.

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Introduction

While housing in the United States is primarily a private market enterprise, regulated at the state and local levels, federal policymakers play an important role in regulating housing finance, providing affordable housing resources to state and local entities, and enforcing fair housing laws, among other functions. Congress establishes laws governing U.S. housing policy, funds housing policies and programs via the annual appropriations process and the federal tax code, and oversees policy and program implementation by various federal agencies. The House Financial Services Committee and the Senate Banking Committee, in particular, play prominent roles in many of these functions as committees of jurisdiction. Federal agencies involved in housing policy and programs include the Department of Housing and Urban Development (HUD), the Federal Housing Finance Agency (FHFA), the Department of the Treasury (Treasury), and others.

The housing policy priorities of the first session of the 117th Congress have been heavily influenced by the COVID-19 pandemic and both its public health and economic ramifications. Significant new housing-related investments were included in the American Rescue Plan Act (P.L. 117-2), a pandemic relief and recovery law enacted early in the 117th Congress.

In addition to those related to the COVID-19 pandemic, several other housing policy considerations are of interest to the 117th Congress. Housing affordability remains a prominent concern, and a variety of policy proposals have been put forward to address the affordability of both rental housing and homeownership. Furthermore, proposals for new housing funding have been included in broader infrastructure proposals, and Congress has signaled an interest in addressing racial disparities in housing. The Biden Administration has revisited certain housing-related policies that were implemented in recent years; for example, the Consumer Financial Protection Bureau (CFPB) delayed the effective date of a mortgage-related rulemaking, while HUD has taken steps to rescind certain Trump Administration fair housing rules and reinstate elements of Obama Administration-era rules. Fannie Mae and Freddie Mac, two government-sponsored enterprises (GSEs) that back a large part of the mortgage market, remain in conservatorship. Congress could take legislative action to address the conservatorship, and even in the absence of legislation it could consider administrative steps taken by the GSEs' regulator and conservator, FHFA, that affect their activities.

This report provides a high-level overview of housing issues of interest to the 117th Congress and, where applicable, refers to more in-depth CRS reports on the issues discussed.

Housing and Mortgage Market Conditions

This section provides background on housing and mortgage market conditions thus far during the 117th Congress to provide context for the housing policy issues discussed in the remainder of the report.[1] It includes selected indicators focused on single-family housing markets, single-family housing finance,[2] and rental markets. The ongoing effects of the COVID-19 pandemic create

[1] For more information on these and other housing and mortgage market conditions, see HUD's quarterly Housing Market Conditions reports, available at https://www.huduser.gov/portal/ushmc/quarterly_commentary.html, and its monthly Housing Market Indicators reports, available at https://www.huduser.gov/portal/ushmc/hmi-update.html. Both of these report series collect data on various housing market indicators that are published by other entities.

[2] Single-family homes are often defined as homes with one-to-four housing units, particularly in the context of housing finance, meaning that a duplex or triplex would be considered single-family housing. In some contexts, however, single-family homes may be defined as only one-unit homes. Single-family homes can be primary residences owned by

uncertainty, however, and current trends in market conditions may not continue. In addition, some housing data collection has been impacted by the pandemic and may not be directly comparable to previous data, contributing to uncertainty about market trends.

This discussion is of market conditions at the national level. Local housing market conditions can vary significantly, 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.

Single-Family House Prices

As shown in **Figure 1**, nominal house prices[3] have increased nationally on a year-over-year basis in each quarter since the beginning of 2012, with year-over-year increases exceeding 5% for much of that period and exceeding 6% at times. These increases followed almost five years of house price declines in the years during and surrounding the financial crisis of 2007-2009 and associated housing market turmoil.

The pace of house price increases remained fairly steady for several years before noticeably accelerating during 2020. In the fourth quarter of 2020, nominal house prices increased nearly 11% from the same quarter a year earlier, fueled by strong housing demand (in part due to low mortgage interest rates, among other factors) and a limited supply of homes for sale.[4] This rapid growth has continued into 2021, with nominal house prices increasing by over 12% in the first quarter.[5]

owner-occupants, or they may be second homes or investment properties. Rental housing units may be in single-family or multifamily properties.

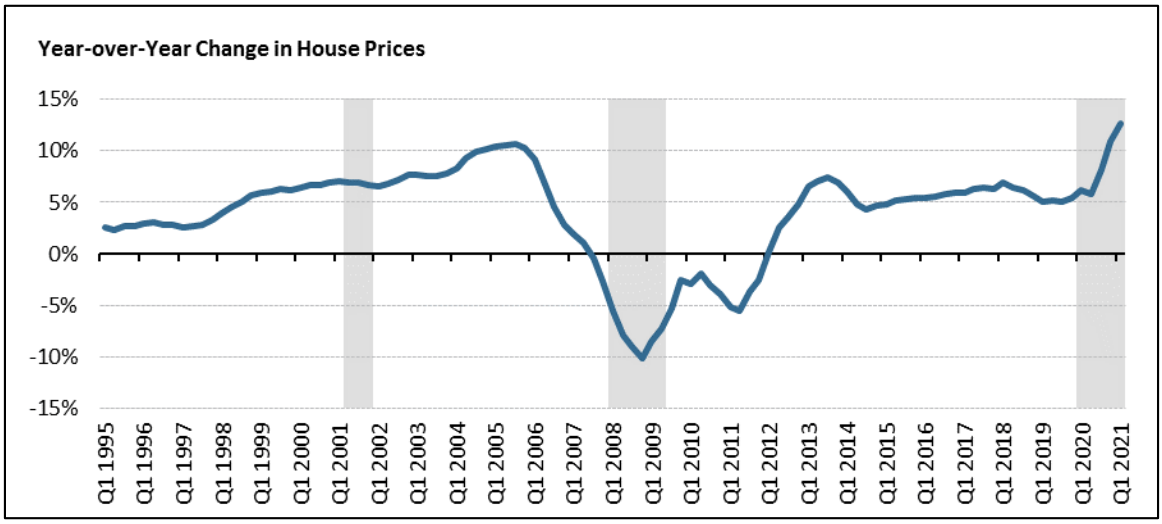
[3] The Federal Housing Finance Agency weights, indexes, and seasonally adjusts nominal price change data. Data measure the average price changes in repeat sales or refinances on the same properties using repeat mortgage transactions that were purchased or securitized by Fannie Mae or Freddie Mac since January 1975. For more information, see Federal Housing Finance Agency, *House Price Index*, at https://www.fhfa.gov/DataTools/Downloads/Pages/House-Price-Index.aspx.

[4] Federal Housing Finance Agency, "U.S. House Prices Rise 10.8 Percent over the Last Year; Up 3.8 Percent in the Fourth Quarter," news release, February 23, 2021, https://www.fhfa.gov/Media/PublicAffairs/Pages/US-House-Prices-Rise-10pt8-Percent-over-the-Last-Year-Up-3pt8-Percent-in-4Q.aspx.

[5] Federal Housing Finance Agency, "U.S. House Prices Rise 12.6 Percent over the Last Year; Up 3.5% in the First Quarter," news release, May 25, 2021, https://www.fhfa.gov/Media/PublicAffairs/Pages/US-House-Prices-Rise-12pt6-Percent-over-the-Last-Year-Up-3pt5-Percent-in-the-First-Quarter.aspx.

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

Q1 1995–Q1 2021



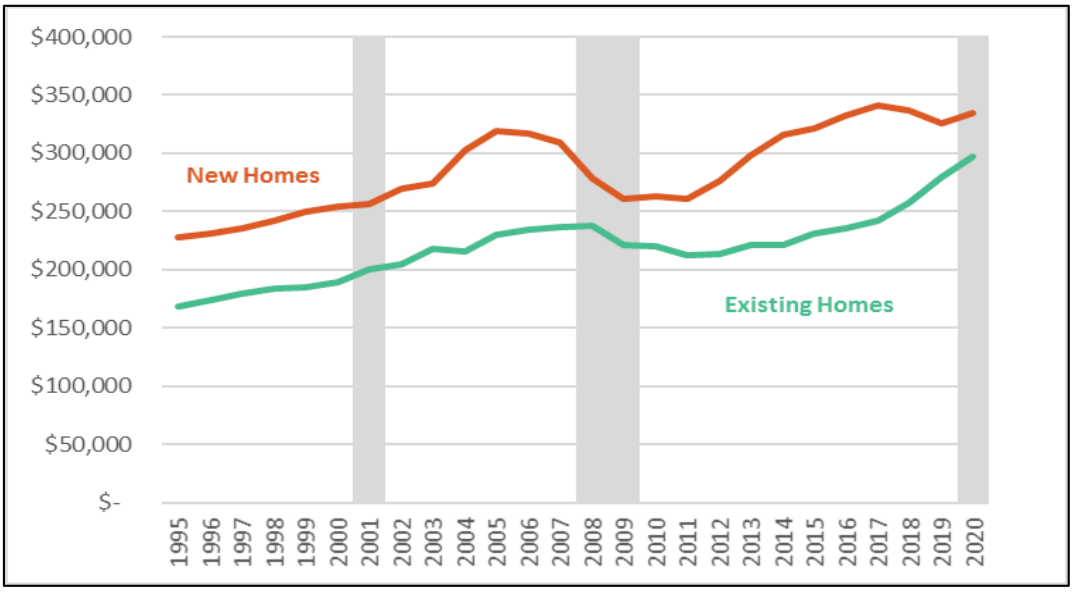
Source: Figure created by CRS using data from the Federal Housing Finance Agency House Price Index (Seasonally Adjusted Purchase-Only Index), available at https://www.fhfa.gov/DataTools/Downloads/Pages/House-Price-Index-Datasets.aspx#qpo.

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

Figure 2 shows the trend in real median prices on both new and existing homes since 1995. Median prices on both new and existing homes have generally trended upward over the past two decades, with a decline in prices during and after the 2007-2009 financial crisis. While the median price of new homes has been consistently above that of existing homes, the median price of existing homes has grown more than new homes—the median real price of existing homes increased about 76% from 1995 to 2020, while the median real price of new homes increased by about 47% over the same period.

Figure 2. Median Real House Prices

1995–2020



Source: CRS calculations based 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 prices, the U.S. Census Bureau for new home prices, and the Bureau of Labor Statistics for the consumer price index.

Notes: Gray bars indicate recessions.

Home Mortgage Interest Rates

Most homebuyers take out a mortgage to purchase a home, especially when purchasing a primary residence.[6] 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 as well as the costs of those mortgages impact housing demand and affordability.

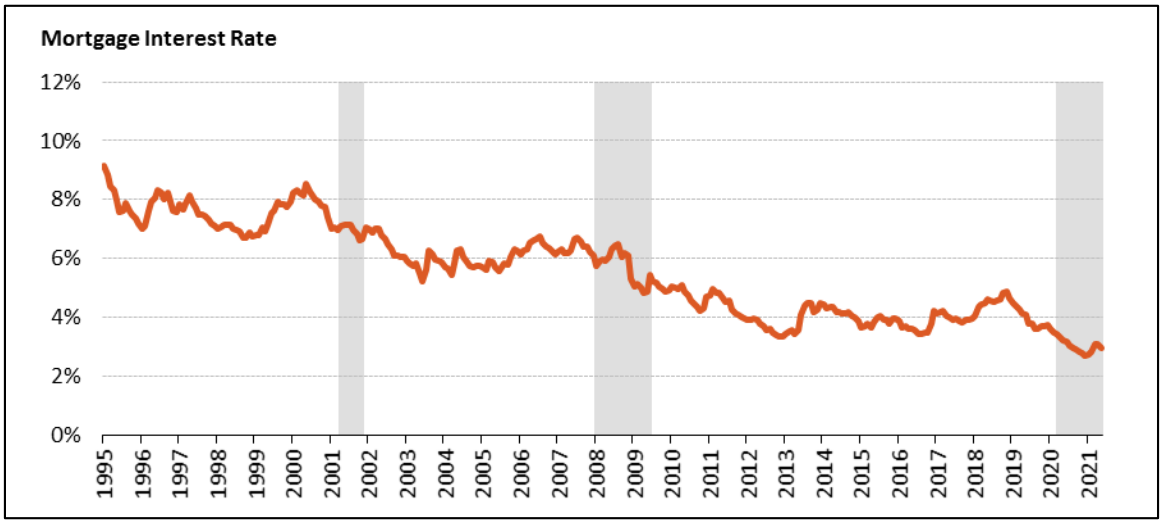
Mortgage interest rates have been low by historical standards for several years, and fell further after the start of the COVID-19 pandemic due in part to the federal monetary policy response to it. Lower interest rates increase mortgage affordability and make it easier for some households to purchase homes or refinance their existing mortgages.

