

Public Housing

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Administering Agency: HUD's Office of Public and Indian Housing (PIH)

Year Started: 1937

Number of Persons/Households Served:

According to PIH's relatively new [Data Dashboard](#), as of November 15, 2022, 1,725,941 residents lived in public housing, 616,125 of whom were children. According to HUD's [Resident Characteristics Report](#) as of October 31, 2022, public housing served 1,494,176 residents in 733,621 households. The number of residents and households has decreased from 2021's 1,591,468 residents and 777,532 households and 2020's 1,661,575 residents in 802,805 households.

Population Targeted: All households must have income less than 80% of the area median income (AMI); at least 40% of new admissions in any year must have extremely low income, (income less than 30% of AMI) or the federal poverty level, whichever is greater.

Funding: For the Capital Fund in FY23, the president proposed \$3.720 billion, the House proposed \$3.670 billion, and the Senate proposed \$3.405 billion. For the Operating Fund, the president proposed \$5.060 billion, the House proposed \$5.063 billion, and the Senate proposed \$5.064 billion. As *Advocates' Guide* went to press, Congress had not passed an FY23 appropriation's act; a short-term Continuing Resolution keeps public housing funding at FY22 levels until further congressional action. In FY22 the Capital Fund received \$3.388 billion, and the Operating Fund received \$5.064 billion, compared to \$2.9 billion for the Capital Fund and \$4.9 billion for the Operating Fund in FY21 and \$2.9 billion for the Capital Fund and \$4.5 billion for the Operating Fund in FY20.

See Also: For related information, refer to the *Rental Assistance Demonstration*, *Public Housing Repositioning*, and *Public Housing Agency Plan* sections of this *Guide*.

The nation's dwindling number of public housing units, 924,377 (Data Dashboard), down from 1.1 million in previous years, still serve nearly 1.7 million residents (down from nearly 2 million in previous years). Public housing is administered by a network of 2,738 local public housing agencies (PHAs) that have 6,262 developments (Data Dashboard). Funding for public housing consists of residents' rents and congressional appropriations to HUD. Additional public housing has not been built in decades. Advocates are focused primarily on preserving the remaining public housing stock, especially as HUD aggressively pursues public housing "repositioning" (see the *Repositioning of Public Housing* section of this *Advocates' Guide*).

Public housing encounters many recurring challenges. For instance, PHAs face significant federal funding shortfalls each year, as they have for decades. In addition, policies such as demolition, disposition, and the former HOPE VI program resulted in the loss of public housing units – approximately 10,000 units each year according to HUD estimates. Congress authorized the expansion of the miss-named Moving to Work (MTW) Demonstration in 2016. MTW is fundamentally a scheme to deregulate public housing that can reduce affordability, deep income targeting, resident participation, and program accountability, all aspects of public housing that make it an essential housing resource for many of the lowest income people (see the *Moving to Work & Expansion* section in Chapter 4 of this *Advocates' Guide*). Also contributing to the reduction of public housing is HUD's Public Housing Repositioning campaign (see the *Repositioning of Public Housing* section of Chapter 4 of this *Advocates' Guide*).

HUD's two tools to address the aging public housing stock are the [Choice Neighborhoods Initiative](#) (CNI) renovation program that addresses both public housing and broader neighborhood improvements, and the [Rental Assistance Demonstration](#) (RAD) designed

to leverage private dollars to improve public housing properties while converting them to either Project-Based Vouchers (PBVs) or Project-Based Rental Assistance (PBRA). See the *Rental Assistance Demonstration* in Chapter 4 of this *Advocates' Guide*.

HISTORY

The “Housing Act of 1937” established the public housing program. President Nixon declared a moratorium on public housing in 1974, shifting the nation’s housing assistance mechanism to the then-new Section 8 programs (both new construction and certificate programs) intended to engage the private sector. Federal funds for adding to the public housing stock were last appropriated in 1994, but little public housing has been built since the early 1980s.

In 1995, Congress stopped requiring that demolished public housing units be replaced on a unit-by-unit, one-for-one basis. In 1998, the “Quality Housing and Work Responsibility Act” (QHWRA) changed various other aspects of public housing, including public housing’s two main funding streams, the operating and capital subsidies. Federal law capped the number of public housing units at the number each PHA operated as of October 1, 1999 (the Faircloth cap).

Today, units are being lost by the cumulative impact of decades of underfunding and neglect of once-viable public housing units. HUD officials have repeatedly stated for years that more than 10,000 units of public housing leave the affordable housing inventory each year due to underfunding. As a response HUD has promoted its “Public Housing Repositioning” policy, which has three components, all of which reduce the stock of public housing: Section 18 demolition and disposition (sale) of units, Section 33 mandatory and Section 22 voluntary conversion of public housing to voucher assistance, and the Rental Assistance Demonstration (see the *Repositioning of Public Housing* in Chapter 4 of this *Advocates' Guide*).

According to HUD testimony, between the mid-1990s and 2010, approximately 200,000 public

housing units had been demolished, while about only 50,000 units were replaced with new public housing units, and another 57,000 former public housing families were given vouchers instead of a public housing replacement unit. Another nearly 50,000 units of non-public housing were incorporated into these new developments, but they serve households with income higher than those of the displaced households and do not provide deep rental assistance like that provided by the public housing program.

