



Memo To Members & Partners

A weekly newsletter from the National Low Income Housing Coalition

Volume 23, Issue 18

May 14, 2018

In This Issue:

Point of View

- *Our Homes, Our Voices* Movement Expands in 2018 with More than 125 Actions around the U.S. – *by Diane Yentel, NLIHC President and CEO*

Take Action

- Tell Congress to Oppose Rescissions

Congress

- Representative Waters Introduces Resolution Rejecting Proposed Rent Increases
- Representative DeLauro Introduces Bill to Address Lead in Homes
- House Subcommittee to Hold Hearing on Homelessness in America

Budget and Appropriations

- Congressional Democrats Propose Investment of \$70B in Public Housing
- House Subcommittee to Vote on FY19 THUD Funding Bill on May 16

Opportunity Starts at Home

- Opportunity Starts at Home campaign introduces the “Opportunity Roundtable”

Disaster Housing Recovery

- More than 200 Organizations Send Letter Urging Senate Leaders to Include DHAP in FAA Reauthorization Act
- Disaster Recovery State Action Plans
- House Subcommittee to Hold Hearing on CDBG-DR
- Additional Updates on Disaster Housing Recovery – May 14

Fair Housing

- Advocates Sue HUD over AFFH Rule Suspension
- HUD Signals Intent to Reconsider Disparate Impact Rule

HUD

- HUD Spring Regulatory Agenda Released; Obama Administration's Proposed Section 3 Rule Scrapped with New Proposed Rule Scheduled for July

Research

- Housing Tax Credit Qualified Action Plans Affect the Location of Affordable Housing

Fact of the Week

- Lowest Income Renter Households are Disproportionately Seniors and People with Disabilities

From the Field

- Louisiana Lawmakers Ban Mandatory Inclusionary Zoning
- Maryland Legislature Passes Wins for Housing and Community Development

Resources

- CBPP and PRRAC Provide a Guide to Small Area Fair Market Rents

NLIHC in the News

- NLIHC in the News for the Week of May 6

NLIHC News

- NLIHC Seeks Housing Advocacy Organizer
- Where to Find Us – May 14

Point of View

***Our Homes, Our Voices* Movement Expands in 2018 with More than 125 Actions around the U.S.** — by Diane Yentel, NLIHC President and CEO

What a powerful week!

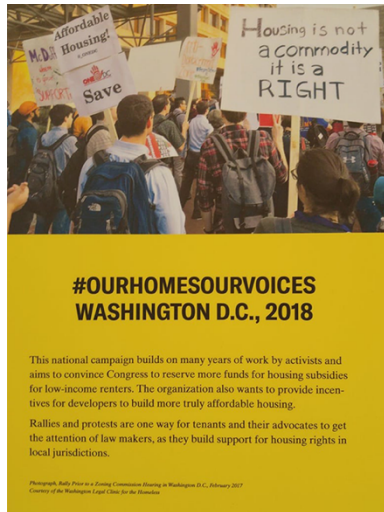
From May 1 through May 8, thousands of advocates in dozens of cities and towns across the country raised their voices in support of increased investments in affordable homes for those with the greatest needs during the *Our Homes, Our Voices* National Housing Week of Action. This year's Week of Action featured over 125 events and activities, more than doubling the actions taken in 2017. There is no doubt that we are, together, building a movement.

Throughout the week of action, resident leaders and other advocates for affordable homes attended legislative meetings, and participated in teach-ins, rallies, letter-writing campaigns, housing builds, candidate forums, call-in days, tweetstorms, trainings, and socials. Check out the inspiring pictures of the week's events at:

<https://bit.ly/2wKjX7s>



During the week, members of Congress and other elected officials heard from thousands of constituents by mail, phone calls, and emails and at events and meetings around the country. Advocates educated their lawmakers about the ways affordable housing has positively impacted their lives, and why more investments in affordable homes are needed. Legislators attending *Our Homes, Our Voices* events saw the direct benefits of affordable housing and spoke to their constituents about their commitment to addressing homelessness and housing poverty in America. More than 30 bipartisan members of Congress tweeted their support for the campaign. The *Our Homes, Our Voices* week of action was so powerful, it was just added to the National Building Museum's *Evicted* exhibit!



On behalf of everyone at NLIHC, thanks to all of the *Our Homes, Our Voices* participants for your tremendous dedication, energy and action. We invite you to turn your efforts now to [Our Homes, Our Votes](#), a non-partisan campaign to register, educate, and mobilize more low income renters and affordable housing advocates to be involved in voting. Renters, especially low income renters, are underrepresented among voters. To ensure low income housing interests are represented, it is critical that organizations engage these renters and other low income people in the voting process.



We also invite you to continue your advocacy efforts by [joining NLIHC](#) and by pledging to continue working to ensure those with the greatest needs have access to safe, accessible homes they can afford.

Please keep posting pictures from your events on the *Our Homes, Our Voices* [Facebook page](#) and continue to tag tweets about the need for greater investments in affordable homes with #OurHomesOurVoices.

Thank you for participating in this successful week of action! You are an inspiration.

Onward,

Diane

Take Action

Tell Congress to Oppose Rescissions

The Trump administration proposed on May 9 to cut \$15.3 billion in previously approved funding to domestic programs, including cuts to vital affordable housing and community development programs. Please tell your

senators and representatives to oppose the rescission package. At a time when federal housing investments are needed more than ever, Congress should expand – not cut – critically needed resources.

Background

Months after enacting more than \$1.9 trillion in tax cuts for billionaires and corporations, the Trump administration has asked Congress to rescind \$15.3 billion in funding previously approved by Congress. The president has promised to put forward additional rescissions in the coming months.

If enacted, the rescission package would cut \$41 million from public housing, \$23 million from the Community Development Financial Institutions (CDFI) Fund, \$40 million from USDA's Rural Rental Assistance program, and \$142 million from the Capital Magnet Fund.

Under the rescission process, lawmakers have 45 days to vote on the plan or a scaled-back version of it. The House is expected to vote on the proposal as soon as this week before it moves to the Senate, where only a simple majority – or 50 votes with Vice President Mike Pence serving as a tie-breaker – may be sufficient to enact the proposal.

