Public Housing

By Ed Gramlich, Senior Advisor, NLIHC

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

Year Started: 1937

Number of Persons/Households Served: 1 million households, 2 million residents

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

Funding: FY20 funding is $7.4 billion ($2.9 billion for the capital fund and $4.5 billion for the operating fund).

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 1 million units of public housing, serving 2 million residents, are administered by a network of more than 3,000 local public housing agencies (PHAs), with funding from 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.

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. There are persistent calls for deregulation of public housing through the expansion of the Moving to Work (MTW) demonstration and other efforts 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.

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 project-based rental assistance.

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" 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 through demolition and disposition (sale) of units, mandatory and voluntary conversion of public housing to voucher assistance, and the cumulative impact of decades of underfunding and neglect on once-viable public housing units. HUD officials regularly state that more than 10,000 units of public housing leave the affordable housing inventory each year.

According to HUD testimony, between the mid-1990s and 2010, approximately 200,000 public housing units had been demolished; upwards of 50,000 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 almost 50,000 units of non-public housing were incorporated into these new developments, but they serve households with incomes higher than those of the displaced households and do not provide rental assistance like that provided by the public housing program.

PROGRAM SUMMARY

There are approximately 1 million public housing units. According to HUD, of the families served by public housing, 33% of household heads are elderly, 31% are non-elderly disabled, and 38% are families with children. The average annual income of a public housing household is $15,183. Of all public housing households, 72% are extremely low-income and 19% are very low-income. Fully 76% of public housing households have incomes less than $20,000 a year. Fifty-six percent of the households have Supplemental Security Income (SSI), Social Security, or pension income. Thirty-four percent have wage income, while 29% receive some form of welfare assistance.

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 ***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 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 incomes less than the poverty level, particularly 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 average public housing household pays $336 per month toward rent and utilities. Public housing operating and capital subsidies provided by Congress and administered by HUD 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 the housing. Most PHAs also administer the Housing Choice Voucher Program.

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 way for public housing residents, voucher holders, and community stakeholders to participate in the PHA's planning process.

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. The $4.65 billion appropriated for the public housing operating subsidy in FY19 left PHAs with about 90% of known operating cost needs during the first quarter of the calendar year and up to 97% for the rest of the year. The $2.78 billion appropriated for the public housing capital subsidy in FY19 further increased PHAs' capital needs backlog. In 2010, PHAs had a $26 billion capital needs backlog, which was estimated to grow by $3.4 billion each year. Public housing associations estimate that there is approximately a $70 billion capital needs backlog in FY19.

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. Since 2008, HUD's operating formula system, called "Asset Management," has determined an agency's operating subsidy on a property-by-property basis, rather than on the previous overall PHA basis.

The capital fund can be used for a variety of purposes, including modernization, demolition, and replacement housing. Up to 20% can also be used to make management improvements. The annual capital needs accrual amount 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.

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 Improvements from 2012 Removed by the current administration

In 2012, after prodding from advocates, HUD clarified and strengthened its guidance (Notice PIH 2012-7) regarding demolition and disposition in an effort to curb the decades-long sale and needless destruction 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 these modest improvements to HUD's demolition/ disposition guidance that advocates helped HUD draft in 2012 (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 is a part of the administration's "repositioning" of public housing through demolition and voluntary conversion to vouchers. Its goal 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 this guide for more.

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 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 authorizing legislation contains several provisions intended to protect public housing residents whose homes are converted to PBRA or PBV through RAD.

The Obama and Trump administrations, along with many developer-oriented organizations, have urged Congress to allow all 1 million public housing units to undergo RAD conversion even though the demonstration is still in its early stages. 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 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 listing numerous problems residents have experienced, such as illegal and inadequate resident relocation practices, unlawful resident re-screening practices, and impediments to resident organizing. See the separate RAD article in this *Advocates' Guide* for more information.

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 Availability (NOFAs). CNI was funded at $65 million in both FY10 and FY11, $120 million in FY12, $114 million in FY13, $90 million in FY14, $80 million in FY15, $125 million in FY16, $138 million in FY17, and $150 million in FY18 and FY19. HUD proposed eliminating CNI in FY19 and FY20, but the House proposed $150 million for CNI in FY19 and $300 million in FY20 while the Senate proposed $100 million for both years.

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 educational outcomes and intergenerational mobility for youth with services and supports.
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. Eighty-five planning grants totaling more than $38 million were awarded through FY18 with four more amounting to $5 million awarded for FY19.

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. HUD works closely with the Department of Education to align CNI's educational investments and outcomes with those of the Promise Neighborhoods Program. Thirty implementation grants totaling $862 million have been awarded through 2018. Applications for FY19 implementation grants were being accepted until November 4, 2019; awards had not been announced by the time this *Advocates' Guide* went to press.

Although each NOFA 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.

Moving to Work

A key public housing issue is the MTW demonstration that provides a limited number of housing agencies flexibility from most statutory and regulatory requirements. Because this demonstration program has not been evaluated, and the potential for harm to residents and the long-term health of the PHAs are at stake, 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. Today, there are 39 PHAs in the MTW demonstration. 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 FY16 funding bill for HUD 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, and no more than three can administer between 6,001 and 27,000 combined units. PHAs will be added to the MTW demonstration by cohort, each of which will be overseen by a research advisory committee to ensure the demonstrations are evaluated with rigorous research protocols. Each year's cohort of MTW sites will be directed by HUD to test one specific policy change.

