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 Data Dashboard, as of October 28, 2023, 1,639,413 residents lived in public housing (a 5% decrease from 2022), 578,699 616,125 of whom were children (a 6% decrease from 2022) as PIH continues public housing "repositioning." According to "Picture of Subsidized Housing" posted by HUD's Office of Policy Development and Research (PD&R), there were 1,645,390 residents living in public housing based on 2022 Census data. Since last year's *Advocates' Guide*, PIH no longer posts data via the Resident Characteristics Report.

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. According to Picture of Subsidized Housing, 77% of the households had extremely low incomes.

Funding: The Administration requested $3.225 billion for the Capital Fund and $5.133 billion for the operating fund in FY24. As *Advocates' Guide* went to press, Congress had not passed an FY24 appropriation's act; a short-term Continuing Resolution keeps public housing funding at FY23 levels until further congressional action.

Congress appropriated $3.380 billion for the Capital Fund and $5.134 billion for the Operating Fund in FY23. 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 *Advocates' Guide*.

The nation's dwindling number of public housing units, 907,070 (Data Dashboard), down from 1.1 million in previous years), still serve more than 1.6 million residents (down from nearly 2 million in previous years). Public housing is administered by a network of 2,746 local public housing agencies (PHAs) that have 6,148 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.

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 have resulted in the loss of public housing units – approximately 10,000 units each year according to HUD estimates. HUD's aggressive "Public Housing Repositioning" campaign is speeding up the pace of demolition, disposition, and conversion of public housing to either Project-Based Vouchers (PBVs) or Project-Based Rental Assistance (PBRA) through the Rental Assistance Demonstration (RAD). See the Repositioning of Public Housing and the Rental Assistance Demonstration sections of this *Advocates' Guide*.

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*).

HUD's does have one modest tool to address the aging public housing stock through the Choice Neighborhoods Initiative (CNI) renovation program, but it enables limited CNI implementation funds ($259 million for FY23) to be used for privately owned, HUD assisted Multifamily properties as well as broader neighborhood improvements. During 2023, PIH initiated its "Strengthening Public Housing for the Future" endeavor. It entailed PIH staff engaging a wide array of stakeholders, soliciting non-monetary ideas that could help preserve existing public housing units and improve the quality of those units. PIH has not issued any preliminary reports or policy recommendations as of the date this *Advocates' Guide* went to press.

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 22 voluntary and Section 33 mandatory conversion of public housing to voucher assistance, and the Rental Assistance Demonstration (see the Repositioning of Public Housing section of 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 Data Dashboard, as of October 28, 2023, there were 907,070 public housing units (17,307 fewer units than the same period in 2022). According to the Data Dashboard, 43% of public housing residents were elderly or disabled, while Picture of Subsidized Housing indicates that in 2022, 30% of heads of households were non-elderly disabled, and 35% were households with children. Data Dashboard indicates that the average annual income of a public housing household was $15,701, up from $14,576. Picture of Subsidized Housing indicated that of all public housing households, 73% were extremely low-income; 71% of public housing households had income less than $20,000 a year. Data Dashboard indicated that 28% 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. Picture of Subsidized Housing showed an average public housing waiting list of 19 months in 2022.

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. According to Picture of Subsidized Housing, 73% of public housing households in 2022 had extremely low incomes. 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. Data Dashboard indicated that the average public housing household paid $331 per month toward rent and utilities in 2022. 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 carrying out 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 PHA. 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. As *Advocates' Guide* went to press, Congress had not passed an FY24 appropriations act; a short-term Continuing Resolution keeps public housing funding at FY23 levels until further congressional action. Congress appropriated $3.38 billion for the Capital Fund and $5.134 billion for the Operating Fund in FY23. 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. For FY24, the Administration requested $3.225 billion for the Capital Fund and $5.133 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. For 2024 HUD extrapolated the capital needs backlog to be at least $50 billon.

