

Making Affordable Housing Work Act of 2018

Summary

This document, read together with the Ramseyer, serves to highlight the changes to current law proposed by the bill.

SECTION 1. SHORT TITLE.

Section 1 of the bill provides the short title, “Making Affordable Housing Work Act of 2018”, and the table of contents.

SECTION 2. RENTAL PAYMENTS AMENDMENTS.

Section 2 of the bill amends or adds the following paragraphs to the section 3 of the United States Housing Act of 1937 (’37 Act). The ’37 Act is the authorizing statute for the Public Housing program and the Section 8 Rental Assistance programs: Tenant-Based Rental Assistance (TBRA)/Housing Choice Vouchers (HCV) (including project-based vouchers) and Project-Based Rental Assistance (PBRA).

Subsection (a)(1)(A) and (B) of the bill amends paragraphs (1) and (2) of section 3(a) of the ’37 Act.

- Occupancy Requirements [subsection (a)(1) of section 3 of the ’37 Act (as amended)]—The bill moves existing occupancy requirements regarding overhousing and absent children from the definitions in section 3(b)(3)(A) of the ’37 Act to section 3(a)(1)(B).
- Rent Structures [subsection (a)(2) of section 3 of the ’37 Act (as amended)]—Currently, income-based rents are set at the highest of 30 percent of adjusted monthly income, 10 percent of monthly income, the welfare rent in as-paid states, or the public housing agency (PHA) minimum rent (which may not be more than \$50). In public housing, families also have the option of paying a flat rent set by the PHAs, which must be no less than 80% of the applicable fair market rent (FMR), 80% of the small area fair market rent (SAFMR), or 80% of the unadjusted rent.
 - Rents for Families [paragraph (2)(A) (as amended)]—The bill changes family monthly rent contributions in the ’37 Act rental assistance programs as follows: The bill sets the family monthly rent contribution for most families (see new framework for exempted families in section 2(a)(1) of the bill) at the higher of 35 percent of the family’s gross income or a minimum rent set at 35 percent of the amount that would be earned from a working federal minimum wage job for 15 hours per week. At the current federal minimum wage, this equals approximately \$150 dollars, rounded to the closest ten. The bill allows the Secretary to adjust the number of hours of work per week used in the calculation of the minimum family rent through regulation, but it establishes a minimum of 15 hours.

- Rents for Exempted Families [paragraph (2)(B) (as amended)]—The bill establishes a separate calculation for the monthly rent contribution for elderly families, disabled families (see new definitions in section 3(b)(3) of the '37 Act), and other families defined by the Secretary through regulation. The bill sets the monthly rent contribution for such families at the higher of 30 percent of the family's gross monthly income, or a minimum rent of \$50. The bill allows the Secretary to adjust the minimum rent amount for such families through regulation, but it establishes a minimum of \$50. For disabled families and families consisting of persons 62 years of age or older who are currently receiving assistance, section 2(b) of the bill (see below) provides a hold-harmless provision that requires the Secretary to phase in any subsequent increases in rent over two triennial recertifications under section (a)(6)(A) rather than imposing them at enactment of the bill.
- Hardship Exemptions [paragraph (2)(C) (as amended)]—The bill moves the rent hardship provisions currently in section 3(a)(3)(B) to the rent provisions in section 3(a)(2) and applies them to family rents under section 3(a)(2)(A) and rents for elderly families, disabled families, and other families defined by the Secretary through regulation under section 3(a)(2)(B). These provisions are currently in place for public housing and the voucher programs, but they are new provisions for the PBRA program.
- Alternative Family Rent Structures [paragraph (2)(D) (as amended)]—The bill allows for the creation of rent structures that would differ from the default rents (see paragraphs (2)(A) and (2)(B), above).
 - Secretary-Established Rents [paragraph (2)(D)(i) (as amended)]—The bill allows the Secretary to establish alternative rent structures that PHAs or owners meeting eligibility criteria established by the Secretary may choose to adopt, as long as such alternative structures serve at least the same number of families as the family rents described above. The bill requires the PHA or owner to notify the Secretary in order to adopt such a structure. The bill provides examples of alternative rent structures that the Secretary may establish, though this list is not exhaustive, and the Secretary retains discretion to adopt other structures. The examples provided include: tiered rents (rents determined by income “bands” with intent to reduce increased earnings disincentives within bands), stepped rents (gradual rent increases with intent to encourage self-sufficiency), and timed escrows (rent increases due to increased earnings placed into escrow for family benefit upon “positive exit” from assisted housing). The bill also requires the alternative family rent structure to provide a reasonable hardship exemption.
 - PHA/Owner-Established Rents [paragraph (2)(D)(ii) (as amended)]—The bill gives PHAs or owners the option to propose alternative rent structures of their own design, subject to HUD approval through enumerated criteria and any additional standards established by the Secretary. The bill also

