

RENTING AT THE EDGE OF THE WORLD: CLIMATE CHANGE PROTECTIONS FAILING RENTERS

Clara Potter & Lauren Godshall*

ABSTRACT

American law and policy are designed to protect property owners. Unsurprisingly, this extends to the policies and laws that are developing in response to climate change. Renters, however, are a massive part of the population, particularly in the places most likely to be impacted in the near and long-term by the effects of climate change. Yet governments at every level currently condition benefits—whether relief for damage caused by natural disasters or proactive funding incentives to develop new climate-safe infrastructure—on property ownership. Because this paradigm centers ownership and the protection of property wealth, renters are largely overlooked. People of color and lower-income households tend to be renters, and so this regime further entrenches existing inequalities and environmental racism, depriving those most in need from access to resources to plan for climate adaptation. The current system not only perpetuates existing racial inequities but also does not make economic sense in the short or long term. The sooner renters are prioritized, the more effective and fair the transition toward a climate response that protect all human life can be.

This article first lays out the disparate historical treatment of renters and property owners, and explains how existing and future climate change protections are compounding, rather than aiding, inequities in housing. A survey of current policies available for renters at the federal, state, and local levels makes these gaps visible and underscores the need for a shift in equitable climate change planning, one that centers protection for non-property owners. Existing policy and legal tools can and must be creatively

* Clara Potter is an Assistant Clinical Professor and Lauren Godshall is an Associate Clinical Professor of Law at the Tulane Environmental Law Clinic, New Orleans, Louisiana. The authors would like to thank Prof. Stacy Seicshnaydre, Prof. Davida Finger, Y. Frank Southall, and the student editors of the Washington University Journal of Law and Policy for their insights and help with this article

adapted to effectively respond to climate change while including renters. This article attempts to fill a silence in existing literature and to address gaps in policy and legal frameworks. It then posits some high-level solutions to bridge those gaps. By advancing better policy—including, most importantly, building new, resilient public housing units—and by leveraging existing litigation tools, governments at every level can better protect renter populations facing our new climate reality. This is necessary to ensure that all communities and individuals—regardless of property ownership status—are protected from the advance of climate change and can be included in equitable adaptation and mitigation efforts.

INTRODUCTION

Climate change policies and responses – particularly those focused on recovery to residents affected by changing landscapes and weather patterns—are becoming more robust, yet they typically focus on property *owners* and their property losses. Such policies are both reactive (providing repayment for losses)¹ and, increasingly, proactive (providing funding for upgrades to structures and lands),² yet typically remain limited to owners of property and structures. Renters exist, but the existing regime of public plans and policies focused on climate change do not adequately acknowledge that, ceding the field to private renters’ insurance companies and the rental market generally. The current distribution of property ownership is no accident; nor is the current legal and social framework’s focus on protecting the wealth of property ownership. It is closely bound up with exclusionary frameworks intended to preserve the interests of white homeowners over the interests of people of color, many of whom were systematically

1. *Louisiana Hurricane Delta, DR-4570-LA*, FEMA (Oct. 16, 2020), <https://www.fema.gov/disaster/4570#funding-obligations> [<https://perma.cc/8YMT-TQR6>] (“If your insurance doesn’t cover all of your home repair or rebuilding expenses, FEMA may be able to help. . . . FEMA is also required to verify you owned your home before providing home repair or home replacement assistance.”).

2. *Coming In 2024: New Ways For Homeowners to Save Money While Fighting Climate Change*, Earthjustice (Nov. 2, 2022), <https://earthjustice.org/article/coming-in-2023-new-ways-for-homeowners-to-save-money-while-fighting-climate-change> [<https://perma.cc/27JE-XK8L>] (discussing tax credits and incentives from the Inflation Reduction Act for homeowners installing energy efficiency improvements on their homes).

excluded from property ownership.³ This paper surveys some of the programs and policies that do exist to protect renters from the short and long-term impacts of climate change, and how they tend to reflect and compound inequities. It then explores what is missing and what could be added to the current framework to advance racial and environmental justice.

