Housing Issues in the 117th Congress

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Housing Issues in the 117th Congress

SUMMARY

As the 117th Congress began, housing challenges presented by the COVID-19 pandemic continued to be a primary concern. In March 2021, Congress passed the American Rescue Plan Act of 2021 (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, including funding for rental assistance, homeowner assistance, and homelessness assistance.

The 117th Congress has also been considering a variety of other housing-related issues. Housing affordability is a perennial policy issue, but it has become particularly salient in light of increasing housing prices, ongoing housing supply constraints, and, during the second half of the 117th Congress, rising mortgage interest rates. There have been a variety of proposals to address housing affordability concerns, including significant new funding for affordable housing programs in proposed infrastructure packages (including the Build Back Better Act). Through hearings and proposed legislation, Congress has also expressed interest in addressing racial disparities in housing outcomes, in issues related to housing and climate resiliency, and in housing and disaster response. Other issues involve changes to housing-related rulemakings, including 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 more than 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 were low for a long period, helping to spur homebuyer demand. (Mortgage interest rates began to increase in the first months of 2022 and have risen substantially since.) 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 issues during the 117th Congress.

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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.

Housing policy priorities at the beginning of the 117th Congress continued to be 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 of 2021 (P.L. 117-2), a pandemic relief and recovery law enacted early in the 117th Congress.

Housing affordability, while a perennial policy issue, has been a prominent concern during the 117th Congress in light of house price increases and limited housing supply affecting both homeownership and rental markets. A variety of policy proposals have been put forward to address the affordability of both rental housing and homeownership, including proposals for new housing funding that have been included in broader infrastructure proposals.

Several other housing policy considerations have also been of interest to the 117th Congress. For example, Congress has signaled an interest in addressing racial disparities in housing. It has also focused attention on issues related to housing and climate as well as disaster resiliency. In addition, 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.

This report begins with an overview of certain housing and mortgage market indicators. It then 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. The **Appendix** lists housing-related legislation that has received committee or floor consideration in the 117th Congress to date.

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

[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.

housing finance,[2] and rental markets. The discussion of market conditions presented in this section is 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.

In general, during the 117th Congress, both homeownership and rental markets have been characterized by low levels of supply (i.e., relatively low numbers of homes available for sale or rent) and, relatedly, significant increases in house prices and rents. These price increases have made housing affordability concerns a prominent issue. In addition, while mortgage interest rates were low for much of the first part of the 117th Congress, they rose sharply over the course of 2022, adding to affordability concerns. A variety of factors, on both the supply side and the demand side, have contributed to low housing inventory levels. While there have been some increases in housing construction activity, challenges related to rising construction costs and the availability of labor and materials persist.

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 at the time, among other factors) and a limited supply of homes for sale.[4] This rapid growth continued through 2021 and 2022, with nominal house prices increasing by nearly 18% in the second quarter of 2022 over the same quarter a year earlier, although the rate of house price growth was beginning to show some signs of slowing.[5]

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

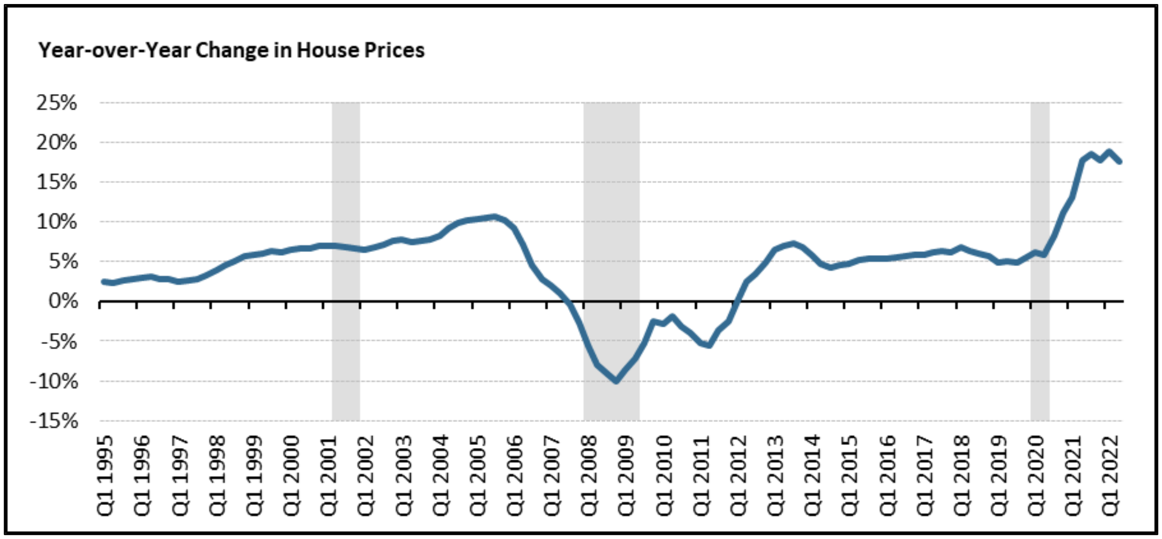
[3] The Federal Housing Finance Agency House Price Index measures the average price changes in repeat sales or refinances on the same properties using repeat mortgage transactions that were purchased or securitized by Fannie Mae or Freddie Mac since January 1975. FHFA weights, indexes, and seasonally adjusts nominal price change data. For more information, see "FHFA 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 17.7 Percent over the Last Year; Up 4.0% from the First Quarter," news release, August 30, 2022, https://www.fhfa.gov/Media/PublicAffairs/Pages/US-House-Prices-Rise-17pt7-Percent-over-the-Last-Year.aspx.

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

Q1 1995–Q2 2022



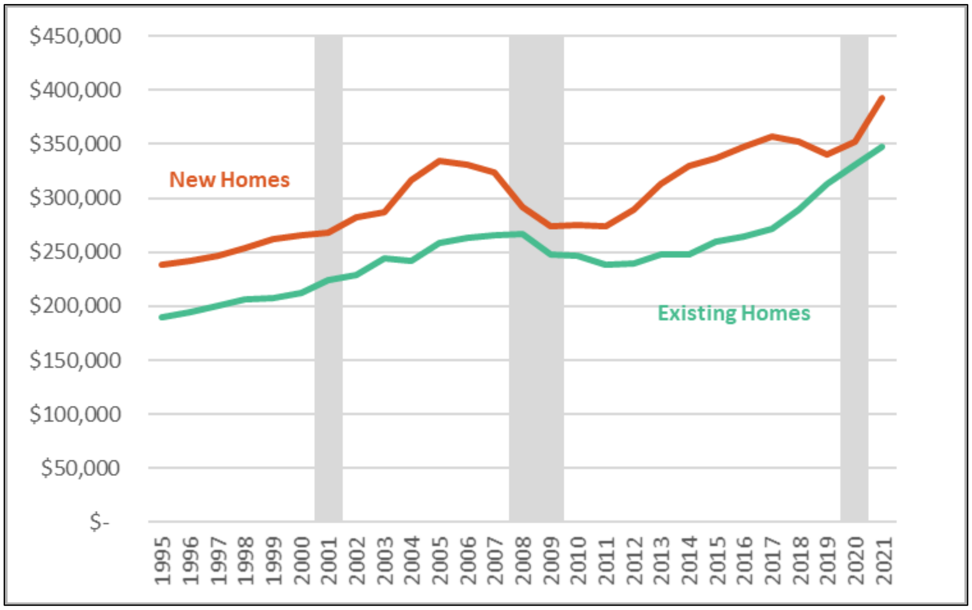
Source: Figure created by CRS using data from the Federal Housing Finance Agency House Price Index (Seasonally Adjusted Purchase-Only Index), available at https://www.fhfa.gov/DataTools/Downloads/Pages/House-Price-Index-Datasets.aspx#qpo.

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 84% from 1995 to 2021, while the median real price of new homes increased by about 65% over the same period.

Figure 2. Median Real House Prices

1995–2021



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.

For more information on recent home price increases, see the following:

- CRS In Focus IF12048, *High Home Prices: Contributing Factors and Policy Considerations*

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.

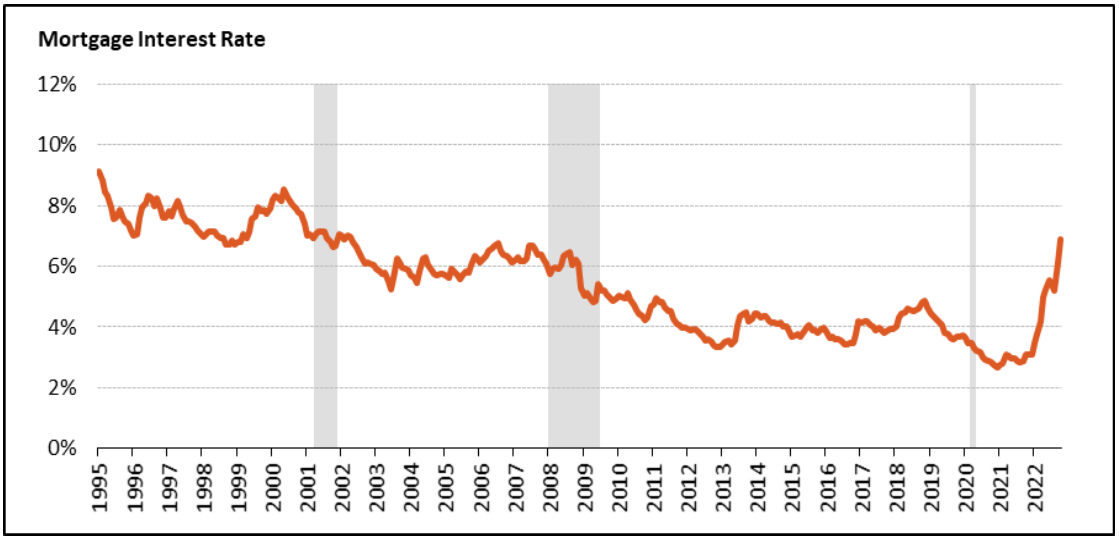
For several years, mortgage interest rates have been low by historical standards, and they fell further after the start of the COVID-19 pandemic due in part to the federal monetary policy response to it. As shown in **Figure 3**, mortgage interest rates were consistently below 5% for about 12 years beginning in May 2010. The rates decreased further throughout 2020, averaging less than 3% in several months in 2020 and 2021. Lower interest rates increase mortgage affordability and make it easier for some households to purchase homes or refinance their existing mortgages.

[6] According to the National Association of Realtors' *2021 Profile of Homebuyers and Sellers*, about 87% of homebuyers who purchased a primary residence between July 2020 and June 2021 financed the purchase. See National Association of Realtors, *Highlights from the 2021 Profile of Home Buyers and Sellers*, November 2021, p. 9, https://cdn.nar.realtor/sites/default/files/documents/2021-highlights-from-the-profile-of-home-buyers-and-sellers-11-11-2021.pdf.

Mortgage interest rates began to increase in early 2022 and rose rapidly over the course of the year. The rates averaged 3.45% in January 2022 and increased to 6.90% by October 2022, which is up from 3.07% a year earlier and is their highest level since 2002.

Figure 3. Mortgage Interest Rates

January 1995–October 2022



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.

