



NATIONAL
HOUSING LAW
PROJECT

Housing Priorities for the Biden-Harris Administration

Rollback and Reform Housing Regulations

A Memorandum To the Transition Team

The United States government faces growing demands for racial, economic, and housing justice. The need for safe and affordable housing in inclusive communities has never been more urgent among a deepening housing crisis and a national reckoning regarding race and our country's legacy of discrimination. The Biden-Harris administration will be immensely consequential in terms of addressing these core issues in American life.

Federal regulations provide important protections for tenants and homeowners. The U.S. Department of Housing and Urban Development (HUD), U.S. Department of Agriculture (USDA), and U.S. Department of the Treasury administer federal housing programs and are responsible for rulemaking to implement legislation or advance new policies. The process of formal rulemaking is governed by the Administrative Procedures Act, which generally requires publication of the proposed rule, a public comment period, adoption, and publication of the final rule. HUD, USDA, and Treasury also regulate housing programs through an extensive body of program directives, which communicate policies, instructions, procedures, and guidance related to housing. These directives further supplement statutes and regulations, providing a legal framework for administration of the housing programs and a road map for the rights of housing providers, advocates, tenants, and homeowners.

Given the significance of regulatory and sub-regulatory guidance, it is imperative that the Biden-Harris transition teams review past administrations' actions and consider substantive changes to reflect the Build Back Better plan priorities. Agencies can also make significant progress within the bounds of existing statutory law to improve tenants' rights, preserve affordable housing, and make the federal housing programs work efficiently for tenants, and homeowners. The following suggestions for regulatory reform and rollback of the previous administration's draconian measures draw on NHLP's expertise and 52 years working with tenants, homeowners, advocates, housing authorities and the public agencies.

U.S. Department of Housing and Urban Development Reform

Department	Regulatory/ Subregulatory	Action	Description
Public and Indian Housing (PIH)	Regulatory	Slow the loss of public housing.	<p>Finalize the proposed rule on the demolition and disposition of public housing (24 C.F.R Part 970). In 1995, Congress repealed the one-for-one replacement requirement for public housing units. What followed was years of Congressional underfunding, maintenance backlogs, and poor management that resulted in a permanent loss of affordable housing for the nation’s poorest families. HUD’s current demolition-disposition policy has contributed to a dramatic reduction in the stock of public housing nationwide. Last revised in 2006, HUD’s regulations concerning this issue are outdated and ineffective. Current regulations do not include resident consultation, allow HUD to fail to enforce application requirements, and public housing authority (PHA) relocation plans have apparent deficiencies. PHAs also cite the regulation’s lack of clarity in these regulations as a barrier to compliance. In 2014, HUD proposed a new rule with significant improvements but never finalized the rule. HUD should finalize, based on prior comments, its proposed demolition-disposition rule from 2014.</p>
PIH	Regulatory and Subregulatory	Maximize choice and mobility in the voucher programs.	<p>Ensure that households are able to obtain and maintain safe and stable housing in communities of their choice. The housing choice voucher (HCV) program has the potential to be a tool for improving racial integration if the program is improved. “Mobility” is a feature of tenant-based housing vouchers that uses evidence-based strategy to improve opportunities for low-income families, desegregate neighborhoods, and reduce homelessness and housing instability. Tenants with vouchers disproportionately live in low-income, racially segregated neighborhoods, and in some cases, voucher tenants struggle to find anywhere to use their voucher. The following recommendations will increase housing opportunities for families in the voucher program:</p> <ul style="list-style-type: none"> • Revise SEMAP to incentivize deconcentration of vouchers in low opportunity communities. HUD uses the Section 8 Management Assessment Program (<u>SEMAP</u>) to measure housing authorities’ performance and “assess whether the Section 8 tenant-based assistance programs operate to help eligible families afford decent rental units at the correct subsidy cost.” Unfortunately, HUD’s current assessment protocol is insufficient to incentivize housing authorities to take aggressive and effective measures to deconcentrate voucher use in low opportunity communities. HUD should revise SEMAP to increase points awarded for deconcentration. • Reform fair market rent (FMR)/small area FMR methodology and allow housing authorities to use alternative data. Some voucher holders simply cannot compete for private housing in their communities because their vouchers are worth less than market rent. One of the main factors that determines the value of a HUD voucher is calculation of the “fair market rents” (FMRs) and small area FMRs (SAFMRs) where the voucher is allocated. HUD’s methodology for determining FMRs and SAFMRs is deeply flawed and often results in inaccurate assessments of market rent. While HUD annually updates FMRs and SAFMRs, the data used in the calculation are several years old. Additionally, FMRs are based on rents across an entire metropolitan area, where rents can vary drastically between (and even within) cities, towns, and zip