Part I will address the issues particularly faced by renters in response to increasing climate change impacts across the U.S. It will first briefly trace the relationship between property ownership, economic power, and race that is reflected in the systems that value and therefore protect property owners to the detriment of other populations. It will briefly touch on the legal distinctions between property ownership and leasing, and then turn to the impacts of climate change that pose risks to renters. Part II is a survey of some of the existing array of plans and programs already in place, which tend to under-prioritize the needs and interests of renters when compared with homeowners. Part III turns to an overview of some of the existing policies and legal tools that may be creatively utilized to protect non-property owners and respond to climate change while maintaining safe housing. It posits high-level, practical policy responses—including, especially, the need for more affordable, resilient units of housing—and potential litigation avenues. As communities adapt to a changing climate, from planning for retreat⁴ to responding to disasters,⁵ more robust advanced planning for, and consideration of, non-property-owners is needed, lest the same inequities that caused the racial disparities between homeowners and renters be amplified.

3. See Sarah Schindler & Kellen Zale, *The Anti-Tenancy Doctrine*, 171 U. PA. L. REV. 267, 272, 274 (2023) (hereinafter “*The Anti-Tenancy Doctrine*”).

4. Retreat planning, also referred to as managed retreat, is “the coordinated process of voluntarily and equitably relocating people, structures, and infrastructure away from vulnerable coastal areas in response to episodic or chronic threats in order to facilitate the transition of individual people, communities, and ecosystems (both species and habitats) inland.” See, *Managed Retreat Toolkit*, GEORGETOWN CLIMATE CTR. <https://www.georgetownclimate.org/adaptation/toolkits/managed-retreat-toolkit/introduction.html?chapter> [https://perma.cc/AUW5-REX6] (last visited Feb. 19, 2024)

5. Climate change-informed disaster response involves both pre-disaster planning for the extreme impacts of storms, floods, fires and extreme temperatures, and post-disaster provision of information and funding to build back, See *FEMA and the Changing Climate*, FEMA (Jan. 4 2023), <https://www.fema.gov/fact-sheet/fema-and-changing-climate> [https://perma.cc/W6E2-63XN] (last visited Feb. 19, 2024).

I. THE PLACE OF RENTERS AND TENANTS IN THE U.S. HOUSING AND PROPERTY SYSTEMS

Society – and, accordingly, the legal system – treats renters and property owners extremely differently. This differential treatment is a reflection of the “historic distinctions between freehold and leasehold estates,” which arose “in feudal English law, a time in history not associated with equity or concern for those living in poverty.”⁶ The early distinctions between tenants as a class and property owners have been solidified further through the ages:

For example, the federal CARES Act [providing support during the Covid-19 pandemic] is able to provide uniform protections for homeowners because mortgage law is highly uniform and federalized as a result of earlier crises, like the Great Depression. In contrast, landlord-tenant law remains largely a matter of state contract and property law, with fewer direct levers for the federal government to activate to protect tenants.⁷

Legal scholars have recognized and traced two related trends: (1) the tendency for homeowners and property owners to be white while renters and non-owners are disproportionately people of color and (2) the tendency for existing legal and political systems to reward property ownership and disregard or downgrade tenancy.⁸ This article will add a third layer onto this

6. Sarah Schindler & Kellen Zale, *How the Law Fails Tenants (and Not Just During A Pandemic)*, 68 UCLA L. REV. DISCOURSE 146, 155–56 (2020) [hereinafter “*How the Law Fails Tenants*”]; see also RESTATEMENT (SECOND) OF PROP.: LANDLORD & TENANT INTRODUCTION 2 (AM. L. INST. 1977) (“Despite the numerous problems associated with the “reception” of the English common law in the United States, it is clear that the classification of tenancies and their basic incidents were wholly transported to this country. During the nineteenth and twentieth centuries, there have been numerous statutory and common law developments, most of them gradual, which have been concerned with adapting the medieval system to changing conditions in an urban society.”).

7. *How the Law Fails Tenants*, *supra* note 6, at 155–56; see also *The Anti-Tenancy Doctrine*, *supra* note 2, at 272 (“[T]he law has systematically disadvantaged tenants in previously unrecognized ways across a wide range of legal doctrines. . . [L]ong-standing structural inequities and deeply embedded forces—such as racism, classism, and a culture of homeownership—have led to affirmative law and policy choices that treat tenants as less than homeowners.”).