As shown in **Figure 3**, mortgage interest rates have been consistently below 5% since May 2010. The rates decreased further throughout 2020, averaging less than 3% for several months from mid-2020 into 2021. The average mortgage interest rate in May 2021 was 2.96%, compared to 3.23% in May 2020 and 4.07% in May 2019.

[6] According to the National Association of Realtors' *2020 Profile of Homebuyers and Sellers*, about 87% of homebuyers who purchased a primary residence between July 2019 and June 2020 financed the purchase. See National Association of Realtors, "Pandemic Caused Buyers to Seek Multi-Generational Homes, Sellers to Sell Faster," press release, November 11, 2020, https://www.nar.realtor/newsroom/pandemic-caused-buyers-to-seek-multi-generational-homes-sellers-to-sell-faster.

Figure 3. Mortgage Interest Rates

January 1995–May 2021



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

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

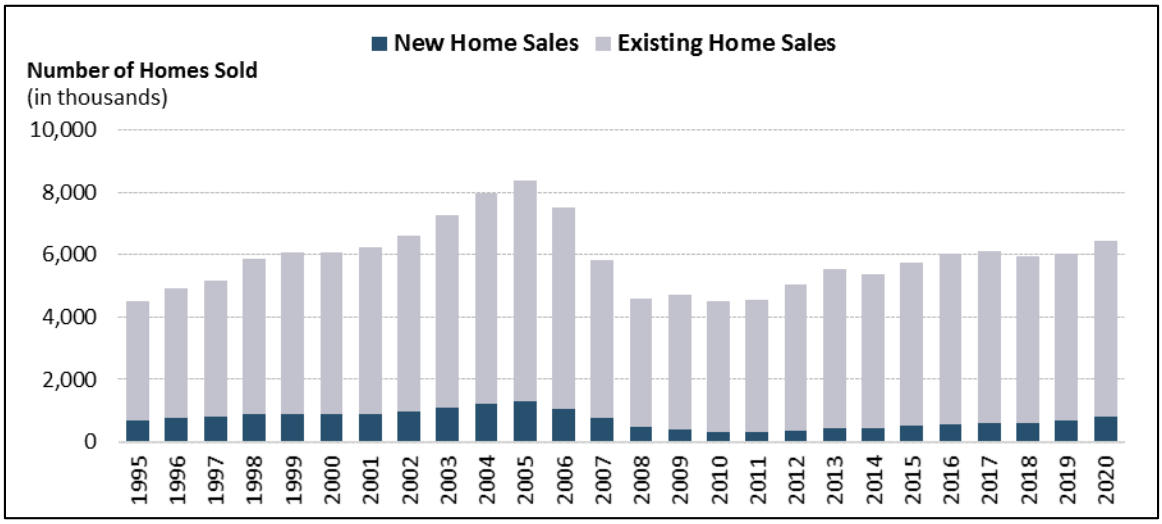
Home Sales

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. As shown in **Figure 4**, home sales fell for several years after 2005 and remained low through the aftermath of the housing and financial crisis of 2007-2009 before generally rising again after 2014.

Homebuyer demand has remained strong even throughout the COVID-19 pandemic. In 2020, the combined number of homes sold was about 6.5 million, the highest figure since 2006 and an increase from 6.0 million in 2019. Existing home sales in 2020 numbered 5.6 million, while new home sales numbered 815,000; both of these levels were the highest since 2006 as well. Although home sales have generally been increasing in recent years, the supply of homes on the market has generally not been keeping pace with demand, contributing to house price increases.

Figure 4. New and Existing Home Sales

Annual, 1995–2020



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.

Inventory of Homes for Sale

Home sales depend in part on the number of homes available for sale. The supply of houses on the market has been low for several years and fell even further in 2020. As shown in **Figure 5**, the annual housing inventory—that is, the number of homes on the market at a given point in time (in this case, at the end of the year)—was under 1.4 million in 2020.[7] The low housing inventory has been driven by several factors, including ongoing shortfalls in housing construction to meet demand[8] and homeowners' decisions about putting their homes on the market, which may have been influenced by the pandemic. Several factors, in turn, have been contributing to construction shortfalls; these include, among other things, the availability and costs of land, labor, and materials (including lumber).[9]

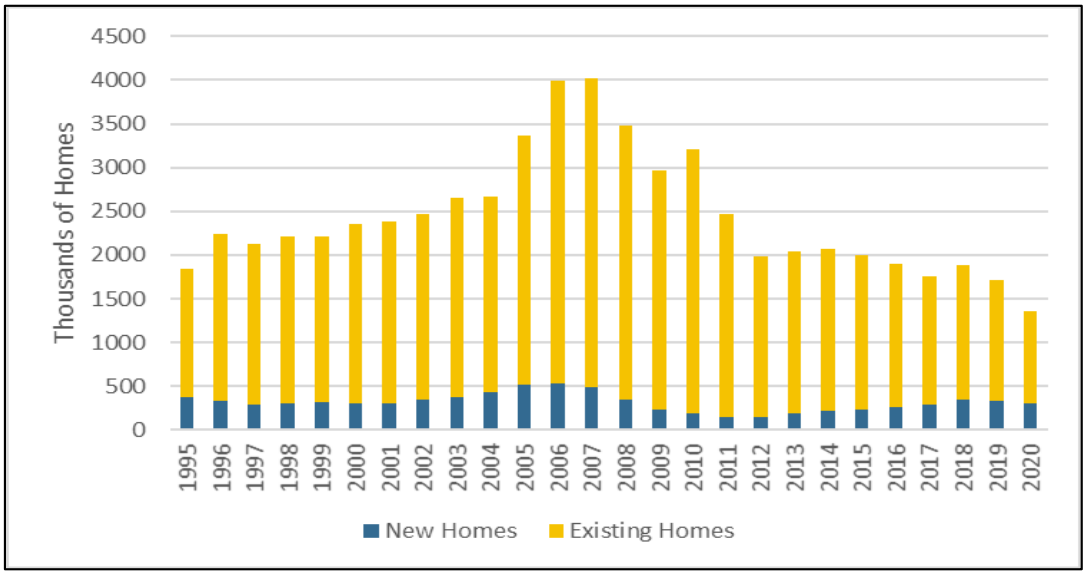
[7] For existing homes, the inventory includes active listings and pending sales; see National Association of Realtors, "Inventory and Months' Supply," blog post, https://www.nar.realtor/blogs/economists-outlook/inventory-and-months-supply. For new homes, inventory includes homes that are "being built to be sold and a permit to build has been issued (in permit-issuing places) or work has begun on the footings or foundation (in nonpermit areas) and a sales contract has not been signed nor a deposit accepted." See U.S. Census Bureau, New Residential Sales, "Definitions – Survey of Construction," https://www.census.gov/construction/nrs/definitions/index.html#n.

[8] See, for example, Freddie Mac, *Housing Supply: A Growing Deficit*, Research Note, May 7, 2021, http://www.freddiemac.com/research/insight/20210507_housing_supply.page.

[9] See, for example, Jim Parrott and Mark Zandi, *Overcoming the Nation's Daunting Housing Supply Shortage*, March 2021, https://www.moodysanalytics.com/-/media/article/2021/overcoming-the-nations-housing-supply-shortage.pdf.

Figure 5. Annual Housing Inventory

1995–2020



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 inventories and the U.S. Census Bureau for new home inventories.

Notes: Annual inventory represents homes for sale as of the end of the year.

Single-Family Housing Construction

A variety of statistics measure the amount of new housing construction underway, including housing starts, housing permits, and housing completions.

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 6 shows the seasonally adjusted annual rate of starts on one-unit homes from January 1995 through May 2021.[11] Housing starts for single-family homes fell during the housing and financial crisis that began around 2007, reflecting decreased home purchase demand. Housing starts have generally been increasing since about 2012, and while they initially showed a steep drop early in the pandemic, they have since rebounded and reached their highest levels since

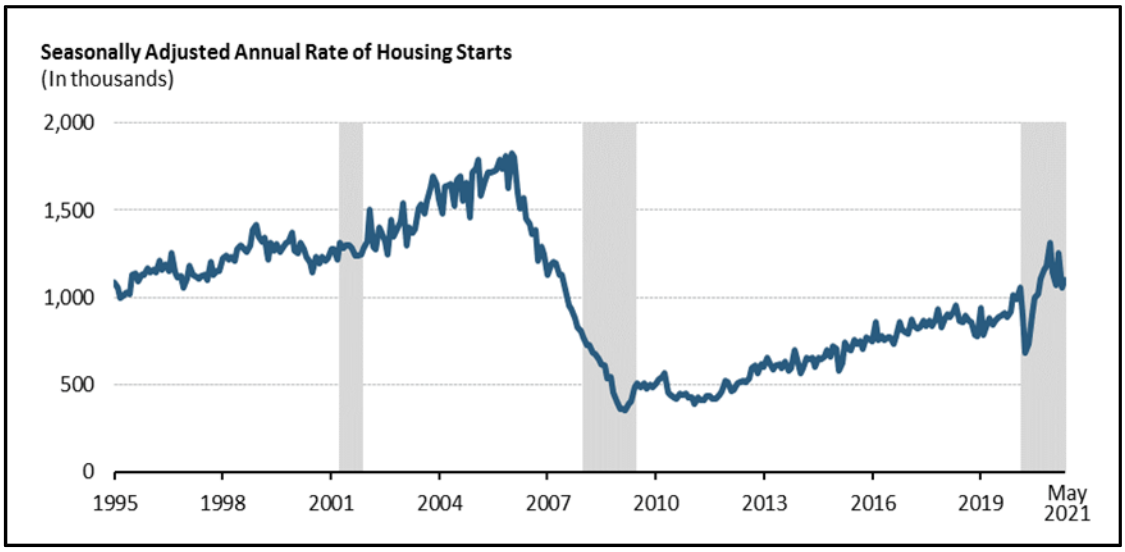
[10] The Census Bureau defines the seasonally adjusted annual rate as "the seasonally adjusted monthly value multiplied by 12" and notes that it "is neither a forecast nor a projection; rather it is a description of the rate of building permits, housing starts, housing completions, or new home sales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

about 2007. Nevertheless, new housing construction has remained below the levels necessary to meet demand, especially for smaller, more affordable starter homes.[12]

Figure 6. Single-Family Housing Starts

(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 May 2021.

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. Gray bars indicate recessions.

Single-Family Mortgage Market Composition

After a mortgage is originated, it might be held in a financial institution's asset portfolio, or it might be securitized through one of several channels.[13] Two government-sponsored enterprises, Fannie Mae and Freddie Mac, issue mortgage-backed securities and guarantee investors' payments on those securities. Mortgages that are insured or guaranteed by a federal agency, such as the Federal Housing Administration (FHA) or the Department of Veterans Affairs (VA), are eligible to be included in mortgage-backed securities guaranteed by Ginnie Mae, part of HUD. Private companies can also issue mortgage-backed securities without a government or GSE guarantee, known as private label securities. The shares of mortgages that are provided through each of these channels can vary based on market conditions, policy decisions, and other factors, and may be relevant to policymakers because of the implications for mortgage access and affordability as well as the federal government's exposure to risk.