			<p>codes. Raising the value of vouchers to accurately reflect market rents will give households access to neighborhoods with high-performing schools, quality jobs, and reliable public transportation.</p> <ul style="list-style-type: none"> • Issue a final rule on PHA consortia. Two or more housing authorities can form a consortium for the purposes of administering housing programs across communities and regions. Consortium members maintain independent legal identities but work jointly to meet HUD’s reporting requirements. Consortia and regional housing authorities can improve operation of the voucher programs by eliminating portability requirements (which are bureaucratic hurdles to moving) and consolidating waitlists, along with other benefits for applicants and tenants. HUD released a <u>proposed rule</u> “Streamlining Requirements Applicable to Formation of Consortia by Public Housing Agencies” in July 2015, but never issued a final rule. The proposed rule primarily addressed consortia for agencies administering voucher programs. HUD should issue the final rule for voucher programs and should introduce a proposed consortia rule for public housing. • Require housing authorities to extend search time and increase payment standards when necessary to affirmatively further fair housing. In areas where voucher households are concentrated in high poverty neighborhoods, HUD should require housing authorities to extend unit search times for vouchers and increase payment standards to allow PHAs to respond to local market conditions.
PIH, Housing (H)	Regulatory and Subregulatory	Expand access to HUD’s housing programs for people with criminal records.	<p>Repeal existing regulations and codify HUD’s sub-regulatory guidance on housing access for people with criminal records. Rules that limit access to housing based on criminal records have a disproportionate impact on people of color, especially Black men. In practice, many landlords apply these rules unevenly based on the race of the applicant. HUD has regulations in place that authorize housing authorities and owners to deny housing based on an applicant’s criminal history. These regulations go far beyond the few categories of ineligibility codified in statute. Tenant screening procedures often veil racist admissions policies and illegally deny people with criminal records access to housing. Recently, HUD released <u>sub-regulatory notices</u> aimed at dismantling its aggressive approaches to tenant screening. The guidance prohibits practices such as blanket admissions bans on people with criminal records, and the use of arrest records that did not result in convictions, and requires an individualized review of housing applications. Codifying these rules and eliminating outdated conflicting regulations will put an end to certain discriminatory admissions practices. When HUD proposes new regulations to codify the guidance, HUD should also prohibit “one-strike” policies, which unreasonably evict and/or deny admission to people who come in contact with the criminal justice system; and make permanent a pandemic response policy change that allowed housing providers to ease restrictions on adding members to households to support family reunification.</p>
Office of the Secretary	Subregulatory	Clarify which federal housing and community development funds are available to	<p>HUD should make clear which of its housing and community development funds are available to immigrant households by providing sufficient guidance pursuant to the Personal Responsibility and Work Opportunity Reconciliation (PRWORA) Act of 1996. It is critical, especially during the pandemic and its economic fallout, to make these funds available to everyone regardless of their immigration status. Given the broad anti-immigrant agenda of the Trump administration, state and local governments are hesitant to use federal dollars to aid immigrant families. Through guidance, HUD should clarify that “short-term, noncash, in-kind emergency disaster</p>