PROGRAM SUMMARY

According to PIH’s relatively new Data Dashboard, as of November 15, 2022, there were 924,377 public housing units. According to HUD’s Resident Characteristics Report (RCR), as of October 31, 2022, there were 928,626 public housing units – down nearly 3% from 2021. According to the Data Dashboard, 43% of public housing residents were elderly, while RCR indicated that 36% were elderly; 19% were non-elderly disabled, and 30% were non-elderly families with children (not counting elderly and disabled households with children). The Data Dashboard does not report information about residents with disabilities or non-elderly families with children.

The average annual income of a public housing household was \$ 14,576 (Data Dashboard) or \$16,696 RCR (up from \$15,875 in 2020). RCR indicated that of all public housing households, 55% were extremely low-income (down from 58% in 2020) and 23% were very low-income (up 1%). Fully 73% of public housing households had income less than \$20,000 a year (down from 76%). Fifty-six percent of the households had Supplemental Security Income (SSI), Social Security, or pension income (unchanged), and 30% received some form of welfare assistance (up 1%). RCR indicated that 32% had wage income (up 2%), while Data Dashboard indicated that 26% had wage income.

The demand for public housing far exceeds the supply. In many large cities, households may remain on waiting lists for decades. Like all HUD rental assistance programs, public housing is

not an entitlement program; rather, its size is determined by annual appropriations and is not based on the number of households that qualify for assistance.

NLIHC's report from October of 2016, *Housing Spotlight: The Long Wait for a Home*, is about public housing and Housing Choice Voucher (HCV) waiting lists. An NLIHC survey of PHAs indicated that public housing waiting lists had a median wait time of nine months and 25% of them had a wait time of at least 1.5 years. Public housing waiting lists had an average size of 834 households.

Eligibility and Rent

Access to public housing is means tested. All public housing households must be low-income, (have income less than 80% of the area median income, AMI), and at least 40% of new admissions in any year must have extremely low incomes, defined as income less than 30% of AMI or the federal poverty level (each adjusted for family size) whichever is greater. The FY14 HUD appropriations act expanded the definition of "extremely low-income" for HUD's rental assistance programs by including families with income less than the poverty level to better serve poor households in rural areas. PHAs can also establish local preferences for certain populations, such as elderly people, people with disabilities, veterans, full-time workers, domestic violence victims, or people who are homeless or who are at risk of becoming homeless.

As in other federal housing assistance programs, residents of public housing pay the highest of: (1) 30% of their monthly adjusted income; (2) 10% of their monthly gross income; (3) their welfare shelter allowance; or (4) a PHA-established minimum rent of up to \$50. The Resident Characteristics Report indicated that the average public housing household paid \$400 per month toward rent and utilities in 2021 (up from \$379), while the Data Dashboard reported the average was \$312. Public housing Operating and Capital Fund subsidies provided by Congress and administered by HUD's Office of Public and Indian Housing (PIH) contribute the balance of

what PHAs receive to operate and maintain their public housing units.

With tenant rent payments and HUD subsidies, PHAs are responsible for maintaining the housing, collecting rents, managing waiting lists, and other activities related to the operation and management of public housing. Most PHAs also administer the Housing Choice Voucher Program (see the *Housing Choice Vouchers* section of Chapter 4 of this *Advocates' Guide*).

Most PHAs are required to complete five-year PHA Plans, along with annual updates, which detail many aspects of their housing programs including waiting list preferences, grievance procedures, plans for capital improvements, minimum rent requirements, and community service requirements. These PHA Plans represent a key tool for public housing residents, voucher households, and community stakeholders to participate in a PHA's planning process (see the *Public Housing Agency Plan* section of Chapter 7 of this *Advocates' Guide*).

Resident Participation

RESIDENT ADVISORY BOARDS

QHWRA created Resident Advisory Boards (RABs) to ensure that public housing and voucher-assisted households can meaningfully participate in the PHA Plan process. Each PHA must have a RAB consisting of residents elected to reflect and represent the population served by the PHA. Where residents with Housing Choice Vouchers make up at least 20% of all assisted households served by the PHA, voucher households must have "reasonable" representation on the RAB.

The basic role of the RAB is to make recommendations to the PHA and assist in other ways with drafting the PHA Plan and any significant amendments to the PHA Plan. By law, PHAs must provide RABs with reasonable resources to enable them to function effectively and independently of the housing agency. Regulations regarding RABs are in the PHA Plan regulations, 24 CFR Part 903. See the Public Housing Agency Plan section of this *Advocates' Guide* for more information about the PHA Plan.

PART 964 RESIDENT PARTICIPATION REGULATIONS

A federal rule provides public housing residents with the right to organize and elect a resident council to represent their interests. This regulation, [24 CFR Part 964](#), spells out residents' rights to participate in all aspects of public housing development operations. Residents must be allowed to be actively involved in a PHA's decision-making process and to give advice on matters such as maintenance, modernization, resident screening and selection, and recreation. The rule defines the obligation of HUD and PHAs to support resident participation activities through training and other activities.

A resident council is a group of residents representing the interests of residents and the properties they live in. Some resident councils are made up of members from just one property, so a PHA could have a number of resident councils. Other resident councils, known as jurisdiction-wide councils, are made up of members from many properties. A resident council is different from a RAB because the official role of a RAB is limited to helping shape the PHA Plan. Resident councils can select members to represent them on the RAB.