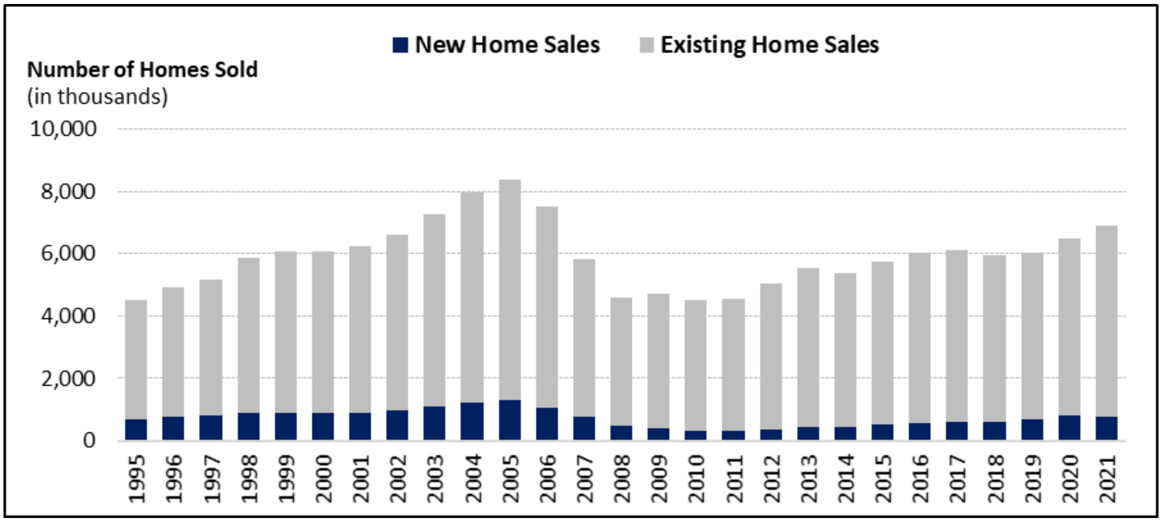
Home Sales

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 throughout the COVID-19 pandemic. In 2021, the combined number of homes sold was about 6.9 million, the highest figure since 2006 and an increase from 6.5 million in 2020. Existing home sales in 2021 numbered 6.1 million, while new home sales numbered 770,000; 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, 1995–2021)



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 declined further in 2021. 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 less than 1.3 million in 2021.[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]

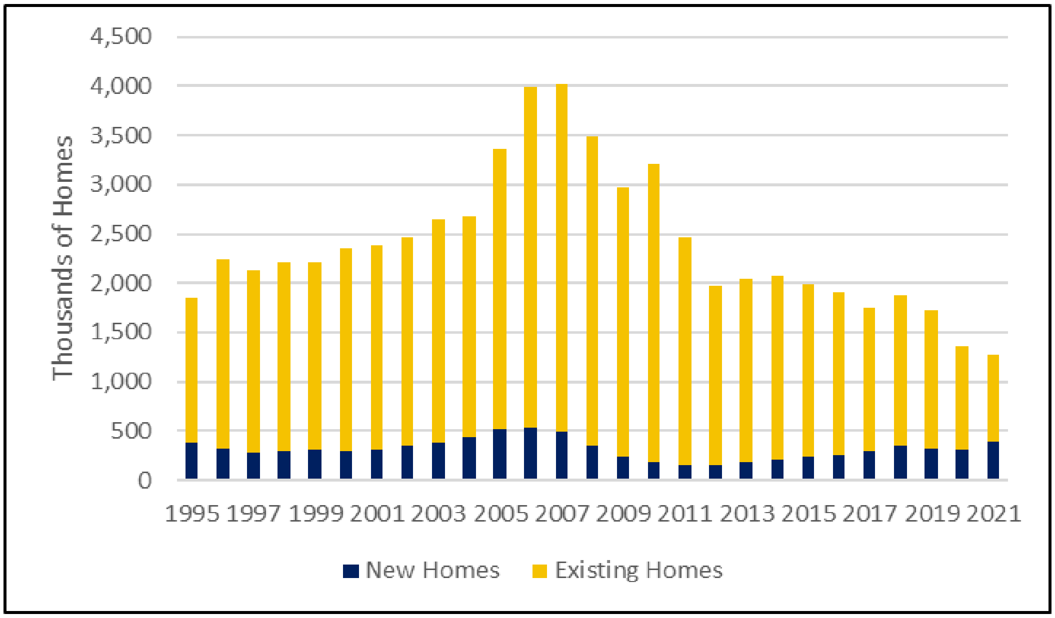
[7] For existing homes, the inventory includes active listings and pending sales; see National Association of Realtors, "Inventory and Months' Supply," blog post, https://www.nar.realtor/blogs/economists-outlook/inventory-and-months-supply. For new homes, inventory includes homes that are "being built 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

1995–2021



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 September 2022.[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 at one point reached

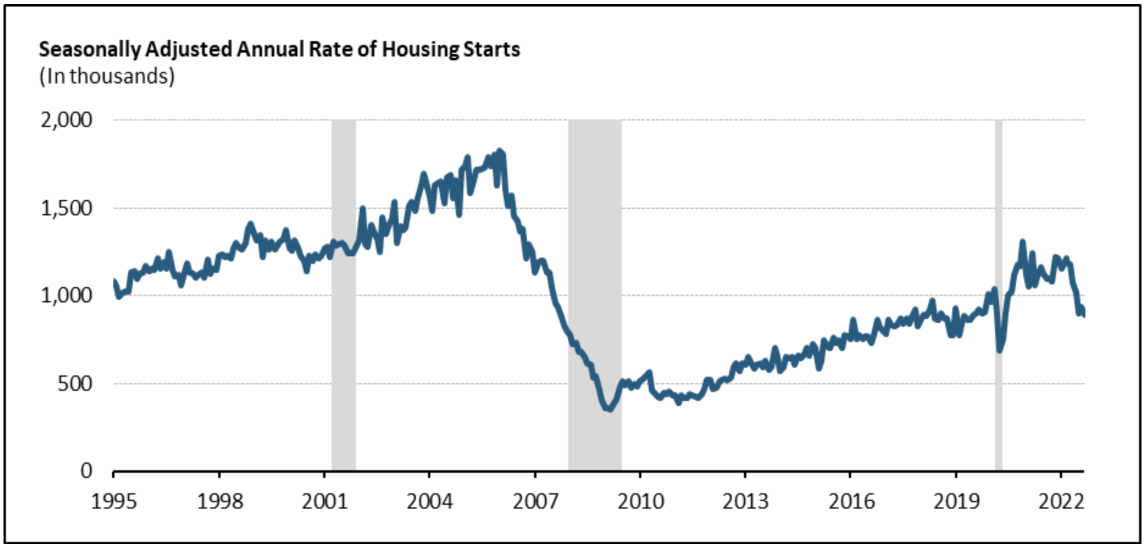
[10] The Census Bureau defines the seasonally adjusted annual rate as "the seasonally adjusted monthly value multiplied by 12" and notes that it "is neither a forecast nor a projection; rather it is a description of the rate of building permits, housing starts, housing completions, or new home sales in the particular month for which they are calculated." See U.S. Census Bureau, "New Residential Construction Press Release FAQs," at https://www.census.gov/construction/nrc/faqs/faqs_nrc_release.html#quest4.

[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.

their highest levels since about 2006. Nevertheless, new housing construction has arguably remained below the levels necessary to meet demand.[12] Some research has suggested that this shortfall has been particularly acute for smaller, more affordable starter homes.[13] Furthermore, single-family housing starts have begun to decrease over the course of 2022, reflecting the impact of ongoing housing construction challenges as well as higher interest rates.

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 September 2022.

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

Most homebuyers use a mortgage to purchase a home. 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.[14] Two government-sponsored enterprises, Fannie Mae and Freddie Mac, purchase mortgages and issue mortgage-backed securities, providing a guarantee that investors in those securities will receive timely principal and interest payments even if borrowers default on the underlying mortgages. 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

[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.

[13] 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.

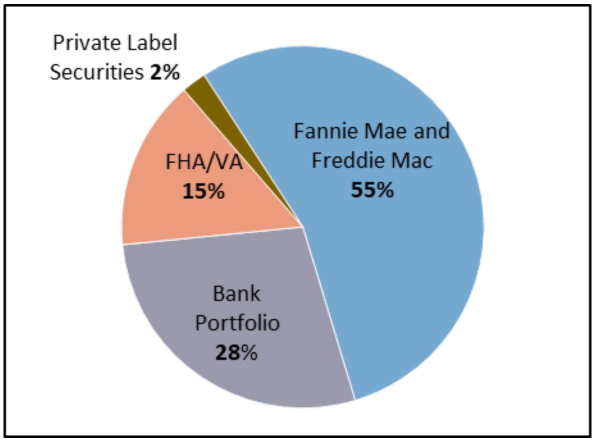
[14] For more information on different types of mortgages and mortgage securitization channels, see CRS Report R42995, *An Overview of the Housing Finance System in the United States*.

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**, about 55% of mortgage originations (by dollar volume) in 2021 were securitized by Fannie Mae or Freddie Mac. About 28% were held in financial institutions' portfolios, and about 15% were securitized FHA or VA loans. About 2% of originations were included in private-label securities.

Figure 7. Share of Mortgage Originations by Type

2021



Source: Figure created by CRS based on Inside Mortgage Finance data as reported in Urban Institute, Housing Finance Policy Center, *Housing Finance at a Glance: A Monthly Chartbook,* February 2022, p. 8.

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

The percentage of loan volume (55%) securitized by Fannie Mae or Freddie Mac in 2021 was a decrease from nearly 60% in 2020 (the highest level since 2013), but an increase from 43% in 2019. The FHA/VA share also decreased somewhat, to 15%, compared to 18% in 2020 and 19% in 2019. The bank portfolio share increased in 2021, to 28% from 22% in 2020, but was lower than the 36% share in 2019. Private label securities increased to 2% from 1%.[15] The overall volume of mortgage originations also increased significantly, rising from about \$2.4 trillion in 2019 to more than \$4.0 trillion in 2020 and an estimated \$4.7 trillion in 2021.[16] Much of this increase was driven by high refinancing volumes due to low interest rates.

[15] 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*, February 2022, p. 8, https://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-february-2022. Other monthly issues of *Housing Finance at a Glance* can be found on the Urban Institute's website at https://www.urban.org/tags/housing-finance-glance-monthly-chartbook.

[16] See Freddie Mac's Quarterly Forecasts, *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; *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: The Housing Market Expected to Remain Stable Despite Rising Rates and Cooling Price Growth*, January 21, 2022, https://www.freddiemac.com/research/forecast/20220121-quarterly-economic-forecast.

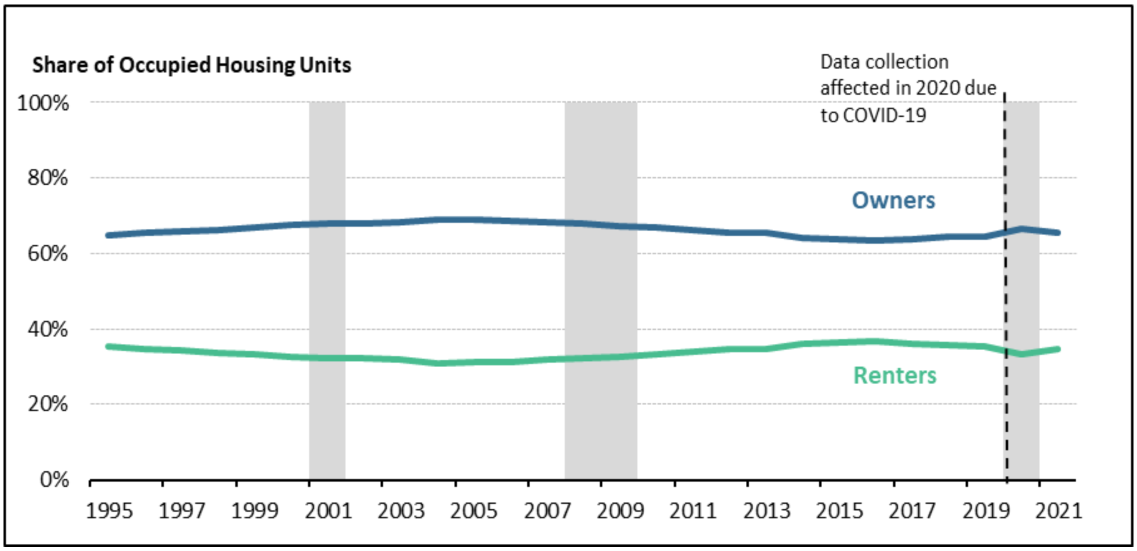
Homeownership and Renter Rates

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 homeownership rate fell from a high of 69.0% in the mid-2000s to 63.4% in 2016, before rising again and reaching 66.6% in 2020. However, data collection for the Census Bureau survey that reports these statistics was affected by the COVID-19 pandemic; therefore, 2020 figures, in particular, may not be comparable with other years.[17] In 2021, the homeownership rate was 65.5%.

As the homeownership rate decreased, the share of renters correspondingly 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 the 2020 data were subject to the changes in data collection procedures caused by the COVID-19 pandemic. In 2021, the renter share was 34.5%.

Figure 8. Renter and Homeownership Rates

1995–2021



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 nearly 127 million in 2021.[18] The number of renter-occupied units increased from about 34 million in 2006 to about 44 million in 2021. 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 83 million in 2021.

[17] See U.S. Census Bureau, *Historical Current Population Survey/Housing Vacancy Survey (CPS/HVS) Changes*, https://www.census.gov/housing/hvs/files/annual21/ann21src.pdf.

