

July 16, 2021

## Memorandum

**To:** Members, Committee on Financial Services  
**From:** FSC Majority Staff  
**Subject:** July 20, 2021, Full Committee Hearing entitled, “Building Back A Better, More Equitable Housing Infrastructure for America: Oversight of the Department of Housing and Urban Development”

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The full Committee will hold a hearing entitled, “Building Back A Better, More Equitable Housing Infrastructure for America: Oversight of the Department of Housing and Urban Development” on Tuesday, July 20, 2021 at 10 a.m. ET in room 2128 of the Rayburn House Office Building. There will be one panel with the following witness:

- **The Honorable Marcia Fudge**, Secretary, U.S. Department of Housing and Urban Development

### Background

On March 10, 2021, the Honorable Marcia Fudge was sworn in as the eighteenth Secretary of the United States Department of Housing and Urban Development (HUD). Prior to serving as the Secretary of HUD, Secretary Fudge served as a Member of the U.S. House of Representatives for Ohio’s 11<sup>th</sup> District from 2008 to 2021, and as mayor of Warrensville Heights, Ohio, from 2000 to 2008. In the months Secretary Fudge was confirmed, HUD has worked to respond to increases in housing instability and homelessness caused by the coronavirus pandemic, proposed new investments in our nation’s housing infrastructure as part of President Biden’s *Build Back Better* plan, and rolled back actions the Trump administration took to undermine the Fair Housing Act.

### American Rescue Plan

With millions out of work, facing eviction and foreclosure, and struggling to make ends meet, President Biden worked with Congress to sign the American Rescue Plan (ARP) into law in March 2021. In order to help stabilize people experiencing homelessness, renters, and homeowners struggling to make their housing payments, ARP included \$21.5 billion in additional emergency rental assistance and nearly \$10 billion for the Homeowner Assistance Fund to be administered through the Department of the Treasury. It also provided funding for HUD-administered programs, including \$5 billion to fund emergency housing vouchers for people experiencing or at risk of homeless and survivors of domestic violence, \$5 billion through the HOME Investment Partnerships Program to finance supportive services, affordable housing, and the acquisition of non-congregate shelter (such as hotels) specifically for people currently experiencing homelessness, as well as critical funding for housing counseling services and fair housing enforcement.

In May, HUD announced that it had allocated 70,000 emergency housing vouchers to public housing agencies across the country to distribute to eligible households and has issued program rules and

guidance.<sup>1</sup> HUD has also allocated ARP HOME funds and is in the process of developing guidance for the program.<sup>2</sup> Additionally, while HUD is not directly administering ARP emergency rental assistance funds (the program is run through the Department of the Treasury), the agency is providing technical assistance and expertise to grantees to help them quickly scale up local emergency rental assistance programs and manage federal funds provided by ARP and the CARES Act.<sup>3</sup>

## American Jobs Plan

The ongoing pandemic and resulting economic instability continue to have devastating effects on many communities, as millions of households struggle to remain stably housed or are forced to live in tents, on streets, and under highways. The U.S. has not experienced a full and equitable recovery as people of color, particularly women of color, continue to experience disproportionately high unemployment rates,<sup>4</sup> households of color and low-income households experience higher shares of housing payment arrearages and mortgage defaults,<sup>5</sup> and communities of color on average show lower vaccination rates.<sup>6</sup> In order to create more jobs and jumpstart the nation's economic recovery, President Biden proposed funding major housing measures in the American Jobs Plan (AJP).<sup>7</sup>

Specifically, the AJP calls for \$318 billion in new housing investments, including direct spending and tax credits. The direct spending includes funding for HUD programs including \$40 billion to repair public housing, \$45 billion for the national Housing Trust Fund, \$35 billion for the HOME Investment Partnerships Program, \$3 billion for lead abatement, \$2 billion for Native American housing needs, \$2 billion for supportive housing for low-income seniors.<sup>8</sup> The AJP also proposes \$5 billion to incentivize communities to reform zoning policies, \$10 billion for a new Community Revitalization Fund, and \$2 billion for a new Community Development Block Grant (CDBG) resiliency program. While the AJP's housing investments were excluded from the bipartisan infrastructure agreement reached between the White House and Senate Republicans, President Biden has affirmed that funding for housing would be included in separate reconciliation legislation.<sup>9</sup> The Chairwoman's Housing is Infrastructure Act of 2021 also includes substantial new investments into the housing programs that would be funded by AJP but also includes significant funding for rental and downpayment assistance to help low income families afford their homes or low-wealth individuals to move into homeownership.