		immigrant communities.	relief,” which is exempted from PWRORA’s mandate to limit assistance to only U.S. citizens and “qualified aliens” can include offering rental assistance to a third party (i.e., a landlord). HUD should also adopt the “FEMA rule”, which permits dollars to go directly to a household as long as one member of the household, including a minor child, is eligible to receive the dollars under PWRORA. HUD should also make clear that CDBG funds are not subject to the immigration restrictions of PWRORA. And HUD should clarify that state and local governments or charitable non-profits issuing the housing and community development funds cannot erect barriers to assistance (i.e., a Social Security Number or Driver’s License) if an immigrant household is otherwise eligible for the funds.
PIH, H	Regulatory and Subregulatory	Build and sustain tenant organizing efforts.	<p>Allocate resources for tenant organizers to address problems encountered by HUD tenants. Organizing is a cornerstone of achieving just and equity-based solutions to systematic defects, and empowers those who are closest to the harm caused by inefficient policies. Congress and HUD have indicated that active resident participation is essential to the success of subsidized properties, but have yet to provide the resources or tools necessary for effective organizing. To support tenant organizing HUD must:</p> <ul style="list-style-type: none"> • Exercise its statutory authority to utilize the 2016 allocation of Sec. 514 funding for grants to organizers, expand property eligibility and allowable activities under the grants, and request more 514 funding as the activities and eligible properties are expanded; • Amend 24 C.F.R Sec. 964 to create a process for public housing residents to submit complaints regarding a housing authority's violation of the tenant participation regulations, and increase funding for tenant participation activities; • Finalize HUD's interim rule from 2011 that establishes a process for measuring public housing residents' satisfaction, ability to participate, and self-sufficiency in the PHA assessment procedure (76 Fed. Reg. 10136, 10137 (Feb. 23, 2011)); and • Issue clarifying guidance that the tenant protections in 24 C.F.R. 245.10(a)(4) apply to project-based vouchers.
PIH, H	Regulatory and Subregulatory	Improve HUD housing conditions.	<p>Modernize the REAC inspection process and require resident engagement. HUD’s current property inspection protocol from the Real Estate Assessment Center (REAC) leaves far too many tenants living in substandard conditions. The process is outdated and has not evolved since REAC’s inception 21 years ago. The REAC inspection process is intended to hold federally-assisted housing providers to HUD’s physical conditions standards. Unfortunately, HUD provides little data about how often properties are brought into compliance after failing REAC inspections. To improve housing conditions, HUD must revise current protocols and:</p> <ul style="list-style-type: none"> • Increase HUD oversight of failing properties. HUD must create early warning systems for properties that are deteriorating and then enforce remediation plans and use penalties to bring properties into compliance. • Increase tenant engagement. Tenants have historically been left out of the REAC process despite the fact that active tenant participation is essential to the success of HUD-assisted properties. Resident engagement is especially important because residents can report real-time property conditions and monitor subsequent remedial action on site. HUD recently initiated a demonstration program, the National

			<p>Standards for the Physical Inspection of Real Estate (NSPIRE), to test new inspection protocols, but it failed to provide for adequate resident participation. HUD should require owners to allow residents, tenant organizations, and advocates to participate in the demonstration and any subsequent evaluations and revisions of REAC.</p> <ul style="list-style-type: none"> • Give tenants enforcement rights. Tenants must have third party enforcement rights regarding property conditions, including rights to remediation of hazardous or unhealthy conditions, appropriate compensation, and timely temporary relocation to safe and habitable affordable housing proximate to the property.
H	Regulatory	Protect tenants in converted properties from displacement.	<p>Publish final enhanced voucher regulations and a lease addendum to better protect tenants from eviction and displacement. In 1999, Congress enacted Unified Enhanced Voucher authority to protect tenants residing in properties converted from public to private ownership. For almost 20 years, HUD has failed to enact regulations implementing this authority, and has relied on sub-regulatory guidance that does not adequately protect tenants as required by the statute. In October of 2016, HUD finally proposed regulations to address this problem, but the agency failed to ensure that all affected, income-eligible tenants received enhanced vouchers and have a right to remain. A required lease addendum will effectuate these long-standing protections. To fulfill Congress' intent that tenants not be displaced by conversions, HUD should issue a required enhanced voucher lease addendum and final regulations that contain these necessary tenant protections.</p>
PIH, H	Regulatory	Ensure that HUD tenants are safe from lead poisoning.	<p>Amend the Lead Safe Housing Rule to ensure that families are not at risk of lead-based paint poisoning. Lead poisoning affects far too many children in HUD assisted housing and contributes to a broader racial disparity in lead poisoning. HUD finalized regulations that amended the Lead Safe Housing Rule (24 C.F.R. Part 35) in January 2017. The amended rule was designed to provide greater protection to children exposed to lead hazards but it was not comprehensive. HUD must further amend this rule to improve lead hazard inspections; give preference to uniform physical conditions standards (UCPS) inspections; update lead hazard definitions based on health standards; remove the zero-bedroom dwelling unit exemption; identify lead service lines; and increase data collection, training, compliance, and oversight. Additionally, HUD needs to conduct risk assessments in all of its inspection programs.</p>
H	Regulatory or Subregulatory	Enhance the rights of HUD residents in buildings converting under RAD.	<p>Publish regulations or revised guidance for the RAD program. In 2011, Congress enacted the Rental Assistance Demonstration (RAD) program to address the backlog of deferred maintenance on public housing properties and preserve affordable housing. Resident participation is critical to the success of this public-private partnership. HUD has issued several guidance documents related to the program but has never published implementing regulations. Key recommendations for program improvements include greater transparency during and after RAD conversions, improved tenant participation requirements, public oversight of the long-term affordability of projects, and enhanced fair housing and relocation rights.</p>
			<p>Fully implement VAWA 2013 housing protections across all HUD programs. HUD program offices must work to fully implement Violence Against Women Act (VAWA) 2013 housing protections in all covered HUD programs, and increase efforts to review covered housing providers for VAWA compliance. HUD must institute a complaint process for survivors and advocates to report issues of VAWA non-compliance. Additionally, HUD must:</p>