Most PHAs are required to provide \$25 per occupied unit per year from their annual operating budget to pay for resident participation activities. A minimum of \$15 per unit per year must be distributed to resident councils to fund activities such as training and organizing. Up to \$10 per unit per year may be used by a PHA for resident participation activities. On May 18, 2021, PIH issued [Notice PIH 2021-16](#) updating guidance on the use of tenant participation funds (previously provided by [Notice PIH 2013-21](#) issued on August 23, 2013).

Notice PIH 2021-16 echoes Notice PIH 2013-21, but in general has more details. Key changes include:

- PHAs and Resident Councils (RCs) are encouraged to develop written agreements that establish a collaborative partnership, provide flexibility, and support RC leaders'

autonomy. The Notice provides four minimum provisions that must be in a written agreement. It also has eight recommended best practices.

- If there is no duly-elected RC, PHAs are encouraged to inform residents that tenant participation (TP) funds are available. Also, PHAs are encouraged to use up to \$10 per unit to carry out tenant participation activities, including training and building resident capacity to establish and operate an RC.
- A new section officially sanctions what has always been practice – that a PHA may fund an RC above the \$15 minimum.
- Any TP funds remaining in RC-controlled accounts at the end of a calendar year may remain in those accounts for future RC expenses.
- Public housing residents in mixed-income communities are eligible to use TP funds.

More information is on NLIHC's Public Housing webpage, <https://nlihc.org/explore-issues/housing-programs/public-housing>, including an outline of key Part 964 features, <https://bit.ly/39sQXmJ>

24 CFR Part 964, *Tenant Participation and Tenant Organizing in Public Housing Regulations*, is at <https://www.govinfo.gov/content/pkg/CFR-2021-title24-vol4/pdf/CFR-2021-title24-vol4-part964.pdf>

RESIDENT COMMISSIONERS

The law also requires every PHA, with a few exceptions, to have at least one person on its governing board who is either a public housing or voucher resident. HUD's rule regarding the appointment of resident commissioners, at Part 964, states that residents on boards should be treated no differently than non-residents.

Public Housing Capital Fund and Operating Fund

PHAs receive two annual, formula-based grants from congressional appropriations to HUD, the Operating Fund and the Capital Fund. For FY23, the president proposed \$3.720 billion, the House

proposed \$3.670, and the Senate proposed \$3.405 for the Capital Fund. The president proposed \$5.060 billion for the Operating Fund, the House proposed \$5.063 billion, and the Senate proposed \$5.064 billion. As *Advocates' Guide* went to press, Congress had not passed an FY23 appropriation's act; a short-term Continuing Resolution keeps public housing funding at FY22 levels until further congressional action. In FY22, \$3.388 billion was appropriated for the Capital Fund and \$5.064 billion was appropriated for the Operating Fund. In FY21, \$2.9 billion was appropriated for the Capital Fund and \$4.9 billion was appropriated for the Operating Fund, while FY21 funding was \$2.9 billion for the Capital Fund and \$4.5 billion for the Operating Fund.

In 2010, a study sponsored by HUD concluded that PHAs had a \$26 billion capital needs backlog, which was estimated to grow by \$3.4 billion each year. Associations representing PHAs estimated that there was approximately a \$70 billion capital needs backlog in FY20 that continues to grow.

The public housing Operating Fund is designed to make up the balance between what residents pay in rent and what it actually costs to operate public housing. Major operating costs include routine and preventative maintenance, a portion of utilities, management, PHA employee salaries and benefits, supportive services, resident participation support, insurance, and security. Other operating costs include recertification of residents' income, annual unit inspections, and planning for long-term capital needs to maintain a PHA's properties viability. Since 2008, HUD's operating formula system, called "Asset Management," has determined an agency's operating subsidy on a property-by-property basis (called Asset Management Project, AMP), rather than on the previous overall PHA basis. HUD states that \$5 billion for FY23 is projected to be sufficient to meet 100% of all public housing operating expenses.

Capital Fund can be used for a variety of purposes, including addressing deferred maintenance, modernization, demolition, resident relocation, development of replacement housing, and carrying out resident economic

self-sufficiency programs. Up to 20% can also be used to make management improvements. The annual capital needs accrual amount (estimated in 2010 to be \$3.4 billion each year) makes clear that annual appropriations for the Capital Fund are woefully insufficient to keep pace with the program's needs. A statutory change in 2016 (HOTMA, see "Statutory and Regulatory Changes Made in 2016" below) now allows a PHA to transfer up to 20% of its Operating Fund appropriation for eligible Capital Fund uses.

PROGRAMS AFFECTING PUBLIC HOUSING

Demolition and Disposition

Since 1983, HUD has authorized PHAs to apply for permission to demolish or dispose of (sell) public housing units. This policy was made infinitely more damaging in 1995 when Congress suspended the requirement that housing agencies replace, on a one-for-one basis, any public housing lost through demolition or disposition. In 2016, HUD reported a net loss of more than 139,000 public housing units due to demolition or disposition since 2000. Demolition and disposition policy is authorized by Section 18 of the "Housing Act" with regulations at 24 CFR part 970 and various PIH Notices.