8. *The Anti-Tenancy Doctrine*, *supra* note 2, at 274 (“In recent years, many scholars (including these authors) have written about the structural barriers to homeownership faced by low-income individuals and people of color. A growing number of scholars have recognized that U.S. law and policy drive homeowners to react in a variety of ways that keep people of color—as well as the rental properties where they often live—out of their owner-occupied neighborhoods. But the part of the story that doesn't get told is how the law systematically disfavors those who are relegated to renter status.”); Stacy Seichsnaydre, *Fair Housing Means Integration*, HUFFINGTON POST (Apr. 15, 2015, 11:27 AM), http://www.huffingtonpost.com/stacy-seichsnaydre/fair-housing-means-integr_b_7050494.html [https://perma.cc/2USR-5CHK].

scholarship, by considering environmental justice and the growing threat of climate change to renters specifically. Climate change will affect homeowners and renters alike through increasing extreme weather events, hurricanes, floods, and fire risks that will destroy or interrupt infrastructure and safe housing, but the legal and policy response to these events tends to protect physical property and thus, property owners, leaving renters even more exposed to risk than they already are.

A. Historical Patterns of Property Ownership and Exclusion

In the mid-twentieth century, the U.S. government and society at large made home ownership a national priority, but limited almost exclusively to whites. Consistent government policy employed in the mid-twentieth century enforced residential racial segregation: “There were many specific government actions that prevented African Americans and whites from living among one another.”⁹ The seminal work on this history, Richard Rothstein’s *The Color of Law*, is concerned primarily with home ownership and the mechanisms used by all levels of government to prevent home ownership by Black people while easing the way to home ownership for white people, rather than on rental markets specifically. However, Rothstein necessarily addresses how the national drive to get white families into suburban housing left families of color behind in urban apartments and public housing: “First, the government embarked on a scheme to persuade as many white families as possible to move from urban apartments to single-family suburban homes. Then, once sub-urbanization was under way, the government, with explicit racial intent, made it nearly impossible for African Americans to follow.”¹⁰ This was accomplished in part through the

9. RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* x (Preface) (2017).

10. *Id.* at 60; see also Caroline Silverstein, *Treece v. Perrier Condominium Owner's Association: The Struggle for Fair Housing in the Fifth Circuit After Inclusive Communities Project, Inc. v. Lincoln Property Co.*, 97 TUL. L. REV. 319, 322 (2022) (“The Great Depression of the 1930s paved the way for the creation of the U.S. Department of Housing and Urban Development (HUD). Congress and HUD oversaw construction of affordable housing until President Nixon placed a moratorium on these construction programs in 1973. The following period marked a shift wherein segregation in impoverished communities rose. Restrictive land-uses in the suburbs prevented low-income families from moving into higher-opportunity areas. Communities weaponized public policy tools such as covenants, land-use regulations, underwriting requirements, and occupancy standards to keep low-income families and people of color out of their suburbs. Government actions further

Federal Housing Administration's (FHA) post-World War II funding of suburban development:

The FHA had its biggest impact on segregation . . . in its financing of entire subdivisions, in many cases entire suburbs, as racially exclusively white enclaves. . . . [After World War II,] mass-production builders created entire suburbs with the FHA- or VA-imposed condition that these suburbs be all white.¹¹

When the Supreme Court eventually took action and ruled that racial exclusion clauses in deeds and agreements in property sales and loans could not depend on the power of government to enforce them in 1948, "the FHA and other federal agencies evaded and subverted the ruling, preserving state-sponsored segregation for at least another decade."¹² From the FHA's beginning, its appraisers not only gave high ratings to mortgage applications if there were no African Americans living in or nearby the neighborhood, but also lowered their risk estimates for individual properties with restrictive deed language.¹³

By the time the federal government changed course and relinquished its insistence on racially-segregation suburbs,

the window of opportunity for an integrated nation had mostly closed . . . Most African American families - who were denied the opportunity to buy into . . . the thousands of subdivisions [developed through FHA and other federal assistance] across the country - remained renters, often in depressed neighborhoods, and gained no equity.¹⁴

entrenched these practices by obstructing public housing development and cutting rental assistance programs.").

11. Rothstein, *supra* note 9, at 70.

12. *Id.* at 77.

13. *Id.* at 83.

14. *Id.* at 182.