PIH, H	Regulatory and Subregulatory	Protect the rights of survivors of domestic violence.	<ul style="list-style-type: none"> • Ensure that housing providers have meaningful emergency transfer plans that actually assist survivors who need to move for their own safety. HUD should revise its Model Emergency Transfer plan with the input of a range of stakeholders including housing and survivor advocates as well as survivors. Experience has shown that the most streamlined way for survivors to have access to safe, affordable housing is for survivors to receive HCVs, and so HUD should take all steps within its authority to streamline survivors' ability to get a voucher when fleeing domestic violence; • Amend VAWA 2013 regulations to incorporate HUD guidance on adverse factors that survivors face, such as poor credit history, related to the abuse they experience. This guidance is located in HUD Notices H 2017-05 and PIH 2017-08 (HA); • Take steps to increase training around issues regarding domestic violence, dating violence, sexual assault, and stalking in the context of housing. Many housing providers still do not fully understand the dynamics of domestic violence and abuse, and would benefit from additional context and understanding about how such violence impacts survivors' ability to access and maintain housing; and • Work with sexual assault advocates and survivors to better understand their specific needs that are distinct from those of domestic violence survivors.
PIH	Regulatory	Implement common sense policies in HOTMA.	<p>Fully implement regulations pursuant to HOTMA that will streamline the federal housing programs and create new and important protections for tenants. In 2016, the Housing Opportunity Through Modernization Act (HOTMA) passed Congress with unanimous bipartisan support and was signed into law. HOTMA is the first major federal housing legislation in almost two decades, and creates changes to the federal housing programs that will increase the effectiveness of rental assistance for tenants, achieve cost savings, and ease administrative burdens for housing authorities and owners. HUD has implemented some, but not all, provisions of HOTMA, and must finalize outstanding proposed regulations pursuant to HOTMA.</p>
PIH	Regulatory	Ensure affordability of the voucher programs.	<p>Amend HUD 24 C.F.R. § 982.505(c)(4) so that it complies with the voucher statute. Under HUD's current regulations, some voucher tenants are forced to pay well above 30 percent of their income in rent. This is inconsistent with the voucher statute 42 U.S.C. § 1437f(o). The discrepancy between the federal statute and current regulations creates an enormous barrier to federally assisted housing, particularly in expensive rental markets. The problem in 24 C.F.R. §982.505(c)(4) is that rent increases can occur for tenants without the subsidy payment increasing. The tenant is responsible for the difference between the payment standard and the contract rent until the next scheduled income recertification. HUD must revise the regulation to comply with the statute.</p>
PIH	Regulatory or Subregulatory	Prohibit the discriminatory practice that forces voucher tenants with disabilities pay more rent.	<p>Implement the HOTMA provision that prevents tenants with disabilities from paying more than 30% of their income in rent when they request an accommodation. Currently, a PHA may charge more than the payment standard if a tenant with a disability requests a reasonable accommodation. Additionally, HUD can grant an even greater exception to the payment standard for some reasonable accommodations. HOTMA Section 102(d)(1) prohibits housing authorities from requiring a tenant who receives an accommodation to pay 40% of their income in rent. HUD must implement this HOTMA provision and make clear that tenants with disabilities should not pay more for requesting a necessary accommodation.</p>