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 properties' viability. Since 2008, HUD's operating formula system, called "Asset Management," has determined a PHA's operating subsidy on a property-by-property basis (called an Asset Management Project; AMP), rather than on the previous overall PHA basis. HUD states that $5.1 billion for FY24 is projected to be sufficient to meet 100% of all public housing operating expenses.

The Capital Fund can be used for many 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, PIH has authorized PHAs to apply for permission to demolish or dispose of (sell) public housing units. This policy was made significantly more damaging in 1995 when Congress suspended the requirement that PHAs 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.

A PHA must apply to PIH's Special Applications Center (SAC) to demolish or dispose of public housing under Section 18. The application must certify that the PHA has described the demolition or disposition in its Annual PHA Plan and that the description in the application is identical. Advocates should challenge an application that is significantly different. PHAs should not re-rent units when they turn over while PIH is considering an application. The information in this article is primarily from the regulations 24 CFR 970.

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. The 2012 Notice served as a reminder to residents, the public, and PHAs of PHAs' obligations regarding resident involvement and the role of the PHA Plan regarding demolition/disposition.

In 2018, the Trump Administration eliminated Notice PIH 2012-07 from 2012 that included modest improvements suggested by advocates. The replacement, Notice PIH 2018-04, downplayed the role of resident consultation to make it easier to demolish public housing. In addition, the Administration withdrew proposed regulation changes drafted in 2014 that would have reinforced those modest improvements. In addition, the administration withdrew proposed regulation changes drafted in 2014 that would have reinforced those modest improvements.

On the last day of the Trump Administration, January 19, 2012, PIH issued Notice PIH 2021-07, which superseded Notice PIH 2018-04. The primary change is to the so-called "RAD/Section 18 Construction Blend," allowing a PHA to convert anywhere from 40% to 80% of the units in a Rental Assistance Demonstration (RAD) project to Project-Based Vouchers (PBVs) under Section 18 – further accelerating PIH's public housing "repositioning" policy. The percentage of units eligible for disposition within a RAD project is based on the "hard construction costs" of the proposed rehabilitation or new construction (see the *Rental Assistance Demonstration* entry in this *Advocates' Guide* for more about RAD/Section 18 Construction Blends).

The Biden Administration has not indicated an intent to issue improved demolition/disposition regulations similar to those proposed by the Obama Administration.

For more information about demolition and disposition is in the *Repositioning of Public Housing* entry in this *Advocates' Guide*.

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 proposed removing the 455,000-unit cap as well as the sunset date; that too did not pass. The Biden Administration proposed eliminating the September 24, 2024 sunset date as well as the cap on the number of public housing units that can be converted under RAD. NLIHC strongly opposes increasing or eliminating the cap.

The Obama and Trump Administrations, along with many developer-oriented organizations, have 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. 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 Senate appropriations bill would extend these contracts for an additional 15 years.

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 to 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 PIH to test one specific policy change.

The cohorts are:

- "MTW Flexibilities," the first cohort announced in January 2017, 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. Thirty-one PHAs were selected.
- "MTW Flexibilities II," the last cohort announced in August 2023, will involve additional smaller PHAs that have 1,000 or fewer combined units of public housing and vouchers. These MTW PHAs will test the overall effects of using various MTW "flexibilities," with a focus on "administrative efficiencies." PIH had not selected PHAs for this cohort before *Advocates' Guide* went to press.
- "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 30% of gross income and growing each year. "Tiered rents" involve a household paying a fixed amount for rent 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. NLIHC has prepared a "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. It 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. See NLIHC's Summary of Key Provisions of the MTW Demonstration Operations Notice for more information.

Other important features of the MTW Expansion include:

- 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.
- 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.

For much more information about the MTW demonstration, see 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 and FY23. The Biden Administration proposed $185 million for FY24, while the Senate proposed $150 million and the House proposed zero.

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 thirty-one planning grants totaling approximately $63 million were awarded through October 2023. The FY 23 planning grants NOFO was posted on April 4, 2023, announcing up to $10 million for awards, with a maximum award of $500,000. The FY23 planning grants were announced on September 15, 2023.