As shown in **Figure 7**, nearly 60% of mortgage originations (by dollar volume) in 2020 were securitized by Fannie Mae or Freddie Mac. About 22% were held in financial institutions'

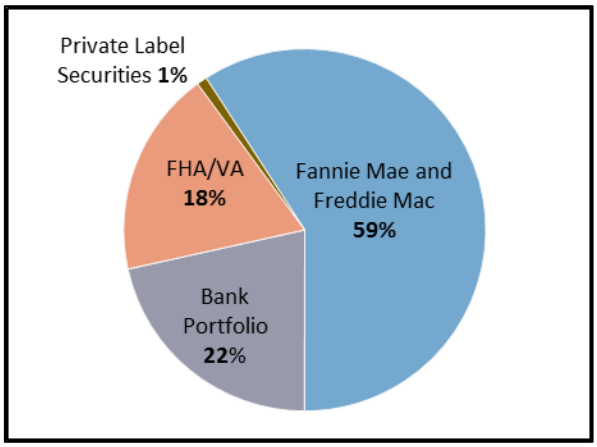
[12] See, for example, Jim Parrott and Mark Zandi, *Overcoming the Nation's Daunting Housing Supply Shortage*, March 2021, https://www.moodysanalytics.com/-/media/article/2021/overcoming-the-nations-housing-supply-shortage.pdf; and Freddie Mac, *Housing Supply: A Growing Deficit*, Research Note, May 7, 2021, http://www.freddiemac.com/research/insight/20210507_housing_supply.page.

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

portfolios, and about 18% were securitized FHA or VA loans. Under 1% of originations were included in private-label securities.

Figure 7. Share of Mortgage Originations by Type

2020



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,* March 2021, p. 8.

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

The nearly 60% of loans securitized by Fannie Mae or Freddie Mac in 2020 was an increase from 43% in 2019 and the highest level since 2013, likely reflecting impacts of the COVID-19 pandemic and its associated economic effects. The FHA/VA share was similar to 2019 (18% compared to 19%), and the bank portfolio share was lower (22% compared to 36%).[14] The overall volume of mortgage originations also increased significantly in 2020, rising to $4.0 trillion from about $2.4 trillion in 2019.[15] Much of this increase was driven by high refinancing volumes due to low interest rates.

Homeownership and Renter Rates

After the housing and mortgage market turmoil that began around 2007, there was a substantial decrease in the homeownership rate and a corresponding increase in the share of renter households. As shown in **Figure 8**, the share of renters increased from about 31% in 2005 and 2006 to a high of about 36.6% in 2016, before beginning to decrease and reaching 35.4% in 2019. The share of renters appeared to fall further, to 33.4%, in 2020, although data collection for the

[14] For a graph showing each of these shares of mortgage originations for each year going back to 2001, see Urban Institute, Housing Finance Policy Center, *Housing Finance at a Glance: A Monthly Chartbook*, March 2021, p. 8. Other monthly issues of *Housing Finance at a Glance* can be found on the Urban Institute's website at https://www.urban.org/policy-centers/housing-finance-policy-center/projects/housing-finance-glance-monthly-chartbooks.

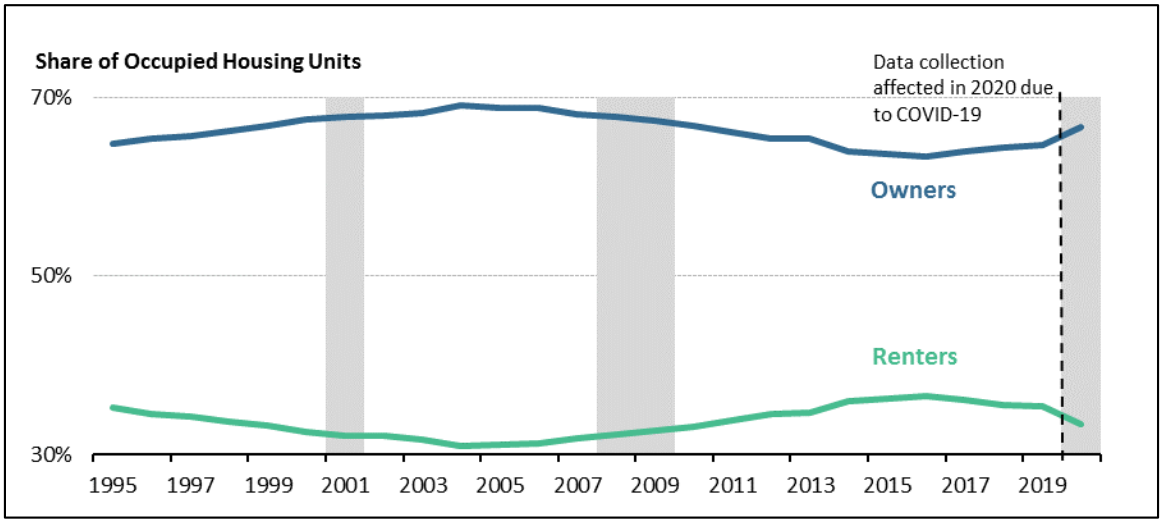
[15] See Freddie Mac's Quarterly Forecasts, *Quarterly Forecast: As the Economy Recovers, the Housing Market Remains Healthy While Mortgage Rates Move Up*, April 2021, http://www.freddiemac.com/fmac-resources/research/pdf/2021Q2-Forecast-03.pdf and *Quarterly Forecast: Housing Market Continues to Rebound as Mortgage Rates Hover at Record Lows,* October 2020, http://www.freddiemac.com/fmac-resources/research/pdf/202010-Forecast-03.pdf.

Census Bureau survey that reports these statistics was affected by the COVID-19 pandemic.[16] Therefore, 2020 figures discussed in this subsection may not be entirely comparable with prior years.

The homeownership rate correspondingly fell from a high of 69.0% in the mid-2000s to 63.4% in 2016, before rising to 64.6% in 2019 and 66.6% in 2020 (though 2020 data was subject to changes in data collection procedures).

Figure 8. Renter and Homeownership Rates

1995–2020



Source: Figure created 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."

Notes: Because data collection procedures were affected by the COVID-19 pandemic during 2020, the Census Bureau urges caution in comparing 2020 estimates to previous estimates. Gray bars indicate recessions.

The overall number of occupied housing units also increased over this period, from nearly 110 million in 2006 to 123 million in 2019 and 126 million in 2020.[17] The number of renter-occupied units increased from about 34 million in 2006 to about 44 million in 2019 before falling to 42 million in 2020. The number of owner-occupied housing units fell from about 75 million in 2006 to about 74 million in 2014; it has since increased to about 79 million units in 2019 and nearly 84 million in 2020. Again, however, 2020 data may not be directly comparable to prior years.

Composition of the Rental Housing Stock

Rental units can be in a variety of property types, including single-family homes, small multifamily buildings, and large multifamily buildings. As shown in **Figure 9**, in 2019 about half of rental units were in single-family properties (defined as properties with 1-4 dwelling units: about 33% of rental units were in 1-unit properties, and about 17% were in 2-4 unit properties).

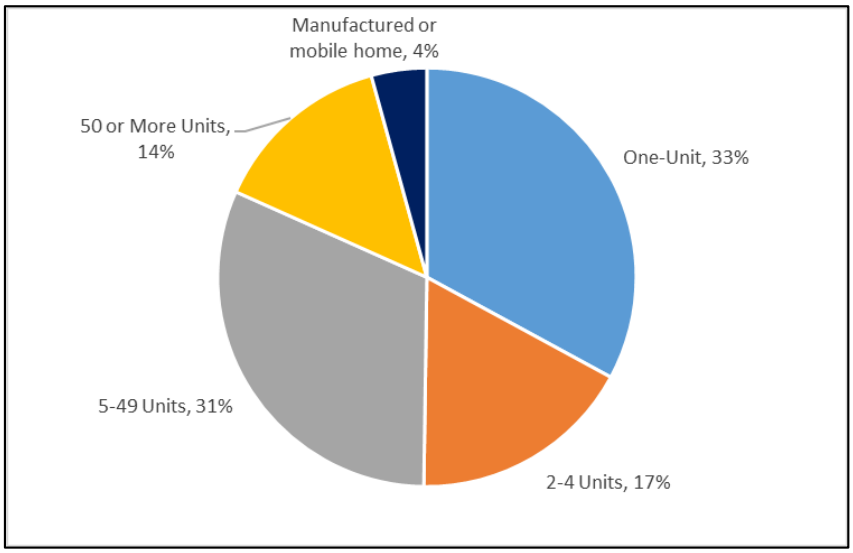
[16] See U.S. Census Bureau, *Historical Current Population Survey/Housing Vacancy Survey (CPS/HVS) Changes*, "Impacts of the coronavirus (COVID-19) pandemic on Housing Vacancies and Homeownership data collection for 2020," https://www.census.gov/housing/hvs/files/annual20/ann20src.pdf.

[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.

About 31% of rental units were in buildings with 5-49 units, and 14% were in buildings with 50 or more units. Another 4% were manufactured housing.[18]

Figure 9. Rental Stock by Number of Units in Property

2019



Source: Figure created by CRS using American Community Survey one-year estimates.

Ownership of rental properties varies widely, from individual investors who own one or a few units to large corporate institutions. Individual investors are more likely to own single-family homes or smaller buildings than large multifamily buildings. According to HUD's 2018 Rental Housing Finance Survey, about 42% of rental properties have a mortgage.[19] However, the likelihood of a property being mortgaged increases with property size,[20] suggesting that a larger share of rental *units* are in properties with a mortgage. In general, single-family rental properties are financed with single-family mortgages while financing for multifamily properties is obtained through the multifamily and commercial mortgage market.[21]

This variation in rental property composition and ownership may be relevant to Congress as it considers various policy questions, including how to respond to challenges faced by renters and landlords due to the COVID-19 pandemic. Some property owners may have more difficulty than others withstanding extended periods of reduced rental income without falling behind on bills or maintenance or having to sell a property, and considerations related to the ownership and financing of rental properties could inform efforts to provide assistance to renters or landlords.

[18] Data are from American Community Survey 2019 one-year estimates, Table B25032. A small number of occupied rental units are reported as being in other types of structures, including boats and recreational vehicles.

[19] Department of Housing and Urban Development, "HUD and Census Bureau Release Findings of Rental Housing Finance Survey," press release, June 3, 2020, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_071.

[20] Urban Institute Housing Finance Policy Center, "Small Multifamily Units," slide deck, May 2020, p. 5, https://www.urban.org/sites/default/files/2020/05/15/small_multifamily_units_0.pdf.

[21] For more information on multifamily mortgages, see CRS Report R46480, *Multifamily Housing Finance and Selected Policy Issues*.

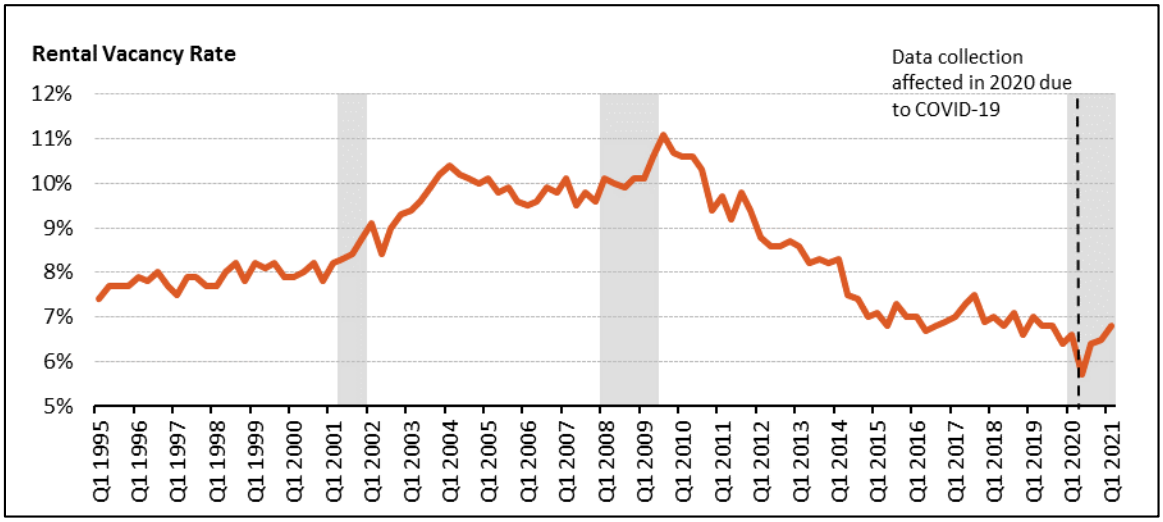
Renter Vacancy Rates

As shown in **Figure 10**, the rental vacancy rate has generally been declining for several years and was 6.4% at the end of 2019. Lower vacancy rates may put upward pressure on rents as renter households compete for fewer available units.