Take Action

Congress needs to hear from you!

Urge your members of Congress to oppose President Trump's rescission proposal that would cut funding needed to address public housing capital repairs and other critical investments in affordable housing.

Call the Capitol switchboard at 202-224-3121 to speak with an operator who will connect you to your lawmakers. You can also email your lawmakers [here](#).

Congress

Representative Waters Introduces Resolution Rejecting Proposed Rent Increases

In response to HUD Secretary Ben Carson's proposal to increase rents and impose work requirements on the lowest income households, House Financial Services Committee Ranking Member Maxine Waters (D-CA) introduced [H. Res. 886](#) on May 10 to affirm the importance of the Brooke rule. The rule, established in 1969 by Senator Edward Brooke (R-MA), ensured that households receiving federal rental assistance paid no more than 25% of their adjusted incomes for rent. The percentage was raised to 30% in 1981 and has been the standard since then. Representative Waters' resolution rejects Dr. Carson's proposal to increase rents on HUD-assisted households to 35% of gross incomes and "acknowledges the need for increased funding for Federal rental assistance programs in order to assist more families in need."

Read the full resolution at: <https://bit.ly/2KTmPCi>

Read the statement by NLIHC and other housing advocates opposing rent increases: <https://bit.ly/2wEKEL3>

Representative DeLauro Introduces Bill to Address Lead in Homes

Representative Rosa DeLauro (D-CT) introduced the “Know Your Home Act” ([H.R. 5704](#)) on May 8 to address lead contamination in homes throughout the country. The proposal would require cities and towns that receive Community Development Block Grant (CDBG) funds to digitize housing code violations from the most recent three years. Making this information easily accessible to the public would allow prospective renters to know if homes have a history of health and safety issues. According the Centers for Disease Control and Prevention, at least 4 million homes in the U.S. have high levels of lead that could expose children to lead poisoning. Read more about Representative DeLauro’s bill at: <https://bit.ly/2rybSwP>

House Subcommittee to Hold Hearing on Homelessness in America

The House Financial Services Housing and Insurance Subcommittee will hold a hearing, “An Overview of Homelessness in America” on May 17 at 2:00 pm ET. Nan Roman, President and CEO of National Alliance to End Homelessness and NLIHC board member, will testify. The hearing will take place in room 2128 of the Rayburn House Office Building. Learn more about the hearing at: <https://bit.ly/2rD3Rqw>

Budget and Appropriations

Congressional Democrats Propose Investment of \$70B in Public Housing

House Democratic Policy & Communications Committee (DPCC) Co-Chair Representative Hakeem Jeffries, Senator Edward J. Markey (D-MA), Representative Stephen F. Lynch (D-MA), and Boston Mayor Martin J. Walsh unveiled a comprehensive proposal in Boston, MA on May 7 to address the public housing crisis in America. The proposal, [A Better Deal for Public Housing & Ladders of Opportunity for American Families](#), proposes to invest \$70 billion over ten years in America’s public housing and offers measures to empower residents, foster safer neighborhoods, and create economic opportunities.

The announcement was part of the [Our Homes, Our Voices](#) National Housing Week of Action, May 1-8, during which thousands of advocates at more than 125 events and activities around the country called for greater federal investments in affordable rental homes. “This proposal to make a sustained investment in public housing is a clear rebuke of proposals to cut housing benefits – whether by slashing investments in public housing and other federal housing programs or imposing rigid, punitive work requirements on millions of low income families,” stated NLIHC President and CEO Diane Yentel at the Boston event announcing the proposal.

Public housing has been underfunded for decades, leading to tens of billions of dollars in backlogged capital repair needs. The proposal includes a significant and sustained reinvestment in public housing infrastructure to ensure this critical source of affordable rental homes is available for America’s lowest income residents. The plan also includes significant resources to provide struggling families living in public housing with the job counseling and training, educational and after-school enrichment programs, and other services to help lift families out of poverty.

Learn more about *A Better Deal* at: <https://bit.ly/2yPZKgo>

Read NLIHC’s press release commending the announcement at: <https://bit.ly/2I3W2oO>

House Subcommittee to Vote on FY19 THUD Funding Bill on May 16

The House Appropriations Subcommittee on Transportation and Housing and Urban Development (THUD) will vote on its FY19 funding bill on May 16 at 5:00 pm ET in room 2358-B of the Rayburn House Office Building. Learn more about the Subcommittee vote at: <https://bit.ly/2jOcRpm>

Opportunity Starts at Home

***Opportunity Starts at Home* campaign introduces the “Opportunity Roundtable”**

The [*Opportunity Starts at Home*](#) campaign held a multi-sector event on May 10 in Washington D.C. to officially introduce its “Opportunity Roundtable.” More than eighty individuals attended the event, including representatives from organizations representing education, healthcare, civil rights, anti-poverty, faith-based, veterans, homelessness, and other sectors.

The event opened with welcoming remarks from NLIHC President and CEO Diane Yentel, who stressed the critical timing of the campaign. “The affordable housing crisis has reached historic heights, most negatively impacting the lowest income people,” she said. “Despite the best efforts of those in the housing community across the country, the crisis is intensifying. At the same time, we have growing research that confirms how central housing affordability is to the outcomes of so many other sectors. It makes sense that leaders from other sectors are now joining us in our advocacy to advance federal policy solutions to make homes affordable for the lowest income people.”

Ms. Yentel’s opening remarks were followed by an informational presentation by Mike Koprowski, national campaign director of Opportunity Starts at Home. Mr. Koprowski, in explaining the goals of the campaign, spoke to the importance of broadening the affordable housing movement and urged the audience to “re-think the silos we’ve created.” To continue expanding the movement, Mr. Koprowski invited the organizations in the audience to join the newly formed “Opportunity Roundtable.”