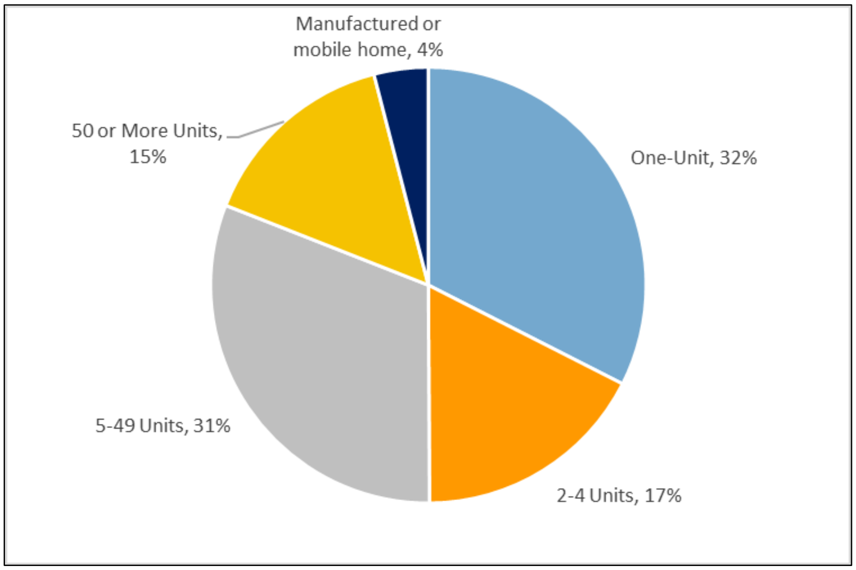
[18] U.S. Census Bureau, Housing Vacancies and Homeownership, Historical Tables, Table 7, "Annual Estimates of the Housing Inventory: 1965 to Present," http://www.census.gov/housing/hvs/data/histtabs.html.

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 2021 about half of rental units were in single-family properties (defined as properties with 1-4 dwelling units: 32% of rental units were in 1-unit properties, and 17% were in 2-4 unit properties). About 31% of rental units were in buildings with 5-49 units, and 15% were in buildings with 50 or more units. Another 4% were manufactured housing.[19]

Figure 9. Rental Stock by Number of Units in Property

2021



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.[20] However, the likelihood of a property being mortgaged increases with property size,[21] 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.[22]

[19] Data are from American Community Survey 2021 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.

[20] 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.

[21] 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.

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

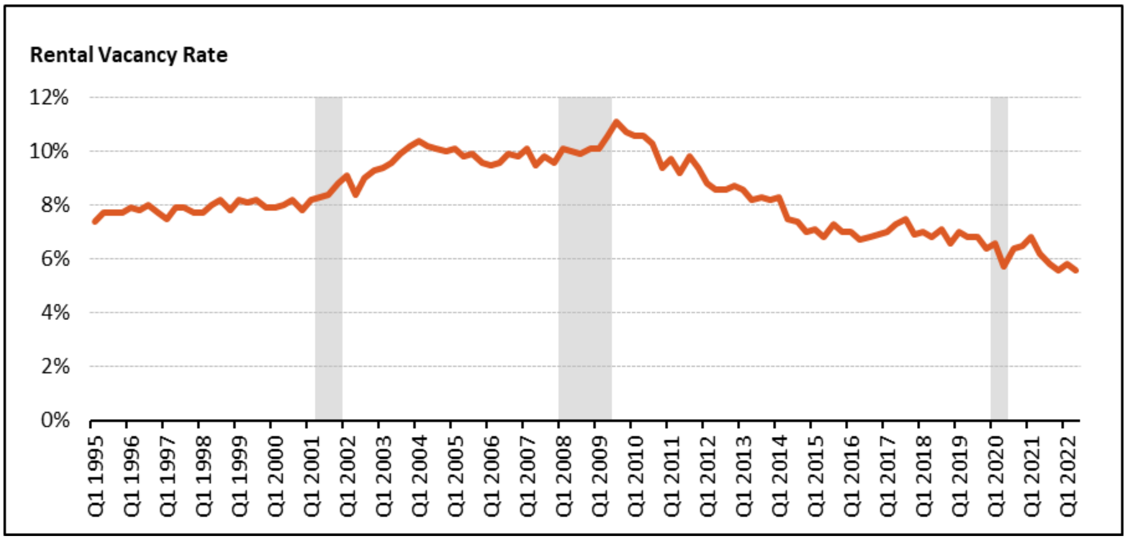
Rental Vacancy Rates

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.[23] 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.[24] The rental vacancy rate in the fourth quarter of 2021 was 5.6% and, after a slight uptick in the first quarter of 2022, was again 5.6% for the second quarter of 2022. The pandemic continued to affect data collection in 2021, although by the fourth quarter of 2021, pandemic-related restrictions on data collection for this survey had ended. However, the Census Bureau continues to urge caution in comparing data to previous affected quarters.[25]

Figure 10. Rental Vacancy Rates

Q1 1995–Q2 2022



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 some quarters in 2020 and 2021, the Census Bureau urges caution in interpreting estimates from affected quarters and in comparing those estimates to previous or subsequent quarterly estimates. Gray bars indicate recessions.

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[23] 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.

[24] 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. The Census Bureau suggests that changes in vacancy rates during that period should be interpreted as reflecting both pandemic effects and changes to data collection procedures.

[25] U.S. Census Bureau, "Quarterly Residential Vacancies and Homeownership, Fourth Quarter 2021," press release, February 2, 2022, https://www.census.gov/housing/hvs/files/qtr421/q421press.pdf.

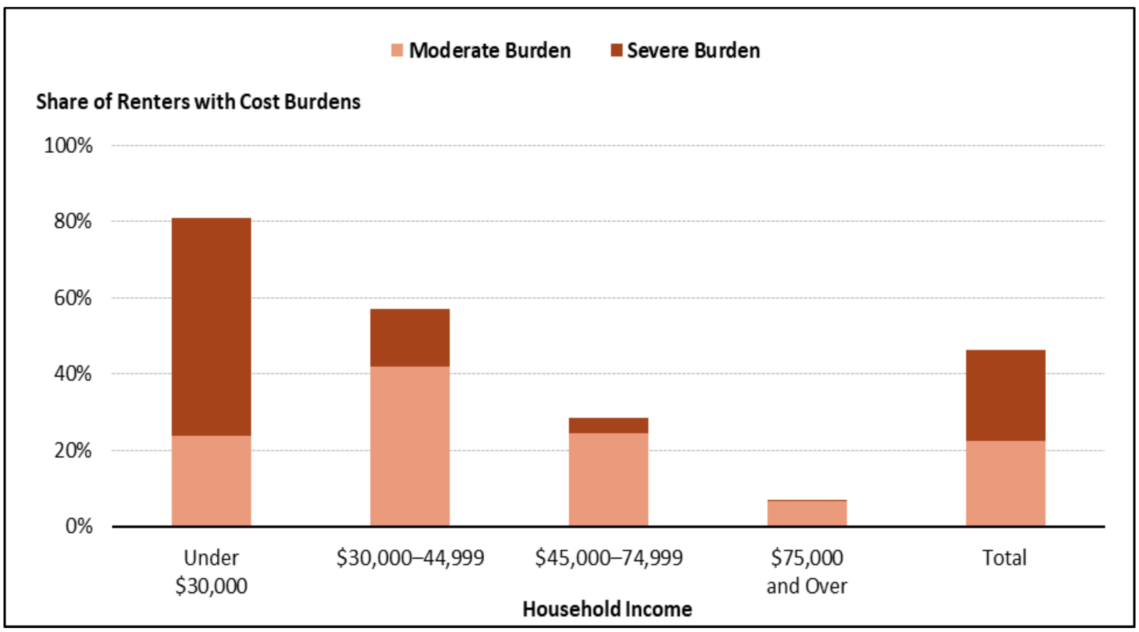
Renter Cost Burdens

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. Renter cost burdens appear to have worsened during the pandemic, although updated data were not fully available as of the cover date of this report.[26]

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 2021*, Appendix Tables, https://www.jchs.harvard.edu/state-nations-housing-2021, showing Joint Center for Housing Studies tabulations of American Community Survey data.

[26] Whitney Airgood-Obrycki and Alexander Hermann, "Affordability Gaps Widened for Renters in the First Year of the Pandemic," Joint Center for Housing Studies of Harvard University, blog post, July 20, 2022, https://www.jchs.harvard.edu/blog/affordability-gaps-widened-renters-first-year-pandemic.

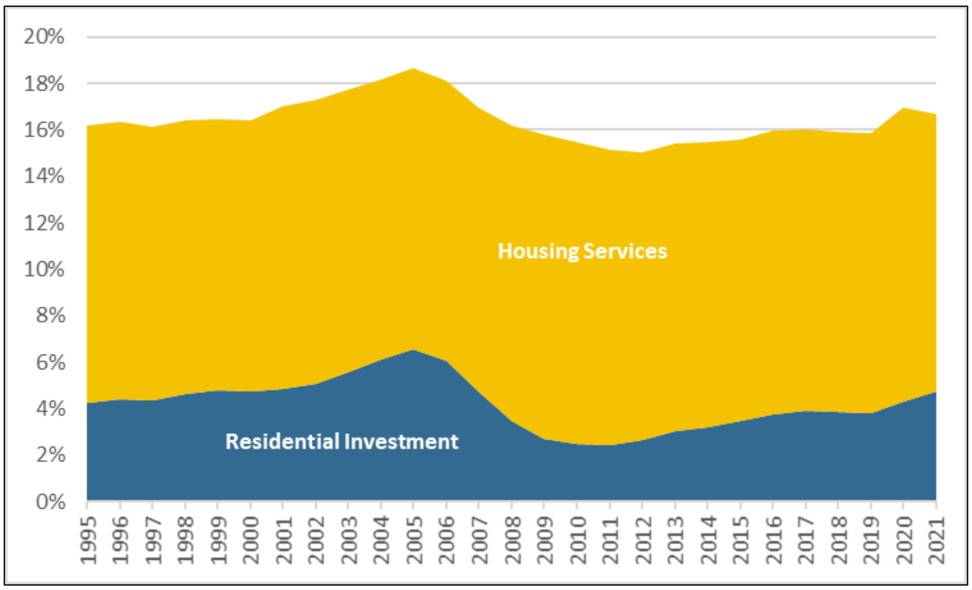
Housing and the Broader Economy

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[27] and utility payments.

Residential investment was $1.1 trillion in 2021 and, as shown in **Figure 12**, accounted for roughly 5% of GDP. Housing services were $2.8 trillion and accounted for roughly 12% of GDP. Despite the pandemic, spending on both residential investment and housing services were up in 2020, accounting for 16.9% of GDP as compared to 15.8% in 2019. Spending began to slow as a percentage of GDP in 2021 however, with residential investment and housing services accounting for 16.7% of GDP. 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

1995-2021



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

Notes: "Residential Investment" (often referred to as *residential fixed investment*) includes spending on the construction of new single- and multifamily structures, residential remodeling, and brokers' fees. "Housing Services" includes spending on renters' utilities and rent, and homeowners' imputed rent and utility payments. For more detailed information on BEA's measurement of residential investment and housing services, see the National Income and Product Accounts (NIPA) Handbook at https://www.bea.gov/resources/methodologies/nipa-handbook.

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

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 height of the COVID-19 pandemic in 2020.

Nevertheless, house price movements can influence residential investment, and therefore, affect macroeconomic activity, all else being equal. Rising home prices likely encourage greater construction (in order to take advantage of the higher sale prices on the completed new homes), possibly resulting in more jobs for construction workers. 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*. In this case, if the value of homeowners' assets (and therefore net wealth) increases, they may be inclined to increase their consumption, which can stimulate the economy. In the United States, consumer spending makes up roughly 70% of the economy; therefore, changes in housing wealth can result in significant changes in GDP. While rising home prices may generally result in increasing residential investment and potentially GDP, rising home prices may also result in decreased housing affordability, which could offset some of the positive effects on the economy.

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

This section provides a high-level overview of some broad issues that have been of interest to the 117th Congress.

Housing Policy Responses to the COVID-19 Pandemic

The COVID-19 pandemic and its economic impacts 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). Some temporary protections—including eviction and foreclosure moratoriums—have ended during the 117th Congress, raising concerns about the number of households that 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

During the 117th Congress, both Congress and federal agencies have taken various actions to continue to address the housing-related impacts of the pandemic. At the same time, some of the temporary protections that had been put in place to assist renters and homeowners affected by the pandemic—namely, federal foreclosure and eviction moratoriums—have ended during this Congress. Major actions related to COVID-19 and housing during the 117th Congress are summarized below.

Housing Funding in the American Rescue Plan Act

In March 2021, the 117th Congress passed and President Biden signed the American Rescue Plan Act of 2021 (ARPA, P.L. 117-2) to provide additional pandemic relief funding. The enacted law included funding for several new and existing housing programs, including additional funding for emergency rental assistance, a new Homeowner Assistance Fund, homelessness assistance, housing counseling, Native American housing programs, and fair housing activities.

For more information, see the following:

- CRS Insight IN11641, *Housing Funding in the American Rescue Plan Act of 2021*

Federal Eviction Moratorium and Emergency Rental Assistance

The 117th Congress has seen the continuation of efforts begun in the 116th Congress to forestall evictions, and the resulting residential displacement, of renters triggered by the economic fallout of the COVID-19 pandemic.

At the beginning of the 117th Congress, a nationwide temporary federal eviction moratorium was in effect. The eviction moratorium had been ordered by the CDC—pursuant to its public health authorities—in September 2020 and was slated to expire at the end of the year (December 31, 2020). However, prior to its expiration, the 116th Congress extended it legislatively, through January 31, 2021. The CDC subsequently administratively updated/extended the order several times, the last time through October 3, 2021. However, the national eviction moratorium was effectively ended on August 26, 2021, when the Supreme Court blocked its enforcement of the order, following a series of legal challenges. (Some state and local eviction moratoriums remained in place beyond the end of the federal moratorium.)