The rental vacancy rate at the end of 2020 was essentially unchanged from the end of 2019.[22] However, like certain other measures discussed earlier, the Census Bureau reports that the data collection procedures for its survey were impacted by the COVID-19 pandemic during 2020 and urges caution in comparing 2020 quarterly estimates to previous quarters. It suggests that changes in vacancy rates during that period should be interpreted as reflecting both pandemic effects and changes to data collection procedures.[23] The rental vacancy rate in the first quarter of 2021 was 6.8%. The pandemic continued to affect data collection in the first quarter of 2021, though to a lesser extent than in 2020.[24]

Figure 10. Rental Vacancy Rates

Q1 1995–Q1 2021



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.

Notes: Because data collection procedures were affected by the COVID-19 pandemic during 2020, the Census Bureau urges caution in comparing 2020 quarterly estimates to previous quarterly estimates. Gray bars indicate recessions.

[22] The rental vacancy rate at the end of 2020 was 6.5%, not statistically different from the fourth quarter 2019 rate of 6.4%. See U.S. Census Bureau, "Quarterly Residential Vacancies and Homeownership, Fourth Quarter 2020," press release, February 2, 2021, https://www.census.gov/housing/hvs/files/currenthvspress.pdf.

[23] See U.S. Census Bureau, "Frequently asked questions: The impact of the coronavirus (COVID-19) pandemic on the Current Population Survey/Housing Vacancy Survey (CPS/HVS)," p. 4, https://www.census.gov/housing/hvs/files/qtr420/impact_coronavirus_20q4.pdf.

[24] U.S. Census Bureau, "Quarterly Residential Vacancies and Homeownership, First Quarter 2021," press release, April 27, 2021, https://www.census.gov/housing/hvs/files/currenthvspress.pdf.

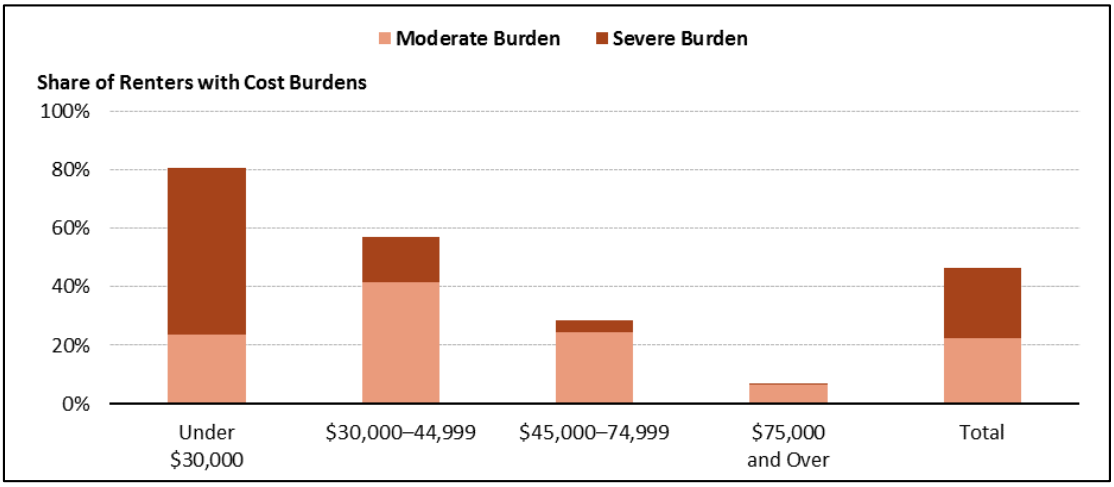
Renter Cost Burdens

A variety of factors impact rental housing affordability, including the supply of rental housing units available, the characteristics of those units (e.g., age, amenities), the demand for available units, and renter incomes. Under the most commonly used definition, housing is considered to be affordable if a household is paying no more than 30% of its income in housing costs. Households that pay more than 30% are considered to be cost-burdened, and those that pay more than 50% are considered to be severely cost-burdened.

Cost burdens can affect both renter and owner households as well as households of all income levels, but they are highest among lower-income renter households. As shown in **Figure 11**, about 46% of all renter households were cost-burdened in 2019 (about 22% had moderate cost burdens and 24% had severe cost burdens). Cost burdens, and especially severe cost burdens, were most prevalent among renters with the lowest incomes. About 80% of renter households with annual incomes below $30,000 were cost-burdened, with most being severely cost-burdened. Nearly 60% of renter households with incomes of at least $30,000 but less than $45,000 were cost-burdened, with most being moderately cost-burdened.

Figure 11. Renter Cost Burdens

2019



Source: Figure created by CRS using data from Joint Center for Housing Studies, *State of the Nation's Housing 2020*, Appendix Tables, https://www.jchs.harvard.edu/state-nations-housing-2020, showing Joint Center for Housing Studies tabulations of American Community Survey data.

Housing and the Broader Economy

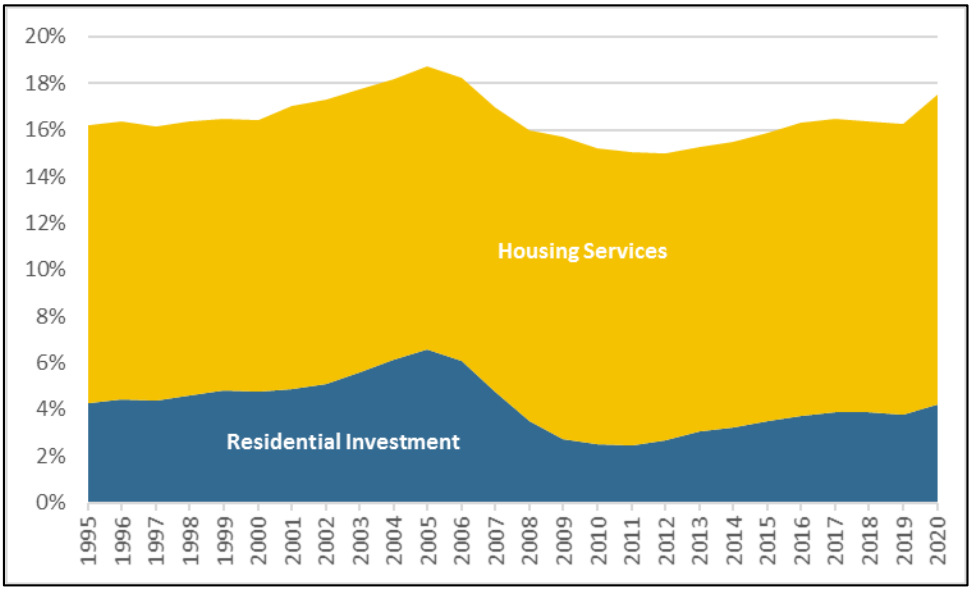
The housing market plays an important role in the larger economy, as it accounts for a significant portion of economic activity. Housing contributes to GDP in two direct ways: residential fixed investment and spending on housing services. Residential fixed investment includes all spending on the construction of new single- and multi-family structures, residential remodeling, and brokers' fees. Housing services includes all spending on renters' utilities and rent and homeowners' imputed rent[25] and utility payments.

[25] Imputed rent is the estimate of the rent a homeowner would be willing to pay to live in his own house.

As shown in **Figure 12**, residential investment was $885.2 billion in 2020 and accounted for roughly 4% of GDP. Housing services were $2.8 trillion and accounted for roughly 13% of GDP. Despite the pandemic, spending on both residential investment and housing services were up in 2020, accounting for 17.5% of GDP as compared to 16.3% in 2019. Spending in the housing market has fluctuated over time, and over the last few decades there has not been a consistent, long-term trend in housing spending as a share of GDP. Housing's share of economic output rose in the lead up to the housing market crash and financial crisis of 2007-2009, and fell rapidly during it. Since the crisis, housing's share of output has risen more gradually and is now in line with pre-crisis numbers.

Figure 12. Total Housing Spending as a Share of GDP

1995-2020



Source: CRS calculations based on Bureau of Economic Analysis, National Income and Product Accounts, Table 1.1.5 and Table 2.3.5.

As evidenced by the housing crash and the role it played in the 2007-2009 financial crisis, the housing market can play a critical role in the health of the broader economy. However, fluctuations in the housing market do not necessarily line up perfectly with the business cycle. Spending on housing can increase even as economic output falls, as witnessed during the COVID-19 pandemic.

That said, house prices are typically thought to impact residential investment and therefore affect economic growth, all else being equal. Rising home prices likely encourage additional construction spending (in order to take advantage of the higher sale prices on the completed new homes), leading to more robust economic growth. A decline in housing prices is likely to depress construction spending, leading to more anemic economic growth. Fluctuations in house prices can also have effects on the economy through so-called *wealth effects* (i.e., as the value of homeowners' assets, and therefore net wealth, increases, they tend to spend more). In addition, increases in housing value encourage homeowners to spend more for a variety of other reasons, including higher confidence in the economy, increased equity for homeowners to borrow against, and higher rental income. A decrease in prices results in the opposite. In the United States, consumer spending makes up roughly 70% of the economy; therefore, changes in housing wealth can result in significant changes in economic growth.

For more information on housing's contribution to the overall economy, see CRS In Focus IF11327, *Introduction to U.S. Economy: Housing Market*.

Housing Issues in the 117th Congress

While the housing issues of interest to policymakers will continue to evolve as the 117th Congress progresses, this section provides a high-level overview of some broad issues that have been, or are likely to be, of interest.

Housing Policy Responses to the COVID-19 Pandemic

The ongoing pandemic and its economic impacts have raised concerns about the ability of individuals and families to afford their housing, as well as spillover effects for housing markets. Both the 116th and 117th Congresses, and the Trump and Biden Administrations, have taken actions related to housing policy and the pandemic (discussed below). However, concerns persist that when temporary protections expire—including eviction moratoriums, foreclosure moratoriums, and mortgage forbearance periods—more households may be in danger of losing their homes through eviction or foreclosure.

116th Congress

During the 116th Congress, there were a number of federal actions related to housing and the pandemic, including the following:

- The Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136), enacted in March 2020, contained certain housing-related pandemic response provisions. These included additional funding for certain federal housing programs, temporary mortgage forbearance for federally backed mortgages, and temporary eviction and foreclosure moratoriums that applied to certain federally related rental units and mortgages, respectively.
- Federal agencies took a variety of administrative actions in response to the pandemic. Among other things, federal agencies and Fannie Mae and Freddie Mac administratively extended their foreclosure moratoriums after the CARES Act foreclosure moratorium expired, and the Centers for Disease Control and Prevention (CDC) implemented a separate and broader eviction moratorium after the CARES Act eviction moratorium expired.
- The Consolidated Appropriations Act, 2021 (P.L. 116-260), enacted in December 2020, contained additional housing-related pandemic response provisions, most notably an extension of the CDC's eviction moratorium and funding for rental assistance.

For a full discussion of actions that Congress and federal agencies took to address the housing impacts of the pandemic during the 116th Congress and links to related CRS reports, see the "The COVID-19 Pandemic and Housing" section in CRS Report R45710, *Housing Issues in the 116th Congress*.

117th Congress

In March 2021, the 117th Congress passed and President Biden signed another pandemic relief law, the American Rescue Plan Act (P.L. 117-2). The enacted law included funding for several new and existing housing programs, including additional funding for rental assistance, a new

Homeowner Assistance Fund, homelessness assistance, housing counseling, Native American housing programs, and fair housing activities.