Following the opening presentations, five leaders from the campaign’s steering committee participated in a panel discussion on why their organizations joined the campaign and how housing intersects with their own fields of work. The panelists were Nan Roman, president and CEO of the National Alliance to End Homelessness; Harry Lawson, director of the human and civil rights department at the National Education Association; Richard Hooks Wayman, national executive director of the Children’s Defense Fund; Marvin Owens, senior director of the NAACP Economic Department; and Alice Dembner, director of substance use disorders and justice-involved populations at Community Catalyst. Diane Yentel moderated the panel.

Ms. Roman, in explaining the multi-sector approach, reiterated: “The goals we have for this campaign are ambitious. And you don’t achieve goals like these with one segment of the housing sector alone. It’s going to take a lot more ways of explaining the situation and the solutions.”

Mr. Lawson talked about the challenges of a multi-sector approach at the national level, particularly as they relate to the connection between housing and education: “Education policy tends to be just as complicated as housing policy. Talking about it in ways that are digestible and understandable is difficult, and it takes a real commitment to awareness and helping people understand the impacts.”

Despite these inherent challenges, Ms. Dembner reminded the audience that “if this isn’t a time for cross-sector engagement, I don’t know what is. Affordable housing can be the turn-key for a life of purpose.”

Mr. Wayman discussed a 2015 Children’s Defense Fund report about existing federal policies that could help reduce child poverty significantly and quickly. “We still have 13 million children living in deep poverty in America,” Mr. Wayman said. “So, the question we posed to ourselves was: What investments could we make in existing federal programs that could go to scale in reducing child poverty? It was surprising to us as child advocates – because we weren’t steeped in this area for many years – that housing subsidies were the number one lift” in reducing child poverty.”

Mr. Owens summarized the overall spirit of the campaign and the panel’s conversation when he emphasized that “affordable housing gets framed in a bricks-and-mortar conversation. But it’s not just about buildings – it’s really about people and what impacts human beings.”



Mike Koprowski introduces the Opportunity Roundtable concept



Attendees listen in to the panel discussion



Panelist Harry Lawson discusses the connections between housing policy and education policy

The Opportunity Roundtable is open to all organizations of varying sizes, ages, structures, and sectors – both housing and non-housing. Organizations that are part of the Roundtable will be supportive of the broad mission of the campaign, but participation on the Roundtable does require an organization to endorse specific policy goals or formally endorse the campaign. In the first year, the primary focus of the Roundtable will be cross-sector engagement. Level of engagement with the campaign can vary to the extent each organization is comfortable. Once formed, the Roundtable will meet at least three times per year. For more details about the Roundtable, please see: <https://bit.ly/2jUiJO5> or email Mike Koprowski at: mkoprowski@nlihc.org

Visit the campaign's website at <https://www.opportunityhome.org> and follow the campaign on all social media platforms: [Twitter](#); [Instagram](#); [Facebook](#); [LinkedIn](#)

Disaster Housing Recovery

More than 200 Organizations Send Letter Urging Senate Leaders to Include DHAP in FAA Reauthorization Act

NLIHC and 212 organizations from the NLIHC-led Disaster Housing Recovery Coalition sent a [letter](#) on May 11 to Senate Homeland Security and Governmental Affairs Committee Chair Ron Johnson (R-WI) and Ranking Member Claire McCaskill (D-MO) urging them to include provisions for the Disaster Housing Assistance Program (DHAP) in the Senate version of the Federal Aviation Administration (FAA) Reauthorization Act. The recently passed House version of this bill contained several disaster-related provisions but failed to include DHAP – a proven program to provide stable, longer-term housing assistance for survivors along with wrap-around case management services to help people recover.

Disaster Recovery State Action Plans

The U.S. Virgin Islands and Puerto Rico released on May 3 and May 10 their draft Community Development Block Grant-Disaster Recovery (CDBG-DR) Action Plans for public comment until May 17 and May 25, respectively. In Florida, the period for public comment closed on May 4. Texas began the process first: HUD approved the state's Action Plan related to funds allocated in 2015 and 2016 on May 1, and the state submitted to HUD a final Action Plan for new CDBG-DR funds on May 8.

The U.S. Virgin Islands Housing Finance Authority (VIHFA) released the territory's draft [CDBG-DR Action Plan](#) on May 3 with the public comment period open until May 17. VIHFA is holding three [open forum sessions](#)

- one on each island. The Plan provides \$72 million for housing (including \$30 million for the housing authority) of the approximately \$243 million in the first CDBG-DR total allocation. With a heavier emphasis on infrastructure, economic development, and electrical grid projects in the first tranche, the second is expected to designate more for unmet housing needs - although that is still to be determined.

Puerto Rico's Department of Housing released on May 10 its draft [Action Plan](#) for the first \$1.5 billion in CDBG-DR funds, open for public comment until May 25. A Spanish version of the plan is [here](#). Local groups have been advocating for an extended comment period and additional public hearings; Puerto Rican groups and other members of the NLIHC-led Disaster Housing Recovery Coalition (DHRC) sent a [letter](#) to HUD Secretary Ben Carson and Puerto Rico Department of Housing Secretary Fernando Gil-Enseñat, urging them to allow for greater public input. Mr. Gil-Enseñat responded with a [letter](#) detailing the efforts his agency has taken to include public comments thus far, which he states more than fulfill the legal requirements. He asserted that additional time for public comment would further delay recovery efforts.

The public comment period for Florida's first [Action Plan](#) closed on May 4. Numerous groups, including NLIHC on behalf of the DHRC, submitted letters with comments and recommendations on Florida's Action Plan for \$616 million in CDBG-DR funds. Many of these letters urged the Florida Department of Economic Opportunity to make adjustments that ensure the lowest income households receive their fair share of resources. Read letters from eight organizations and coalitions [here](#).

HUD has officially [approved](#) the Texas General Land Office's first [Action Plan](#) for of \$57.8 million that were part of allocations made in 2015 and 2016. The Texas GLO submitted an [Action Plan](#) to HUD for \$5.024 billion in new CDBG-DR on May 8. Texas Housers submitted [comments](#) on this plan, including recommendations to improve transparency, adjust FEMA-verified loss thresholds, increase the amount for affordable housing, and provide assistance for all families.