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. Fifty-two implementation grants (generally at $50 million) totaling over $1.7 million were awarded through October 2022. HUD posted the FY23 NOFO on September 6, 2023, announcing $259 million available for awards of up to $50 million each. Applications were due on February 13, 2024.

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

1. One-for-one replacement of all public and private HUD-assisted units.
2. Each resident who wishes to return to the improved development may do so.
3. Residents who are relocated during redevelopment must be tracked until the transformed housing is fully occupied.
4. Existing residents must have access to the benefits of the improved neighborhood.
5. 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 changes to the public housing and voucher programs. The major public housing changes are:

Income Determination and Recertification

1. 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 PHA may determine a household's income, before applying any deductions, based on income determination made within the previous 12-month period using the income determination made by other programs, such as Temporary Assistance for Needy Families (TANF), Medicaid, the Supplemental Nutrition Assistance Program (SNAP),the Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Earned Income Tax Credit (EITC), Supplemental Security Income (SSI), and the Low Income Housing Tax Credit (LIHTC).
2. A household may request an income review any time their income or deductions are estimated to decrease by 10%.
   - A PHA has the discretion to set a lower percentage threshold.
   - Rent decreases are to be effective on the first day of the month after the date of the actual change in come – meaning the rent reduction is to be applied retroactively.
3. A PHA must review a household's income any time that income with deductions is estimated to increase by 10%, except that any increase in earned income cannot be considered until the next annual recertification.

Income Deductions and Exclusions

4. The Earned Income Disregard was eliminated; it disregarded certain increases in earned income for residents who had been unemployed or were receiving welfare.
5. When determining income:
   - The deduction for elderly and disabled households increased to $525 (up from $400) with annual adjustments for inflation. (Became effective on January 1, 2024).
   - 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 (effective on January 1, 2024).
   - The deduction of anticipated expenses for the care of children under age 12 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.
   - If a household is not able to pay rent, a PHA has the discretion to establish policies for determining a household's eligibility for general hardship relief for the health and medical care expense deduction and for the child-care expense hardship exemption.
   - PHAs may adopt additional deductions (called "permissive deductions") for public housing residents.
6. 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.

Asset Limits

7. To be eligible for public housing assistance, a household must not own real property that is suitable for occupancy as its residence or have assets greater than $100,000 (adjusted for inflation each year). However, PHAs have the discretion to not enforce these asset limits.
   - Some things do not count as "assets" and are instead considered "necessary personal property" such as a car needed for everyday use, furniture, appliances, personal computer, etc.
   - So-called "non-necessary personal items that have a combined value less than $50,000 are excluded from the calculating household assets.
   - Also exempt are retirement savings accounts.
   - A household may self-certify that it has assets less than $50,000 (adjusted for inflation each year).

Other Provisions

8. A PHA may transfer up to 20% of its Operating Fund appropriation for eligible Capital Fund uses.
9. PHAs may establish replacement reserves using Capital Funds and other sources, including Operating Funds (up to the 20% cap), if 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 and NLIHC summarized key provisions of the proposed changes. A final rule implementing the income and asset provisions was published in the *Federal Register* on February 14, 2023. Notice PIH 2023-27/H 2023-10 was posted on September 29, 2023 providing detailed guidance for implementing the final rule provisions.

THE NATIONAL STANDARDS FOR PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)

The National Standards for Physical Inspection of Real Estate (NSPIRE) is a protocol intended to align, consolidate, and improve the physical inspection regulations that apply to multiple HUD-assisted housing programs (24 CFR part 5). NSPIRE replaces the Uniform Physical Condition Standards (UPCS) developed in the 1990s and it absorbs much of the Housing Quality Standards (HQS) regulations developed in the 1970s. NSPIRE physical inspections focus on three areas: the housing units where HUD-assisted residents live, elements of their building's non-residential interiors, and the outside of buildings, ensuring that components of these three areas are "functionally adequate, operable, and free of health and safety hazards."