PIH	Subregulatory	Improve tenant protections and strengthen oversight of the MTW program.	Halt new admissions to the MTW program until the Operations Notice can be revised and proper oversight guaranteed. The Moving to Work (MTW) demonstration grants participating PHAs the flexibility to implement and study new policies related to the funding and administration of their programs. In 2016, Congress expanded the Moving to Work demonstration from 39 to 139 participating housing authorities. There are currently no regulations on the MTW program or its expansion, but HUD recently issued a final Operations Notice that will apply only to new MTW agencies. The Operations Notice provides program guidelines and a framework for the research. However, the notice does not ensure that tenants in MTW jurisdictions are not harmed when housing authorities apply regulatory and statutory waivers, per the expansion. HUD should halt any new admissions into MTW until the program guidelines can be reviewed and HUD can ensure it will properly oversee the program. In addition, HUD must implement a meaningful system for monitoring the original 39 participating agencies.
PIH	Regulatory	Remove barriers to voucher portability.	Revise portability regulations to make it easier for voucher families to move across jurisdictions. Portability is another key feature of the voucher programs. “Portability” allows tenants to carry voucher-based assistance from the jurisdiction of one PHA to the jurisdiction of another. Existing portability regulations are burdensome and confusing for tenants and housing authorities. They put tenants at risk of voucher termination and/or homelessness. HUD previously revised its portability requirements. The revisions made several important improvements but fell short of removing significant barriers to housing choice. Specifically, the final rule allows housing authorities to re-screen tenants who are seeking to port their vouchers. HUD’s regulations should adhere to the <u>statute</u> , which prohibits receiving PHAs from conducting elective screening of current participants, and revise the regulation accordingly.
PIH, H	Regulatory	Create judicially enforceable tenants’ rights.	Give tenants third party beneficiary rights to enforce contracts and regulatory obligations. All tenant and applicant statutory and regulatory rights, as well as program contracts between agencies and owners, should be judicially enforceable by tenants. In order to accomplish this, HUD should require third party beneficiary language in all new or renewal contracts moving forward, and remove any contrary language in existing program regulations that bars third party enforcement and replace it with provisions indicating that tenants are intended beneficiaries with enforcement rights for existing contracts. Create judicially enforceable tenants’ rights.

U.S. Department of Housing and Urban Development Rollbacks

Department	Regulatory/ Subregulatory	Action	Description
Office of Fair Housing and Equal Opportunity (FHEO)	Regulatory	Reinstate the 2013 Discriminatory Effects standard and withdraw the 2020 disparate impact rulemaking.	Reinstate the 2013 Disparate Impact rule. HUD’s 2013 Disparate Impact rule formalized a uniform approach to assessing housing discrimination claims without having to show discriminatory intent. The 2013 rule created a framework for discriminatory effects claims under the Fair Housing Act (FHA) that was based on decades of case law. In 2020, the current administration proposed rulemaking that would make it harder for victims of housing discrimination to bring to bring disparate impact claims. The new rule makes it more difficult to identify and eliminate discriminatory practices in the housing market – for both renters and prospective homeowners. HUD must restore the 2013 Rule and abandon efforts to implement the 2020 replacement rule.

FHEO	Regulatory	Reinstate and implement the 2015 AFFH rule and withdraw the 2020 “Preserving Community and Neighborhood Choice” rule.	Reinstate and fully implement the Affirmatively Furthering Fair Housing Rule (AFFH). The 2015 AFFH rule created a framework for communities to devise local solutions to tackle systemic racism and segregation in housing. The tools allowed communities to analyze residential segregation, concentrations of poverty based on race and a range of other factors affecting housing conditions and economic well-being. The rule required communities and housing authorities to develop concrete goals and strategies to address the identified issues. The Biden-Harris administration should immediately restore the 2015 rule, and withdraw the 2020 “Preserving Community and Neighborhood Choice” rule that circumvented public engagement. Thorough reinstatement of the 2015 AFFH Rule must include restoring the data and mapping tools, training, and technical assistance that communities need to engage in the planning process outlined in the rule. HUD should also resume oversight of communities’ progress. Congress will need to provide additional funding and resources for capacity building around implementation.
Office of the Secretary	Regulatory	Abandon efforts to change the Mixed-Status Families rule.	HUD must abandon proposed regulatory changes that would evict families with mixed immigration status from HUD subsidized housing. Currently, families with mixed immigration statuses receive prorated housing assistance, meaning that household members who lack a qualifying immigration status do not receive rental subsidy. The Trump administration has proposed a rule that would not allow mixed-status households to live in federally subsidized housing, abandoning this long-established standard. The proposal would jeopardize the housing stability of <u>over 100,000 individuals (including over 38,000 U.S. citizen children)</u> , and places them at risk of homelessness. HUD’s own <u>regulatory impact analysis</u> revealed that the proposed rule will cost HUD between \$372 million to \$437 million annually, and would “reduce the quantity and quality of assisted housing.” If the proposed rule is finalized before the end of the current administration, the Biden-Harris administration could pursue rollback through the Congressional Review Act, or if the effective date has not yet passed, by posting a memo to the federal registrar seeking a delay of the effective date until the final rule can be further evaluated.
Office of the Secretary	Regulatory and Subregulatory	Retain the Equal Access Rule and abandon proposed 2020 changes to shelter protections.	HUD must retain protections for LGBTQ people accessing shelter, and reinstate relevant guidance. In 2012, HUD finalized the Equal Access rule which prohibits discrimination in HUD programs on the basis of sexual orientation, gender identity, or marital status. HUD updated Equal Access protections in 2016 by adding specific protections to allow individuals to access Community Planning and Development (CPD)-funded single-sex shelters according to their gender identities. In 2020, HUD proposed <u>rulemaking</u> that would permit CPD-funded, single-sex shelters to base admissions on a “good faith” belief about a person’s biological sex, essentially allowing for shelters to deny admission to transgender and gender-nonconforming individuals. Within that proposal, HUD also solicited input as to whether HUD should maintain the broader 2012 Equal Access Rule protecting LGBT individuals. HUD must retain its 2012 and 2016 protections for LGBT people in HUD programs, and reinstate <u>guidance</u> that helps shelter providers make accommodations consistent with individuals’ gender identities.
FHEO	Regulatory	Maintain the 2016 standard for Fair Housing Act liability.	HUD must retain its standards that hold accountable landlords that fail to stop housing discrimination. In 2016, HUD issued <u>regulations</u> that outlined the standards for analyzing harassment claims under the Fair Housing Act, as well as the standard for liability under all FHA claims. Under these regulations, a landlord can be held liable for the discriminatory conduct of a tenant who harasses or otherwise discriminates against another tenant if the