The U.S. Virgin Islands' CDBG-DR Action Plan open for public comment is at: <https://bit.ly/2KgNsA2>

Puerto Rico's CDBG-DR Action Plan open for public comment is at: <https://bit.ly/2ww2FLg> (English) and <https://bit.ly/2rFeAky> (Spanish)

House Subcommittee to Hold Hearing on CDBG-DR

The House Financial Services Subcommittee on Oversight will hold a hearing to examine the Community Development Block Grant-Disaster Relief (CDBG-DR) program. Witnesses have not yet been announced. The hearing will be held on May 17 at 10:00 am ET in room 2128 of the Rayburn House Office Building. Learn more about this hearing at: <https://bit.ly/2G7U0hR>

Additional Updates on Disaster Housing Recovery – May 14

The following is a review of additional housing recovery developments related to Hurricanes Harvey, Irma, and Maria, and the California wildfires since last week's *Memo to Members and Partners* (for the article in last week's *Memo*, see [5/7](#)). NLIHC also posts this information at our [On the Home Front](#) blog.

General Updates

Senator Patty Murray (D-WA) introduced the “Rural Disaster Recovery Act of 2018” ([S. 2767](#)), which includes a provision to create a new program to help communities recover when FEMA does not grant Individual Assistance (IA). The proposed program would help with shelter, food, and other recovery services.

FEMA has [released](#) a strategic plan for 2018-2022. The plan has three main goals: build a culture of preparedness; prepare the country for disasters; and reduce the complexity of FEMA. The public can submit questions, comments, and feedback.

Hurricane Maria

FEMA

FEMA granted an unconditional final [extension](#) of the Transitional Sheltering Assistance (TSA) program for survivors of Hurricane Maria through June 30. FEMA will also offer transportation back to Puerto Rico for interested families participating in TSA on the continental U.S.

FEMA and the U.S. Virgin Islands Department of Planning and Natural Resources will introduce an updated version of [The Stronger Home Guide](#) on May 16. This is the first update since 1996.

Local Perspective

The Puerto Rico Planning Board is requesting public comment on new [FEMA flood maps](#). The maps will help Puerto Rico better implement mitigation techniques. The public can provide feedback regarding these maps either by email or mail.

Hurricane Irma

Local Perspective

Thousands of Floridians with disabilities were denied access to Hurricane Irma Disaster-SNAP benefits because they were unable to attend in-person interviews. A new settlement will allow these individuals to apply for benefits by participating in phone interviews. The Florida Department of Children and Families has contacted many of these individuals to alert them of their new eligibility.

Fair Housing

Advocates Sue HUD over AFFH Rule Suspension

Three advocacy organizations filed suit against HUD for suspending until October 31, 2020, the obligation of jurisdictions to submit an Assessment of Fair Housing (AFH) as required by the Affirmatively Furthering Fair Housing (AFFH) rule. The January 5, 2018 suspension in essence suspends the entire AFFH rule for more than 900 jurisdictions (out of 1,200) until 2024 or 2025 (see *Memo*, [1/8](#)). The National Fair Housing Alliance, Texas Low Income Housing Information Services (Texas Housers), and Texas Appleseed filed their legal complaint on May 8, 2018.

The plaintiffs assert that HUD violated the Administrative Procedure Act (APA) in three ways:

1. HUD failed to provide public notice and comment before suspending the AFFH rule's requirement for jurisdictions to submit an AFH.
2. HUD acted in an arbitrary and capricious manner because it did not provide a reasoned basis for the suspension.
3. HUD abdicated its duty under the Fair Housing Act to ensure that recipients of HUD funds affirmatively further fair housing.

Plaintiffs seek preliminary and permanent injunctive relief, including a ruling that the January 5, 2018 *Federal Register* notice constitutes an unlawful agency action, and they call for the courts to order HUD to rescind the notice, immediately reinstate the AFH process, and take all necessary steps to implement and enforce the AFFH rule.

Failure to provide notice and comment. HUD abruptly announced the immediate suspension of the AFH requirements in the *Federal Register* on January 5, 2018 without the APA-required notice and comment. The APA requires a federal agency to publish a notice of proposed rulemaking in the *Federal Register* before issuing a substantive rule. The APA also requires an agency to “give interested persons an opportunity to participate in the rule making through the submission of written data, views, or arguments.”

Citing three court decisions, the plaintiffs add that once a rule is final, the agency “is itself bound by [it] until that rule is amended or revoked,” and the agency “may not alter such a rule without notice and comment.” Also, because the “suspension or delayed implementation of a final regulation normally constitutes substantive rulemaking under [the] APA,” such action requires compliance with the APA’s procedural requirements. Otherwise, “an agency could guide a future rule through the rulemaking process, promulgate a final rule, and then effectively repeal it, simply by indefinitely postponing its operative date.”

Acting in an arbitrary and capricious manner. The complaint raises three components. First, the plaintiffs assert that HUD made no attempt to explain why it was problematic or unexpected that 17 of the first 49 AFH submissions were not initially accepted. The AFFH rule anticipated that HUD would not accept some AFHs on first submission, especially because the AFH was a new concept and tool. The rule requires HUD to provide feedback to a jurisdiction for revising its AFH.

Second, HUD did not consider significant evidence. The complaint notes that 32 of the submissions HUD initially rejected were subsequently improved through a collaborative process between HUD and the jurisdictions, and all but a few were accepted after revision. AFHs not approved were deemed “deeply flawed.” Examples included failing to: recognize segregation in an entire section of a jurisdiction; include any metrics or milestones to measure improvements in fair housing; analyze HUD-provided data; or consider housing barriers for key constituents, such as people living in public housing.

HUD ignored the benefits of ongoing implementation of the AFFH rule. HUD’s suspension notice claimed that another reason for the suspension was that jurisdictions’ expended resources completing an AFH and HUD expended resources reviewing them. The notice did not, however, describe the magnitude of the expense or how the expense outweighed the benefits. The complaint refers to a study that found that AFHs submitted by 28 jurisdictions were a “striking improvement” over those jurisdictions’ previous Analyses of Impediments (AIs).