In 2012, after prodding from advocates, PIH under the Obama Administration clarified and strengthened its guidance (Notice PIH 2012-7) regarding demolition and disposition in an effort to curb the decades-long needless destruction or sale of the public housing stock. This guidance clarified the demolition and disposition process in a number of ways. For example, the guidance unequivocally stated that a proposed demolition or disposition must be identified in the PHA Plan or in a significant amendment to the PHA Plan, and that PHAs must comply with the existing regulations' strict resident consultation requirements for the PHA Plan process, the demolition or disposition application process, and the redevelopment plan. That guidance also reminded PHAs that HUD's Section 3 requirement to provide employment, training and economic opportunities to residents applied

to properties in the demolition and disposition process. The review criteria for demolition applications had to meet clear HUD standards, and no demolition or disposition was permissible prior to HUD's approval, including any phase of the resident relocation process.

In 2018, the Trump Administration eliminated the modest improvements to HUD's demolition/disposition guidance that advocates helped HUD draft in 2012 (Notice PIH 2012-7) and replaced it with [Notice PIH 2018-04](#) in order to make it far easier to demolish public housing, and to do so without resident input and protections. In addition, the Administration withdrew proposed regulation changes drafted in 2014 that would have reinforced those modest improvements. All of this was a part of the Administration's "repositioning" of public housing through demolition and voluntary conversion of public housing to vouchers. Its goal at the time was to reposition 105,000 public housing units in FY19 alone by streamlining the demolition application and approval process. See the *Public Housing Repositioning* section of Chapter 4 of this *Advocates' Guide*.

As of November 14, 2022, the Biden Administration has not hinted that it plans to take action to remove Notice PIH 2018-04 and replace it with more robust guidance containing resident protections similar to Notice PIH 2012-7, nor has the Biden Administration indicated an intent to issue improved demolition/disposition regulations similar to those proposed by the Obama Administration. PIH continues to promote [Public Housing Repositioning](#).

Rental Assistance Demonstration

As part of its FY12 HUD appropriations act, Congress authorized the [Rental Assistance Demonstration](#) (RAD), which allowed HUD to approve the conversion of up to 60,000 public housing and Section 8 Moderate Rehabilitation Program units into either project-based Section 8 rental assistance contracts (PBRA) or project-based vouchers (PBV) by September 2015. Since then, Congress has increased the cap three times, first to 185,000 units, then to 225,000,

and now to 455,000 units by September 30, 2024. The Senate FY22 appropriations bill proposed expanding the cap to 500,000 units and extending the time to convert to September 30, 2028, which NLIHC opposed. That bill did not pass. The Senate FY23 appropriations bill and HUD's budget request to Congress proposes removing the 455,000-unit cap as well as the sunset date. NLIHC strongly opposes increasing or eliminating the cap.

The Obama and Trump Administrations, along with many developer-oriented organizations, urged Congress to allow all public housing units to undergo RAD conversion even though the "demonstration" has yet to adequately demonstrate that the resident protection provisions in the statute are being fully realized. Many residents whose public housing properties have been approved for RAD complain that PHAs, developers, and HUD have not provided adequate information, causing many to doubt that resident the protections in the authorizing legislation will be honored by PHAs and developers or monitored by HUD. The National Housing Law Project sent a [letter](#) to HUD Secretary Carson in 2017 listing numerous problems residents had experienced, such as illegal and inadequate resident relocation practices, unlawful resident re-screening practices, and impediments to resident organizing. See the *Rental Assistance Demonstration* section of Chapter 4 of this *Advocates' Guide* for more information.

Moving to Work

A key public housing issue is the so-called [Moving to Work \(MTW\) demonstration](#) that provides a limited number of housing agencies flexibility from most statutory and regulatory requirements. Because the original demonstration program has not been evaluated, particularly regarding the potential for harm to residents, NLIHC has long held that the MTW demonstration is not ready for expansion or permanent authorization. Various legislative vehicles have sought to maintain and expand the current MTW program. The original MTW involved 39 PHAs. The MTW contracts for each of these 39 PHAs were set to expire in 2018, but in

2016 HUD extended all of them to 2028.

The three MTW statutory goals are:

1. Reducing costs and increasing cost-effectiveness;
2. Providing incentives for resident self-sufficiency; and
3. Increasing housing choices for low-income households.

PHAs granted MTW status (“MTW agencies”) must meet five statutory requirements:

1. Ensure that 75% of the households they assist have income at or below 50% of area median income (AMI);
2. Establish a reasonable rent policy;
3. Assist substantially the same number of low-income households as a PHA would without MTW funding flexibility;
4. Assist a mix of households by size comparable to the mix a PHA would have served if it were not in MTW; and
5. Ensure that assisted units meet housing quality standards.

In practice, HUD’s enforcement of these requirements for the original 39 MTW agencies has been highly permissive.

The FY16 appropriations act expanded the MTW demonstration by a total of 100 PHAs over the course of a seven-year period. Of the 100 new PHA MTW sites, no fewer than 50 PHAs must administer up to 1,000 combined public housing and voucher units, no fewer than 47 must administer between 1,001 and 6,000 combined units, no more than three can administer between 6,001 and 27,000 combined units, and five must be PHAs with portfolio-wide awards under RAD. PHAs were to be added to the MTW demonstration by cohort (groups), each of which will be overseen by a research advisory committee to ensure the demonstrations are evaluated with rigorous research protocols. Each cohort of MTW sites were to be directed by HUD to test one specific policy change.