At the same time that the federal eviction moratorium was in place, Congress—first the 116th and then the 117th—funded a new federal Emergency Rental Assistance (ERA) program at the

Treasury Department. The first tranche of ERA funding—$25 billion—was provided by the FY2021 Consolidated Appropriations Act in December 2020. The second tranche of ERA funding—$21.55 billion—was appropriated by ARPA. While there are some differences between ERA-1 and ERA-2, generally, both rounds of funding were awarded via formula to states and localities to be used to fund rental and utility payments and arrearages for low-income renters.

Some policymakers and other stakeholders expressed concern about the slow award of ERA funds to at-risk renters, particularly in light of the end of eviction moratoriums. Treasury published multiple revisions to program guidance, as well as best practices, to attempt to speed dispersal. In June 2021, the White House announced implementation of "a whole-of-government effort to raise awareness about emergency rental assistance."[28] This included 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, and the convening of a White House summit to plan for eviction prevention. In January 2022, Treasury implemented the first round of statutorily directed recapture of ERA-1 funding from states and localities that did not meet spending targets, reallocating funds to communities that demonstrated they could use additional funding. Treasury has continued to recapture and reallocate unused ERA-1 and ERA-2 funding, as directed by the ERA statutes.

For more information, see the following:

- CRS Insight IN11673, *The CDC's Federal Eviction Moratorium*
- CRS Legal Sidebar LSB10632, *Litigation of the CDC's Eviction Moratorium*
- CRS Legal Sidebar LSB10638, *Supreme Court Blocks Enforcement of the CDC's Eviction Moratorium*
- CRS Report R46688, *Pandemic Relief: The Emergency Rental Assistance Program*

Actions Related to COVID-19 and Mortgages

The 117th Congress has also seen the continuation of efforts begun in the 116th Congress to assist homeowners who may be having difficulty paying their mortgages due to COVID-19-related financial hardships. At the beginning of the 117th Congress, foreclosure moratoriums were in effect for mortgages backed by federal agencies (HUD, VA, and USDA) and Fannie Mae and Freddie Mac. The federal agencies and Fannie Mae and Freddie Mac extended these existing moratoriums through July 31, 2021, at which point they expired.[29]

Although the foreclosure moratoriums for federally backed mortgages have expired, borrowers with mortgages backed by federal agencies or Fannie Mae or Freddie Mac continue to be eligible to request a COVID-19-related forbearance if they are experiencing a financial hardship as a result of the pandemic. In September 2021, FHA, VA, and USDA all extended their deadlines for requesting COVID-19-related forbearance through the end of the COVID-19 national emergency.[30] (Fannie Mae and Freddie Mac have not set a deadline for requesting COVID-19-

[28] 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/.

[29] Upon the expiration of the foreclosure moratoriums at the end of July, the federal agencies and Fannie Mae and Freddie Mac extended prohibitions on foreclosure-related evictions until September 30, 2021.

[30] For more information on COVID-19-related mortgage forbearance and related deadlines, see Consumer Financial

related forbearance.) In addition, all of these entities announced that mortgage forbearance periods for mortgages they back could be extended under certain circumstances.[31] Each has also implemented certain loss mitigation options to assist borrowers who are exiting COVID-19-related forbearance plans.[32] (Loss mitigation refers to options to avoid foreclosure, such as repayments plans, loan modifications, or other foreclosure alternatives.)

In June 2021, the CFPB promulgated a final rule temporarily amending certain mortgage servicing procedures under Regulation X[33] in response to the pandemic and the concern that a large number of borrowers might exit forbearance around the same time without receiving a meaningful opportunity to be reviewed for loss mitigation.[34] Under the final rule, which became effective on August 31, 2021, 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, until January 1, 2022, the rule required servicers to ensure that at least one of several procedural safeguards (described in the final rule) were met before initiating foreclosure on mortgages that were at least 120 days past due.

Finally, as noted above, ARPA included funding for a new Homeowner Assistance Fund (HAF). Through the HAF, Treasury provides funding to states, territories, and tribes to use to provide mortgage payment assistance or other related assistance to eligible homeowners who are in danger of default, foreclosure, or displacement due to COVID-19-related hardships.[35]

For more information, see the following:

- CRS Report R46830, *The Homeowner Assistance Fund in the American Rescue Plan Act: In Brief*

Housing Affordability

While housing affordability is a perennial policy issue for Congress, the house price increases and supply constraints described earlier in the "Housing and Mortgage Market Conditions" section have exacerbated concerns about housing affordability. Affordability challenges can affect both owners and renters at varying levels of income; however, lower-income renter households are the

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Protection Bureau, "Learn About Forbearance," https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/help-for-homeowners/learn-about-forbearance/.

[31] For a summary of these extensions, see Consumer Financial Protection Bureau, "Extend Your Forbearance," at https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/help-for-homeowners/extend-forbearance/.

[32] For a summary of the types of loss mitigation options that may be available, see Consumer Financial Protection Bureau, "Exit Your Forbearance," https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/help-for-homeowners/repay-forbearance/.

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

[34] 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.

[35] States, territories, and tribes have discretion in how to structure their Homeowner Assistance Fund programs, within the parameters of ARPA and Treasury's program guidance. For information on individual states' Homeowner Assistance Fund programs, see the National Council of State Housing Agencies website at https://www.ncsha.org/homeowner-assistance-fund/.

most likely to face severe housing cost burdens,[36] placing them at greatest risk for housing insecurity. Estimates vary, but they generally show that the primary federal rental assistance programs reach roughly one in four eligible households.

Proposals to address housing affordability in general, and for low-income renter households in particular, can take many forms.[37] 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.

The 117th Congress has seen a variety of proposals related to housing affordability, including some related to all of the above approaches.

- There have been proposals to provide significant additional federal funding for constructing new affordable housing, including several that have been included in various infrastructure proposals and, ultimately, in the version of the Build Back Better Act reconciliation legislation (H.R. 5376) that was passed by the House on November 19, 2021 (discussed further in the "Housing in the Build Back Better Act and Other Infrastructure Proposals" section of this report).
- There have been proposals to expand existing rental assistance programs to serve more families,[38] including a proposal to create a Housing Choice Voucher entitlement, which would allow the program to serve all eligible households. This draft proposal was the subject of a hearing by the House Financial Services Committee,[39] and in July 2021 it was introduced as H.R. 4496, the Ending Homelessness Act of 2021, as part of a legislative housing package announced by House Financial Services Committee Chairwoman Maxine Waters.[40]

  Additionally, the Consolidated Appropriations Act, FY2022 (P.L. 117-103) funded the largest increase in new vouchers in approximately two decades.[41]

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[36] See Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 2021*, pp. 32-33, https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf.

[37] 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*.

[38] 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.

[39] 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.

[40] 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. The legislative housing package also included two other bills introduced by Chairwoman Waters: the Housing is Infrastructure Act of 2021 (H.R. 4497), which would authorize appropriations for a variety of affordable housing programs and activities, and the Downpayment Toward Equity Act of 2021 (H.R. 4495), which would establish a down payment assistance program for income-eligible first-time, first-generation homebuyers.

[41] P.L. 117-103 provided approximately $200 million for new general purpose vouchers. HUD used that funding to award 19,359 vouchers to nearly 2,000 public housing authorities in the fall of 2022. See Department of Housing and Urban Development, "Fact Sheet: HUD Awards More Than 19,000 New Housing Choice Vouchers in Most Expansive

- Proposals to encourage local governments to examine land use and other regulatory requirements or to support related activities have included, among others, provisions in the Build Back Better Act[42] and the Yes in My Backyard Act (H.R. 3198/S. 1614). The latter was one of several bills included in a June 2021 Senate Banking Committee hearing on selected bills related to affordable housing.[43]

In addition, the President's FY2023 budget request proposed $35 billion in new mandatory funding for a Housing Supply Fund at HUD to support new housing production, housing-related infrastructure improvements, and efforts to reduce local barriers to housing development.[44] The budget request also proposed expansions to the Low-Income Housing Tax Credit[45] and $5 billion in new mandatory funding for Treasury's Community Development Financial Institutions (CDFI) Fund to support financing for affordable housing development.[46]

Homelessness

Housing affordability challenges and housing instability arising from the COVID-19 pandemic have increased concerns that more people may be at risk of homelessness.[47] Data collection during the pandemic has been limited, and pandemic-related interventions may have prevented homelessness in some cases, so there is not yet a full picture of changes in the number of people experiencing homelessness. HUD directs a point-in-time (PIT) count of the number of people experiencing homelessness on one day during the last week of January each year. However, the 2021 PIT count included only people living in shelter (emergency shelter and transitional housing) and not those who were unsheltered (living on the street or other places not meant for human habitation); the number of people living in shelter declined by 8% from January 2020 to January 2021.[48]

Between the CARES Act and ARPA, Congress appropriated nearly $15 billion for HUD programs to assist people experiencing homelessness. The CARES Act provided $4 billion for the Emergency Solutions Grants program to provide emergency and non-congregate shelter accommodations as well as short-term rental assistance to assist people immediately at risk of losing their housing. ARPA provided $5 billion to fund emergency housing vouchers through the

Allocation of Flexible Rental Assistance in 20 Years," press release, September 23, 2022, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_22_182.

[42] See the Unlocking Possibilities Program in Section 40103 of H.R. 5376 as passed by the House.

[43] U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Examining Bipartisan Bills to Increase Access to Housing*, 117th Cong., 1st sess., June 24, 2021, https://www.banking.senate.gov/hearings/examining-bipartisan-bills-to-increase-access-to-housing.

[44] HUD FY2023 Budget Justifications, *Housing Supply Fund (Mandatory Request)*, https://www.hud.gov/sites/dfiles/CFO/documents/2023_CJ_Program_CC3_Housing_Supply_Fund.pdf.

[45] Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals*, pp. 20-21, https://home.treasury.gov/system/files/131/General-Explanations-FY2023.pdf.

[46] Department of the Treasury FY2023 Budget Justifications, *Community Development Financial Institutions Fund*, pp. 10-11, https://home.treasury.gov/system/files/266/12-CDFI-FY-2023-CJ.pdf.

[47] For example, see Riordan Frost, *Pre-Pandemic Trends Offer Insight into Post Pandemic Homelessness*, Joint Center for Housing Studies, March 30, 2021, https://www.jchs.harvard.edu/blog/pre-pandemic-trends-offer-insight-post-pandemic-homelessness.

[48] U.S. Department of Housing and Urban Development, *The 2021 Annual Homeless Assessment Report (AHAR) to Congress*, January 2022, p. 8, https://www.huduser.gov/portal/sites/default/files/pdf/2021-AHAR-Part-1.pdf.

Section 8 program to assist people experiencing homelessness.[49] In May 2021, HUD announced it was using the $5 billion in ARPA funding to award 70,000 emergency housing vouchers.[50] Further, ARPA appropriated an additional $5 billion for the HOME program, which communities are to use for various activities that primarily assist people who are homeless or at risk of homelessness, including development of affordable housing, rental assistance, and supportive services.[51]

In the 117th Congress, the House Financial Services Committee's Subcommittee on Housing, Community Development, and Insurance held a hearing in February 2022, "Housing America: Addressing Challenges in Serving People Experiencing Homelessness," and the Senate Banking Committee's Subcommittee on Housing, Transportation, and Community Development held a hearing in July 2022, "Opportunities and Challenges in Addressing Homelessness."[52] During each hearing, Members cited related bills that have been proposed in the 117th Congress. Further, on June 24, 2021, the Senate Banking Committee held a hearing on bills that would address affordable housing, including S. 1991, the Family Stability and Opportunity Vouchers Act of 2021, which would provide Section 8 vouchers for families with children who are homeless or unstably housed.[53]

Housing in the Build Back Better Act and Other Infrastructure Proposals

The topic of infrastructure investments has been prominent during the 117th Congress. In Spring 2021, the Biden Administration released its infrastructure proposal, the American Jobs Plan, which contained a number of proposals to invest additional resources in housing.[54]

Two legislative initiatives were developed in response to President Biden's American Jobs Plan infrastructure investment proposal. The first package—the Infrastructure Investment and Jobs Act (IIJA, P.L. 117-58)—was enacted in November 2021. It included new spending for a variety of transportation, energy, and water programs, among others, including funding to replace lead water service lines and funding for hazard mitigation (the latter of which is discussed further in the

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49 More information about the emergency housing vouchers is available on HUD's website, https://www.hud.gov/ehv.

50 U.S. Department of Housing and Urban Development, "HUD Announces $5 Billion to House People Experiencing Homelessness," press release, May 17, 2021, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_21_087.