requires such alternative rent structure to provide a reasonable hardship exemption.

- Alternative Income Recertifications [paragraph (2)(D)(iii) (as amended)]—The bill allows the Secretary to change the frequency of income reviews to facilitate alternative rent structures.
- Minimum Family Share [paragraph (2)(E) (as amended)]—The bill defines “minimum family share” to be the family rents determined under paragraph (2). This change is necessary because in the voucher programs, a family may wind up paying more than the family rent due to utilities and other costs.
- Minimum Work Requirements [paragraph (2)(F) (as amended)]—The bill allows PHAs or owners to impose work requirements on families and individuals. These work requirements may not be applied to elderly families or individuals 65 or older, individuals with disabilities or disabled families, or other families as defined by the Secretary through regulation. Any PHA or owner that imposes work requirements would be exempt from imposing the community service and self-sufficiency requirements under section 12(c) of the ’37 Act. To implement this option, the Secretary must, through regulation, establish criteria on the population that may be subject to work requirements, the maximum number of hours per week a PHA or owner may require, the definition of “work” (i.e., what sorts of educational or vocational training activities could satisfy the requirements), and other requirements needed to prevent adverse impacts. PHAs currently implementing work requirements have used a number of models, including allowing one adult in the family to work additional hours over the minimum requirement while another adult in the family remains at home for reasons determined by the PHA.

Subsection (a)(1)(C) of the bill strikes the current paragraph (3) and reserves it in section 3(a) of the ’37 Act. Section 3(a)(3) currently provides the provisions for minimum rents in public housing which are now addressed in section 3(a)(2) of the ’37 Act as amended.

Subsection (a)(1)(D) of the bill amends paragraphs (6) and (7) of section 3(a) of the ’37 Act.

- Reviews of Family Income [subsection (a)(6) of section 3 of the ’37 Act (as amended)]—Currently, the ’37 Act requires annual reviews of family income, unless the family has at least 90 percent of their income from fixed-income sources (in which case the family must only undergo a full income review every three years). A family may undergo an interim reexamination when their income is estimated change by 10 percent or more (mandatory when the family’s income has increased, at the family’s request when income has decreased).
 - Family Income Review Frequency [paragraph (6)(A) (as amended)]—The bill reduces the frequency of family income reviews used to calculate tenant rent contributions from annual to triennial. This change is intended to provide

incentives for increased tenant earnings by allowing tenants to retain the portion of additional income earned during the three-year period between reviews that would otherwise be paid as increased tenant rent contribution.

- Interim Reexaminations [paragraph (6)(B) (as amended)]—The bill prohibits interim reexaminations that result in higher family rents, providing incentives for adding family members to the lease. The bill raises the threshold by which a change in the family’s income would require PHAs or owners to conduct interim reexaminations upon request to a decrease of at least 20 percent (the threshold would remain 10 percent for elderly families, disabled families, or other families as defined by the Secretary through regulation). This change is intended to reduce administrative burdens on public housing agencies and owners.
- Other [paragraph (6)(C) (as amended)]—The bill renames, but does not otherwise revise, this paragraph, which requires that reviews of family income be subject to privacy protections of section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.
- Calculations of Income [subsection (a)(7) of section 3 of the ’37 Act (as amended)]—The ’37 Act currently allows PHAs or owners to use estimations of the family’s income for the upcoming year or to use income from a prior year.
 - Use of Current Year Income [paragraph (7)(A) (as amended)]—The bill removes the ability to use prior income determinations. This is due to the fact that by switching to a triennial certification cycle, allowing anything other than the most recent income data could result in rents being set using extremely out of date information and not accurately reflecting a family’s income. Income determinations may be based on the prior year’s income if the income is seasonal or sporadic, matching current policy, but using current income as the default ensures the most accurate income information possible.
 - Procedures [paragraph (7)(D) (as amended)]—The bill moves language from section 8(o)(5) of the ’37 Act to section 3(a)(7)(D) requiring PHAs and owners to establish procedures to ensure that income data provided by families is complete and accurate. This move is intended to group income calculation provisions together.