The four cohorts were planned:

- “MTW Flexibilities” involves smaller PHAs that have a combination of 1,000 or fewer public housing units and vouchers. This cohort allows PHAs to use any of the regulatory waivers in the Final MTW Operations Notice (see below) in order to evaluate the overall effects of MTW flexibility on a PHA and its residents. HUD will compare outcomes related to MTW’s three statutory goals between the MTW PHAs and PHAs assigned to a control group. Applicant PHAs were assigned by lottery to be MTW PHAs, waitlist PHAs, or control group PHAs. Thirty-one PHAs were selected.
- “Rent Reform/Stepped and Tiered Rent” involves 10 PHAs testing “rent reform” ideas of using “stepped rents” or “tiered rents,” which PIH claims is designed to “increase resident self-sufficiency and reduce PHA administrative burdens.” Stepped rent is a form of time limit; it is a scheme that increases a household’s rent on a fixed schedule in both frequency and amount, starting at 35% of adjusted income and growing each year. “Tiered rents” involve a household paying a fixed amount if their income is in a set range, which could result in rent burden. Only PHAs with a combination of at least 1,000 non-elderly and non-disabled public housing residents and voucher households were eligible. NLIHC and other advocates urged PIH not to implement this cohort because of its serious potential to impose cost burdens on residents. NLIHC has a summary of the MTW Rent Reform cohort.
- “Landlord Incentives” explores ways to increase and sustain landlord participation in the Housing Choice Voucher program. Twenty-nine PHAs were selected. NLIHC has prepared a summary of key provisions of the landlord incentives Notice.
- “Asset Building” experiments with policies and practices that help residents build financial assets and/or build credit. For the purpose of this cohort, asset building

is defined as activities that encourage the growth of assisted residents' savings accounts and/or that aim to build credit for assisted households. Eighteen PHAs were selected, each offered three asset building options to implement:

- **Opt-Out Savings Account Option.** A PHA must deposit at least \$10 per month for at least one year into an escrow account for the benefit of assisted households (either public housing or Housing Choice Voucher (HCV) households) with the goal of increasing the number of households that have bank accounts, thereby strengthening household stability.
- **PHA-Designed Asset Building Option.** This option allows a PHA to design its own local asset building program that encourages the growth of savings accounts and/or aims to build credit for assisted households.
- **Credit Building Option.** For residents who given their informed consent, a PHA must report to credit bureaus, those residents' public housing rent payments for at least one year. The goal is to increase the credit scores of public housing households. A household may withdraw at any time (this option is not available for HCV households, because of the difficulty of having individual landlords report to credit bureaus).

Before PIH's implementation of the Asset Building Cohort, NLIHC and consumer advocates conveyed to PIH concern that the credit building option for the demonstration would require PHAs to report public housing residents' rent payment using "full file reporting," meaning that not only will on-time rent payments be reported, but late and missed payments would also be reported. NLIHC and others had urged PIH to only require PHAs to report on-time rent payments, which the three major credit reporting entities can accommodate. Full file reporting can harm residents if they

encounter only one or two slightly late or small missed payments that are episodic due to unforeseen circumstances and otherwise not indicative of serious rent payment problems. NLIHC also urged PIH to define "small" unpaid balances so that participating PHAs do not report minor unpaid rent balances, resulting in damage to a household's credit. As one potential definition of "small," NLIHC informed PIH that starting in 2023, the major credit reporting agencies will not include medical collection debt under \$500. In the end, PIH did not adopt these recommendations.

More details about the options are presented in NLIHC's "Summary of the Key Features of the MTW Asset Building Cohort."

- "Work Requirements" was rescinded in June 2021. NLIHC and other advocates vehemently opposed this proposed cohort.

A final Operations Notice providing overall direction to all MTW Expansion PHAs was published on August 28, 2019. As proposed in an October 11, 2018 draft Operations Notice, the final allows a PHA to impose a potentially harmful work requirement, time limit, and burdensome rent "MTW Waiver" without securing HUD approval and without the rigorous evaluation called for by the statute. NLIHC's formal comment letter in response to the draft stated that such waivers should only be allowed as part of a rigorous cohort evaluation.

The most important components of the final Operations Notice for advocates to read are the three appendices. Appendix I "MTW Waivers" charts "MTW activities" that MTW agencies may implement without HUD approval, as long as they are implemented with the "safe harbors" tied to the specific allowed MTW activity. Appendix II has instructions for any required written impact analyses and hardship policies. Impact analyses are required for certain activities, such as work requirements, term-limited assistance, and stepped rent. Written financial and other hardship policies must be developed for most

MTW activities. Appendix III explains the method for calculating the requirement that MTW agencies house substantially the same number of families as they would have absent MTW.

Four basic categories of waivers are: “MTW Waivers,” “Safe Harbor Waivers,” “Agency-Specific Waivers,” and “Cohort-Specific Waivers.”

MTW Waivers: MTW agencies may conduct any activity/policy in Appendix I without PIH review and approval. However, each specific eligible activity/policy has specific “safe harbor” requirements/limitations that an MTW agency must follow, for example requiring a hardship policy or not applying an activity/policy to elderly people.