This created a pattern of generational wealth building in white suburban communities and left communities of color in urban centers that were then neglected by federal dollars.¹⁵ Public housing became emblematic of this intentional neglect:

In 1984, investigative reporters from the Dallas Morning News visited federally funded developments in the forty-seven metropolitan areas. The reporters found that the nation's nearly ten million public housing tenants were almost always segregated by race and that every predominantly white-occupied project had facilities, amenities, services, and maintenance that were superior to what was found in predominantly black-occupied projects.¹⁶

B. De Jure Segregation's Effect on Renters

Specific to renters, Rothstein identified two programs used by the government to support low-income renters and showed how both tend to exacerbate levels of segregation in the rental community. First is the low-income housing tax credit, which subsidizes developers whose multi-unit projects will be made available to low-income families specifically:

In the tax credit program, communities can veto developers' proposals, something that officials in middle-class areas don't hesitate to do. . . . Developers themselves also prefer to use tax credits in low-income neighborhoods because land is cheaper, it is easier to market new apartments to renters in the immediate vicinity, and there is less political opposition to additional housing for minorities and lower-income families.¹⁷

15. *Id.* at 34.

16. *Id.*

17. *Id.* at 190.

The second program are the Housing Choice Vouchers (also known as Section 8), in which the government subsidizes families' rental payments: "In the Section 8 program, landlords in most states and cities can legally refuse to rent to tenants who use housing vouchers."¹⁸

Hostility to changing this status quo in housing did not stop with the end of the federally subsidized housing programs in the 1970s, as demonstrated in New Orleans following Hurricane Katrina's flooding and damage of the city and resulting demolition of public housing and rental-dense neighborhoods. Stacy Seicshnaydre, a Tulane law professor who had a front row seat to the post-Katrina rebuilding of New Orleans' urban core, described the "creative zeal" that local governments used in the immediate aftermath of Katrina to zone away the dense public apartment housing and multifamily housing that existed before the storm and to radically alter or reduce the amount of available public housing.¹⁹ Seicshnaydre predicted in 2007 that,

Whereas a fair housing approach to affordable housing development post-Katrina would seek to avoid the spatial and racial concentration and isolation that has plagued public housing programs for decades, the current decision to demolish the public housing in New Orleans and redevelop it into mixed-income housing . . . will prolong, and arguably make permanent, the displacement of thousands of families who occupied public housing in New Orleans pre-Katrina.²⁰

18. *Id.*; see also Silverstein, *supra* note 10, at 322–23.

19. Stacy E. Seicshnaydre, *The More Things Change, the More They Stay the Same: In Search of a Just Public Housing Policy Post-Katrina*, 81 TUL. L. REV. 1263, 1264–65 (2007). Some "creative" policy ideas to prevent post-Katrina construction included a resolution aimed at preventing developers of apartment complexes from applying for tax credits and an ordinance prohibiting the rental of single-family homes to non-relatives. *Id.* at n.6, n.7; see also Judith Browne-Dianis, Anita Sinha, *Exiling the Poor: The Clash of Redevelopment and Fair Housing in Post-Katrina New Orleans*, 51 HOW. L.J. 481, 485–86 (2008) ("After Katrina, local governments in the greater New Orleans area introduced ordinances specifically designed to inhibit the development of affordable housing and limit access to existing properties on the basis of race. Additionally, the City of New Orleans pursued an aggressive demolition program primarily applied to low-income neighborhoods.")

20. Seicshnaydre, *supra* note 19, at 1266.

Seicshnaydre's predictions were correct: in 2015, NPR reported that New Orleans's 5,000 units of pre-Katrina public housing had shrunk to 1,900 units.²¹ And, echoing Rothstein's concerns about Section 8, the concomitant increase in Section 8 vouchers has led to their use in clusters of other high-poverty areas around the city.²²

One thing should be clear: renters are not an insignificant percentage of the population. Per the U.S. Census, renters made up around 36% of the nation's 122.8 million households in 2019—that is, prior to the COVID-19 pandemic.²³ Evaluating the effects of the freeze on evictions for periods of the pandemic and the ensuing mid-pandemic evictions, an Aspen Institute study estimated that between 29-43% of renter households were at risk of eviction proceedings when federal protections lapsed, which the study's authors translated to between 30 and 40 million Americans.²⁴ A Harvard study used survey data to estimate that renters made up 34.2% of the population in 2022, with 43.9 million households renting their housing in 2022.²⁵ Renters skew to the lower ends of income and wealth distributions, according to data from the Federal Reserve's 2019 Survey of Consumer Finances.²⁶

21. Pam Fessler, *After Katrina, New Orleans' Public Housing is a Mix of Pastel and Promises*, NPR (Aug. 17, 2015, 3:35 AM), <https://www.npr.org/2015/08/17/431267040/after-katrina-new-orleans-public-housing-is-a-mix-of-pastel-and-promises> [<https://perma.cc/B5PJ-TCH9>].