## Fiscal Year 2022 Budget Request

The Fiscal Year (FY) 2022 HUD budget reverses a four-year pattern of budgets which proposed deep cuts to HUD programs. Instead, the budget proposes a \$9 billion or 15% increase in funding compared to the FY 2021 enacted level.<sup>10</sup> Overall, the budget request proposes \$68.7 billion in

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<sup>1</sup> HUD, [HUD Announces \\$5 Billion to House People Experiencing Homelessness](#) (May 17, 2021); HUD, [Emergency Housing Vouchers](#) (accessed July 12, 2021).

<sup>2</sup> HUD, [HOME-ARP Program](#) (accessed July 12, 2021).

<sup>3</sup> U.S. Department of the Treasury, [Fact Sheet: The Biden-Harris Administration Announces Enhanced Efforts to Prevent Evictions and Provide Emergency Assistance to Renters](#) (May 7, 2021).

<sup>4</sup> Nate Rattner and Thomas Franck, [Black and Hispanic women aren't sharing in the job market recovery](#), CNBC (March 5, 2021); See also Astrid Galvan, [Latinas left workforce at highest rate, see slow recovery](#), Associated Press (June 16, 2021).

<sup>5</sup> Susan F. Cherry et al, [Government and Private Household Debt Relief During COVID-19](#), National Bureau of Economic Research (Jan. 2021).

<sup>6</sup> Marty Johnson, [Racial disparities in COVID-19 vaccination rates persist as delta variant gains steam](#), The Hill (Jul. 8, 2021).

<sup>7</sup> White House, [American Jobs Plan](#) (accessed July 12, 2021).

<sup>8</sup> HUD, [American Jobs Plan Housing Factsheet](#) (accessed July 12, 2021).

<sup>9</sup> Committee on Financial Services, [Chairwoman Waters Secures Commitment from President Biden to Include Housing in Reconciliation](#) (July 8, 2021).

<sup>10</sup> HUD, [Fiscal Year 2022 HUD Budget](#) (2021).

discretionary spending for HUD to provide a critical safety net for our nation's poorest families, seniors, veterans, and people with disabilities, expand fair housing and economic opportunities for low- and moderate-income families, and strengthen communities. Specifically, the HUD budget request proposes:

- **Public Housing:** \$3.5 billion for the public housing capital fund, \$435 million over the FY 2021 enacted level, and \$4.9 billion for the public housing operating fund, \$23 million over the FY 2021 enacted level. The budget request includes \$185 million for the Choice Neighborhood Initiative.
- **Housing Choice Vouchers (HCVs):** \$30.4 billion, an increase of \$5.4 billion over the FY 2021 enacted level, to maintain current services and provide HCVs to an additional 200,000 families.
- **Project-Based Rental Assistance:** \$14 billion for Project-Based Section 8 Rental Assistance, an increase of \$595 million over the 2021 enacted level.
- **Supportive housing for the elderly (Section 202):** \$928 million, \$73 million over the FY 2021 enacted level, including \$100 million to support the development of 1,1000 new homes for low-income older adults.
- **Supportive housing for people with disabilities (Section 811):** \$272 million to support Section 811 properties, with \$80 million set aside to construct 900 new units of permanently affordable, accessible housing for people with disabilities.
- **Housing Opportunities for People Living with AIDS Program (HOPWA):** \$450 million for the HOPWA program, a \$30 million increase over the FY 2021 enacted level.
- **Homeless Assistance Grants:** \$3.5 billion for Homeless Assistance Grants, an increase of \$500 million over the 2021 enacted level. This will support more than 100,000 additional households, including survivors of domestic violence and youth experiencing homelessness.
- **Modernization and Improvement of Energy Efficiency, Resilience, and Safety in HUD-Assisted Housing:** \$800 million in new investments across HUD programs to rehabilitate and modernize housing to be more energy efficient and resilient.
- **Native American Programs:** \$1 billion for Native American programs, \$175 million more than the FY 2021 enacted level.
- **Community Development Block Grant Program (CDBG):** \$3.8 billion for CBDG, an increase of \$295 million over FY 2021 enacted levels.
- **HOME Investments Partnerships Program:** \$1.85 billion for the HOME Investment Partnerships Program, an increase of \$500 million over the FY21 enacted level. This would include a \$100 million set-aside for a new downpayment initiative to States and insular areas.
- **Housing Counseling:** \$85.9 million for HUD's housing counseling program, which would include \$20 million for legal services to help renters avoid evictions.
- **Self-Sufficiency Programs:** \$120 million for the Family Self-Sufficiency Program (\$15 million over the FY 2021 enacted level) and \$20 million for the Jobs-Plus Program (\$5 million over the FY 2021 enacted level).
- **Homeownership for Minority, First-Time, and First-Generation Homebuyers:** \$180 million for the Federal Housing Administration's Mutual Mortgage Insurance Program to support access to homeownership for underserved borrowers.
- **Fair Housing Enforcement:** \$85 million in grants to support State and local fair housing enforcement organizations and to further education, outreach, and training on fair housing laws.
- **Lead Hazard and Healthy Homes Grants:** \$400 million, an increase of \$40 million over FY 2021 enacted levels, to reduce lead-based paint and other health hazards in the homes of low-income families with children.
- **Self-Help Homeownership Opportunity Program (SHOP):** \$10 million for non-profits to develop homeownership opportunities for low-income families through sweat equity.

- **Section 4 Program:** \$41 million, a \$5 million increase from FY 2021, to develop the capacity and ability of organizations to undertake community development and affordable housing projects.
- **Manufactured Housing:** level-funding at \$14 million for the development and enforcement of appropriate standards for the construction, design, installation, and performance of manufactured homes.

## Executive Actions on Fair Housing

During his first week in office, President Biden issued an executive order on racial equity and a memorandum on fair housing, reasserting a federal commitment to fair housing at the highest levels of government.<sup>11</sup> The President’s January 20<sup>th</sup> executive order calls on each federal agency to “assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups...[to] better equip agencies to develop policies and programs that deliver resources and benefits equitably to all.”<sup>12</sup> It also requires that each agency, alongside the Office of Management and Budget, create a plan to address barriers to equity identified in such assessments by January 2022. As the primary federal agency charged with enforcement of the Fair Housing Act (FHAAct),<sup>13</sup> the President’s January 26<sup>th</sup> memorandum on fair housing explicitly calls on HUD Secretary Fudge to “redress our nation’s and our federal government’s history of discriminatory housing practices and policies,” including by taking actions that “undo historic patterns of segregation and other types of discrimination and that afford access to long-denied opportunities,” consistent with the FHAAct.

Passed in 1968 and amended in both 1974 and 1988, the FHAAct has two main purposes: 1) to end and prohibit discrimination in the sale, rental, financing, advertising, and insurance of housing on the basis of race, color, sex, national origin, religion, disability, and familial status; and 2) to undo systemic barriers to housing opportunity through a mandate to “affirmatively further fair housing”. Implementing two central tenets of the FHAAct are HUD regulations known as the Affirmatively Furthering Fair Housing (AFFH) and Disparate Impact rules.