Safe Harbor Waivers: MTW agencies may request PIH approval to expand an MTW Waiver activity/policy in Appendix I in a way inconsistent with the safe harbors for that specific MTW Waiver activity/policy. PIH has not yet provide instructions on how PHAs may justify such requests. However, when submitting a Safe Harbor Waiver, an MTW agency must hold a public meeting to specifically discuss the Safe Harbor Waivers. This meeting is in addition to following the PHA Plan public participation process requirements. The MTW agency must consider, in consultation with the Resident Advisory Board (RAB) and any tenant associations, all comments received at the public hearing. The comments received by the public, RABs, and tenant associations must be submitted by the MTW agency, along with the MTW agency’s description of how the comments were considered, as a required attachment to the MTW Supplement (see below).

Agency-Specific Waivers: MTW agencies may seek PIH approval for an Agency-Specific Waiver in order to implement additional activities not among those in the Appendix I. The request must have an analysis of the potential impact on residents as well as a hardship policy. A PHA must follow the same public participation process described above for Safe Harbor Waivers.

Cohort-Specific Waivers: MTW agencies may be provided Cohort-Specific Waivers if additional

wavers not included in Appendix I are necessary to allow implementation of the required cohort study. Cohort-Specific Waivers will be detailed in the applicable Selection Notice for that cohort study.

MTW agencies will submit an “MTW Supplement” to the Annual PHA Plan. The MTW Supplement must go through a public process along with the Annual PHA Plan, following all of the Annual PHA Plan public participation requirements. So-called “Qualified PHAs,” those with fewer than 550 public housing units and vouchers combined will be required to submit an MTW Supplement each year.

An MTW agency must implement one or multiple “reasonable rent policies” during the term of its MTW designation. PIH defines a reasonable rent policy as any change in the regulations on how rent is calculated for a household, such as any Tenant Rent Policies in Appendix I.

MTW PHAs will maintain MTW designation for 20 years, with the MTW waivers expiring at the end of the 20-year term. The previous draft Operations Notice had a 12-year term.

An MTW agency’s MTW program applies to all of the MTW agency’s public housing units, tenant-based HCV assistance, project-based HCV assistance (PBV), and homeownership units.

An MTW agency may spend up to 10% of its HCV HAP funding on “local, non-traditional activities,” as described in Appendix I, without prior HUD approval. Examples include providing: shallow rent subsidies, rent subsidies to supportive housing programs to help homeless households, services to low-income people who are not public housing or voucher tenants, and gap-financing to develop Low Income Housing Tax Credit (LIHTC) properties. An MTW agency may spend more than 10% by seeking PIH approval through a Safe Harbor Waiver. NLIHC urged PIH to remove this option because it has the effect of reducing the number of HCVs a PHA could use to house residents.

NLIHC’s Summary of Key Provisions of the MTW Demonstration Operations Notice is at: <https://bit.ly/3ocxCvk> See also, the *Moving to Work and*

Expansion article in Chapter 4 of this *Advocate's Guide*.

Choice Neighborhoods Initiative

The Choice Neighborhoods Initiative (CNI), created in FY10, was HUD's successor to the HOPE VI Program. Like HOPE VI, CNI focuses on severely distressed public housing properties, but CNI expands HOPE VI's reach to include HUD-assisted, private housing properties and entire neighborhoods. Although unauthorized, CNI has been funded through annual appropriations bills and administered according to the details of HUD Notices of Fund Opportunity (NOFOs). HUD proposed eliminating CNI in FY19, FY20, and FY21, but Congress has continued to approve funding for CNI, approving \$150 million in FY19, \$175 million in FY20 \$200 million in FY21, and \$350 million for FY22. For FY23 the president proposed \$250 million, the House \$450 million, and the Senate \$250 million.

HUD states that CNI has three goals:

1. Housing: Replace distressed public and HUD-assisted private housing with mixed-income housing that is responsive to the needs of the surrounding neighborhood.
2. People: Improve employment and income, health, and children's education outcomes.
3. Neighborhood: Create the conditions necessary for public and private reinvestment in distressed neighborhoods to offer the kinds of amenities and assets, including safety, good schools, and commercial activity, that are important to families' choices about their community.

In addition to PHAs, grantees can include HUD-assisted private housing owners, local governments, nonprofits, and for-profit developers. The CNI Program awards both large implementation grants and smaller planning grants. CNI planning grants are to assist communities in developing a comprehensive neighborhood revitalization plan, called a transformation plan, and in building the community-wide support necessary for that plan to be implemented. One hundred and

seven planning grants totaling approximately \$52 million were awarded through December 2021. The FY 22 planning grants NOFO was posted on May 10, 2022, announcing up to \$10 million for awards, with a maximum award of \$500,000. Applications were due July 28, 2022.

CNI implementation grants are intended primarily to help transform severely distressed public housing and HUD-assisted private housing developments through rehabilitation, demolition, and new construction. HUD also requires applicants to prepare a more comprehensive plan to address other aspects of neighborhood distress such as violent crime, failing schools, and capital disinvestment. Funds can also be used for supportive services and improvements to the surrounding community, such as developing community facilities and addressing vacant, blighted properties. Forty implementation grants totaling a little nearly \$1.2 million were awarded through May 2021. HUD posted the FY22 NOFO on September 30, 2022, announcing \$379 million available for awards of up to \$50 million each. Applications were due on January 11, 2023. In January, 2022 HUD claims that implementation grants had created 4,500 HUD replacement housing units (which can include RAD conversions) plus an additional 4,600 "affordable" and market-rate units.