Subsection (a)(2)(A) of the bill amends paragraphs (3) and (4) of section 3(b) of the ’37 Act by adding or modifying several definitions as follows:

- Families and Persons [subsection (b)(3) of section 3 of the ’37 Act (as amended)]—
 - Elderly Family [paragraph (3)(A)(ii) (as amended)].—The bill amends the definition of elderly family to be a family whose head of household, co-head of household, spouse, or sole member is an elderly person (currently defined as 62 years old in section 3(b)(3)(B)(i) of the ’37 Act, which the bill does not change).

This change conforms to the regulatory definition of such a family. However, to qualify as an elderly family for purposes of rent calculation, interim income examinations and work requirements, all adults in the household (other than a live-in aide) must either be disabled or over 65 years of age. These changes are only for purposes of rent calculation and not for eligibility of assistance.

- Disabled Family [paragraph (3)(A)(iii) (as amended)]—The bill amends the definition of disabled family to a family whose head of household, co-head of household, spouse, or sole member is a person with disabilities. This change conforms to the regulatory definition of such a family. However, to qualify as a disabled family for purposes of rent calculation, interim income examinations and work requirements, all adults in the household (other than a live-in aide) must either be disabled or over 65 years of age. These changes are only for purposes of rent calculation and not for eligibility of assistance.
- Income [subsection (b)(4) of section 3 of the '37 Act (as amended)]—The bill consolidates several provisions related to what is included or excluded in income into a clarified paragraph.
 - Excluded Amounts [paragraph (4)(B) (as amended)]—The bill changes the statutory list of exclusions from income to exclude from income amounts and benefits from ABLE accounts and grants or scholarships that cover required fees and charges associated with full-time attendance at a school or vocational training, conforming the '37 Act to other statutes and current HUD policies. In addition, it modifies the asset exclusion. Currently imputed returns on assets valued under \$50,000 are excluded. The bill excludes actual returns on net family assets under \$25,000.
 - Monthly Income [paragraph (4)(C) (as amended)]—The bill defines a family's monthly income as the family's annual income divided by 12.

Subsection (a)(2)(B) of the bill strikes and reserves section 3(b)(5) of the '37 Act. This paragraph currently provides for adjustments to a family's income (e.g., deductions for medical or childcare expenses). Because the bill relies on income minus the statutory exclusions in section 3(b)(4)(B), above, the details of adjusted income are no longer needed.

Subsection (a)(2)(C) of the bill adds section 3(b)(14) to the '37 Act, moving the current definition of the term "Owner" from section 8(f)(1) of the '37 Act.

Section 2(b) of the bill allows the Secretary to implement the amendments made in section 2(a) of the bill as necessary to minimize negative impacts on families, PHAs, or owners. Section 2(b) also provides a hold-harmless provision that requires the Secretary to phase in any subsequent increases in rent for disabled families and families consisting of persons 62 years of age or older who are currently receiving assistance over two triennial recertifications under section 3(a)(6)(A), rather than imposing them at enactment.

SECTION 3. LOW-INCOME HOUSING ASSISTANCE AMENDMENTS.

Section 3 of the bill amends section 8 of the '37 Act.

Subsection (a)(1) of the bill amends section 8(c)(3) of the '37 Act.

- Frequency of Family Income Reviews [subsection (c)(3) (as amended)]—The bill requires reviews of family income be consistent with section 3(a)(6) of the '37 Act, unless otherwise provided in the '37 Act. Current law requires income reviews to be conducted annually.