22. *Id.* (“Despite the popularity of the vouchers, though, those using them often end up clustered in other high-poverty areas around the city, studies show.”).

23. Drew DeSilver, *As national eviction ban expires, a look at who rents and who owns in the U.S.*, PEW RSCH. CENTER (Aug. 2, 2021), <https://www.pewresearch.org/short-reads/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s/#:~:text=One%20big%20disparity%20among%20renters,Center's%20analysis%20of%20census%20data> [<https://perma.cc/D6MG-NZVL>].

24. Emily Benfer et al., *The Covid-19 Eviction Crisis: an Estimated 30-40 Million People in America Are at Risk*, ASPEN INST. (Aug. 7, 2020), <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/> [<https://perma.cc/7VMP-YCBZ>]. DeSilver, *supra* note 23 (“Because certain demographics—young people, racial and ethnic minorities, and those with lower incomes—are more likely to rent, those groups likely will be disproportionately affected when evictions resume.”).

25. *The State of the Nation's Housing 2023*, HARVARD JOINT CTR. FOR HOUS. STUD. (2023), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nation_s_Housing_2023.pdf [<https://perma.cc/5E29-AMF6>].

26. DeSilver, *supra* note 23 (“About three-fifths of people in the lowest income quartile (60.6%) rent their homes, as do 87.6% of people with net worths below the 25th percentile. In both cases, as one goes up the income or net worth distribution scale, the share of people who are renters falls: Only 10.5% of people in the top income quartile, for example, are renters.”); *see also Survey of*

Two big, if historically unsurprising, disparities among today's renters remain race and ethnicity:

Nationwide, about 58% of households headed by Black or African American adults rent their homes, as do nearly 52% of Hispanic- or Latino-led households By contrast, roughly a quarter of households led by non-Hispanic White adults (27.9%) are rentals, as are just under 40% of Asian-led households.²⁷

C. Renters and Property Rights

The second major theme underpinning renters and property law is the differential relationship between home ownership and home leasing. Historically, tenants were an afterthought of property law, which was largely and originally concerned with protecting owners' rights; the common law "placed the risk on the tenant as to whether the condition of the leased property made it unsuitable for the use contemplated by the parties."²⁸ Landlord-tenant relationships were also treated as separate and apart from standard contracts, such that by the 1970s, tenants were left between two evolving legal regimes that ignored them,

Without much in the way of legal remedy to address substandard rental housing conditions. One result of this legal lacuna for tenants was that, as society urbanized, many poor tenants found themselves living in dreadful housing conditions but without any rights to bring to bear on the problem.²⁹

Consumer Finances (SCF), BD. OF GOVERNORS OF THE FED. RESRV. SYS. (2023), <https://www.federalreserve.gov/econres/scfindex.htm> [<https://perma.cc/TF2Q-NW8T>].

27. DeSilver, *supra* note 23.

28. RESTATEMENT (SECOND) OF PROP.: LANDLORD & TENANT II 5 INTRODUCTORY NOTE (AM. L. INST. 1977).

29. Serge Martinez, *Revitalizing the Implied Warranty of Habitability*, 34 NOTRE DAME J.L., ETHICS & PUB. POL'Y 239, 241 (2020); see also John A. Lovett, *Property and Radically Changed Circumstances*, 74 TENN. L. REV. 463, 566 (2007).

Housing codes and, later, the implied warranty of habitability arose as social responses to the pervasive issues of unsafe rental housing.³⁰ There are also localized protections, such as rent control ordinances and “just cause” limitations to evictions that control or limit the relationships between tenants and landlords although these vary widely by jurisdiction.³¹

Where a rental property becomes unlivable from an external cause – like a hurricane – the implied warranty of habitability *should* protect the displaced tenant from having to continue paying rent while having to live elsewhere (but even then, landlords may assert defenses).³² However, that still leaves the displaced tenant houseless in a market now impacted by a home-destroying weather event. And in some states, like Louisiana, unlivability is still no excuse to withhold rent; a tenant even in an uninhabitable situation may still be evicted for failure to pay rent.³³