			landlord knew or should have known of the conduct but failed to take steps to stop it. HUD recently <u>indicated</u> that it intends to remove the provision that would allow a landlord to be held accountable. If the current administration moves to make these changes, the transition team must abandon any efforts to change the standard.
Office of the Secretary	Regulatory	Withdraw rulemaking that loosens requirements around religious freedom.	Withdraw proposed rule that would eliminate requirements for religious organizations that receive HUD funds. In <u>proposed rulemaking</u> , the current administration is attempting to withdraw a requirement that individuals seeking assistance are provided written notice of their rights regarding religious freedom and a requirement that religious organizations provide referrals to alternative organizations if the individual objects to the religious nature of the original provider.
Office of the Secretary	Subregulatory	Withdraw rulemaking regarding HUD guidance documents.	Withdraw interim rulemaking regarding agency guidance documents. In November 2020, HUD issued an interim rule, "Implementing Executive Order 13891: Promoting the Rule of Law Through Improved Agency Guidance Documents." HUD promulgated this <u>Interim Final Rule</u> without pre-publication for public input. This rulemaking will significantly hinder the Biden-Harris administration's ability to issue guidance consistent with their housing agenda.

U.S. Department of Agriculture Reform and Rollback

Department	Regulatory/ Subregulatory	Action	Description
Rural Housing Service (RHS)	Regulatory	Improve protections for single family direct loan borrowers.	Bring Rural Development (RD) regulations into compliance with the federal statute. Federal <u>law</u> requires that single family direct loan borrowers with financial hardships caused by reasons outside of their control be given a moratorium on mortgage payments when they are unable to continue making mortgage payments without unduly impairing their standard of living. Contrary to this law, the USDA RD regulations have several arbitrary rules of thumb about who can qualify for a moratorium that deny benefits to borrowers that meet the statutory standard and often result in absurd results. This includes denying a moratorium when the loss of income is by a household member that is not on the loan documents and denying a moratorium if the loss of income was less than 20 percent of household income or because it occurred more than 12 months before an application for a moratorium is filed. USDA should reform the regulations (7 CFR 3550.207) to comply with federal law (42 USC 1475).
RHS	Regulatory	Stop pursuing debts from foreclosed single family borrowers.	Stop Enforcement of the Federal Debt Collection Procedure. Federal law allows agencies to administratively pursue individuals that owe money to the federal government by off-setting federal benefits or tax refunds and garnishing up to 25% of their wages. RD is the only federal housing agency that goes after outstanding debts from low- or moderate-income single family borrowers whose home has been foreclosed on or was voluntarily signed over the agency. These borrowers have already lost homes due to poverty or dire financial circumstances and have no means for paying these debts. The pursuit of debt by RD only furthers poverty, and yields little return for the federal government.