Third, HUD claimed that better technical assistance was needed to improve jurisdictions’ understanding of their obligations but did not explain why such a need warranted the suspension.

The plaintiffs state that, to the extent HUD’s current technical assistance is inadequate, it is because under Secretary Carson HUD has cut back on technical assistance offerings to local jurisdictions and has stopped issuing technical guidance to its own staff. Starting in 2017, HUD has forbidden its contractors or staff to

engage in on-site technical assistance, failed to publish further guidance, and ceased to monitor and respond to questions about the AFFH rule submitted through the HUD Exchange Ask-A-Question portal.

HUD abdicated its duty under the Fair Housing Act to ensure that recipients of HUD funds affirmatively further fair housing. HUD promulgated the AFFH rule during the Obama administration in response to mounting evidence that the AI system, which was basically honor-based, resulted in jurisdictions accepting federal funds without taking meaningful steps to affirmatively further fair housing. By suspending the AFFH, most jurisdictions will revert to the very flawed AI system.

Co-counsel for the plaintiffs are the Lawyers' Committee for Civil Rights Under Law, the Poverty & Race Research Action Council, the NAACP Legal Defense and Educational Fund, the American Civil Liberties Union, the Public Citizen Litigation Group, and the law firm of Relman, Dane, and Colfax, PLLC.

A more detailed version of this *Memo* article can be found at: <https://bit.ly/2Ibip7M>

The complaint and related materials are available on the website of the Policy & Race Research Action Council at: <https://bit.ly/2KOfpzX>

More about the July 2015 AFFH rule is on page 7-5 of NLIHC's *2018 Advocates' Guide* at: <https://bit.ly/2G2zU8q>

More about the Analysis of Impediments is on page 7-17 of NLIHC's *2018 Advocates' Guide* at: <https://bit.ly/2IckAIB>

Read NLIHC's statement commending the lawsuit at: <https://bit.ly/2IbwPsZ>

HUD Signals Intent to Reconsider Disparate Impact Rule

HUD announced its intent to reconsider its February 15, 2013 Disparate Impact regulation, signaling a third attempt by HUD under Secretary Ben Carson to weaken its fair housing enforcement. In a [media release](#) on May 10, HUD indicated that it will formally seek public comment on whether the regulation is consistent with the U.S. Supreme Court decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities* (see *Memo*, [6/29/15](#)).

HUD's first action against fair housing during this administration was its attempt to suspend the final rule implementing Small Area Fair Market Rents (SAFMRs) (see *Memo* [8/21/17](#)), after which the U.S. District Court for the District of Columbia issued a preliminary injunction on December 23, 2018 in response to a suit filed by fair housing organizations. As a result of the injunction, HUD was forced to implement the SAFMR rule (see *Memo*, [1/8](#)). HUD's second action against fair housing came on January 5, 2018, when the department in essence suspended the Affirmatively Furthering Fair Housing (AFFH) final rule (see *Memo*, [1/8](#)). This week three advocacy organizations filed suit against HUD for its suspension of the AFFH rule (see related article in this *Memo to Members and Partners*).

HUD's media release acknowledges that the Supreme Court upheld the use of disparate impact theory to establish liability under the Fair Housing Act in cases where seemingly neutral practices have a discriminatory impact on protected classes of persons. HUD goes on to state that the Court "did not directly rule upon it," hence HUD wants public input whether the regulation is consistent with the Court's ruling in *Texas v. Inclusive Communities*.

For many years HUD interpreted the Fair Housing Act to prohibit housing practices that have a discriminatory effect, even if there was no intent to discriminate. Eleven courts of appeals agreed. There were minor variations,

however, in how the courts and HUD applied the discriminatory effects concept. Therefore, the February 15, 2013 regulation was issued to establish uniform standards for determining when a housing practice with a discriminatory effect violates the Fair Housing Act (see *Memo*, [2/8/13](#)).

The final rule standardized a three-step “burden-shifting” approach that HUD has used and that a majority of appeals courts have applied.

- First, the party complaining that there is a discriminatory effect has the burden of proving that a practice caused, or predictably will cause, a discriminatory effect.
- Second, if the complaining party makes a convincing argument, then the burden of proof shifts to the defending party, which must show that the practice has a “legally sufficient justification,” meaning it is necessary to achieve a substantial, legitimate, nondiscriminatory interest that cannot be served by another practice that has a less discriminatory effect.
- Third, if the defending party is successful, the complaining party can still succeed by demonstrating that the defending party’s substantial, legitimate, nondiscriminatory interest could be served by another practice that has a less discriminatory effect.

More about Disparate Impact is on page 7-1 of NLIHC’s *2018 Advocates’ Guide* at: <https://bit.ly/2IcZlWK>

HUD

HUD Spring Regulatory Agenda Released; Obama Administration’s Proposed Section 3 Rule Scrapped with New Proposed Rule Scheduled for July

HUD’s Spring Regulatory Agenda was posted on May 9, 2018 by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget. Notably, the Fall 2017 Long-Term Agenda had the [proposed rule for Section 3](#) (“Economic Opportunities for Low and Very Low Income Persons”), which was developed in the Obama administration with significant input from advocates. In the Spring 2018 Agenda, the Trump administration appears to be poised to announce, without input from advocates, a new [notice of proposed rulemaking](#) (NPRM) for Section 3. The tentative schedule for the Section 3 proposed rule is July, 2018.

The OIRA description of the proposed Section 3 rule is substantially changed. One sentence is a cause of potential concern: “The rule proposes to align and integrate oversight and reporting by eliminating complaint and compliance review provisions in favor of program-specific mechanisms, thereby reducing burden.” The other new descriptive text is:

“The rule also proposes opportunities to encourage the training of low- and very low-income persons to ensure the availability of a skilled workforce once the construction or renovation begins. Finally, it would establish thresholds at levels at which federal assistance effectively generates new economic opportunities, provide a mechanism to adjust thresholds over time, align requirements to typical recipients’ business practices to reduce burden, and clarify the obligations of covered recipient agencies.”