Subsection (a)(2)(A) and (B) of the bill amends paragraphs (1) and (6) of section 8(f) of the '37 Act by adding or modifying several definitions as follows:

- Owner [subsection (f)(1) (as amended)]—Because the bill moved the definition of “owner” into section 3(b)(14) of the '37 Act (see section 2(a)(2)(C) of the bill, above), the bill redefines “owner” to cross-reference section 3(b) of the '37 Act.
- Project-Based Assistance [subsection (f)(6) (as amended)]—The current definition of “project-based assistance” includes project-based voucher assistance under section 8(o)(13), which is inconsistent with the use of the term in the bill. Therefore, the bill modifies “project-based assistance” to exclude project-based voucher assistance.

Subsection (a)(3)(A) and (B) of the bill amends paragraphs (1) and (2) of section 8(o) of the '37 Act.

- Review [subsection (o)(1)(E) (as amended)]—The bill amends reviews of payment standards that result in a significant percentage of families occupying units of any size paying more than 30 percent to 35 percent of income for rent, in order to be consistent with the rent policies in section 3, as amended by this bill.
- Amount of Monthly Assistance Payment [subsection (o)(2) (as amended)]—The bill makes several technical changes to conform the rent policies detailed in section 8(o) with the policies in section 3, as amended by this bill.
 - Tenant-Based Assistance; Rent Not Exceeding Payment Standard [paragraph (2)(A) (as amended)]—The bill amends the family rent so that it conforms with section 3(a)(2)(E).
 - Tenant-Based Assistance; Rent Exceeding Payment Standard [paragraph (2)(B) (as amended)]—The bill amends the family rent so that it conforms with section 3(a)(2)(E).
 - Families Receiving Project-Based Voucher Assistance [paragraph (2)(C) (as amended)]—The bill changes the family rent to the difference between the unit

rent (including tenant-paid utilities) determined in accordance with subsections (o)(13)(H) and (o)(13)(I) and the family rent.

Subsection (a)(3)(C) of the bill strikes and reserves paragraphs (3) and (5) of section 8(o) of the '37 Act. Paragraph (3) conflicts with the bill's proposed revised family rent structures, and the provisions of paragraph (5) were duplicative of provisions in section 3 or were moved into section 3 (see section 3(a)(7)(D) of the '37 Act, above).

Subsection (a)(3)(D) of the bill amends paragraph (13) of section 8(o) of the '37 Act.

- PHA Project-Based Voucher Assistance [subsection (o)(13) (as amended)]—The bill replaces all references to “project-based assistance” in section 8(o)(13) with “project-based voucher assistance” to add clarity.

Subsection (a)(3)(E) of the bill amends paragraph (18) of section 8(o) of the '37 Act.

- Rental Assistance for Assisted Living Facilities [subsection (o)(18)(B)(iii) (as amended)]—The bill strikes the requirement that families pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such an amount of percentage that is reasonable given the services and amenities provided. This is to conform with the new rent policies proposed by the bill.

Subsection (a)(4) of the bill amends paragraph (1) of section 8(t) of the '37 Act.

- Enhanced Vouchers [subsection (t)(1) (as amended)]—The bill amends the '37 Act so that the percentage of income paid by a family for rent conforms to the minimum family share under section 3(a)(2)(E) of the '37 Act.

Subsection (a)(5) of the bill amends paragraph (2) of section 8(u) of the '37 Act by striking “adjusted”. This is to conform the '37 Act with the shift away from using adjusted income as proposed in this bill.

Subsection (a)(6)(A) and (B) of the bill amends paragraphs (2) and (7) of section 8(y) of the '37 Act.

- Determination of Amount of Assistance [subsection (y)(2) (as amended)]—
 - Monthly Expenses Not Exceeding Payment Standard [paragraph (2)(A) (as amended)]—The bill makes conforming changes to the amount paid by the family based on changes made in section 3(a)(2)(E) of the '37 Act, while grandfathering in current participants in the program to prevent defaults on mortgages.
 - Monthly Expenses Exceed Payment Standard [paragraph (2)(B) (as amended)]—The bill makes conforming changes to the amount paid by the family based on changes made in section 3(a)(2)(E) of the '37 Act, while grandfathering in current participants in the program to prevent defaults on mortgages.

- Downpayment Assistance [subsection (y)(7)(A) (as amended)]—The bill removes the requirement that downpayment assistance be subject to advance appropriations.