Furthermore, during the 117th Congress, federal agencies have taken several steps to extend existing pandemic-related housing protections, implement previously enacted assistance measures, or propose additional protections:

- The CDC announced three additional extensions of its federal eviction moratorium. As of the cover date of this report, the most recent extension goes through July 31, 2021, and the CDC stated that it expects this extension to be the last.[26] In addition, Treasury began allocating emergency rental assistance funding that was first provided in P.L. 116-260 to states and localities.
- Federal agencies and Fannie Mae and Freddie Mac extended existing foreclosure moratoriums that apply to the mortgages they back. As of the cover date of this report, the most recent extension goes through July 31, 2021, with the Administration indicating that this will be the federal agencies' last extension.[27] In addition, all of these entities announced that mortgage forbearance periods for mortgages they back could be extended beyond the period allowed under the CARES Act under certain circumstances.
- In June 2021, concurrent with the announcement of the extension of the CDC eviction moratorium and foreclosure moratoriums for federally backed mortgages through July 31, 2021, the White House announced a series of actions designed to help state and local governments promote housing stability and prevent evictions and foreclosures. These included revisions to Treasury guidance on the use of Emergency Rental Assistance (ERA) funds designed to speed the delivery of assistance; a letter to state and local courts from the Deputy Attorney General encouraging the adoption of eviction diversion efforts and guidance on how ERA funds can be used to support such efforts; convening of a White House summit to plan for eviction prevention; extensions of deadlines related to mortgage forbearance approval; and implementation of "a whole-of-government effort to raise awareness about emergency rental assistance."[28]
- In June 2021, the CFPB promulgated a final rule temporarily amending certain mortgage servicing procedures under Regulation X[29] in response to the pandemic and the concern that a large number of borrowers may exit forbearance around the same time without receiving a meaningful opportunity to be reviewed for loss mitigation.[30] (Loss mitigation refers to options to avoid foreclosure, such as

[26] Centers for Disease Control and Prevention (CDC), "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," June 24, 2021, https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html.

[27] The White House, "Fact Sheet: Biden-Harris Administration Announces Initiatives to Promote Housing Stability By Supporting Vulnerable Tenants and Preventing Foreclosures," June 24, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/24/fact-sheet-biden-harris-administration-announces-initiatives-to-promote-housing-stability-by-supporting-vulnerable-tenants-and-preventing-foreclosures/. The fact sheet states that the foreclosure moratorium is being extended "by a final month, until July 31st."

[28] Ibid.

[29] Regulation X implements certain mortgage servicing standards under the Real Estate Settlement Procedures Act (RESPA).

[30] Consumer Financial Protection Bureau, "Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X," 86 *Federal Register* 34848-34903, June 30, 2021, https://www.federalregister.gov/documents/2021/06/30/2021-13964/protections-for-borrowers-affected-by-the-covid-19-emergency-under-the-real-estate-settlement. For an executive summary of the rule, see https://files.consumerfinance.gov/f/documents/cfpb_covid-mortgage-servicing-rule_executive-summary_2021-06.pdf.

repayments plans, loan modifications, or other foreclosure alternatives.) Under the final rule, servicers may offer certain types of loan modifications to borrowers with pandemic-related hardships even if they have not received a completed loss mitigation application from the borrower. In addition, the rule requires servicers to ensure that at least one of several procedural safeguards (described in the final rule) have been met before initiating foreclosure on mortgages that are at least 120 days past due. The final rule becomes effective on August 31, 2021.

For more information, see the following:

- CRS Insight IN11641, *Housing Funding in the American Rescue Plan Act of 2021*
- CRS Insight IN11673, *The CDC's Federal Eviction Moratorium*
- CRS Report R46688, *Emergency Rental Assistance through the Coronavirus Relief Fund*
- CRS Report R46830, *The Homeowner Assistance Fund in the American Rescue Plan Act: In Brief*

Housing Affordability

Housing affordability is a perennial policy issue for Congress. While affordability challenges can affect both owners and renters at varying levels of income, lower-income renter households are the most likely to face severe housing cost burdens, placing them at greatest risk for housing insecurity. Estimates vary, but they generally show that current federal housing assistance programs reach roughly one in four eligible households. In light of persistent concerns that many express about housing affordability, the 117th Congress may consider various affordable housing policy options.

Proposals to address housing affordability have taken many forms.[31] One approach is to provide additional funding for new or existing programs that support the development of affordable housing in an attempt to increase the supply of such housing. Another is to pursue demand-side interventions that help individuals with their housing costs, such as by expanding rental assistance through the Section 8 Housing Choice Voucher program or creating new tax credits for renters or homebuyers. A third approach is to take steps to encourage or incentivize state and local governments to review or address existing policies that may negatively affect housing development and affordability in their communities, such as land use regulations or other regulatory requirements that could make building housing more difficult or costly.

Among other proposals related to housing affordability in the 117th Congress, there have been proposals for significant additional federal funding for constructing new affordable housing, including several that have been included in various infrastructure proposals (discussed further in the next section). Additionally, there have been proposals to expand existing rental assistance programs to serve more families,[32] including a draft proposal to create a Housing Choice Voucher entitlement, which would allow the program to serve all eligible households. This proposal was

[31] For a discussion of certain legislative proposals made in the 116th Congress, see the section on "Proposed New Investments in Affordable Housing" in CRS Report R45710, *Housing Issues in the 116th Congress*.

[32] For example, see S. 1991, which would authorize 500,000 new vouchers, and President Biden's FY2022 budget request, which includes a request for funding for an additional 200,000 new vouchers.

the subject of a hearing by the House Financial Services Committee,[33] and in July 2021 it was introduced as H.R. 4496 as part of a legislative housing package announced by Financial Services Committee Chairwoman Maxine Waters.[34]

Housing in Infrastructure Proposals

The topic of infrastructure investments has been prominent during the 117th Congress. The Biden Administration's infrastructure proposal, the American Jobs Plan, was released in the spring of 2021 and contains a number of proposals to invest additional resources in housing.[35] Those proposals include the following:

- funding through tax credits, grants, and rental assistance to produce, preserve, and provide energy efficiency retrofits for affordable rental housing;
- enacting the Neighborhood Homes Investment Act (S. 98/H.R. 2143), which would provide new tax credits to build and rehabilitate housing for low- and moderate-income homeowners and buyers in certain disadvantaged areas;
- new grants to incentive land use and zoning policy changes in local communities;
- additional funding to address the backlog of capital needs, address health and safety concerns, and promote energy efficiency in public housing;
- funding to replace lead pipes and service lines to reduce lead exposure in homes; and
- additional funding for HUD's Community Development Block Grant (CDBG) to promote climate resiliency in low- and moderate-income communities at higher risk of climate-related disasters.

Both the House Financial Services Committee and the Senate Banking Committee have held hearings related to housing as infrastructure.[36] In addition, in April 2021, Chairwoman Waters released draft legislation, the Housing is Infrastructure Act of 2021, which would authorize

[33] U.S. Congress, House Committee on Financial Services, *Virtual Hearing - Universal Vouchers: Ending Homelessness and Expanding Economic Opportunity in America*, 117th Cong., 1st sess., June 9, 2020, https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=407952.

[34] House Financial Services Committee, "Waters Announces Introduction of Groundbreaking Legislative Housing Package," press release, July 15, 2021, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408154.

[35] See The White House, "Fact Sheet: The American Jobs Plan," March 31, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/. Some additional detail on these proposals was released in May 2021; see The White House, "Fact Sheet: The American Jobs Plan Will Produce, Preserve, and Retrofit More Than 2 Million Affordable Housing Units and Create Good-Paying Jobs," May 26, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/26/fact-sheet-the-american-jobs-plan-will-produce-preserve-and-retrofit-more-than-2-million-affordable-housing-units-and-create-good-paying-jobs/.

[36] These have included U.S. Congress, House Committee on Financial Services, *Build Back Better: Investing in Equitable and Affordable Housing Infrastructure*, 117th Cong., 1st sess., April 14, 2021, https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=407532; U.S. Congress, House Committee on Financial Services, *Building Back a Better, More Equitable Housing Infrastructure for America: Oversight of the Department of Housing and Urban Development*, 117th Congress, 1st sess., July 20, 2021, https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408108, and U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *21st Century Communities: Expanding Opportunity Through Infrastructure Investments*, 117th Cong., 1st sess., May 20, 2021, https://www.banking.senate.gov/hearings/21st-century-communities-expanding-opportunity-through-infrastructure-investments, at which HUD Secretary Marcia Fudge was one of the witnesses.

hundreds of billions of dollars in new funding for various affordable housing programs and activities.[37] It was subsequently introduced as H.R. 4497 as part of a legislative housing package announced by Chairwoman Waters.[38]

Fair Housing

Congress enacted the Fair Housing Act "to provide, within constitutional limitations, for fair housing throughout the United States."[39] Congress passed the act in 1968 after years of private and government-sanctioned housing discrimination that resulted in racially segregated neighborhoods and unequal access to housing.[40] As amended, the act prohibits discrimination in the sale, rental, or financing of housing based on race, color, religion, national origin, sex, familial status, and disability.[41]

Historically, courts and HUD generally recognized that the Fair Housing Act bars both *intentional* discrimination as well as *disparate impact* (also referred to as *discriminatory effects*) discrimination resulting from "facially neutral decision[s]."[42] Intentional discrimination claims allege that a defendant made a housing decision based on "a discriminatory intent or motive."[43] Disparate impact claims involve allegations that a housing practice has "a disproportionately adverse effect on [a protected class] and [is] otherwise unjustified by a legitimate rationale."[44] Various court actions over the past decade have created uncertainty about whether the act supports disparate impact claims, and if it does, what test courts should apply to evaluate such claims. In 2015, the Supreme Court held that disparate impact claims are cognizable (i.e., viable) under the Fair Housing Act, and provided guidance to HUD and lower courts regarding how

[37] See https://democrats-financialservices.house.gov/UploadedFiles/BILLS-117pih-HousingisInfrastructureActof2021.pdf.

[38] House Financial Services Committee, "Waters Announces Introduction of Groundbreaking Legislative Housing Package," press release, July 15, 2021, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408154. A version of this legislation was also introduced in the 116th Congress and was ordered reported by the House Financial Services Committee (H.R. 5187, 116th Congress). Additionally in the 116th Congress, a set of "additional infrastructure investments" was included in Title V of the FY2021 Transportation-HUD appropriations legislation that passed the House (H.R. 7616, as incorporated into H.R. 7617, 116th Congress), although they were not included in the final FY2021 full-year appropriations package.

[39] 42 U.S.C. §3601. The Fair Housing Act (42 U.S.C. §§3601-3631) was originally enacted as Title VIII of the Civil Rights Act of 1968 (P.L. 90-284).

[40] See NAACP v. HUD, 817 F.2d 149, 154-55 (1st Cir. 1987) (Breyer, J.); Nat'l Fair Housing Alliance v. Carson, 330 F. Supp. 3d 14, 24 (D.D.C. 2015). See also Thomas J. Sugrue, 'From Jim Crow to Fair Housing,' in *The Fight for Fair Housing: Causes, Consequences, and Future Implications of the 1968 Fair Housing Act*, ed. Gregory D. Squires (New York: Routledge, an imprint of the Taylor & Francis Group, 2018), pp. 14-27.

[41] P.L. 104-76 (authorizing certain housing for older persons); P.L. 100-430 (adding protections for the disabled and families with children).

[42] Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 558 F.2d 1283, 1290 (7th Cir. 1977). There are two types of disparate impact discrimination: "The first occurs when that decision has a greater adverse impact on one [protected] group than on another. The second is the effect which the decision has on the community involved; if it perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups." Ibid.

[43] Texas Dept. of Hous. & Cmnty Affairs v. Inclusive Communities Project, 135 S. Ct. 2507, 2513 (2015) (internal quotations omitted).

[44] Ibid. (internal quotations omitted).

claims should be assessed.[45] During the Obama, Trump, and Biden Administrations, HUD has issued differing regulations to implement disparate impact liability that have sparked litigation.[46]

In addition to prohibiting discrimination, the act imposes a broad mandate on HUD and all other federal "executive departments and agencies [to] administer their programs and activities relating to housing and urban development … in a manner affirmatively to further the purposes of [the Fair Housing Act]."[47] This mandate, known as the "affirmatively furthering fair housing" mandate (AFFH), is not further delineated in the statute, and the Obama, Trump, and Biden Administrations have implemented the mandate differently.

The evolving administrative and judicial interpretations of the Fair Housing Act's AFFH requirements and disparate impact liability, each discussed below, have been of ongoing interest to Congress. For example, past Congresses have held hearings and considered legislative provisions related to HUD actions on these and other fair housing issues.[48] For more information on the Fair Housing Act in general, see CRS Report 95-710, *The Fair Housing Act (FHA): A Legal Overview*.