NSPIRE applies to all HUD housing previously inspected by HUD's Real Estate Assessment Center (REAC), including Public Housing and Multifamily Housing programs such as Section 8 Project-Based Rental Assistance (PBRA), Section 202 Supportive Housing for the Elderly, Section 811 Supportive Housing for Persons with Disabilities, and FHA Insured multifamily housing. NSPIRE also applies to HUD programs previously inspected using the Housing Quality Standards (HQS) regulations: the HCV program (including Project-Based Vouchers, PBVs) and the programs administered by the Office of Community Planning and Development (CPD) – HOME Investment Partnerships (HOME), national Housing Trust Fund (HTF), Housing Opportunities for Persons with AIDS (HOPWA), Emergency Solutions Grants (ESG), and Continuum of Care (CoC) homelessness assistance programs.

HUD published a final rule implementing the National Standards for Physical Inspection of Real Estate (NSPIRE) in the *Federal Register* on May 11, 2023. The new inspection protocol started on July 1, 2023 for public housing and on October 1, 2023 for the various programs of HUD's Office of Multifamily Housing Programs, such as PBRA, Section 202 and Section 811. The Housing Choice Voucher (HCV) and Project-Based Voucher programs, as well as the CPD programs, will not need to implement the NSPIRE changes until October 1, 2024.

HUD has published three "Subordinate Notices" that supplement the final rule addressing NSPIRE "standards," "scoring," and "administration." The intent of issuing the subordinate notices instead of incorporating their content in regulation is to enable HUD to more readily provide updates as appropriate.

For more information about NSPIRE, see the *National Standards for Physical Inspection of Real Estate (NSPIRE)* article in this *Advocates' Guide*.

STREAMLINING RULE

A final "streamlining rule" was published on March 8, 2016, implementing provisions of the "FAST Act". 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 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. PIH has a public housing smoke-free housing webpage.

CARBON MONOXIDE DETECTORS

"The Consolidated Appropriations Act of 2021" required 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 FY24, the Administration requested $3.225 billion for the Capital Fund and $5.133 billion for the operating fund. As *Advocates' Guide* went to press, Congress had not passed an FY24 appropriations act; a short-term Continuing Resolution keeps public housing funding at FY23 levels until further congressional action.

Congress appropriated $3.380 billion for the Capital Fund and $5.134 billion for the Operating Fund in FY23. 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 2024

On October 31, 2023 HUD sent a proposed regulation to the Office of Information and Regulatory Affairs (OIRA) for review. A brief abstract indicates the proposed rule would amend regulations for public housing and certain project-based rental assistance that govern admission, eviction, and termination decisions for applicants who have criminal records, or a history of involvement in the criminal justice system. The proposed rule would require PHAs and providers of project-based rental assistance to revise practices that unnecessarily prevent individuals who have criminal histories, but who do not pose a risk to the health and safety of other residents from participating in HUD programs.

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 (a feature currently allowed for households with fixed incomes).
- HUD proposed allocating $300 million on a competitive basis to help preserve public housing that has critical, extensive, and pervasive modernization needs.
- HUD proposed undertaking a new assessment of public housing capital needs, with a focus on smaller PHAs.
- HUD proposed $60 million for competitive grants to address housing-related hazards such as mold, carbon monoxide, and radon. An additional $25 million was proposed to help address lead-based paint hazards.

Subsidy funding for public housing has been woefully insufficient to meet the need of the nation's the remaining 907,070 public housing units as of October 28, 2023. Without adequate funds, more units will go into irretrievable disrepair, potentially leading to greater homelessness. In 2024, 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.

PD&R's Picture of Subsidized Housing, https://www.huduser.gov/portal/datasets/assthsg.html.

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 FY24 proposal for Public Housing, https://www.hud.gov/sites/dfiles/CFO/documents/2024_CJ_Program_Template_-_PH_Fund.pdf.