The four cohorts are:

- "MTW Flexibilities" will involve 30 PHAs that have a combination of 1,000 or fewer public housing units and vouchers. This cohort will evaluate the overall effects of MTW flexibility on the PHA and its residents. HUD will compare outcomes related to MTW's three statutory objectives between the MTW PHAs and PHAs assigned to a control group. Applicant PHAs will be assigned by lottery to be MTW PHAs, waitlist PHAs, or control group PHAs.
- "Rent Reform" will involve 10 PHAs testing "rent reform" ideas designed to "increase resident self-sufficiency and reduce PHA administrative burdens." Only PHAs with a combination of at least 1,000 non-elderly and

non-disabled public housing residents and voucher households will be eligible. Each PHA will implement one alternative rent policy.

- "Work Requirements" will be evaluated. Detailed information about this cohort is not available yet.
- "Landlord Incentives" will explore ways to increase and sustain landlord participation in the Housing Choice Voucher program.

In January of 2017, HUD issued a draft MTW Operations Notice for public comment. It proposed three categories of statutory and regulatory waivers that MTW agencies could pursue:

1. General waivers available without review by HUD to all MTW expansion agencies.
2. Conditional waivers available if approved by HUD. Conditional waivers are expected to have a greater and more direct impact on households.
3. Cohort-specific waivers available only to MTW agencies implementing a specific cohort policy change.

NLIHC's letter conveyed strong opposition to the inclusion of work requirements, time limits, and major changes to rent policies among possible conditional waivers. Because such policies have the potential to cause substantial harm to residents in the form of severe cost burdens, housing instability, and perhaps homelessness, those policies should only be allowed as cohort-specific waivers subject to the most rigorous evaluation required by the MTW expansion statute.

On October 11, 2018, HUD issued a revised Operations Notice for public comment. It was far worse than the previous draft. The revised proposed Operations Notice would allow 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 stated that such waivers should only be allowed as part of a rigorous cohort evaluation. As of the date this *Advocates' Guide* went to press, a final Operations Notice was not published. NLIHC anticipates that it will be published early 2020.

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, which disregarded certain increases in earned income for residents who had been unemployed or receiving welfare, was eliminated.
- 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.
  - 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.
  - Any expenses related to aid and attendants for veterans are 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.
  - If a household's income exceeds 120% of AMI for two consecutive years, the 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 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 implementing HOTMA's minimum heating standards. On September 17, 2019, HUD proposed HOTMA implementation regulations basically 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, proposing households be 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, to allow 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), to revise the definition of "net family assets" by eliminating a number of previously included items such as the value of necessary "personal property" (like a car), and to allows PHA to choose to not enforce the asset limit.

Streamlining Rule

A "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 SSI). If that person or household 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 so 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 "smoke free" rule was published on December 5, 2016. PHAs must 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") in which public housing is located. 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.

FUNDING

For FY20 the capital fund received $2.87 billion and the operating fund received $4.55 billion, for a total of $7.42 billion. In FY19, the capital fund received $2.775 billion and the operating fund received $4.653 billion, for a total of $7.4 billion, a slight increase above $7.34 in FY18 and a helpful increase above $6.34 billion from FY16 and FY17.

FORECAST FOR 2020

Subsidy funding for public housing has been woefully insufficient for many years to meet the need of the nation's 1 million public housing units. Without adequate funds, more units will go into irretrievable disrepair, potentially leading to greater homelessness. In 2020, funding will continue to be a major issue.

President Trump's proposed FY20 budget would have eliminated the public housing capital fund and drastically reduced the operating fund's formula-based grants to a mere $2.86 billion. The administration stated that it expected local and state governments to fill in the budget vacuum left by the federal government. However, the House spending package included $2.86 billion for the capital fund and $4.75 billion for the operating fund. The Senate approved $2.86 billion for the capital fund and $4.65 billion for the operating fund. Ultimately the final FY20 appropriation approve $2.87 billion for the capital fund and $4.55 billion for the operating fund, for a total of $7.42 billion.

President Trump's proposed FY19 budget would have "repositioned," public housing, speeding up HUD's retreat from providing public housing. In FY19 alone, HUD aimed to remove 105,000 public housing units from the inventory. One way of doing that is to make it administratively easier to demolish public housing, and by establishing a new $30 million competitive demolition grant program. HUD would also encourage PHAs to voluntarily convert public housing to vouchers.

President Trump's FY20 budget proposal included so-called "rent reforms" that would have placed serious financial burdens on public housing residents. For example, non-elderly and non-disabled households would pay 35% of their gross income (up from 30% of their adjusted income). Elderly and disabled households would pay 30% of gross income (not adjusted income). The proposal would have allowed PHAs to use alternative rent structures, such as tiered rents and stepped rents (effectively time limits). The proposal would also have imposed uniform work requirements. Congress has not taken steps to adopt these provisions, but the president has proposed them again for FY21.

WHAT TO SAY TO LEGISLATORS

Advocates should ask members of Congress to:

- Maintain funding for the public housing operating funds and increase resources to the capital funds.
- Support public housing as one way to end all types of homelessness.
- Oppose burdensome and costly time limits and work requirements for people receiving federal housing assistance.

FOR MORE INFORMATION

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

NLIHC's *Housing Spotlight: The Long Wait for a Home*, http://bit.ly/2dGp2CU.

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, http://bit.ly/2hULSJy.

HUD's HOTMA homepage, https://bit.ly/2AVgHoX.

HUD's Rental Assistance Demonstration homepage, http://bit.ly/2ht2w2C.

HUD's Moving to Work demonstration homepage, http://bit.ly/2i0tmwC.

HUD's Moving to Work expansion page, https://bit.ly/2E7AYJN.

HUD's Choice Neighborhoods homepage, http://bit.ly/2hURgwh.

HUD's Smoke Free homepage, https://bit.ly/2LMyQg9.