51 See U.S. Department of Housing and Urban Development, *Requirements for the Use of Funds in the HOME-American Rescue Plan Program*, September 13, 2021, https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-10cpdn.pdf.

52 See U.S. Congress, House Committee on Financial Services, Subcommittee on Housing, Community Development, and Insurance, *Housing America: Addressing Challenges in Serving People Experiencing Homelessness*, 117th Cong., 2nd sess., February 2, 2022; and U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Housing, Transportation, and Community Development, *Opportunities And Challenges In Addressing Homelessness*, 117th Cong., 2nd sess., July 19, 2022.

53 U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Examining Bipartisan Bills to Increase Access to Housing*, 117th Cong., 1st sess., June 24, 2021.

54 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/.

"Housing and Climate Impacts" section of this report). It did not include funding specifically for affordable housing programs or initiatives, however.

The second legislative package—often referred to as the Build Back Better Act (H.R. 5376)—was developed pursuant to reconciliation directives included in S.Con.Res. 14, the Concurrent Budget Resolution for FY2022.[55] As passed by the House in November 2021, the Financial Services Committee title of the bill (Title IV) included about $157 billion in new mandatory spending over 10 years for programs and activities within the committee's jurisdiction, primarily a range of new and existing affordable housing programs.[56] Most of the housing investments that were proposed in the Administration's American Jobs Plan were included in the bill in some form, as were other housing-related investments. Among other things, Title IV of the House-passed bill would have provided funding to

- produce, preserve, or rehabilitate affordable housing, including funding for programs such as the Housing Trust Fund, Section 202, and Section 811 programs;
- increase funding for existing federally assisted affordable housing, including public housing, project-based Section 8 multifamily housing, and rural rental housing programs;
- provide additional rental assistance through funding for new Section 8 vouchers;
- assist local communities with planning and implementing local housing and community development strategies; and
- provide assistance for homebuyers, including funding for a new down payment assistance program for first-time, first generation homebuyers.

In addition, the Ways and Means Committee title of the bill (Title XIII) included certain additional tax-related housing provisions; namely, changes to the Low-Income Housing Tax Credit and the inclusion of the Neighborhood Homes Investment Act (NHIA). The NHIA would provide tax credits to support the development or rehabilitation of single-family homes in certain distressed neighborhoods. (For more information on the NHIA, see CRS In Focus IF11884, *Neighborhood Homes Investment Act: Overview and Policy Considerations*.)

In August 2022, a revised version of the FY2022 reconciliation legislation was signed into law as the Inflation Reduction Act (IRA, P.L. 117-169), which replaced the text of what is often referred to as the Build Back Better Act. While most of the affordable housing provisions of the Build Back Better Act were not included in the IRA, Section 30002 appropriated $1 billion in mandatory funding for loans, loan modifications, and grants to finance projects in existing HUD-assisted multifamily housing developments that improve energy or water efficiency, enhance indoor air quality or sustainability, implement the use of certain technologies, or address climate resilience. In addition, the IRA included multiple provisions related to rebates, tax incentives, or other assistance for certain home energy efficiency and electrification purposes.[57] It also included

[55] For more information on S.Con.Res. 14, see CRS Report R46893, *S.Con.Res. 14: The Budget Resolution for FY2022*.

[56] This amount compares to about $300 billion in new spending that was included in the version of the bill reported out of committee. For more information on the committee-passed bill, see U.S. House Committee on Financial Services, "Committee Passes Build Back Better Agenda to Provide Long-Overdue Investments in Housing Resources," press release, September 14, 2021, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408325.

[57] Such provisions include Section 13301, Extension, Increase, and Modifications of Nonbusiness Energy Property Credit; Section 13302, Residential Clean Electricity Credit; Section 13304, Extension, Increase, and Modifications of New Energy Efficient Home Credit; Section 50121, Home Energy Performance-Based, Whole-House Rebates; Section 50122, High-Efficiency Electric Home Rebate Program; and Section 80003, Tribal Electrification Program.

funding to assist states with contractor training and to assist states and local governments in adopting and implementing the latest building energy codes for residential and other buildings, including zero energy stretch codes.[58] For more information on these provisions, see CRS Report R47262, *Inflation Reduction Act of 2022 (IRA): Provisions Related to Climate Change*.

Earlier in the 117th Congress, both the House Financial Services Committee and the Senate Banking Committee held hearings related to housing as infrastructure.[59] In July 2021, House Financial Services Committee Chairwoman Maxine Waters introduced the Housing is Infrastructure Act of 2021 (H.R. 4497) as part of her legislative housing package.[60] The Housing is Infrastructure Act would authorize hundreds of billions of dollars in new funding for various affordable housing programs and activities. Many of the activities included in that bill, as well as certain other parts of the Chairwoman's legislative housing package, were included in the House-passed version of the Build Back Better Act in some form.

For more information, see the following:

- CRS Report R46916, *FY2022 Reconciliation: Title IV, House Financial Services Committee Provisions*
- CRS Report R46960, *Tax Provisions in the Build Back Better Act: Rules Committee Print 117-18*

Performance-Based Contract Administrator Contract Solicitation

In 2022, HUD published a draft contract solicitation for comment that has generated a lot of interest. It involves oversight of the second largest federal rental assistance program—the Section 8 project-based rental assistance (PBRA) program. The PBRA program involves approximately 17,000 contracts between HUD and private property owners to subsidize the rents of over 1 million low-income tenants. Those contracts govern the terms of the rental assistance HUD provides to owners on behalf of eligible low-income tenants, and the conditions the property owners must meet to receive that funding. Since the early 2000s, HUD has contracted with Public Housing Authorities (PHAs) and State Housing Finance Agencies (SHFAs) to manage the

[58] Such provisions include Sec. 50123, State-Based Home Energy Efficiency Contractor Training Grants and Sec. 50131, Assistance for Latest and Zero Building Energy Code Adoption. "Zero energy stretch codes" refers to the voluntary zero energy provisions of the 2021 International Energy Conservation Code or equivalent stretch code. A "stretch code" is one that exceeds the expected energy-efficiency performance of a building energy code.

[59] 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.

[60] 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). 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), although they were not included in the final FY2021 full-year appropriations package.

contracts on a state-by-state basis via the Performance Based Contract Administrator (PBCA) initiative. In FY2022, Congress provided HUD with $355 million for PBCAs, to oversee approximately $13.6 billion in PBRA assistance.

In response to several HUD Office of Inspector General (OIG) audit reports issued in 2009 raising questions about the cost effectiveness and oversight of the existing PBCA contracts,[61] in 2011 HUD issued an invitation for applications from PHAs and SHFAs to enter into new and revised PBCA contracts.[62] HUD's initial solicitation and award of contracts was protested to the Government Accountability Office (GAO) by unsuccessful bidders. HUD decided to enter into new contracts in only 11 states where no protests were filed, and chose to withdraw the solicitation for those states that were protested.[63] The agency issued a revised solicitation in 2012; the selections from that solicitation were also protested to GAO.[64] GAO ultimately sustained the protests, finding that HUD is seeking services that should be obtained via a procurement instrument rather than a Notice of Funding Availability (NOFA).[65] HUD disputed GAO's finding and decided to proceed with the solicitation, which led to a legal dispute that was ended in 2015. The courts ultimately ruled that HUD could not pursue its plan to award these contracts to PHAs and SHFAs via NOFA (using the same cooperative agreement process the agency had used in the past), and instead, the agency needed to follow federal procurement law to solicit bidders via a free and open competitive process.[66]

In 2022, HUD published a draft solicitation for comment that would replace the existing state-by-state PBCA contracts (slated to expire in 2023) with new regional contracts (for up to 15 subregions, generally made up of several states) for what HUD is terming Housing Assistance Payments Support Service (HAPSS) contracts.[67] Not only would there be fewer HAPSS contracts than the current PBCA contracts, but the HAPSS contracts would be narrower in the scope than the current PBCA contracts, as HUD is seeking to bring some contract oversight functions back in-house to the agency.

This new solicitation has raised concerns from existing PBCAs, including about the implications of losing their existing contracts.[68] The comment period for the draft solicitation was initially slated to close in August 2022, but, in response to stakeholder feedback, was extended through September 28, 2022. It is uncertain when HUD will publish a final solicitation for these contracts.

[61] HUD OIG, *HUD's Monitoring of the Performance Based Contract Administrators was Inadequate*, Audit Report No. 2009-SE-0003, September 1, 2009; and HUD OIG, *HUD's Performance-Based Contract Administration Contract Was Not Cost Effective*, Audit Report No. 2009-LA-0001, November 12, 2009.

[62] HUD, Invitation for Submission of Applications: Contract Administrators for Project-Based Section 8 Housing Assistance Payments (HAP) Contracts, dated March 23, 2011, https://www.hud.gov/sites/documents/INVITATIONFORAPPSFINAL.PDF

[63] For more information, see https://www.ncsha.org/blog/hud-announces-new-pbca-competition-many-states.

[64] HUD, FY 2012 Notice of Funding Availability Performance Based Contract Administration Program for the Administration of Project Based Section 8 Housing Assistance Payments Contracts, available at https://archives.hud.gov/funding/2012/grppbca.cfm.

[65] GAO's bid protest decision can be accessed at https://www.gao.gov/products/b-406738%2Cb-406738.2%2Cb-406738.3%2Cb-406738.4%2Cb-406738.5%2Cb-406738.6%2Cb-406738.7%2Cb-406738.8.

[66] For a review, see the background to the petition for a writ of certiorari that was filed by the Solicitor General and was ultimately denied by the Supreme Court, available at https://www.justice.gov/sites/default/files/osg/briefs/2015/01/27/united_states_v._cms_contract_mgmt_servs_pet.pdf.

[67] Presolicitation Notice 86614622R00001, https://sam.gov/opp/0f955552e3524fd9a0d1583a307fbcd8/view.

[68] For example, see comment letter submitted by the National Council of State Housing Agencies to HUD, dated September 28, 2022, https://sam.gov/opp/0f955552e3524fd9a0d1583a307fbcd8/view.

Native American Housing Assistance and Self-Determination Act Reauthorization

The 117th Congress has been considering legislation to reauthorize the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA, P.L. 104-330). NAHASDA authorizes the Indian Housing Block Grant (IHBG), through which HUD provides formula funding to federally recognized tribes and Alaska Native villages that can be used for a range of affordable housing activities.[69] As amended, it also authorizes the Native Hawaiian Housing Block Grant (NHHBG), which provides funding for affordable housing activities that benefit Native Hawaiians eligible to reside on the Hawaiian Home Lands.

The most recent authorization for most NAHASDA programs expired at the end of FY2013, although Congress has continued to fund NAHASDA programs in annual appropriations laws.[70] NAHASDA reauthorization legislation has been introduced and considered to varying degrees in every Congress since the 113th, but none has ultimately been enacted. While both tribes and Congress have been generally supportive of NAHASDA, there is sometimes disagreement over specific provisions or policy proposals that have been included in reauthorization bills.

In the 117th Congress, different NAHASDA reauthorization bills have been introduced in the House and the Senate. In September 2021, the House Financial Services Committee ordered to be reported H.R. 5195, which would reauthorize the IHBG, the NHHBG, and certain other Native American housing programs (namely, HUD's Section 184 Indian Home Loan Guarantee Program and Section 184A Native Hawaiian Housing Loan Guarantee Program) through FY2026.[71] In February 2022, the Senate Committee on Indian Affairs ordered to be reported S. 2264, which would reauthorize the IHBG, the NHHBG, and the Section 184 and Section 184A programs through FY2032.[72] Both bills also contain a range of other provisions that would make changes to NAHASDA and otherwise address housing assistance for Indian tribes in various ways.

Fair Housing

The evolving administrative and judicial interpretations of certain requirements of the Fair Housing Act have been of ongoing interest to Congress.[73] Congress enacted the Fair Housing Act

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[69] NAHASDA also authorizes the Title VI loan guarantee program, through which HUD provides loan guarantees to increase tribes' access to financing for affordable housing activities.

[70] The NHHBG has not been reauthorized since its original authorization expired in FY2005, although it has generally continued to receive funding in appropriations acts.

[71] U.S. House Committee on Financial Services, "Committee Passes Legislation to Expedite Emergency Rental Assistance and Provide Protections for Descendants of Black Native American Freedmen," press release, September 14, 2021, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408326.

[72] U.S. Senate Committee on Indian Affairs, "Schatz, Murkowski Lead Committee Passage of Bipartisan Bill to Advance Native American Housing Programs," press release, February 17, 2022, https://www.indian.senate.gov/news/press-release/schatz-murkowski-lead-committee-passage-bipartisan-bill-advance-native-american.

[73] Past Congresses have held hearings and considered legislative provisions related to HUD actions on the Fair Housing Act and other fair housing issues. 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). No such provision was included in the enacted Consolidated Appropriations Act, 2021 (P.L. 116-260).