Affirmatively Furthering Fair Housing

What affirmatively furthering fair housing means is not defined in statute. Various courts, in decisions regarding HUD's obligations, have concluded that it means more than refraining from discrimination.[49] A 1987 federal appellate court decision looked at the legislative history of the Fair Housing Act, saying that the "law's supporters saw the ending of discrimination as a means toward truly opening the nation's housing stock to persons of every race and creed." With that goal in mind, the court stated

> This broader goal suggests an intent that HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.[50]

Over the years, HUD has enforced the AFFH requirement first through guidance and then through regulations. HUD's AFFH regulations have changed several times in the last six years over three presidential administrations. The first AFFH regulations, issued by the Obama Administration in 2015, were replaced by Trump Administration regulations that became effective on September 8, 2020. Most recently, the Biden Administration announced an interim final AFFH rule that replaces the Trump Administration rule as of July 31, 2021.

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[45] Ibid.

[46] See, for example, Mass. Fair Hous. Ctr. v. United States HUD, 496 F. Supp. 3d 600, 603 (D. Mass. 2020); Am. Ins. Assoc. v. Dept. of Hous. and Urban Dev., 74 F. Supp. 3d 30 (D.D.C. 2014) (vacated and remanded).

[47] 42 U.S.C. §3608(d).

[48] See, for example, from the 116th Congress, House Financial Services Committee, "Waters Statement on HUD's Move to Weaken Protections Against Housing Discrimination," press release, August 22, 2019, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=404216. Also in the 116th Congress, a provision in the FY2021 House-passed appropriations bill for multiple agencies, including HUD, would have prohibited funds from being used to implement, administer, or enforce HUD's 2020 AFFH rule (see Section 506 of the General Provisions for Additional Infrastructure Investments in H.R. 7617 in the 116th Congress). No such provision was included in the enacted Consolidated Appropriations Act, 2021 (P.L. 116-260).

[49] See, for example, NAACP v. HUD, 817 F.2d at 149, 155 ("Finally, every court that has considered the question has held or stated that Title VIII imposes upon HUD an obligation to do more than simply refrain from discriminating (and from purposefully aiding discrimination by others)."); Nat'l Fair Housing Alliance v. Carson, 330 F.Supp.3d 14,25 (D.D.C. 2015) (same).

[50] NAACP v. HUD, 817 F.2d at 155.

During the Obama Administration, HUD's 2015 regulations defined AFFH as "taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws."[51] States and localities receiving HUD formula grant funding, as well as Public Housing Authorities (PHAs), were required to assess the needs of their communities and ways in which they could improve access to housing. They were also required to submit a report to HUD, called an Assessment of Fair Housing (AFH).

During the Trump Administration, HUD suspended implementation of the 2015 AFFH regulations in May 2018. On August 7, 2020, HUD issued a new final rule, entitled "Preserving Community and Neighborhood Choice," that repealed and replaced the 2015 regulations.[52] The final rule stated that fair housing "means housing that, among other attributes, is affordable, safe, decent, free of unlawful discrimination, and accessible as required under civil rights laws," and that AFFH means "to take any action rationally related to promoting any attribute or attributes of fair housing."[53] States and localities were to certify that they satisfied the requirement to AFFH as part of their consolidated plans;[54] the rule did not apply to PHAs. The rule took effect on September 8, 2020.

On January 26, 2021, the Biden Administration issued a Presidential Memorandum to HUD, directing the agency to "take all steps necessary to examine the effects of the August 7, 2020, rule entitled 'Preserving Community and Neighborhood Choice' … including the effect that repealing the July 16, 2015, rule entitled 'Affirmatively Furthering Fair Housing' has had on HUD's statutory duty to affirmatively further fair housing."[55]

On June 10, 2021, HUD published an interim final rule that repeals the Trump Administration rule and reinstates certain aspects of the 2015 AFFH rule, including the definition of AFFH as well as grantee certification requirements.[56] It does not require submission of an AFH, and HUD states that it anticipates releasing a proposed rule, subject to notice and comment procedures, to address other aspects of the 2015 AFFH rule.[57] The interim final rule is effective on July 31, 2021.

[51] U.S. Department of Housing and Urban Development, "Affirmatively Furthering Fair Housing," 80 *Federal Register* 42353, July 16, 2015, https://www.federalregister.gov/documents/2015/07/16/2015-17032/affirmatively-furthering-fair-housing.

[52] U.S. Department of Housing and Urban Development, "Preserving Community and Neighborhood Choice," 85 *Federal Register* 47899, August 7, 2020, https://www.federalregister.gov/documents/2020/08/07/2020-16320/preserving-community-and-neighborhood-choice.

[53] 85 *Federal Register* 47905.

[54] 85 *Federal Register* 47909.

[55] The White House, "Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies," January 26, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/.

[56] U.S. Department of Housing and Urban Development, "Restoring Affirmatively Furthering Fair Housing Definitions and Certifications," 86 *Federal Register* 30779, 30783, June 10, 2021, https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications.

[57] Ibid. at 30785.

For more information, see the following:

- CRS Report R44557, *The Fair Housing Act: HUD Oversight, Programs, and Activities*

Disparate Impact Discrimination

In February 2013, during the Obama Administration, HUD for the first time issued regulations "formaliz[ing] HUD's long-held interpretation of the availability of 'discriminatory effects' liability under the Fair Housing Act and to provide nationwide consistency in the application of that form of liability."[58] However, various court decisions raised doubts about the legality of the 2013 rule and disparate impact liability under the act generally.[59] In 2015, the U.S. Supreme Court, in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, held that disparate impact claims are cognizable under the Fair Housing Act.[60] The *Inclusive Communities* decision did not expressly adopt HUD's 2013 rule. Rather, the Court adopted a three-step burden-shifting test using language similar, but not identical, to the 2013 rule, while also outlining a number of limiting factors that lower courts and HUD should apply when assessing disparate impact claims.[61]

In September 2020, near the end of the Trump Administration, HUD issued a final rule that amended the 2013 rule "to better reflect the Supreme Court's 2015 [*Inclusive Communities*] ruling."[62] The 2020 rule, among other things, would have imposed new pleading requirements on plaintiffs to maintain a prima facie disparate impact claim and would have established new defenses that a defendant could use to rebut disparate impact claims. Shortly thereafter, housing advocates filed a lawsuit in a federal district court alleging that the 2020 rule should be set aside because it is arbitrary and capricious interpretation of the law in violation of the Administrative Procedure Act (APA).[63] Before the 2020 rule went into effect, the court issued a preliminary injunction enjoining HUD from enforcing the 2020 rule and reinstating the 2013 rule until a future order of the court.[64]

The court explained that the 2020 rule constituted a "massive overhaul" of the 2013 rule by "introducing new, onerous pleading requirements," "easing the burden on defendants of justifying

[58] Department of Housing and Urban Development, "Implementation of the Fair Housing Act's Discriminatory Effects Standard," 78 *Federal Register* 11460, February 15, 2013, https://www.federalregister.gov/documents/2013/02/15/2013-03375/implementation-of-the-fair-housing-acts-discriminatory-effects-standard.

[59] See, for example, Am. Ins. Assoc. v. Dept. of Hous. and Urban Dev., 74 F. Supp. 3d 30 (D.D.C. 2014) (vacated and remanded) (interpreting the Fair Housing Act as only prohibiting intentional discrimination, not discriminatory effects, and vacating HUD's 2013 rule). The district court's decision was subsequently vacated and remanded for reconsideration in accordance with the Supreme Court's *Inclusive Communities* ruling. Am. Ins. Assoc. v. Dept. of Hous. and Urban Dev. No. 14-5321, September 23, 2015 (D.C. Cir.) (*per curiam*). The Supreme Court has also granted certiorari in two cases to address the question of whether disparate impact claims are cognizable under the Fair Housing Act, which signaled to many that the Court was likely to reverse the prevailing understanding that the act bars disparate impact discrimination. Twp. of Mount Holly, N.J. v. Mt. Holly Gardens Citizens in Action, Inc., 133 S. Ct. 2824, (2013); and Magner v. Gallagher, 132 S. Ct. 548 (2011). Both cases were dismissed before the Court heard any argument. Twp. of Mount Holly, N.J. v. Mt. Holly Gardens Citizens in Action, Inc., 134 S. Ct. 636, (2013); Magner v. Gallagher, 132 S. Ct. 1306, (2012).

[60] 576 U.S. 519 (2015).

[61] Ibid. at 531-45.

[62] 85 *Federal Register* 60288.

[63] Mass. Fair Hous. Ctr. v. United States HUD, 496 F. Supp. 3d 600, 603 (D. Mass. 2020).

[64] Ibid. at 612.

a policy with discriminatory effect while at the same time rendering it more difficult for plaintiffs to rebut that justification," and "arm[ing] defendants with broad new defenses."[65] In the court's view, these alterations "weaken[], for housing discrimination victims and fair housing organizations, disparate impact liability under the Fair Housing Act."[66] HUD argued that these changes were justified because they brought the rule into alignment with *Inclusive Communities* and "to provide better clarity to the public."[67] The court concluded that these major changes, "which r[a]n the risk of neutering disparate impact liability under the Fair Housing Act, appear[ed] inadequately justified" and "accomplish[ed] the opposite of clarity."[68] Consequently, the court held that the plaintiffs demonstrated "a substantial likelihood of success on the merits as to their claim that the 2020 Rule [wa]s arbitrary and capricious under the APA."[69]

On January 26, 2021, President Biden issued a memorandum directing HUD to "as soon as practicable, take all steps necessary to examine the effects of the [2020 rule]."[70] HUD responded to this presidential directive by voluntarily dismissing its appeal of the federal district court's injunction[71] and by proposing a regulation that would recodify the 2013 rule and effectively rescind the 2020 rule.[72] In a proposed rule issued on June 25, 2021, HUD expressed its belief "that the practical effect of the 2020 Rule's amendments is to severely limit HUD's and plaintiffs' use of the discriminatory effects framework in ways that substantially diminish that frameworks' effectiveness in accomplishing the purposes that Inclusive Communities articulated."[73] HUD further explained that "the 2013 Rule has provided a workable and balanced framework for investigating and litigating discriminatory effects claims that is consistent with the Act, HUD's own guidance, *Inclusive Communities*, and other jurisprudence."[74] As a consequence, parties who previously filed suits challenging the 2013 rule as inconsistent with *Inclusive Communities* could continue the lawsuits because the 2013 rule has been reinstated.[75]

For more information, see the following:

- CRS Report R44203, Disparate Impact Claims Under the Fair Housing Act

[65] Ibid. at 606-608.

[66] Ibid. at 607.

[67] Ibid. at 610.

[68] Ibid. at 611.

[69] Ibid.

[70] The White House, "Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies," January 26, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/.

[71] Mass. Fair Housing Ctr. v. HUD, No 21-1003 (1st Cir. Feb. 18, 2021).

[72] Department of Housing and Urban Development, "Reinstatement of HUD's Discriminatory Effects Standard," 86 *Federal Register* 33590, June 25, 2021, https://www.federalregister.gov/documents/2021/06/25/2021-13240/reinstatement-of-huds-discriminatory-effects-standard.

[73] Ibid. at 33594.

[74] Ibid.

[75] See, for example, Christopher J. Willis, Richard J. Andreano, Jr., and Lori J. Sommerfield, "President Biden Issues Executive Order Directing HUD to Review Fair Housing Act Disparate Impact Rule," Consumer Finance Monitor, Ballard Spahr, LLP, February 3, 2021, https://www.consumerfinancemonitor.com/2021/02/03/president-biden-issues-executive-order-directing-hud-to-review-fair-housing-act-disparate-impact-rule/.