Section 3(b) of the bill provides that current recipients of homeownership voucher assistance under section 8(y) of the '37 Act will continue to receive the amount of assistance they are currently receiving. This is to prevent mortgage defaults for these families.

Section 3(c) of the bill allows the Secretary to implement the amendments made in section 3(a) of the bill as necessary to minimize negative impacts on families, PHAs, or owners.

SECTION 4. SELF-CERTIFICATION OF ASSETS.

Section 4 of the bill amends section 16, Eligibility for Assistance, of the '37 Act:

- Eligibility for Assistance Based on Assets [subsection (e)(3)(A) (as amended)]— The bill allows self-certification of assets for assets under \$25,000, lowering the threshold from \$50,000. This makes the self-certification of assets threshold consistent with the asset exclusion from income in section 3(b)(4), above.

SECTION 5. HOUSING FOR THE ELDERLY.

Section 5 of the bill amends section 202 of the Housing Act of 1959 (Section 202), the authorizing statute for the Section 202 Supportive Housing for the Elderly Program.

- Tenant Rent Contribution [subsection (c)(3) of section 202 (as amended)]—Section 5(a) of the bill conforms the family's rent to the amount determined by section 3(a)(2) of the '37 Act, as amended.

Section 5(b) of the bill allows the Secretary to implement the amendments made in section 5(a) of the bill as necessary to minimize negative impacts on families, PHAs, or owners. Section 5(b) also provides a hold-harmless provision that requires the Secretary to phase in any subsequent increases in rent for disabled families and families consisting of persons 62 years of age or older who are currently receiving assistance over two triennial recertifications under section 3(a)(6)(A), rather than imposing them at enactment.

SECTION 6. SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES.

Section 6 of the bill amends section 811 of the Cranston-Gonzalez National Affordable Housing Act (Section 811), the authorizing statute for the Section 811 Supportive Housing for Persons with Disabilities program.

- Rent Contribution [subsection (d)(3) of Section 811 (as amended)]—Section 6(a) of the bill conforms the family's rent to the amount determined by section 3(a)(2) of the '37 Act, as amended.

Section 6(b) of the bill allows the Secretary to implement the amendments made in section 6(a) of the bill as necessary to minimize negative impacts on families, PHAs, or owners. Section 6(b) also provides a hold-harmless provision that requires the Secretary to phase in any subsequent increases in rent for disabled families and families consisting of persons 62 years of age or older who are currently receiving assistance over two triennial recertifications under section 3(a)(6)(A), rather than imposing them at enactment.

SECTION 7. TECHNICAL AND CONFORMING AMENDMENTS.

Section 7 of the bill, in subsections (a) and (b), makes technical changes in the following authorizing acts:

- Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) [section 7(a) of the bill]; and
- Section 811(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013(b)) [section 7(b) of the bill].

Section 7(c) of the bill makes changes to sections 859 and 861(b)(1)(B)(i) of the AIDS Housing Opportunity Act (42 U.S.C. 12908 and 42 U.S.C. 12910(b)(1)(B)(i)) to exclude the Housing Opportunities for Persons with AIDS (HOPWA) program from the income changes made in the '37 Act.

Section 7 of the bill, in subsections (d) through (f), also makes confirming edits to the following authorizing acts to remove references to “adjusted income”:

- Sections 8(o)(1)(D), 12(d), 23(d), and 304(b) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(1)(D); 42 U.S.C. 1437f(d); 42 U.S.C. 1437u(d); and 42 U.S.C. 1437aaa-3(b)).
- Section 802(d)(7)(A) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8011(d)(7)(A)).
- Section 203(g) of the Housing and Community Development Amendments Act of 1978 (12 U.S.C. 1701z-11(g)).
- Section 206(d)(6) of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 1437a note).
- Section 101(d) of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s(d)).
- Sections 221(f) and 236(f) of the National Housing Act (12 U.S.C. 1715l(f) and 12 U.S.C. 1715z-1(f)).
- Section 215(a)(1)(B) and (a)(3) of the Home Investment Partnerships Act (42 U.S.C. 12745(a)).

Section 7(g) of the bill amends section 516 of the Housing Act of 1949 (42 U.S.C. 1486) so that USDA’s housing for rural homeless and migrant farmworkers does not utilize the rent structures established by this bill in section 3(a) of the '37 Act.