RHS	Regulatory	Fully implement VAWA 2013 housing protections across USDA rental housing programs.	<p>Adopt regulations implementing the Violence Against Women Act that provides protections for domestic violence victims. VAWA 2013 protections apply to USDA RD rental housing, yet the agency has not adopted regulations which require owners of RD rental housing to abide by VAWA and inform residents of its protections, which includes the right of victims not to be evicted for violence committed against them and the right to move to other rental units. RD published notices about VAWA which did not conform to the act's requirements and have since expired. RD should:</p> <ul style="list-style-type: none"> • Propose and adopt regulations implementing VAWA 2013, until new regulations are published. RD should require owners of RD housing to follow the HUD regulations setting forth victims' rights and rental owners' obligations and require them to post public notices about tenants' rights under VAWA; • Advise its staff that they can facilitate the protection of victims by issuing Letters of Priority Entitlement (LOPES) which give victims priority admission to other RD rental housing developments; and • Establish a formal complaint process where survivors and advocates can identify failures by owners and RD staff to comply with VAWA 2013 requirements.
RHS	Regulatory	End a practice that rewards owners that prepay 515 loans.	<p>Stop issuing vouchers to residents remaining in Section 515 developments that have been prepaid subject to use restrictions. RD vouchers are intended to assist residents who face economic hardship or displacement due to the prepayment of Section 515 loans. RD has been issuing vouchers to all residents who remain in a Section 515 prepaid developments even when the prepayments have been subject to use restrictions that should protect residents against rent increases or displacement. This practice facilitates the prepayment of Section 515 developments because it relieves prepaying owners of the financial burden of having to subsidize remaining residents as required by the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA). RD should stop this practice immediately, thereby disincentivizing prepayment of Section 515 loans, protecting residents against displacement and rent increase, and saving money by not issuing vouchers when they are not needed.</p>
RHS	Subregulatory	Prioritize tenants' rights in prepayment of developments.	<p>Advise residents of their rights and of owners' obligations when they are living in developments that are about to be prepaid. ELIHPA protects residents of RD rental housing by imposing use restrictions that require owners to operate prepaid properties as if they remained in the Section 515 program for as long as the residents chooses to remain in their home. RD staff is not properly advising residents of their rights, nor is it advising owners of their obligations after a prepayment. Letters and notice sent to owners and residents do not clearly establish rights and obligations after a prepayment. For example, if an owner prepays a loan subject to use restrictions, RD typically advises owners that they may increase rents and advises residents that the only way they can protect themselves is to secure an RD voucher. Neither statement is true. RD should advise resident and owners of their post-prepayment rights and obligations in clear and unambiguous notices that strictly follow ELIHPA.</p>
RHS	Regulatory	Abandon anticipated changes regarding immigrant access to assisted housing.	<p>Abandon proposed additional restrictions on mixed-status families living in Rural Housing Service housing. USDA recently took <u>steps to advance anticipated rulemaking</u> based upon the HUD Mixed-Status Rule. NHLP and the National Low Income Housing Coalition prepared an analysis outlining the reasons why the data cited in a preliminary abstract regarding the proposal are flawed.</p>