Racial Disparities in Housing

Despite the Fair Housing Act and other efforts, long-standing racial disparities in housing outcomes persist. For many housing indicators, the discrepancy is especially pronounced between Black individuals and White individuals, including in homeownership rates,[76] renter cost burdens,[77] and, most recently, the housing-related impacts of the COVID-19 pandemic.[78]

While housing-related legislative proposals in general can have implications for racial disparities in housing, the 117th Congress has signaled a particular interest in considering ways to directly address such disparities. For example, the House Financial Services Committee held a hearing in March 2021 entitled "Justice for All: Achieving Racial Equity Through Fair Access to Housing and Financial Services."[79] The committee's hearing memorandum included descriptions of several introduced or draft bills that would address specific issues related to housing and race, and some of these bills have since received additional consideration. For example, in April 2021 the committee ordered to be reported the Real Estate Valuation Fairness and Improvement Act of 2021 (H.R. 2553), regarding potential racial disparities in appraisals. Similarly, the Senate Banking Committee held a hearing in April 2021 entitled "Separate and Unequal: The Legacy of Racial Discrimination in Housing," which examined related issues.[80]

In June 2021, the Biden Administration released a fact sheet highlighting a number of actions it has taken or proposed that it states will help address racial disparities in housing.[81]

Housing and Climate Impacts

Many communities across the country are experiencing the impacts of climate change. Many extreme weather and climate-related events are expected to become more frequent and more intense in a warmer world.[82] Climate-related risks to the housing stock include the impacts of

[76] In the fourth quarter of 2019, 73.7% of White householders owned homes, compared to 44% of Black householders; see U.S. Census Bureau, Housing Vacancies and Homeownership historical tables, Table 16, https://www.census.gov/housing/hvs/data/histtabs.html.

[77] In 2019, 54% of Black renters spent more than 30% of income on housing, compared to 42% of White renters; see Joint Center for Housing Studies, *State of the Nation's Housing 2020*, Excel Data Table W-1, https://www.jchs.harvard.edu/state-nations-housing-2020.

[78] Black renters and homeowners have been more likely than White renters and homeowners to report being behind on housing payments during the pandemic; see Consumer Financial Protection Bureau, *Housing insecurity and the COVID-19 pandemic*, March 2021, p. 8, https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.

[79] U.S. Congress, House Committee on Financial Services, *Justice for All: Achieving Racial Equity Through Fair Access to Housing and Financial Services*, 117th Cong., 1st sess., March 10, 2021, https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=406264.

[80] U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Separate and Unequal: The Legacy of Racial Discrimination in Housing*, 117th Cong., 1st sess., April 13, 2021, https://www.banking.senate.gov/hearings/separate-and-unequal-the-legacy-of-racial-discrimination-in-housing.

[81] The White House, "Fact Sheet: Biden-Harris Administration Announces New Actions to Build Black Wealth and Narrow the Racial Wealth Gap," June 1, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/01/fact-sheet-biden-harris-administration-announces-new-actions-to-build-black-wealth-and-narrow-the-racial-wealth-gap/.

[82] D.R. Reidmiller, C.W. Avery, D.R. Easterling et al., *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment*, U.S. Global Change Research Program, Volume II, Washington, DC, November 23, 2018, pp. 1-47, https://nca2018.globalchange.gov/ (hereinafter, *Fourth National Climate Assessment*).

flooding and coastal erosion,[83] sea level rise,[84] and increased wildfire activity from extreme heat events combined with drought.[85] This vulnerability to the effects of climate change has increased interest in improving the resilience of the nation's housing stock and mitigating housing's climate-related impacts through increased energy efficiency or other measures.[86]

Both Congress and the White House have put forward funding proposals to address climate-related housing issues. For example, funding for various climate-related housing activities is included in the White House's American Jobs Plan infrastructure proposal,[87] the FY2022 HUD budget proposal,[88] and the Housing is Infrastructure bill (H.R. 4497) introduced by House Financial Services Chairwoman Waters in July 2021 as part of a legislative housing package.[89] In addition, in May 2021 the House Financial Services Committee held a hearing entitled "Built to Last: Examining Housing Resilience in the Face of Climate Change."[90]

Climate impacts may also have implications for housing markets and housing finance. A number of studies suggest that risks associated with sea level rise are not fully reflected in home prices,[91] though there are already indications of reductions in property prices in homes subject to recurring flooding.[92] For example, a nationwide evaluation of the effect of floodplain location on property

[83] As of 2013 (the most recent data available in the *Fourth National Climate Assessment*), coastal shoreline counties were home to 133.2 million people, or 42% of the population, and 49.4 million housing units. See *Fourth National Climate Assessment*, pp. 323-330. The numbers cited by the *Fourth National Climate Assessment* come from a Reuters analysis of data provided by RealtyTrac; incomplete data for some areas means the actual total is probably much higher. See Ryan McNeill, Deborah J. Nelson, and Duff Wilson, "As the Seas Rise, A Slow-Motion Disaster Gnaws at America's Shores," *Reuters*, September 4, 2017, https://www.reuters.com/investigates/special-report/waters-edge-the-crisis-of-rising-sea-levels/.

[84] For example, 13.1 million people may need to move away from the shoreline by 2100, as flooding and erosion make coastal floodplains increasingly hazardous. Under a high climate change scenario, between $66 billion and $106 billion worth of real estate will be below sea level by 2050, and $238 billion to $507 billion by 2100. See *Fourth National Climate Assessment*, pp. 330, 335, and 338.

[85] Research suggests that there are now about 49 million homes in the wildland urban interface (WUI)—the area where houses are in or adjacent to wildland vegetation—which has the highest residential wildfire risk. This number has been increasing by roughly 350,000 houses per year over the last two decades. See Marshall Burke, Anne Driscoll, Jenny Xue et al., *The Changing Risk and Burden of Wildfire in the US*, National Bureau of Economic Research, Working Paper 27423, Cambridge, MA, June 2020, p. 2, https://www.nber.org/papers/w27423.

[86] Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 2020*, Cambridge, MA, December 16, 2020, p. 7, https://www.jchs.harvard.edu/state-nations-housing-2020.

[87] See https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/26/fact-sheet-the-american-jobs-plan-will-produce-preserve-and-retrofit-more-than-2-million-affordable-housing-units-and-create-good-paying-jobs/.

[88] See HUD's FY2022 budget justifications at https://www.hud.gov/sites/dfiles/CFO/documents/6_2022CJ_ClimateInitiative.pdf.

[89] See House Financial Services Committee, House Financial Services Committee, "Waters Announces Introduction of Groundbreaking Legislative Housing Package," press release, July 15, 2021, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408154, for a link to the bill text.

[90] U.S. Congress, House Committee on Financial Services, Subcommittee on Housing, Community Development, and Insurance, *Built to Last: Examining Housing Resilience in the Face of Climate Change*, 117th Cong., 1st sess., May 4, 2021, https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=407747.

[91] See, for example, Laura A. Bakkensen and Lint Barrage, *Flood Risk Belief Heterogeneity and Coastal Home Price Dynamic: Going Under Water?* National Bureau of Economic Research, Working Paper 23854, Cambridge, MA, February 2021, pp. 8-10, https://www.nber.org/papers/w23854.

[92] See, for example, Benjamin J. Keys and Philip Mulder, *Neglected No More: Housing Markets, Mortgage Lending, and Sea Level Rise*, National Bureau of Economic Research, Working Paper 27930, Cambridge, MA, October 2020, p. 3, https://www.nber.org/system/files/working_papers/w27930/w27930.pdf; and Stephen A. McAlpine and Jeremy R. Porter, "Estimating Recent Local Impacts of Sea-Level Rise on Current Real-Estate Losses: A Housing Market Case Study in Miami-Dade, Florida," *Population Research and Policy Review*, vol. 27 (2018), pp. 871-895.

prices by the National Bureau of Economic Research (NBER) found that for single-family homes, being zoned into the floodplain reduces property values by 2% to 10%, with the strongest discount in states with strict real estate disclosure laws. The NBER estimates that there are at least 3.8 million floodplain homes in the United States that are overvalued by a total of $34 billion.[93]

FHFA, Fannie Mae, and Freddie Mac have noted that they may be exposed to the risk of future losses from natural disasters on mortgages that they own or guarantee, particularly as the magnitude and frequency of these disasters increases with climate change.[94] As climate impacts grow over time, the mortgages on such properties may become riskier.[95] The FHFA recently issued a request for input on climate change and natural disaster risk to the housing finance system.[96] Furthermore, in Executive Order 14030, signed on May 20, 2021, President Biden directed the HUD Secretary, with other cabinet secretaries, to consider approaches to better integrate climate-related financial risk into underwriting standards, loan terms and conditions, and asset management and servicing procedures, as related to their federal lending policies and programs.[97]

Housing and Disaster Response and Recovery

The extent to which federal policies adequately and effectively address the housing needs of disaster survivors as well as the range of disasters that occur is of ongoing interest to policymakers. When disasters occur, the President may authorize an emergency or major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act; P.L. 93-288, as amended). The declaration may authorize the Federal Emergency Management Agency (FEMA) to provide housing assistance, including through the Individuals and Households Program (IHP).[98] Additionally, Congress may appropriate further relief and recovery funding for the Community Development Block Grant Disaster Recovery (CDBG-DR) program.

[93] Miyuki Hino and Marshall Burke, *Does Information About Climate Risk Affect Property Values?* National Bureau of Economic Research, Working Paper 26807, Cambridge, MA, February 2020, https://www.nber.org/papers/w26807.

[94] Federal Housing Finance Agency, Office of the Inspector General, *Disaster Risk for Enterprise Single-Family Mortgages*, White Paper WPR-2021-004, Washington, DC, March 23, 2021, pp. 5-8, https://www.fhfaoig.gov/sites/default/files/WPR-2021-004.pdf.

[95] Lael Brainard, Member of the Federal Reserve Board of Governors, "Financial Stability Implications of Climate Change," speech at "Transform Tomorrow Today," Ceres 2021 Conference, Boston, MA, March 23, 2021, https://www.federalreserve.gov/newsevents/speech/brainard20210323a.htm.

[96] Federal Housing Finance Agency, Office of the Director, *Climate and Natural Disaster Risk Management at the Regulated Entities: Request for Input*, January 2021, https://www.fhfa.gov/Media/PublicAffairs/Documents/Climate-and-Natural-Disaster-RFI.pdf.

[97] Executive Order 14030, "Climate-Related Financial Risk," 86(99) *Federal Register* 27967-27971, May 20, 2021, https://www.govinfo.gov/content/pkg/FR-2021-05-25/pdf/2021-11168.pdf.

[98] 42 U.S.C. §5174. See also 44 C.F.R. §206.110(a), and FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, FP 104-009-03, v. 1.1, May 2021, pp. 6, 41, https://www.fema.gov/sites/default/files/documents/fema_individual-assistance-program_policy-guide_05-26-2021.pdf (hereinafter FEMA, *IAPPG*).

FEMA IHP Housing Assistance

IHP Housing Assistance for Economically Destructive Disasters

Stafford Act declarations tend to respond to natural disasters that result in physical damages (e.g., hurricanes); however, although uncommon, there have been declarations for incidents that do not result in physical damages, such as public health incidents (e.g., the COVID-19 pandemic).

Disasters commonly have economic consequences. During the early response to the COVID-19 pandemic, Congress considered the federal government's options for providing rental assistance payments to individuals experiencing financial hardship due to the pandemic. Although Rental Assistance is a form of IHP assistance,[99] it is premised on an individual being displaced from their primary residence because it is uninhabitable, inaccessible, unavailable due to forced relocation, or nonfunctional due to utility outages.[100] FEMA does not have the statutory authority to provide temporary rental or mortgage payments when people experience disaster-caused financial hardship. However, this has not always been the case. Prior to May 2002, the Stafford Act authorized assistance to disaster survivors unable to make mortgage or rental payments. Section 206 of the Disaster Mitigation Act of 2000 (DMA2K; P.L. 106-390) amended the Stafford Act to remove temporary mortgage and rental payments, and add the language predicating assistance on displacement.[101]

DMA2K was generally intended to control the federal cost of disaster assistance; however, the specific justification for removing the provision of mortgage and rental payments from the amended version of the Stafford Act is not specified in the committee reports on the bill.[102] Congress may continue to evaluate whether FEMA's housing assistance programs are adequate and appropriate to meet the needs of survivors following disasters that result in economic, rather than physical, damages—as this was a gap that was revealed by the economic effects of the COVID-19 pandemic.

IHP Housing Assistance and Hazard Mitigation

IHP housing assistance may take various forms, including temporary assistance to rent alternate accommodations and assistance for repair and reconstruction, such as through Home Repair Assistance. The objective of Home Repair Assistance is to make the disaster survivors' home

[99] 42 U.S.C. §5174(c)(1)(A).

[100] 42 U.S.C. §5174(b)(1); see also FEMA, *IAPPG*, pp. 80-81.

[101] See the prior version of the Stafford Act's provision of temporary rental or mortgage payments at 42 U.S.C. §5174(b), 2001, https://www.govinfo.gov/content/pkg/USCODE-2001-title42/pdf/USCODE-2001-title42-chap68-subchapIV-sec5174.pdf.