The Section 3 summary lists three HUD officials as references: one from the Office of Community Planning and Development, one from the Secretary’s office, and one from the Office of Recapitalization (which oversees the Rental Assistance Demonstration) – but no one from the Office of Public and Indian Housing.

A final rule for the national Housing Trust Fund remains on the long-term list, but the anticipated date of moving from an interim regulation to a final regulation has been pushed back from December, 2018, to May, 2019.

The anticipated periods for two final rules pertaining to lead-based paint hazards have also been pushed back: “Streamlining Reporting Requirements for Lead-Based Paint Hazards in Project-Based Assistance Housing and Tenant-Based Assistance Housing” (now November, 2018), and “Conforming Lead Disclosure Rule to Include Zero Bedroom Dwellings in the Definition of Target Housing and Making Clarifying Changes” (now December, 2018).

The Fall 2017 Agenda had a single proposed rule for the “Housing Opportunity Through Modernization Act of 2016” (HOTMA). The Spring 2018 Agenda has HOTMA regulations separated into four proposed rules, one about income reviews (September, 2018), one about project-based voucher implementation (December, 2018), one about over-income public housing tenants (September, 2018), and one about capital fund replacement reserve funds (December, 2018).

The final rule, “Streamlining Administrative Regulations for Multifamily Housing Programs and Implementing Family Income Reviews Under the Fixing America's Surface Transportation (FAST) Act” is now scheduled for December 2018 instead of December 2017. And the final rule for “Streamlining Management and Occupancy Reviews for Section 8 Housing Assistance Programs” is pushed back from March 2018 to September 2018.

A new rule will be proposed in December to implement a single inspection protocol for public housing and voucher units, as required by the Appropriations Act of 2016. The proposed rule would revise the physical inspection regulations for HUD’s Housing Choice Voucher program to conform to the Uniform Physical Condition Standards (UPCS) used by other HUD programs. A UPCS-based inspection protocol would take the place of the existing housing quality standards (HQS).

The Spring 2018 Long-Term Agenda adds a notice of proposed rulemaking about voluntary conversions of public housing developments. Still on the long-term list, but with later anticipated dates, are “Tenant-Based Assistance: Enhanced Vouchers” and “Supportive Housing for Persons with Disabilities Implementing New Project-Rental Assistance Authority.”

These agendas are aspirational and may not be strictly adhered to.

The Spring 2018 Unified Agenda of Regulatory and Deregulatory Action is at: <https://bit.ly/2vIJI2G>

The full Spring Agenda is at: <https://bit.ly/2KQI8W4>

The full Spring 2018 Long-Term Agenda is at: <https://bit.ly/2I6jGkR>

The Fall 2017 Agenda is at: <https://bit.ly/2Ia0Ysn>

The Fall 2017 Long-Term Agenda is at: <https://bit.ly/2rBQuqu>

Research

Housing Tax Credit Qualified Action Plans Affect the Location of Affordable Housing

An article published in *Housing Policy Debate* by Ingrid Gould Ellen and Keren Mertens Horn, “Points for Place: Can State Governments Shape Siting Patterns of Low-Income Housing Tax Credit Developments,”

examines the impact of state Qualified Allocation Plans (QAPs) on the siting of affordable rental housing supported by 9% Low Income Housing Tax Credits (LIHTCs). Their research finds that QAP changes that prioritize development in higher opportunity areas are associated with a greater share of tax credit allocations to developments in low-poverty neighborhoods and a lesser share in predominantly minority neighborhoods.

Every state receives an annual allocation of LIHTCs to disburse through a state agency, often referred to as a housing finance agency (HFA). HFAs are required to develop QAPs, which set forth the criteria used to determine which projects proposed by developers receive an allocation of the credits. Housing advocates often provide input on the criteria during the QAP review process to promote certain policy objectives such as deeper income targeting, preservation of existing affordable housing, or siting affordable housing in higher-opportunity neighborhoods.

To determine the impact of QAP provisions on LIHTC siting patterns, the authors examined location criteria in QAPs from 20 states at two different points in time (2002 and 2010) and the subsequent neighborhood characteristics of LIHTC developments awarded credits for new construction and preservation. Neighborhood characteristics included poverty, racial composition, and the housing market and were measured at the census-tract level.

Looking at the change in LIHTC allocations between 2003 to 2005 and 2011 to 2013, the share of LIHTC units sited in low-poverty neighborhoods (poverty rate < 10%) increased by 3.5 percentage points; the share of LIHTC units sited in high-poverty neighborhoods (poverty rate > 30%) declined by 8.5 percentage points; and the share sited in high-minority neighborhoods (less than 10% white) declined by 6.2 percentage points.