U.S. Department of the Treasury Reform

Department	Regulatory/ Subregulatory	Action	Description
Internal Revenue Service (IRS)	Regulatory	Develop regulations for the LIHTC program.	Establish regulations in LIHTC to preserve affordability and protect tenants. To date, the IRS has failed to implement meaningful regulations to govern our country's largest source of affordable housing, the Low-Income Housing Tax Credit (LIHTC) program. Instead, individual states, through the Qualified Allocation plan process, are left to regulate such issues as affordability and tenants' rights, creating a patchwork of inadequate protections across the nation. The Internal Revenue Service (IRS) should draft specific program requirements regulating the substantive and procedural rights of tenants including the right to organize, good cause protections from eviction, standardized and non-discriminatory admissions criteria, VAWA rights for survivors of domestic violence, and a grievance procedure prior to eviction.
IRS	Regulatory or Subregulatory	Protect LIHTC tenants with disabilities and with limited English proficiency.	Interpret Section 504 and Title VI to apply to LIHTC properties. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against people with disabilities, imposes accessibility standards on housing providers, and ensures coverage for tenants under the Uniform Relocation Act in housing programs that are in receipt of "federal financial assistance." Similarly, Title VI of the Civil Rights Act of 1964 prohibits discrimination in programs and activities receiving federal financial assistance on the basis of race, color, and national origin. The prohibition of discrimination on the basis of national origin has been interpreted to include providing meaningful language access to persons with limited English proficiency, such as providing written translations of key documents and providing free oral interpretation. The IRS failed to explicitly state that tax credits are "federal financial assistance" in its guidance, rendering Section 504 and Title VI inapplicable in the LIHTC program and stripping LIHTC residents of important rights. Treasury must publish regulations pursuant to Section 504 and Title VI that clearly state tax credits are "federal financial assistance" because the economic benefits of tax credits and exemptions are indistinguishable from the economic benefits produced by actual expenditures.
IRS	Regulatory or Subregulatory	Prevent premature exits from use restrictions in the LIHTC program.	Establish guidance to prevent questionable foreclosure practices that prematurely end affordability requirements. The LIHTC statute contains a provision that requires specific action by the Treasury to prevent spurious foreclosures from prematurely terminating a project's use restrictions, but the IRS has never taken action to stop such planned foreclosures. The IRS has never issued any guidance authorizing state Housing Finance Agencies to take such action. Treasury should issue a regulation or guidance for implementing this provision, or that authorizes state credit allocators to do so.
Office of the Comptroller of the Currency (OCC)	Regulatory	Rescind the recently finalized Community Reinvestment Act regulations.	The OCC must rescind the recently finalized changes to Community Reinvestment Act (CRA) regulations. The changes significantly reduce investment in low-income communities and communities of color that have suffered due to historical, intentional disinvestment. The final rule published under the current administration limits public input from members of affected communities and will expand the types of activities that count for CRA credit to include lending and other programs that provide no or little benefit to these communities and that are likely to fuel displacement.

U.S. Department of Homeland Security Rollback

Regulatory/ Subregulatory	Action	Description
Regulatory	Rescind the Public Charge rule.	Rescind the Public Charge Rule. The rule makes it easier for DHS to designate immigrants as a “public charge,” which can deny individuals admission into the country or prevent someone from receiving a green card. Under the Public Charge Rule, an individual may be deemed a public charge because they use, or might use, health, nutrition, or housing assistance programs that they are legally entitled to receive. The Public Charge rule has already had a significant chilling effect that has already resulted in families forgoing benefits, which is particularly harmful during the pandemic. The Public Charge Rule explicitly covers three federal housing programs: the Section 8 Housing Choice Voucher Program, Project-Based Section 8 Rental Assistance (including Section 8 Moderate Rehabilitation), and Public Housing. The Public Charge Rule has been the source of multiple lawsuits, including a recent decision vacating the rule and several national and state preliminary injunctions. DHS and the administration will need to take steps to rescind the Public Charge Rule, first issuing an Executive Order that outlines a non-enforcement policy and a Request For Information from DHS before issuing a new notice of proposed rulemaking.

Executive Order Rollbacks

Action	Description
Rescind Executive Orders 13771 and 13777.	Rescind EO 13771, “Reducing Regulation and Controlling Regulatory Costs.” This executive order requires two regulations be identified for elimination for every new regulation adopted. The 2-for-1 formulation oversimplifies the rulemaking process and fails to account for the need to retain important existing regulations and the need to create new regulations that similarly clarify protections and obligations under the law. President Biden should also rescind Executive Order 13777, “Enforcing the Regulatory Reform Agenda.” This will enable the new administration determine its own approach to rulemaking.
Rescind and replace Executive Order 13878.	Rescind EO 13878, “Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing,” and replace with a new order and council to promote access to affordable housing. This order should be replaced with an order that acknowledges the need to increase the supply of affordable housing, but does not disparage other important policy tools, such as rent control, environmental protections, and labor requirements. A new EO must also acknowledge the historic and ongoing racial segregation of affordable housing in many communities, the need to preserve and rehabilitate existing affordable housing, and the importance of involving affordable housing residents in policymaking.
Rescind Executive Order 13891.	Rescind EO 13891, “Promoting the Rule of Law through Improved Agency Guidance Documents.” Similar to the HUD Interim Rule on the same subject matter, leaving this Executive Order in place will hinder the Biden Administration’s ability to issue guidance consistent with their agenda.
Rescind Executive Order 13950.	Rescind EO, “Combating Race and Sex Stereotyping.” This EO will have a chilling effect on critical training and technical assistance regarding historic and current patterns of segregation, discrimination, racism, and sexism.

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