[102] U.S. Congress, House Committee on Transportation and Infrastructure, *Disaster Mitigation and Cost Reduction Act of 1999*, 106th Cong., 1st sess., March 3, 1999, Report 106-40, pp. 1, 12, 17, https://www.congress.gov/106/crpt/hrpt40/CRPT-106hrpt40.pdf. During the 108th Congress, then Department of Homeland Security (DHS) Deputy Inspector General Richard L. Skinner included in his statement, with regard to "Eligibility Issues in the Mortgage and Rental Assistance Program," that "FEMA historically has not had to implement the Mortgage and Rental Assistance (MRA) program on a large scale because previous disasters did not coincide with nor result in widespread unemployment and national economic losses. From the inception of MRA until September 11, 2001, only $18.1 million had been awarded under the program for 68 declared disasters, compared to approximately $76 million as a result of the New York disaster alone. Because it was seldom used, Congress eliminated the program when it enacted the Disaster Mitigation Act of 2000 (DMA 2000) making the program unavailable after May 1, 2002." U.S. Congress, Senate Committee on Environment and Public Works, Subcommittee on Clean Air, Climate Change, and Nuclear Safety, *Review of the General Accounting Office Report on FEMA's Activities After the Terrorist Attacks on September 11, 2001*, 108th Cong., 1st sess., September 24, 2003, S.Hrg. 108-364, p. 253.

"safe, sanitary, or functional," not to return the home to its pre-disaster condition or to improve it.[103] Still, repairs may include hazard mitigation measures to make the housing more resilient.[104] On June 10, 2021, FEMA announced an expansion of the mitigation assistance provided for IHP Home Repair Assistance for disasters declared on or after May 26, 2021, to "allow eligible homeowners ... [to] repair or rebuild stronger, more durable homes."[105]

FEMA's guidance details the types of mitigation measures that are available under the IHP.[106] Its regulations and guidance impose limitations on the mitigation assistance that may be provided, including that it may only be awarded for disaster-damaged real property components that existed and were functional prior to the declared disaster,[107] and the amount of financial assistance for housing is capped in statute.[108] Additionally, although hazard mitigation measures are intended to "reduce the likelihood of future damage," this assistance is not available until after a disaster has occurred and received a presidential Stafford Act declaration.[109]

Congress may consider whether the funding for mitigation measures provided for Home Repair Assistance is sufficient, and could also consider whether there is a need to expand eligibility for pre-disaster mitigation or expand the programs that support pre-disaster mitigation.

CDBG-DR

Following some disasters, Congress has provided Community Development Block Grant (CDBG) funding in supplementary appropriations for disaster recovery purposes, which has come to be known as CDBG-DR. These HUD-administered grants assist impacted states and localities in their recovery efforts under CDBG statutory authorities. CDBG-DR is not a formally authorized program, meaning the rules that govern the funding use and oversight vary with HUD guidance accompanying each allocation. Previous Congresses, including the 116th Congress, considered legislation to permanently authorize CDBG-DR, and it is possible that the 117th Congress could consider such legislation as well.

For more information on CDBG-DR, see the following:

- CRS Report R46475, The Community Development Block Grant's Disaster Recovery (CDBG-DR) Component: Background and Issues

[103] FEMA, *IAPPG*, p. 85.

[104] FEMA, *IAPPG*, p. 86.

[105] FEMA, "Hazard Mitigation Under the Individuals and Households Program," press release, June 10, 2021, https://www.fema.gov/fact-sheet/hazard-mitigation-under-individuals-and-households-program (hereinafter FEMA, "Hazard Mitigation Under the IHP").

[106] FEMA, "Hazard Mitigation Under the IHP."

[107] 44 C.F.R. §§206.111 and 206.117(a), (b)(2)(i), (b)(2)(iii), and (b)(2)(iv); and FEMA, *IAPPG*, p. 87.

[108] 42 U.S.C. §5174(h)(1); and FEMA, *IAPPG*, pp. 42, 85. For FY2021, the maximum amount of financial assistance for housing is $36,000; see FEMA, "Notice of Maximum Amount of Assistance Under the Individuals and Households Program," 85 *Federal Register* 69340, November 2, 2020, https://www.govinfo.gov/content/pkg/FR-2020-11-02/pdf/2020-24235.pdf.

[109] FEMA, *IAPPG*, pp. 85-86. Homeowners may benefit from hazard mitigation projects, such as those funded through the Hazard Mitigation Grant Program (HMGP), but an individual homeowner is not able to apply directly for HMGP funding; see FEMA, "Property Owners and the Hazard Mitigation Grant Program," last accessed June 11, 2021, https://www.fema.gov/grants/mitigation/hazard-mitigation/property-owners.

CFPB Revisions to the Qualified Mortgage Rule

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act; P.L. 111-203) was enacted in 2010 to address conditions that were perceived to have led to the 2007-2009 housing and financial crisis. Among other provisions, it required lenders to make a good faith effort to ensure that residential borrowers have the ability to repay their mortgage loans. If a borrower brings a lawsuit claiming that a lender did not follow this requirement, the lender could be required to pay monetary damages if it is found to be in violation.[110] The CFPB released a final rule implementing these ability-to-repay (ATR) requirements in January 2013; the rule took effect in January 2014.[111]

One of several ways that a mortgage originator can comply with the ATR requirements is by originating a qualified mortgage (QM), a mortgage that meets certain specified underwriting and product feature requirements. A QM reduces an originator's legal liability by providing either a rebuttable presumption of compliance with the ATR requirements or safe harbor protection, depending on the loan's pricing. The QM rule has been amended several times since being finalized in 2013.[112] In December 2020, near the end of the Trump Administration, the CFPB issued a final rule making certain changes to the definition of a General QM.[113] Among other things, it replaced a limit on the allowable debt-to-income ratio for a General QM with a measure of the loan's pricing with the aim of increasing credit access to households that have demonstrated the ability to repay loans despite having lower income.[114] The CFPB also issued a new "seasoned QM" rule.[115] Under this rule, certain non-QM mortgages could become QMs or certain rebuttable presumption QMs could become safe harbor QMs after a lender has held them in its own portfolio for a certain amount of time.

In March 2021, the CFPB issued a proposed rule to delay the mandatory compliance date of the revised General QM rule by over a year, from July 1, 2021, to October 1, 2022.[116] The delay would give the incoming CFPB leadership time to review the revisions. (Mortgage originators could choose to comply with either the old or the new QM rule in the interim.) Despite support

[110] 15 U.S.C. §1640

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

[112] For amendments to the ATR/QM rule, see Consumer Financial Protection Bureau, "Final Rule: Ability-to-Repay/Qualified Mortgage Rule," at https://www.consumerfinance.gov/rules-policy/final-rules/ability-to-pay-qualified-mortgage-rule/.

[113] Consumer Financial Protection Bureau, "Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition," 85 *Federal Register* 86308-86400, December 29, 2020.

[114] For example, the CFPB found that some households had difficulty refinancing into less expensive loans because their debt-to-income ratio exceeded the 43% threshold for lenders to receive safe harbor protection. See CFPB, *Ability-to-Repay and Qualified Mortgage Rule Assessment Report*, January 2019, pp. 11, 147-153, https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf.

[115] Consumer Financial Protection Bureau, "Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition," 85 *Federal Register* 86402-86455, December 29, 2020. This amendment was implemented as required by the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (P.L. 115-174).

[116] Consumer Financial Protection Bureau, "Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition; Delay of Mandatory Compliance Date," 86 *Federal Register* 12839-12857, March 5, 2021.

for the 2020 amendments from some in the mortgage industry,[117] the CFPB issued a final rule on April 30, 2021, adopting the delay.[118]

The CFPB has also indicated that it may reconsider the seasoned QM rule, as well as aspects of the General QM rule, in the future.[119]

For more information, see the following:

- CRS In Focus IF11761, The Qualified Mortgage (QM) Rule and Recent Revisions

Status of Fannie Mae and Freddie Mac

In 2008, Fannie Mae and Freddie Mac, two GSEs that guarantee mortgage-backed securities and together back about half of the U.S. mortgage market, were experiencing financial difficulties stemming from the housing and mortgage market turmoil that was taking place during the financial crisis at the time. They consented to enter conservatorship overseen by the FHFA, their new regulator established by the Housing and Economic Recovery Act of 2008 (P.L. 110-289). Treasury agreed to provide financial support in exchange for senior preferred stock in each GSE and the option to purchase up to 79.9% of common stock at a nominal cost in the future. Fannie Mae and Freddie Mac have remained in conservatorship since that time. They could ultimately leave conservatorship through legislative action,[120] or, potentially, through administrative actions taken by the FHFA and Treasury.

Whether or not it pursues a legislative resolution to the conservatorship, Congress may take an interest in any actions by the FHFA that could affect the eventual release of Fannie Mae and Freddie Mac from conservatorship, or in how actions the FHFA takes affect homebuyers and the mortgage market. In June 2021, the Supreme Court, in *Collins v. Yellen,* struck down as unconstitutional a statutory provision that had limited the ability of the President to remove an FHFA Director during a director's five-year term.[121] The decision allows the President to remove the director at will, rather than only for cause. Following that decision, President Biden removed FHFA Director Mark Calabria and designated as Acting FHFA Director Sandra L. Thompson, who had been serving as the FHFA's Deputy Director of the Division of Housing Mission and

[117] See, for example, Mortgage Bankers Association, "MBA Urges No Delay to CFPB QM Final Rule," April 7, 2021, https://newslink.mba.org/mba-newslinks/2021/april/mba-newslink-wednesday-apr-7-2021/mba-urges-no-delay-to-cfpb-qm-final-rule/; and Center For Responsible Lending, "CRL Statement on CFPB's Plan to Revise Qualified Mortgage Standards," press release, January 24, 2020, at https://www.responsiblelending.org/media/crl-statement-cfpbs-plan-revise-qualified-mortgage-standards.

[118] Consumer Financial Protection Bureau, "Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General," 86 *Federal Register* 22844-22860, April 30, 2021, https://www.federalregister.gov/documents/2021/04/30/2021-09028/qualified-mortgage-definition-under-the-truth-in-lending-act-regulation-z-general-qm-loan-definition.

[119] Consumer Financial Protection Bureau, "Statement on Mandatory Compliance Date of General QM Final Rule and Possible Reconsideration of General QM Final Rule and Seasoned QM Final Rule," February 23, 2021, https://files.consumerfinance.gov/f/documents/cfpb_qm-statement_2021-02.pdf.

[120] Previous Congresses have considered legislative housing finance reform to varying degrees, and many proposals for reforming the housing finance system have been put forward by Members of Congress, think tanks, and industry groups. In March 2021, Senate Banking Committee Ranking Member Pat Toomey released a set of guiding principles for housing finance reform; see "Toomey Outlines Housing Finance Reform Principles," press release, March 15, 2021, https://www.banking.senate.gov/newsroom/minority/toomey-outlines-housing-finance-reform-principles#:~:text=today%20released%20a%20set%20of,equitable%20access%20for%20all%20lenders.

[121] Collins v. Yellen, 141 S. Ct. 1761 (2021).

Goals.[122] New leadership at the FHFA could likely have implications for policy decisions related to Fannie Mae and Freddie Mac.

For more information, see the following:

- CRS Report R44525, *Fannie Mae and Freddie Mac in Conservatorship: Frequently Asked Questions*
- CRS Report R46746, *Fannie Mae and Freddie Mac: Recent Administrative Developments*
- CRS Legal Sidebar LSB10614, *Supreme Court: Structure of Federal Housing Finance Agency Violates Constitution*

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[122] FHFA, "Sandra L. Thompson Announced as Acting Director of FHFA," news release, June 23, 2021, https://www.fhfa.gov/Media/PublicAffairs/Pages/Sandra-L-Thompson-Announced-as-Acting-Director-of-FHFA.aspx. See also FHFA, "FHFA Director Mark Calabria's Statement on the U.S. Supreme Court's Collins v. Yellen Decision," June 23, 2021, https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Director-Mark-Calabrias-Statement-on-the-US-Supreme-Courts-Collins-v-Yellen-Decision.aspx.

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