"to provide, within constitutional limitations, for fair housing throughout the United States."[74] 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.[75] 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.[76]

The Fair Housing Act bars *intentional* discrimination, through which plaintiffs allege that a defendant made a housing decision based on "a discriminatory intent or motive."[77] In addition, prior to 2005, HUD and courts had historically recognized that the act also bars *disparate impact* (also referred to as *discriminatory effects*) discrimination—"facially neutral [housing] decision[s]" that have "a disproportionately adverse effect on [a protected class] and [are] otherwise unjustified by a legitimate rationale."[78] However, the Supreme Court, in the 2005 decision *Smith v. City of Jackson, Mississippi*[79] (a case involving the federal Age Discrimination in Employment Act of 1967 [ADEA]), indirectly called into question past decisions that had held that disparate impact claims are cognizable (i.e., viable) under the Fair Housing Act.

In *Smith*, the Court held that the ADEA supports disparate impact claims in part because the law expressly prohibits actions that "adversely affect" a protected class.[80] Due to the absence of similar statutory language in the Fair Housing Act, various court decisions following *Smith* raised questions about whether the act supports disparate impact claims, and if it does, the test courts should apply to evaluate them.[81]

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74 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).

75 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.

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

77 Texas Dept. of Hous. & Cmnty Affairs v. Inclusive Communities Project, 135 S. Ct. 2507, 2513 (2015) (internal quotation marks omitted).

78 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.

79 544 U.S. 228 (2005).

80 Ibid. at 235-38.

81 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 also granted certiorari in two cases to address the question of whether disparate impact claims were 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). See also Joshua Thompson and Ralph Kasarda, *Symposium: Just give the Court a Chance*, SCOTUSblog (January 6, 2015), https://www.scotusblog.com/2015/01/symposium-just-give-the-court-a-chance/.

The Supreme Court settled some of this uncertainty in a 2015 opinion, holding that disparate impact claims are cognizable under the Fair Housing Act, while providing guidance to HUD and lower courts regarding how claims should be assessed.[82] During the Obama, Trump, and Biden Administrations, HUD issued differing regulations to implement disparate impact liability post-*Smith*, which sparked litigation.[83]

In addition to prohibiting discrimination, the Fair Housing 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]."[84] 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.

For more information on the Fair Housing Act in general, see the following:

- CRS Report 95-710, *The Fair Housing Act (FHA): A Legal Overview*

Affirmatively Furthering Fair Housing (AFFH)

What AFFH means is not defined in statute, and various court decisions regarding HUD's obligations under the mandate have concluded that it means more than refraining from discrimination.[85] A 1987 federal appellate court decision examined the Fair Housing Act's legislative history and concluded 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."[86] 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.[87]

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 recent years over the span of 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 replaced the Trump Administration rule as of July 31, 2021.

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

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

[83] See, for example, Mass. Fair Hous. Ctr. v. United States HUD, 496 F. Supp. 3d 600, 603 (D. Mass. 2020) (government appeal voluntarily dismissed, Mass. Fair Housing Ctr. v. HUD, No 21-1003 (1st Cir. Feb. 18, 2021)); Am. Ins. Assoc. v. Dept. of Hous. and Urban Dev., 74 F. Supp. 3d 30 (D.D.C. 2014) (vacated and remanded by Am. Ins. Assoc. v. Dept. of Hous. and Urban Dev. No. 14-5321, September 23, 2015 (D.C. Cir.) (*per curiam*)).

[84] 42 U.S.C. §3608(d).

[85] See, for example, NAACP v. HUD, 817 F.2d 149, 155 (1987) ("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).

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

[87] Ibid.

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."[88] 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.[89] 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."[90] States and localities were to certify that they satisfied the AFFH requirement as part of their consolidated plans.[91] The rule did not apply to PHAs and took effect on September 8, 2020.

On January 26, 2021, President Biden 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."[92]

On June 10, 2021, HUD published an interim final rule that repealed the Trump Administration rule and reinstated certain aspects of the 2015 AFFH rule, including the definition of AFFH as well as grantee certification requirements.[93] 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.[94] The interim final rule became effective on July 31, 2021.

For more information, see the following:

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

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[88] 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.

[89] 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.

[90] 85 *Federal Register* 47905.

[91] 85 *Federal Register* 47909.

[92] 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/.

[93] 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.

[94] Ibid. at 30785. HUD had not issued a proposed rule as of the cover date of this report.

Disparate Impact Discrimination

Amidst the growing uncertainty regarding disparate impact discrimination under the Fair Housing Act following the Supreme Court's *Smith* opinion discussed above,[95] HUD, for the first time in February 2013 during the Obama Administration, issued regulations to "formalize 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."[96] In 2014, a federal district court briefly vacated the 2013 disparate impact rule after holding that disparate impact claims are not cognizable under the Fair Housing Act and that HUD had exceeded its statutory authority in issuing the rule.[97] About a year later, a federal appellate court vacated the district court's decision and remanded proceedings for reconsideration in accordance with the Supreme Court's 2015 decision, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*[98] In *Inclusive Communities*, the Supreme Court held that disparate impact claims are cognizable under the Fair Housing Act.[99] The Court's decision did not expressly adopt the disparate impact test implemented by HUD's 2013 rule; rather, the Court adopted a three-step burden-shifting test using language similar, but not identical, to the 2013 rule and outlined a number of limiting factors that lower courts and HUD should apply when assessing disparate impact claims.[100]

In September 2020, near the end of the Trump Administration, HUD issued a final rule intended "to better reflect the Supreme Court's 2015 [*Inclusive Communities*] ruling."[101] The 2020 rule would have significantly altered the 2013 rule by, among other things, imposing new pleading requirements on plaintiffs to maintain a prima facie disparate impact claim and establishing new defenses that a defendant could use to rebut disparate impact claims. Shortly after the rule's issuance, housing advocates filed a lawsuit in federal district court alleging that the 2020 rule should be set aside because it was an arbitrary and capricious interpretation of the law in violation of the Administrative Procedure Act (APA).[102] Before the 2020 rule went into effect, the district court issued a preliminary injunction enjoining HUD from implementing and enforcing the 2020 rule, which had the effect of keeping the 2013 rule in place.[103]

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 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."[104] In the court's

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95 See *supra* n. 66-67 and surrounding text.

96 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.

97 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).

98 Am. Ins. Assoc. v. Dept. of Hous. and Urban Dev. No. 14-5321, September 23, 2015 (D.C. Cir.) (*per curiam*).

99 576 U.S. 519 (2015).

100 Ibid. at 531-45.

101 Department of Housing and Urban Development, "Implementation of the Fair Housing Act's Disparate Impact Standard," 85 *Federal Register* 60288, September 24, 2020, https://www.federalregister.gov/documents/2020/09/24/2020-19887/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard.

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

103 Ibid. at 612.

104 Ibid. at 606-608.

view, these alterations "weaken[ed], for housing discrimination victims and fair housing organizations, disparate impact liability under the Fair Housing Act."[105] HUD argued that these changes were justified because they brought the rule into alignment with *Inclusive Communities* and "provide[d] better clarity to the public."[106] 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."[107] 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."[108]

On January 26, 2021, President Biden issued a memorandum directing HUD to "take all steps necessary to examine the effects of the [2020 rule]."[109] HUD responded to this presidential directive by voluntarily dismissing its appeal of the federal district court's injunction[110] and proposing a regulation that would recodify the 2013 rule and effectively rescind the 2020 rule.[111] In the proposed rule issued on June 25, 2021, HUD expressed its belief "that the practical effect of the 2020 Rule's amendments [wa]s 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."[112] 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."[113] 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.[114]

For more information, see the following:

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

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

105 Ibid. at 607.

106 Ibid. at 610.

107 Ibid. at 611.

108 Ibid.

109 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/.

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

111 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.

112 Ibid. at 33594.

113 Ibid.

114 See, generally, 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/.

Black individuals and White individuals, including in homeownership rates,[115] renter cost burdens,[116] and, most recently, the housing-related impacts of the COVID-19 pandemic.[117]

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."[118] 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. 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.[119] The Biden Administration, including HUD, has also focused attention on promoting equity in federal programs.[120]

One issue that has received particular attention is possible racial disparities in home appraisals. In April 2021, the House Financial Services Committee ordered to be reported the Real Estate Valuation Fairness and Improvement Act of 2021 (H.R. 2553), one of the bills included in the committee's March 2021 hearing, which would establish an interagency task force to examine real estate valuation standards and would take actions to promote diversity in the appraisal profession. 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, including announcing an interagency task force to address inequities in home appraisals led by HUD Secretary Marcia Fudge. [121] That task force, known as the Interagency Task Force on Property Appraisal and Valuation Equity (PAVE), released a report in March 2022 outlining steps that agencies would take to address appraisal bias.[122] The Senate Banking Committee and House Financial Services Committee held hearings on the topic shortly thereafter.[123] Additionally, in

[115] 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.

[116] 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.

[117] 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.

[118] 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.

[119] 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.

[120] For more on HUD's equity-related efforts, see https://www.hud.gov/equity.

[121] 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/.

[122] Interagency Task Force on Property Appraisal and Valuation Equity, Action Plan to Advance Property Appraisal and Valuation Equity: Closing the Racial Wealth Gap by Addressing Mis-valuations for Families and Communities of Color, March 2022, https://pave.hud.gov/sites/pave.hud.gov/files/documents/PAVEActionPlan.pdf. The task force website is at https://pave.hud.gov/.

[123] U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Strengthening Oversight and Equity in*

February 2022, House Financial Services Committee Chairwoman Maxine Waters sent a letter to HUD, regulatory agencies, and appraiser professional organizations indicating that her committee would be taking actions, including legislation, to address racial discrimination in appraisals.[124]

Housing and Climate Impacts

Many communities across the country are experiencing the impacts of climate change, with extreme weather and climate-related events expected to become more frequent and more intense in a warmer world.[125] Climate-related risks to the housing stock include the impacts of flooding and coastal erosion,[126] sea level rise,[127] high-intensity rainfall events,[128] higher urban temperatures,[129] more intense hurricanes with higher winds and storm surge,[130] and increased wildfire activity from extreme heat events combined with drought.[131] A recent study found that more than 1.45 million homes in the United States–about 1 in every 10 homes–were affected by the largest natural catastrophe events of 2021 (wildfire, severe weather, hurricanes, and winter storms), with an estimated $56.92 billion in damage.[132] This vulnerability to the effects of climate change has highlighted the importance of improving the resilience of the nation's housing stock

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the Appraisal Process, 117th Cong., 2nd sess., March 24, 2022, https://www.banking.senate.gov/hearings/strengthening-oversight-and-equity-in-the-appraisal-process and U.S. Congress, House Committee on Financial Services, *Devalued, Denied, and Disrespected: How Home Appraisal Bias and Discrimination Are Hurting Homeowners and Communities of Color*, 117th Cong., March 29, 2022, https://financialservices.house.gov/events/eventsingle.aspx?EventID=409150.

[124] House Committee on Financial Services, "Waters Calls on Regulators and Industry to Hold Appraisers Accountable and Announces Plans for Legislation," press release, February 22, 2022, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=409146. Draft legislation was discussed at the March 2022 House Financial Services Committee hearing described in the previous footnote.

[125] 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*).

[126] The Intergovernmental Panel on Climate Change (IPCC) February 2022 report estimates that 15.4 million housing units in the United States are in the 100-year floodplain, or the 1%-annual-chance floodplain, which is defined as the area with a 1% or greater risk of flooding every year. See H.-P. Pörtner, D.C. Roberts, and E.S. Poloczanska et al., *Climate Change 2022: Impacts, Adaptation, and Vulnerability*, IPCC, Summary for Policymakers, February 28, 2022, pp. 6-37, https://www.ipcc.ch/report/ar6/wg2/ (hereinafter, "*IPCC Adaptation*").

[127] 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.

[128] *IPCC Adaptation*, p. 14-47.

[129] *IPCC Adaptation*, p. 6-24 and pp. 14-47 - 14-48.

[130] Tom Knutson, *Global Warming and Hurricanes: An Overview of Current Research Results*, National Oceanographic and Atmospheric Administration, Geophysical Fluid Dynamics Laboratory, Princeton, NJ, October 24, 2022, https://www.gfdl.noaa.gov/global-warming-and-hurricanes/.

[131] The number of homes in the wildland urban interface (WUI)—the area where houses are in or adjacent to wildland vegetation and that has the highest wildfire risk—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. According to the IPCC February 2022 report, 29 million people in the United States live in areas with significant wildfire risk, and 12 million of these are socially vulnerable. See *IPCC Adaptation*, p. 14-27.