Although each NOFO has been different, key constant features include:

- One-for-one replacement of all public and private HUD-assisted units.
- Each resident who wishes to return to the improved development may do so.
- Residents who are relocated during redevelopment must be tracked until the transformed housing is fully occupied.
- Existing residents must have access to the benefits of the improved neighborhood.
- Resident involvement must be continuous, from the beginning of the planning process through implementation and management of the grant.

The Lead Applicant must be a PHA, a local government, or a tribal entity. If there is also a Co-Applicant, it must be a PHA, a local government, a tribal entity, or the owner of the target HUD-assisted housing (e.g. a nonprofit or for-profit developer).

STATUTORY AND REGULATORY CHANGES MADE SINCE 2016

HOTMA Changes

On July 29, 2016, President Obama signed into law the “Housing Opportunity Through Modernization Act” (HOTMA). This law made some changes to the public housing and voucher programs. The major public housing changes are:

- For residents already assisted, rents must be based on a household’s income from the prior year. For applicants for assistance, rent must be based on estimated income for the upcoming year.
- A household may request an income review any time its income or deductions are estimated to decrease by 10%.
- A PHA must review a household’s income any time that income with deductions are estimated to increase by 10%, except that any increase in earned income cannot be considered until the next annual recertification.
- The Earned Income Disregard was eliminated; it disregarded certain increases in earned income for residents who had been unemployed or receiving welfare.
- When determining income:
 - The deduction for elderly and disabled households increased to \$525 (up from \$400) with annual adjustments for inflation.
 - The deduction for elderly and disabled households for medical care (as well as for attendant care and auxiliary aid expenses for disabled members of the household) used to be for such expenses that exceeded 3% of income. HOTMA limits the deduction for such expenses to those that exceed 10% of income.
- The dependent deduction remains at \$480 but will be indexed to inflation; it applies to each member of a household who is less than 18 years of age and attending school, or who is a person 18 years of age or older with a disability.
- The deduction of anticipated expenses for the care of children under age 13 that are needed for employment or education is unchanged.
- Any expenses related to aiding and attending to veterans is excluded from income.
- Any income of a full-time student who is a dependent is excluded from income, as are any scholarship funds used for tuition and books.
- HUD must establish hardship exemptions in regulation for households that would not be able to pay rent due to hardship. These regulations must be made in consultation with tenant organizations and industry participants.
- If a household’s income exceeds 120% of AMI for two consecutive years, a PHA must either:
 - Terminate the household’s tenancy within six months of the household’s second income determination, or
 - Charge a monthly rent equal to the greater of the Fair Market Rent (FMR) or the amount of the monthly operating and capital subsidy provided to the household’s unit.
- A PHA may transfer up to 20% of its Operating Fund appropriation for eligible Capital Fund uses.
- PHAs may establish replacement reserves using Capital Funds and other sources, including Operating Funds (up to the 20% cap), as long as the PHA Plan provides for such use of Operating Funds.

HUD issued a [final rule on July 26, 2018](#) implementing the 120% over-income limit.

HUD issued [Notice PIH 2018-19](#) implementing HOTMA's minimum heating standards. On September 17, 2019, HUD [proposed HOTMA implementation regulations](#) echoing HOTMA's income examination, income calculation, elderly or disabled deduction, child-care deduction and hardship provisions, and healthcare deduction and hardship provisions. In addition, HUD proposed HOTMA asset limitation provisions, including: making households ineligible if net household assets are greater than \$100,000 (adjusted for inflation each year) or if the household owns real property suitable for occupancy; allowing a PHA to determine net assets based on a household's certification that their net family assets are less than \$50,000 (adjusted for inflation each year); revising the definition of "net family assets" by eliminating several previously included items such as the value of necessary "personal property" (like a car); and allowing a PHA to choose to not enforce the asset limit. NLIHC [summarized](#) key provisions of the proposed changes. A final rule cleared the Office of Information and Regulatory Affairs (OIRA) during 2022, but was not published in the *Federal Register* before *Advocate's Guide* went to publication.

Streamlining Rule

A final "[streamlining rule](#)" was published on March 8, 2016. Key public housing provisions include:

- PHAs have the option of conducting a streamlined income determination for any household member who has a fixed source of income (such as Supplemental Security Income, SSI). If that person or household member with a fixed income also has a non-fixed source of income, the non-fixed source of income is still subject to third-party verification. Upon admission to public housing, third-party verification of all income amounts will be required for all household members. A full income reexamination and redetermination must be performed every three years. In between those three years, a streamlined income determination must be conducted by applying a verified cost of

living adjustment or current rate of interest to the previously verified or adjusted income amount.

- PHAs have the option of providing utility reimbursements on a quarterly basis to public housing residents if the amounts due were \$45 or less. PHAs can continue to provide utility reimbursements monthly if they choose. If a PHA opts to make payments on a quarterly basis, the PHA must establish a hardship policy for tenants if less frequent reimbursement will create a financial hardship.
- Public housing households may now self-certify that they are complying with the community service requirement. PHAs are required to review a sample of self-certifications and validate their accuracy with third-party verification procedures currently in place.
- Many of the requirements relating to the process for obtaining a grievance hearing and the procedures governing the hearing were eliminated.