*Affirmatively Furthering Fair Housing.* While the AFFH mandate of the FHAAct is intended to require recipients of federal housing grants to proactively address structural barriers and affirmatively expand access to opportunity for people of protected classes, the statute went largely ignored and unenforced over the past half-century until the Obama administration released its final AFFH rule in July of 2015.<sup>14</sup> However, in August 2020, the Trump administration implemented a new final AFFH rule that significantly weakened enforcement of the AFFH mandate by redefining AFFH, and eliminating the stronger Assessment of Fair Housing (AFH), reverting back to the old Analysis of Impediments (AI) fair housing planning requirement that GAO found to be ineffective.<sup>15</sup> In June 2021, the Biden administration

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<sup>11</sup> White House, [Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#) (Jan. 20, 2021); See also White House, [Memorandum on Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies](#) (Jan. 26, 2021).

<sup>12</sup> *Id.*

<sup>13</sup> HUD’s Office of Fair Housing and Equal Opportunity receives and investigates fair housing complaints. HUD occasionally refers complaints to the Department of Justice (DOJ), typically when HUD determines that there is a more systemic issue involved in the case. The DOJ can also choose to litigate fair housing cases without a referral from HUD. In addition to investigating complaints that are submitted to HUD, the Secretary of HUD has the power to proactively conduct investigations and file subsequent Secretary-Initiated Complaints. These complaints involve potential fair housing violations that are national in scope and affect the broad public, or where HUD is unaware of a specific complainant or injured party.

<sup>14</sup> [80 FR 42271](#)

<sup>15</sup> [85 FR 47899](#); See also GAO, [HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions’ Fair Housing Plans](#) (Sep. 2010).

issued an interim final rule that restored the 2015 rule’s definition of AFFH and has announced a forthcoming final rulemaking that is expected to more fully reinstate the Obama era rule.<sup>16</sup>

*Disparate Impact.* The disparate impact standard under the FHAct allows victims of housing discrimination to seek justice in the courts by putting a stop to policies and practices that appear neutral on their face, but that have the impact of discriminating against protected classes of people. Disparate impact claims have been critical to holding industry and private actors accountable for systemic forms of housing discrimination. In 2013, HUD issued a final rule under the Obama administration that would determine whether a practice has an unjustified discriminatory effect under the FHAct.<sup>17</sup> The Supreme Court’s 2015 *Inclusive Communities Project v. Texas Department of Housing and Community Affairs* decision confirmed that the disparate impact standard applies under the FHAct.<sup>18</sup> However, in September 2020, the Trump administration published a new final Disparate Impact Rule that would have significantly shifted the burden of proof from the perpetrators of discrimination to the plaintiffs, making it more difficult for victims of housing discrimination to prevail in court under the disparate impact standard.<sup>19</sup> On June 25, 2021, the Biden Administration published a notice of proposed rulemaking to fully reinstate the 2013 Disparate Impact Rule, which “remains in effect due to the [U.S. District Court for the District of Massachusetts’] preliminary injunction.”<sup>20</sup>

*Equal Access Rule.* Under President Obama, HUD instituted the Equal Access Rule in 2016 to strengthen provisions of the FHAct and ensure individuals had equal access to services, benefits, and shelter provided through HUD programs, regardless of their gender identity or sexual orientation.<sup>21</sup> In May 2019, the Trump administration undermined that rule by releasing a notice of proposed rulemaking, threatening existing requirements that owners and operators of HUD-funded homeless shelters inform individuals of their rights under the Equal Access Rule.<sup>22</sup> In April 2021, the Biden administration rescinded the Trump administration’s proposed rulemaking and issued technical assistance resources to help grantees adequately comply with the requirements of the Equal Access Rule.<sup>23</sup>

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<sup>16</sup> HUD, [HUD Restores Affirmatively Furthering Fair Housing Requirement](#) (June 10, 2021); See also [86 FR 34943](#).

<sup>17</sup> [78 FR 11459](#)

<sup>18</sup> U.S. Supreme Court, [Texas Department of Housing and Community Affairs et al. V. Inclusive Communities Project, Inc., et al](#) (June 2015).

<sup>19</sup> [85 FR 60288](#).