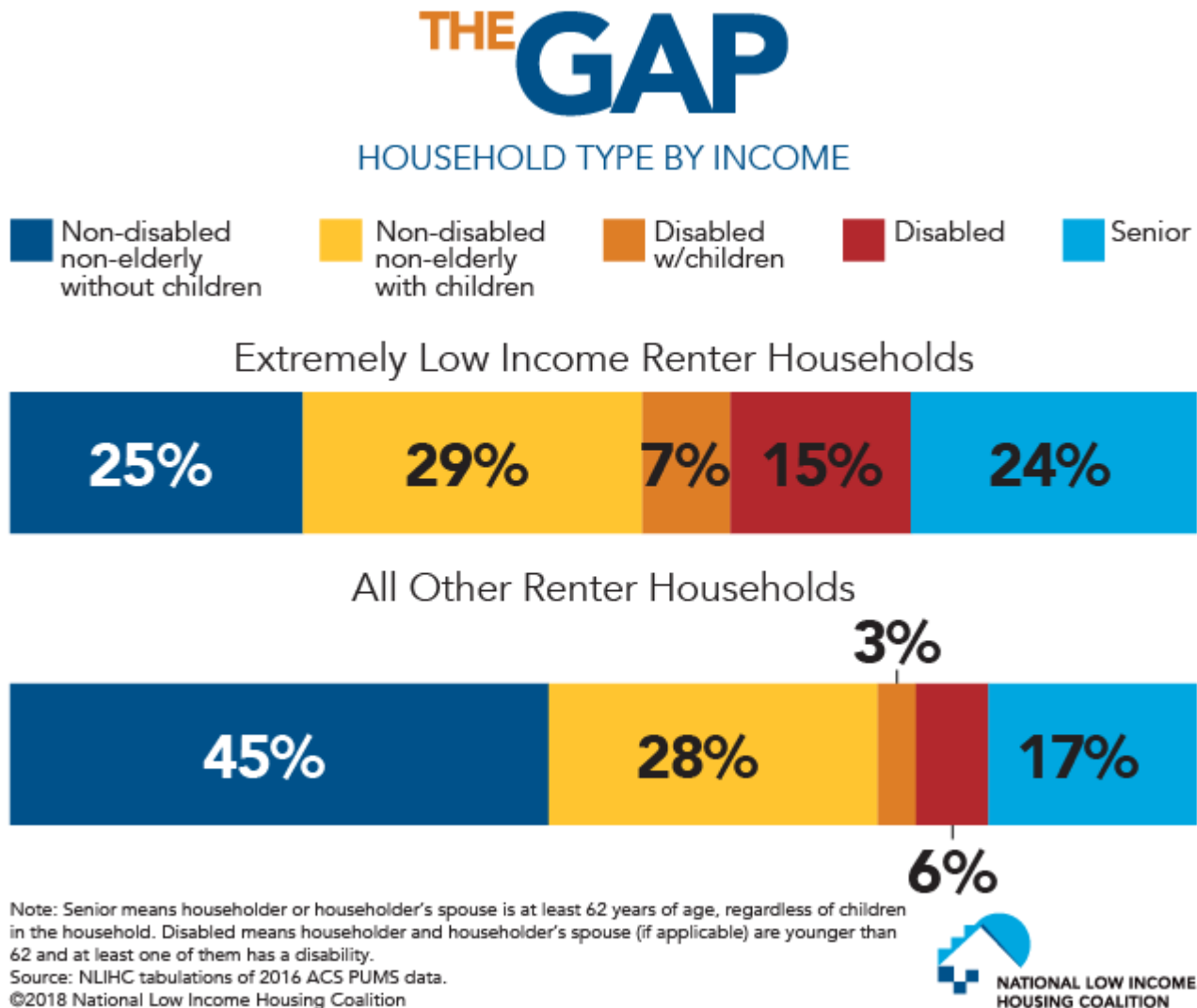
The authors found a relationship between changes in states' QAPs and the siting of LIHTC developments. States that began to prioritize development in higher-opportunity areas saw a subsequent increase in the share of LIHTCs allocated to developments in low-poverty neighborhoods and a decrease in the share allocated to developments in largely minority neighborhoods. It was not clear whether changes in QAP criteria led LIHTC developers to begin proposing developments in different neighborhoods, or whether states simply selected different developments to receive tax credits. Changes to neighborhood priorities in QAPs also appeared to matter more in some states, like Texas and New Jersey, than in others. Determining the precise reasons for the differences, according to the authors, requires further research.

The authors conclude that state and local housing officials should view QAPs "as critical planning tools and pay careful attention to the neighborhood priorities they communicate."

"Points for Place: Can State Governments Shape Siting Patterns of Low-Income Housing Tax Credit Developments" is available at: <https://bit.ly/2ryVBJ4>

Fact of the Week

Lowest Income Renter Households are Disproportionately Seniors and People with Disabilities



Source: NLIHC tabulations of 2016 ACS PUMS data presented in [The Gap: A Shortage of Affordable Homes](#).

From the Field

Louisiana Lawmakers Ban Mandatory Inclusionary Zoning

State lawmakers in Louisiana passed a bill (S.B 462) on Tuesday, May 9 that will ban municipalities from requiring developers to include affordable housing in new multifamily projects. Senator Danny Martiny (R-LA), chairman of the Senate Commerce Committee sponsored the bill. Many legislators argued that requiring a developer to sell or rent a unit for less than they could get for it on the open market is unconstitutional.

Several cities in Louisiana are facing an affordable housing crisis. Housing costs are rising while wages have stagnated. Affordable housing contracts, tax credits, and other federal subsidies are increasingly expiring.

Mandatory inclusionary zoning laws would increase the supply of affordable homes in the absence of other incentives for for-profit developers to create them.

Housing advocates across the state worked hard to oppose S.B. 462. Members of the Greater New Orleans Housing Alliance called and tweeted their representatives urging them to #PutHousingFirst, and advocates went to the Capitol on Monday, May 7 to express their concerns in person. The bill passed in the House by a vote of 61-29. Without the requirement of mandatory inclusionary zoning, the City of New Orleans and other municipalities around the state will lose a powerful tool for creating equitable, sustainable and affordable homes for all.

The bill's passage will push New Orleans further down its current path of displacement and disparity, falling further behind on the goals outlined in the [*Housing NOLA's 10-Year Strategy and Implementation Plan*](#) and [*Smart Housing Mix Study of 2016*](#). "We are deeply disappointed in the decision that allowed this bill to pass," said by Andreanecia Morris, president and chair of GNOHA. "It's nearly unfathomable to think that throughout our long history, our elected officials in the state capitol have yet to realize that our market cannot and will not correct itself."

For more information, contact Andreanecia Morris at: amorris@housingnola.org

Maryland Legislature Passes Wins for Housing and Community Development

The Maryland General Assembly recently wrapped up their 2018 legislative session, a positive one for affordable housing and community development. The 2019 budget includes \$20 million for Rental Housing Works (RHW), a subordinate gap financing program used solely for projects financed by the Maryland Department of Housing and Community Development (DHCD) Multifamily Bond Program and 4% Low Income Housing Tax Credits. An additional \$5 million may be authorized to RHW if bond proceeds exceed the budgeted amount. The DHCD also received full funding for other rental housing program funds and a \$2 million increase for the Community Legacy Program, which provides local governments and community development organizations funding for community strengthening and revitalization, for a total of \$8 million.