[132] CoreLogic, *2021 Climate Change Catastrophe Report*, February 17, 2022, https://www.corelogic.com/press-releases/corelogic-climate-change-catastrophe-report-estimates-1-in-10-u-s-residential-properties-impacted-by-natural-disasters-in-2021/.

and mitigating housing's climate-related impacts through increased energy efficiency or other measures.[133]

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,[134] though there are already indications of reductions in property prices in homes subject to recurring flooding.[135] For example, a nationwide evaluation of the effect of floodplain location on property 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.[136] A recent report found that nearly 650,000 properties will be at least partially submerged by 2050 due to rising sea levels, reducing the tax base of coastal counties in the United States.[137]

The Mortgage Bankers Association's Research Institute for Housing America published a report on the impact of climate change on housing and housing finance in which it noted that, in addition to increasing residential property damage, climate change may increase mortgage default and mortgage prepayment risk, trigger adverse selection in the types of loans that are sold to the government-sponsored enterprises, and increase the volatility of house prices.[138] FHFA, Fannie Mae, and Freddie Mac have noted that Fannie Mae and Freddie Mac 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.[139] As climate impacts grow over time, the mortgages on such properties may become riskier.[140] In January 2021, FHFA issued a request for input on climate change and natural disaster risk to the housing finance system.[141] FHFA released a statement in December 2021 acknowledging that climate change

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[133] Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 2021*, Cambridge, MA, June 16, 2021, p. 6 and pp. 34-35, https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf.

[134] 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.

[135] 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.

[136] 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.

[137] Climate Central, *Shrinking Tax Base: Land & Property at Risk from Rising Seas*, October 8, 2022, p. 4, https://assets.ctfassets.net/cxgxgstp8r5d/2KKeTjnqbFelWrZalnPeRR/9a28719038f3a1dddbdd2e8b78b8455b/CC_Sinking_Tax_Base_20220908a.pdf.

[138] Sean Becketti, *The Impact of Climate Change on Housing and Housing Finance*, Research Institute for Housing America, September 23, 2021, pp. 16-19, 22847_Research_RIHA_September_2021_Report_WB.pdf.

[139] 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.

[140] 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.

[141] 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.

poses a serious threat to the U.S. housing finance system, and announced that it is also enhancing its agency-wide monitoring and supervision of climate change issues.[142] The FHFA Strategic Plan for Fiscal Years 2022-2026 included an objective to identify options for incorporating climate change into regulated entity governance.[143]

The Financial Stability Oversight Council (of which the FHFA Director is a member) identified climate change as an emerging and increasing threat to U.S. financial stability, noting that the primary exposure of the government-sponsored enterprises to risk from climate change arises from credit losses in the mortgage market. However, they may be subject to additional exposures, and FHFA is in the process of identifying and measuring climate-related risks to its regulated entities. FHFA is in the early stages of planning for this work,[144] beginning with flood risk, but plans to also examine the impacts of other perils, such as wind damage, wildfires, and droughts.[145]

Both Congress and the White House have introduced initiatives to address climate risks to housing. For example, 23 agencies developed Climate Adaptation and Resilience Plans in October 2021[146] and in October 2022 these agencies released Climate Adaptation and Resilience Progress Reports.[147] These were developed in response to Executive Order (E.O.) 14008, which directed the head of each government agency to submit a draft action plan within 120 days of the E.O. that describes steps the agency can take with regard to its facilities and operations to bolster adaptation and increase resilience to the impacts of climate change.[148] In May 2021, E.O. 14030 directed federal agencies to develop, within 120 days, a comprehensive government-wide climate-risk strategy to identify and disclose climate-related financial risk to government programs, assets, and liabilities.[149] In response, HUD published its Climate Adaptation and Resilience Plan in November 2021, in which it identified the potential vulnerability of the FHA Mutual Mortgage Insurance Fund and General Insurance and Special Risk Insurance Fund to increased defaults and losses as a specific threat to HUD programs.[150]

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[142] Federal Housing Finance Agency, "FHFA Acting Director Sandra L. Thompson's Statement on Climate Change," press release, December 27, 201, https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Acting-Director-Sandra-L-Thompsons-Statement-on-Climate-Change.aspx.

[143] Federal Housing Finance Agency, *Strategic Plan Fiscal Years 2022-2026*, April 14, 2022, p. 9, https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA_StrategicPlan_2022-2026_Final.pdf.

[144] Federal Housing Finance Agency Office of Inspector General, *FHFA Has Laid the Groundwork to Integrate Consideration of Climate-Related Financial Risk into its Policies and Programs but Plans and Methodologies to Accomplish This Work Are in the Early Stages of Development*, Audit Report AUD-2022-008, July 23, 2022, p. 11, https://www.fhfaoig.gov/sites/default/files/AUD-2022-008.pdf.

[145] Financial Stability Oversight Council, *Report on Climate-Related Financial Risk 2021*, Washington, DC, October 21, 2021, pp. 58-59, https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf.

[146] Office of the Federal Chief Sustainability Officer, Council on Environmental Quality, *Climate Resilience Infrastructure and Operations*, October 7, 2021, https://www.sustainability.gov/federalsustainabilityplan/resilience.html.

[147] Office of the Federal Chief Sustainability Officer, Council on Environmental Quality, *Federal Progress, Plans, and Performance*, Agency Climate Adaptation and Resilience Progress Reports, October 6, 2022, https://www.sustainability.gov/federalsustainabilityplan/resilience.html.

[148] Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad," 86(19) *Federal Register* 7625, February 1, 2021.

[149] Executive Order 14030, "Climate-Related Financial Risk," 86(99) *Federal Register* 27967-27971, May 20, 2021.

[150] Department of Housing and Urban Development, *Climate Action Plan*, Washington, DC, November 2021, p. 11, https://www.hud.gov/sites/dfiles/Main/documents/HUD-Climate-Action-Plan.pdf.

The Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58), enacted in November 2021, appropriated significant new funding for hazard mitigation, which could be used by communities to reduce risks associated with climate change. This includes $500 million for the STORM Act State Revolving Loan Program, $1 billion for the Building Resilient Communities and Infrastructure grant program, and $3.5 billion for the Flood Mitigation Assistance grant program.[151] In addition to the funding appropriated for housing by the IRA, which was discussed earlier in this report, Section 70006 of the IRA allows FEMA to provide financial assistance for hazard mitigation to cover costs associated with low-carbon materials and incentives that encourage low-carbon and net-zero energy projects.

In addition, a number of committees have held hearings on housing and climate change during the 117th Congress, including the House Financial Services Committee,[152] the House Select Committee on the Climate Crisis,[153] and the Senate Committee on Banking, Housing and Urban Affairs.[154]

Housing and Disaster Response and Recovery

The extent to which federal policies adequately and effectively address the housing needs of disaster survivors following the range of disasters that may 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).[155] Additionally, Congress may appropriate further relief and recovery funding for the Community Development Block Grant Disaster Recovery (CDBG-DR) program.

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151 For additional information on these mitigation programs, see CRS Report R46989, *FEMA Hazard Mitigation: A First Step Toward Climate Adaptation*.

152 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; and 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, p. https://financialservices.house.gov/events/eventsingle.aspx?EventID=407532.

153 U.S. Congress, House Select Committee on Climate Crisis, *Building Climate Resilient Communities*, 117th Cong., 1st sess., June 11, 2021, https://climatecrisis.house.gov/committee-activity/hearings/building-climate-resilient-communities.

154 U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *21st Century Communities: Capitalizing on Opportunities in the Clean Energy Economy*, 117th Cong., 1st sess., April 22, 2021, pp. https://www.banking.senate.gov/hearings/21st-century-communities_capitalizing-on-opportunities-in-the-clean-energy-economy; and U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *21st Century Communities: Climate Change, Resilience, and Reinsurance*, 117th Cong., 1st sess., July 20, 2021, pp. https://www.banking.senate.gov/hearings/21st-century-communities_climate-change-resilience-and-reinsurance.

155 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_iappg-1.1.pdf (hereinafter FEMA, *IAPPG*).

FEMA IHP Housing Assistance

IHP Housing Assistance for Economically Destructive Disasters

Stafford Act declarations tend to support response and recovery following natural disasters that result in physical damages (e.g., hurricanes). Although uncommon, Presidents have issued declarations for incidents that do not result in physical damages, such as public health incidents (e.g., the COVID-19 pandemic).

Disasters can 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,[156] 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.[157] 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 the President to provide temporary mortgage or rental payments to or on behalf of individuals and families meeting certain criteria.[158] 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.[159]

Congress intended DMA2K 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.[160] During a Senate hearing in 2003, the Department of Homeland Security Office of Inspector General (DHS OIG) attributed Congress's elimination of mortgage and rental payments to lack of program use and implementation challenges.[161] Despite these challenges, the DHS OIG stated

[156] 42 U.S.C. §5174(c)(1)(A).

[157] 42 U.S.C. §5174(b)(1); see also FEMA, *IAPPG*, pp. 80-81.

[158] The 2001 version of Stafford Act Section 408(b)—Temporary Mortgage and Rental Payments—stated "The President is authorized to provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of individuals and families who, *as a result of financial hardship caused by a major disaster*, have received written notice of dispossession or eviction from a residence by reason of a foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease, entered into prior to such disaster. Such assistance shall be provided for the duration of the period of financial hardship but not to exceed 18 months [emphasis added]."

[159] 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.

[160] 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.

[161] During the 108th Congress, then DHS Deputy Inspector General, Richard "Rick" L. Skinner, included in his statement, in the "Individual Assistance Review" section, 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

that the "effects of the 9/11 terrorist attack ... demonstrated genuine need for programs such as this. Therefore, we have recommended ... that Congress consider reinstating the program under the Stafford Act."[162] 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 "safe, sanitary, or functional," not to return the home to its pre-disaster condition or to improve it.[163] Still, repairs may include hazard mitigation measures to make the housing more resilient.[164] 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."[165]

FEMA's guidance details the types of mitigation measures that are available under the IHP.[166] 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,[167] and the amount of financial assistance for housing is capped in statute.[168] 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.[169]

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.

Cong., 1st sess., September 24, 2003, S.Hrg. 108-364, p. 253, https://www.govinfo.gov/content/pkg/CHRG-108shrg92386/pdf/CHRG-108shrg92386.pdf (hereinafter "U.S. Congress, *Review of the GAO Report on FEMA's Activities After September 11, 2001*").

162 U.S. Congress, *Review of the GAO Report on FEMA's Activities After September 11, 2001*, pp. 253-254 (Statement of Rick Skinner, DHS Deputy IG).

163 FEMA, *IAPPG*, p. 85.

164 FEMA, *IAPPG*, p. 86.

165 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"").

166 FEMA, "Hazard Mitigation Under the IHP."

167 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.

168 42 U.S.C. §5174(h)(1); and FEMA, *IAPPG*, pp. 42, 85. For FY2022, the maximum amount of financial assistance for housing is $37,900; see DHS/FEMA, "Notice of Maximum Amount of Assistance Under the Individuals and Households Program," 86 *Federal Register* 63046, November 15, 2021, https://www.govinfo.gov/content/pkg/FR-2021-11-15/pdf/2021-24755.pdf.

169 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 updated September 26, 2021, https://www.fema.gov/grants/mitigation/hazard-mitigation/property-owners.

IHP Policy Change to Ownership Documentation Requirements to Advance Equity

On September 2, 2021, FEMA released a memorandum amending FEMA's Individual Assistance program guidance in accordance with the Biden Administration and FEMA's equity initiatives.[170] One significant policy change to the IHP is that FEMA now accepts expanded forms of documentation to verify an applicant's occupancy and ownership, which is required before FEMA can provide certain types of IHP assistance.[171] To that end, FEMA will accept a "written self-declarative statement ... from applicants whose pre-disaster residence was passed down via heirship."[172] In this context, FEMA defines heirship as "the legal right to receive real and personal property under state law upon the death of an ancestor or next of kin."[173]

Prior to this policy change, there were reports that some African American families in the Southern United States were prevented from receiving assistance for which they may have otherwise been eligible because they own property passed down by heirship and lack the formal or traditional documentation FEMA previously would accept to prove ownership (e.g., deed or deed of trust to the property).[174] Although other property-related challenges may persist for some people who own property passed down by heirship (without formal or traditional documentation of ownership),[175] such individuals may now be able to receive disaster assistance from FEMA.[176]

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[170] Memorandum from Keith Turi, Assistant Administrator of the FEMA Recovery Directorate, to FEMA Regional Administrators, "Amendment to FP 104-009-03, Individual Assistance Program and Policy Guide, Version 1.1," September 2, 2021, https://www.fema.gov/sites/default/files/documents/fema_iappg-policy-amendments-memo.pdf (hereinafter, "Memorandum from Keith Turi"); Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," 86 *Federal Register* 7009-7013, January 25, 2021, https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf; FEMA, "FEMA Makes Changes to Individual Assistance Policies to Advance Equity for Disaster Survivors," release HQ-21-193, September 2, 2021, https://www.fema.gov/press-release/20210902/fema-makes-changes-individual-assistance-policies-advance-equity-disaster (hereinafter "FEMA, "Changes to Advance Equity""); and FEMA, "2022–2026 FEMA Strategic Plan Building the FEMA our Nation Needs and Deserves," https://www.fema.gov/sites/default/files/documents/fema_2022-2026-strategic-plan.pdf (hereinafter "FEMA, "2022-2026 Strategic Plan"").