<sup>20</sup> Federal Register, [RIN 2529-AB02](#) (Jun. 25, 2021).

<sup>21</sup> [81 FR 64763](#)

<sup>22</sup> HUD, [HUD Updates Equal Access Rule, Returns Decision Making to Local Shelter Providers](#) (Jul. 1, 2020); See also [86 FR 22125](#).

<sup>23</sup> HUD, [HUD Withdraws Proposed Rule, Reaffirms Its Commitment to Equal Access to Housing, Shelters, and Other Services Regardless of Gender Identity](#) (Apr. 22, 2021).

## Appendix: Legislation

- **H.R. \_\_\_, the “Housing Is Infrastructure Act of 2021,” (Waters)** is a bill to authorize over \$600 billion in new funding for America’s housing infrastructure.
- **H.R. \_\_\_, the “Downpayment Toward Equity Act of 2021,” (Waters)** is a bill to address the legacy of discrimination in our housing markets by providing downpayment and other financial assistance, along with housing counseling requirements, to expand access to sustainable homeownership and reduce barriers to entry for credit-worthy, lower wealth borrowers.
- **H.R. \_\_\_, the “Ending Homelessness Act of 2021,” (Waters)** is a bill to establish a universal voucher program, ban housing discrimination based on source of income and veteran status, and provide supplemental emergency funding to address the homelessness crisis in the United States.
- **H.R. 2851, the “Affordable Housing Preservation Act of 2021,” (Omar)** is a bill to establish a demonstration program to support zero equity and limited equity cooperative developments.
- **H.R. 3111, the “Grandfamily Housing Act of 2021,” (McGovern/Pressley)** is a bill to provide supportive services to households headed by grandparents.
- **H.R. \_\_\_, the “Fair Chance at Housing Act,” (Ocasio-Cortez)** is a discussion draft to reform the eviction and screening policies for federal housing assistance.
- **H.R. 3555, the “Voters on the Move Registration Act,” (Williams/Waters)** is a bill to require public housing agencies, owners of federally assisted housing, and lenders of federally-backed mortgages to provide tenants and borrowers with voter registration information upon applying for a mortgage loan or receiving federal rental assistance.
- **H.R. 4237, the “Tenant Empowerment Act,” (Pressley/Tlaib/Waters)** is a bill to protect and empower residents of certain federally assisted rental housing to hold HUD and providers accountable for poor housing conditions and improve the quality of their homes.
- **H.R. 3279, the “HUD Inspection Oversight Act of 2021,” (Lawson)** is a bill to direct HUD to increase transparency and strengthen enforcement of the inspection process for properties supported by project-based rental assistance that fail to come into compliance with federal housing laws.
- **H.R. 2965, the “Naomi Schwartz Safe Parking Program Act of 2021,” (Carbajal)** is a bill to provide grants to local governments to establish safe parking programs.
- **H.R. \_\_\_, the “Federal Financing Bank Risk-Sharing Act of 2021,” (Velazquez)** is a draft bill to require the continuation of the FHA affordable rental housing financing partnership with the Federal Financing Bank, and for other purposes.
- **H.R. 3333, the “Manufactured Housing Tenant’s Bill of Rights,” (Axne)** is a bill to establish a set of minimum standards for MHC tenants that receive federal financing through Fannie Mae, Freddie Mac, or the Federal Housing Administration
- **H.R. 3332 the “Manufactured Housing Community Preservation Act of 2021,” (Axne)** is a bill to help nonprofits, resident-formed cooperatives, and other local entities purchase and maintain manufactured housing communities through awards of up to \$1 million.
- **H.R. \_\_\_, the “Preventing Foreclosures on Seniors Act,”** is a bill to revise the FHA program for home equity conversion mortgages to add safeguards to prevent the displacement of elderly homeowners and their spouses.
- **H.R. \_\_\_, the “Improving Federal Oversight of PACE Financing Act,” (Sherman)** is a bill to require Property Assessed Clean Energy (PACE) financiers to receive the consent of mortgage holders before providing financing.