Smoke Free Public Housing

A final "[smoke free](#)" rule was published on December 5, 2016. PHAs had to design and implement a policy prohibiting the use of prohibited tobacco products in all public housing living units and interior areas (including but not limited to hallways, rental and administrative offices, community centers, daycare centers, laundry centers, and similar structures), as well as at outdoor areas within 25 feet of public housing and administrative office buildings (collectively referred to as "restricted areas"). PHAs may, but are not required to, further limit smoking to outdoor designated smoking areas on the grounds of the public housing or administrative office buildings in order to accommodate residents who smoke. These areas must be outside of any restricted areas and may include partially enclosed structures. PHAs had until August 2018 to develop and implement their smoke-free policy. HUD has a public housing smoke-free housing [webpage](#).

Carbon Monoxide Detectors

“The Consolidated Appropriations Act of 2021” requires Carbon Monoxide (CO) alarms or detectors to be installed in each public housing unit, as well as other HUD-assisted properties, by December 27, 2022. HUD issued joint [Notice PIH 2022-01/H 2022-01/OLHCHH 2022-01](#) clarifying that it will enforce this requirement. PHAs may use either their Operating Funds or Capital Funds to purchase, install, and maintain CO alarms or detectors. In addition, the act provided a set-aside in the Capital Fund Program that PHAs can compete for to secure additional funds for CO alarms or detectors

FUNDING

For the Capital Fund in FY23, the president proposed \$3.720 billion, the House proposed \$3.670 billion, and the Senate proposed \$3.405 billion. For the Operating Fund, the president proposed \$5.060 billion, the House proposed \$5.063 billion, and the Senate proposed \$5.064 billion. As *Advocates’ Guide* went to press, Congress had not passed an FY23 appropriation’s act; a short-term Continuing Resolution keeps public housing funding at FY22 levels until further congressional action. In FY22 the Capital Fund received \$3.388 billion and the Operating Fund received \$5.064 billion, compared to \$2.9 billion for the Capital Fund and \$4.9 billion for the Operating Fund in FY21 and \$2.9 billion for the Capital Fund and \$4.5 billion for the Operating Fund in FY20.

FORECAST FOR 2023

HUD’s budget proposal to Congress (“[Congressional Justification](#)” or “CJ”) sought several legislative changes, including:

- Under current law, Public Housing appropriations are designated as “Operating” or “Capital,” each of which has a separate list of eligible uses in statute. Small PHAs (i.e., those operating fewer than 250 units) have full flexibility to use their Operating for capital expenses and use their Capital Funds for operating expenses. Non-small PHAs are only able to use 20% of their Operating or Capital

Funds flexibly. HUD proposes to grant full flexibility to all PHAs.

- HUD proposes to remove the Community Service and Self-Sufficiency requirement. Current law requires non-working, non-elderly, non-disabled residents to participate in eight hours per month of either community service or economic self-sufficiency activities.
- HUD proposes allowing PHAs to implement income recertifications every three years, instead of annually or every other year.

Subsidy funding for public housing has been woefully insufficient to meet the need of the nation’s the remaining 928,626 public housing units as of October 31, 2022. Without adequate funds, more units will go into irretrievable disrepair, potentially leading to greater homelessness. In 2023, funding will continue to be a major issue.

WHAT TO SAY TO LEGISLATORS

Advocates should ask Members of Congress to:

- Maintain and increase funding for the public housing Operating and Capital Funds.
- Support public housing as one way to end all types of homelessness.

FOR MORE INFORMATION

NLIHC, 202-662-1530, www.nlihc.org.

NLIHC’s Public Housing webpage, <https://bit.ly/36UfpLU>.

NLIHC’s *Housing Spotlight: The Long Wait for a Home*.

NLIHC’s Summary of September 17, 2019 proposed HOTMA implementation regulations, <https://bit.ly/2kr70dt>.

National Housing Law Project, 415-546-7000, <http://nhlp.org/resourcecenter?tid=34>.

Center for Budget and Policy Priorities, 202-408-1080, <http://www.cbpp.org/topics/housing>.

HUD’s Public Housing homepage, https://www.hud.gov/program_offices/public_indian_housing/programs/ph.

HUD's Public Housing Data Dashboard, https://www.hud.gov/program_offices/public_indian_housing/programs/ph/PH_Dashboard.

HUD's Resident Characteristics Report page, https://www.hud.gov/program_offices/public_indian_housing/systems/pic/50058/rcr.

HUD's HOTMA homepage, https://www.hud.gov/program_offices/public_indian_housing/hotmaresources.

HUD's Public Housing Occupancy Guidebook, https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mod/guidebook.

HUD's Rental Assistance Demonstration homepage, <https://www.hud.gov/RAD>.

HUD's Public Housing Repositioning homepage, https://www.hud.gov/program_offices/public_indian_housing/repositioning.

HUD's Moving to Work demonstration homepage, https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw.

HUD's Moving to Work expansion page, https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw/expansion.

HUD's Choice Neighborhoods homepage, https://www.hud.gov/program_offices/public_indian_housing/programs/ph/cn.

HUD's Smoke Free homepage, https://www.hud.gov/program_offices/public_indian_housing/programs/ph/phecc/smokefree.

The Administration's FY23 proposal for Public Housing, https://www.hud.gov/sites/dfiles/CFO/documents/2023_CJ_PIH2_Program_PH_Fund.pdf.