[171] 42 U.S.C. §5174(c)(2)(A)(i) and (c)(3)(A); FEMA, *IAPPG*, pp. 51-55.

[172] Memorandum from Keith Turi, pp. 8-9.

[173] Memorandum from Keith Turi, p. 9, footnote 3.

[174] Hannah Dreier and Andrew Ba Tran, "The real damage: Why FEMA is denying disaster aid to Black families that have lived for generations in the Deep South," *Washington Post*, July 11, 2021, https://www.washingtonpost.com/nation/2021/07/11/fema-black-owned-property/ (hereinafter, "Hannah Dreier, "The real damage"").

[175] See Conner Bailey et al., "Heirs' Property and Persistent Poverty among African Americans in the Southeastern United States," U.S. Department of Agriculture Forest Service, Southern Research Station, "Heirs' Property," p. 17; see also Skipper G. StipeMaas, "The Georgia Heirs Property Law Center, Inc.: Addressing Tangled Title and Economic Security for Georgians," U.S. Department of Agriculture Forest Service, Southern Research Station, "Heirs' Property," p. 104. In this study, it was concluded that "[h]ome and land ownership should provide cultural, environmental, economic, and political stability from which to operate. Heirs property creates instability, reducing people's ability to manage their homes and land. Consequently, people lose their ability to grow wealth, stabilize communities and tax bases, and sustainably manage our farms, forests, and wetlands."

[176] Conner Bailey et al., "Heirs' Property and Persistent Poverty among African Americans in the Southeastern United States," U.S. Department of Agriculture Forest Service, Southern Research Station, "Heirs' Property," p. 17. This study stated in its conclusions that "the clouded nature of title to heirs' property means that such property has no collateral value. The land cannot be used as collateral for a mortgage to build a home or start a business or for other productive use. The cumulative effect of $6.6 billion in clouded title represents a significant impediment on the economic prospects of African Americans in the Black Belt South", but also noted that "FEMA ... [has] identified mechanisms to give heirs' property owners access to government program benefits."

Upon issuing the updated guidance, FEMA stated that the change was made to "reduce barriers to access experienced by underserved populations."[177]

CDBG-DR

Following some disasters, Congress has provided Community Development Block Grant (CDBG) funding in supplemental 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.

The Reforming Disaster Recovery Act of 2021 (H.R. 4707/S. 2471), introduced in the 117th Congress, would authorize CDBG-DR as a standing program and codify a CDBG-DR program structure. (In the 116th Congress, a substantially similar bill, H.R. 3702, was passed by the House.) On December 15, 2021, the U.S. Senate Committee on Banking, Housing, and Urban Affairs conducted a hearing to consider authorization of CDBG-DR as a standing program.[178] Another bill introduced in the 117th Congress, H.R. 2809, the Natural Disaster Recovery Program Act of 2021, would establish a separate program to address unmet needs of states and tribal entities in disaster recovery.

In addition to the hearing on CDBG-DR authorization, the U.S. House Committee on Financial Services has conducted hearings on various aspects of CDBG-DR grant administration, in its oversight role, during the 117th Congress. On January 19, 2022, the House Financial Services Subcommittee on Oversight and Investigations, held a hearing to examine findings by the U.S. Government Accountability Office[179] regarding the distribution of CDBG-DR funds for vulnerable populations.[180] On July 15, 2021, the Subcommittee on Oversight and Investigations of the House Committee on Financial Services held a hearing to examine the management and distribution of CDBG-DR and CDBG Mitigation (CDBG-MIT) funds in Texas, as well as broader issues related to targeting of funds and HUD's monitoring of such activities.[181]

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*

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[177] FEMA, "Changes to Advance Equity"; see also FEMA, "2022-2026 Strategic Plan," p. 11 (see "Equity in Action" text box).

[178] U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Disaster Recovery Assistance - Authorization of the Community Development Block Grant – Disaster Recovery Program*, 117th Cong., December 15, 2021, https://www.banking.senate.gov/hearings/disaster-recovery-assistance_-authorization-of-the-community-development-block-grant—disaster-recovery-program.

[179] U.S. Government Accountability Office, *Disaster Recovery: Better Data Are Needed to Ensure Equitable Delivery of HUD Block Grant Funds to Vulnerable Populations* , GAO-22-105548, January 19, 2022, https://www.gao.gov/products/gao-22-105548.

[180] U.S. Congress, House Committee on Financial Services, Subcommittee on Oversight and Investigations, Ensuring Equitable Delivery of Disaster Benefits to Vulnerable Communities and Peoples: An Examination of GAO's Findings of the CDBG Program, 117th Cong., 2nd sess., January 19, 2022, https://financialservices.house.gov/events/eventsingle.aspx?EventID=408704.

[181] U.S. Congress, House Committee on Financial Services, Subcommittee on Oversight and Investigations, *CDBG Disaster Recovery: States, Cities, and Denials of Funding*, 117th Cong., 1st sess., July 15, 2021, https://financialservices.house.gov/events/eventsingle.aspx?EventID=408106.

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.[182] The CFPB released a final rule implementing these ability-to-repay (ATR) requirements in January 2013; the rule took effect in January 2014.[183]

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.[184] 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.[185] 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.[186] The CFPB also issued a new "seasoned QM" rule.[187] 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.

The CFPB issued a final rule on April 30, 2021, to delay the adoption of the mandatory compliance date of the revised General QM rule by over a year, from July 1, 2021, to October 1, 2022.[188] The delay allowed the incoming CFPB leadership time to review the revisions.

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.[189]

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182 15 U.S.C. §1640

183 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.

184 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/.

185 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.

186 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.

187 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).

188 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.

189 Consumer Financial Protection Bureau, "Statement on Mandatory Compliance Date of General QM Final Rule and

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,[190] 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.[191] 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 Goals.[192] In December 2021, President Biden announced that he would nominate Acting Director Thompson to be the permanent FHFA Director.[193] On May 25, 2022, the Senate confirmed Sandra L. Thompson as Director of the FHFA.[194]

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.

[190] 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.

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

[192] 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.

[193] The White House, "President Biden Announces Nominee for Director of the Federal Housing Finance Agency," December 14, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/14/president-biden-announces-nominee-for-director-of-the-federal-housing-finance-agency/#:~:text=WASHINGTON%20%E2%80%93%20Today%2C%20President%20Joe%20Biden,Housing%20Finance%20Agency%20(FHFA).

[194] U.S. Senate Roll Call vote number 203: https://www.senate.gov/legislative/LIS/roll_call_votes/vote1172/vote_117_2_00203.htm.

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*

Appendix. Housing Bills in the 117th Congress

This Appendix lists housing-related legislation that received committee or floor action during the 117th Congress as of October 21, 2022. The table does not include broader bills that contained some housing-related provisions (e.g., the CARES Act, the American Rescue Plan Act, what is commonly referred to as the Build Back Better Act) and received committee or floor action.[195]

Table A-1. Housing Bills in the 117th Congress that Received Committee or Floor Action

(ordered by chamber and bill number)

Bill Number	Bill Title	Latest Action
H.R. 8476	Housing Inspections Accountability Act	Ordered to be Reported in the Nature of a Substitute (Amended) by the Yeas and Nays: 28 - 23
H.R. 8313	End Veteran Homelessness Act	Ordered to be Reported (Amended) by Voice Vote
H.R. 7981	Public and Federally Assisted Housing Fire Safety Act of 2022	Passed/agreed to in House
H.R. 7733	CDFI Bond Guarantee Program Improvement Act of 2022	Passed/agreed to in House
H.R. 7716	Coordinating Substance Use and Homelessness Care Act of 2022	Ordered to be Reported in the Nature of a Substitute by the Yeas and Nays: 27 - 22
H.R. 7196	Flexibility in Addressing Rural Homelessness Act of 2022	Placed on the Union Calendar, Calendar No. 330
H.R. 7123	Studying Barriers to Homelessness Act	Ordered to be Reported in the Nature of a Substitute (Amended) by the Yeas and Nays: 27 - 23
H.R. 6528	Housing Temperature Safety Act of 2022	Received in the Senate and Read twice and referred to the Committee on Banking, Housing, and Urban Affairs.
H.R. 5196	Expediting Assistance to Renters and Landlords Act of 2021	Ordered to be Reported in the Nature of a Substitute (Amended) by the Yeas and Nays: 28 – 22.
H.R. 4495	Downpayment Toward Equity Act of 2021	Ordered to be Reported (Amended) by the Yeas and Nays: 28 – 23.
H.R. 3332	Manufactured Housing Community Preservation Act of 2021	Ordered to be Reported in the Nature of a Substitute (Amended) by the Yeas and Nays: 28 – 23.
H.R. 3111	Grandfamily Housing Act of 2021	Ordered to be Reported (Amended) by the Yeas and Nays: 29 – 24.
H.R. 3009	Improving Language Access in Mortgage Servicing Act of 2021	Reported (Amended) by the Committee on Financial Services. H.Rept. 117-370, Part I.

[195] Some of the housing-related provisions of these broader bills are discussed throughout this report.

Bill Number	Bill Title	Latest Action
H.R. 3008	Homebuyer Assistance Act of 2021	Passed/agreed to in House
H.R. 2965	Naomi Schwartz Safe Parking Program Act of 2021	Ordered to be Reported in the Nature of a Substitute (Amended) by the Yeas and Nays: 28 – 22.
H.R. 1532	Improving FHA Support for Small-Dollar Mortgages Act of 2021	Passed/agreed to in House
H.R. 1395	Housing Financial Literacy Act of 2021	Passed/agreed to in House
H.R. 68	Housing Fairness Act of 2021	Ordered to be Reported (Amended) by the Yeas and Nays: 28 - 24.
S. 4872	Strategy and Investment in Rural Housing Preservation Act of 2022	Committee on Banking, Housing, and Urban Affairs, Subcommittee on Housing, Transportation, and Community Development. Hearings held.
S. 3381	Tribal Trust Land Homeownership Act of 2021	Committee on Indian Affairs. Ordered to be reported without amendment favorably.
S. 3188	Manufactured Housing Community Improvement Grant Program Act	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 2920	Downpayment Toward Equity Act of 2021	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 2616	Livable Communities Act of 2021	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 2471	Reforming Disaster Recovery Act	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 2361	Green Retrofits Act	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 2300	Restoring Communities Left Behind Act	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 2190	Task Force on the Impact of the Affordable Housing Crisis Act of 2021	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 2182	Eviction Crisis Act of 2021	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 2179	Grandfamily Housing Act of 2021	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 2131	Improving FHA Support for Small-Dollar Mortgages Act of 2021	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 2049	Trafficking Survivors Housing Act of 2021	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 2008	A bill to strengthen the United States Interagency Council on Homelessness	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 1991	Family Stability and Opportunity Vouchers Act of 2021	Committee on Banking, Housing, and Urban Affairs. Hearings held.

Bill Number	Bill Title	Latest Action
S. 1860	Lead-Safe Housing for Kids Act of 2021	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 1820	Choice in Affordable Housing Act of 2021	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 1614	Yes In My Backyard Act	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 1368	American Housing and Economic Mobility Act of 2021	Committee on Banking, Housing, and Urban Affairs, Subcommittee on Financial Institutions and Consumer Protection. Hearings held.
S. 769	Housing Fairness Act of 2021	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 679	Public Housing Emergency Response Act	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 598	Public Housing Emergency Response Act	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 404	Coronavirus Housing Counseling Improvement Act	Committee on Banking, Housing, and Urban Affairs. Hearings held.
S. 265	Public Housing Fire Safety Act	Committee on Banking, Housing, and Urban Affairs, Subcommittee on Housing, Transportation, and Community Development. Hearings held.
S.Res. 452	A resolution recognizing November 2021 as "National Homeless Children and Youth Awareness Month"	Passed/agreed to in Senate

Source: CRS search of http://www.congress.gov.

Notes: The bills in this table are those that were identified by a search on http://www.congress.gov. The search was limited to bills that had received committee or floor action as of the date of the search (October 21, 2022) and (1) were classified with the policy area "Housing and Community Development" or (2) were classified with the policy area "Finance and Financial Sector" and certain housing-related subject terms. Some primarily housing-related bills may not be captured by this search and therefore do not appear in this table; for example, the NAHASDA reauthorization bills ordered to be reported by the House Financial Services Committee (H.R. 5195) and Senate Indian Affairs Committee (S. 2264) are classified with the policy area "Native Americans" and therefore are not included in these search results. Some of the standalone measures shown in this table, or similar provisions, may have been included in broader bills that received additional action, but those broader bills are not reflected in this table.

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