The legislature approved language in the budget bill that requires DHCD to complete an assessment of the affordable rental housing needs across the state, including where housing and what age groups are most in need. The Maryland Affordable Housing Coalition (MAHC), an NLIHC state partner, expressed hopes this information will help inform future Qualified Allocation Plans and address the need for additional senior housing. DHCD must also prepare a plan to preserve existing affordable housing to continue to serve low income residents in the future. Preservation is becoming increasingly important as older properties' subsidies and affordability restrictions begin to expire.

As for other legislation, MAHC opposed HB580 (Prohibited Lease Provisions—Late Fees for Tenants Receiving Government Benefits), which did not pass. MAHC supported the successful establishment of the Community Development Fund (CDF), designed to finance affordable housing and community development. The CDF does not yet have a funding source, but legislation is expected to follow next year to establish one. Additionally, the "Heritage Rehabilitation Tax Credit Act" passed, making state historic tax credits transferrable and refundable for affordable housing projects that are also receiving an allocation of Low Income Housing Tax Credits. The bill also authorized an additional 5% tax credit for commercial projects that have an affordable housing component.

For more information, contact Miranda Darden at the Maryland Affordable Housing Coalition at: mdarden@mdahc.org

Resources

CBPP and PRRAC Provide a Guide to Small Area Fair Market Rents

The Center on Budget and Policy Priorities (CBPP) and the Poverty & Race Research Action Council (PRRAC) developed a brief, easy-to-read guide explaining Small Area FMRs (SAFMRs). The guide describes SAFMRs, the benefits of using SAFMRs, and issues for advocates. The guide explains HUD's policy requiring SAFMRs be used by public housing agencies (PHAs) in 24 metropolitan areas. It also describes how other PHAs may voluntarily use SAFMRs. The guide is at: <https://bit.ly/2rxmMUm>

NLIHC in the News

NLIHC in the News for the Week of May 6

The following are some of the news stories that NLIHC contributed to during the week of May 6:

- “Why cracking California’s homeless crisis will take more than money,” *Scribd*, May 11 at: <https://bit.ly/2rCsqEM>
 - “The Rent Is Too Damn High, and Progressives Need to Do Something,” *The Nation*, May 9 at: <https://bit.ly/2wAvuq4>
 - “Civil rights groups sue HUD, Ben Carson for delaying Obama fair housing effort,” *HousingWire*, May 8 at: <https://bit.ly/2jNuOnY>
 - “Lack of safe, affordable housing for low-income people in Columbus focus of Nehemiah Action event,” *The Columbus Dispatch*, May 7 at: <https://bit.ly/2IrTCQn>
-

NLIHC News

NLIHC Seeks Housing Advocacy Organizer

NLIHC is accepting applications for the position of housing advocacy organizer. As a member of the NLIHC field team, the housing advocacy organizer mobilizes NLIHC members on federal policy advocacy based on NLIHC's approved policy agenda, assists in the design and implementation of campaign field strategies, and conducts outreach activities in specific states. The organizer will spend significant time developing and retaining NLIHC membership; increasing endorsements for NLIHC campaigns; and mobilizing NLIHC membership, state coalition partners, and other advocates on “calls to action” and other organizing efforts in support of socially just affordable housing policy that ensures the lowest income people in the U.S. have decent, affordable homes.

The position requires strong written and oral communication skills and excellent electronic technology skills, including proficiency in the Microsoft Office suite, database management, and social media use. Some familiarity with customer relationship management systems like Salesforce would be a plus. Priority consideration will be given to candidates with proven organizing experience mobilizing a community or constituent base at a national, state, or local level. Some knowledge of federal housing policy is a plus. A bachelor's degree is required. The position is based in Washington, DC. Some travel is required.

An equal opportunity, affirmative action employer, NLIHC offers a competitive salary and benefits package.

Interested candidates should submit by email (rwillis@nlihc.org) a cover letter with salary requirements, resume, and two writing samples to Renee Willis, vice president for field and communications, National Low Income Housing Coalition, 1000 Vermont Avenue, NW, Suite 500, Washington, D.C. 20005.

Where to Find Us – May 14

NLIHC President and CEO Diane Yentel and other NLIHC staff will be speaking at the following events in the coming months:

- Provider Alliance to End Homelessness, Los Angeles, CA on May 17
- [Virginia Community Health Workers Forum](#), Richmond, VA on May 18
- [Conference on Ending Homelessness](#), Yakima, WA, May 22-23
- [2018 Denver Housing Summit](#), Denver, CO on May 24
- [Maryland Association of Housing and Redevelopment Agencies \(MAHRA\) Annual Conference](#), Ocean City, MD on May 24
- US SIF Forum for Sustainable and Responsible Investment Annual Conference, [Investing for a Sustainable World](#), Washington, DC on June 1
- [NFHA National Conference](#), Washington, DC on June 12
- [Virginia Housing Alliance Annual Luncheon](#), Richmond, VA on June 14
- [Florida Housing Coalition Annual Conference](#), Orlando, FL on August 27
- [Federal Reserve Bank of Philadelphia: Reinventing Our Communities: Investing in Opportunity](#), Baltimore, MD on October 1

NLIHC Staff

Sonya Acosta, Policy Intern, x241
Andrew Aurand, Vice President for Research, x245
Victoria Bourret, Housing Advocacy Organizer, x244
Josephine Clarke, Executive Assistant, x226
Dan Emmanuel, Senior Research Analyst, x316
Ellen Errico, Creative Services Manager, x246
Ed Gramlich, Senior Advisor, x314
Paul Kealey, Chief Operating Officer, x232
Mike Koprowski, Director, Multisector Housing Campaign, x317
Joseph Lindstrom, Manager, Field Organizing, x222
Lisa Marlow, Communications Specialist, x239
Sarah Mickelson, Senior Director of Public Policy, x228
Isaiah Milbauer, Field Intern, x252
Khara Norris, Director of Administration, x242
Christina Sin, Development Manager, x234
Debra Susie, Disaster Housing Recovery Coordinator, x227
Elayne Weiss, Senior Policy Analyst, x243
Chantelle Wilkinson, Housing Campaign Coordinator, x230
Renee Willis, Vice President for Field and Communications, x247
Diane Yentel, President and CEO, x228