There are some protections for tenants’ rights in the human rights context. The human right to adequate housing is enshrined in international law – specifically, the Universal Declaration of Human Rights, which was adopted by the world community in 1948.³⁴

The United Nations’ “Basic Principles and Guidelines on Development-based Evictions and Displacement”—presented by the Special Rapporteur on Adequate Housing and acknowledged by the UN Human Rights Council in 2007—is the current international operational tool aimed at minimizing

30. Martinez, *supra* note 29, at 248; Nathan Cummings & Anika Singh Lemar, *Anticipating the Impact of the White House’s Blueprint for a Renter Bill of Rights*, 32 J. AFFORDABLE HOUS. & CMTY. DEV. L. 119, 131–32 (2023) (“The implied warranty of habitability was a major victory for tenants when it was almost universally adopted during the last major wave of organizing in the 1960s and 1970s.”). (Note that Arkansas still does not recognize the implied warranty of habitability). See Memorandum from Alice Noble-Allgire to Members of the URLTA Drafting Committee, 50 State Survey of the Warranty of Habitability (Feb. 12, 2012), <https://www.nhlp.org/wp-content/uploads/Research-Memo-re-50-State-Survey-of-the-Warranty-of-Habitability.pdf> [<https://perma.cc/AFL8-BQGS>].

31. See Rachel M. Cohen, *The fight to make it harder for landlords to evict their tenants*, VOX (May 1, 2023, 9:33 AM), <https://www.vox.com/policy/2023/5/1/23697209/landlords-tenants-good-cause-just-cause-eviction-housing> [<https://perma.cc/W6PH-HXZR>]; Anna Bauman, Sydney Wertheim, & Meghna Chakrabarti, *These States Are Turning to Rent Control: How it Affects Affordable Housing*, WBUR (Jun. 19, 2019), <https://www.wbur.org/onpoint/2019/06/19/new-york-rent-control-laws-oregon-california> [<https://perma.cc/ZY58-99PY>].

32. Molly Prindle, *Landlords’ Responsibilities Under the Implied Warranty of Habitability and the Covenant of Quiet Enjoyment Extend to Hurricane-Caused Damage*, 68 AM. U.L. REV. F. 91, 110–113 (2019) (noting the states where such protections are suggested by law and remedies for violations of the warranty).

33. See LA. CIV. CODE ANN. art. 2704 (2005); LA. STAT. ANN. § 9:3260 (2023).

34. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25 (Dec. 10, 1948).

forced evictions, ensuring the human right to adequate housing for all people and communities threatened with evictions, and promoting human rights-based standards related to housing, rehabilitation, and resettlement.³⁵ These principles have been applied in India and other UN member states, but never in the U.S.³⁶ Indian courts have read the right to shelter into the constitutional right to life and liberty; the U.S. has not made the same interpretation.³⁷ One state, Massachusetts, has a “right to shelter” law that requires the state provide safe shelter to all families.³⁸ Although the Massachusetts law has been on the books since 1983, no other U.S. state has followed suit, and there is no federally recognized general right to shelter or housing.³⁹ So for all renters whose housing has been impacted by climate change, there are few legal options currently available from a “right to housing” perspective.

In sum, the United States’ rental landscape involves an intentional history of driving low-income people of color into rental housing, while also treating the rights and obligations of renters, as opposed to property owners, as less significant or less protected. These two threads then come together in the face of a general, global and societal challenge: climate change.

35. Miloon Kothari, REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING 14–26 (2007), <https://digitallibrary.un.org/record/593076?ln=en> [<https://perma.cc/482X-6TGF>].

36. Miloon Kothari & Patricia I. Vasquez, *Policy Debate | The UN Guidelines on Forced Evictions : A Useful Soft-Law Instrument?*, 6.2 INT’L DEV. POL’Y, Dec. 18, 2015 at para. 41–42, <http://journals.openedition.org/poldev/2188> [<https://perma.cc/U596-9XHX>]. The authors could find no indication of the U.S. adopting or incorporating the UN guidelines.

37. *Id.*, at para. 43–44. The authors could find no indication of any U.S. court adopting or incorporating the UN guidelines.

38. Bruce Mohl, *Right to shelter: Is it a migrant magnet?*, COMMONWEALTH BEACON (Aug. 28, 2023), <https://commonwealthmagazine.org/immigration/right-to-shelter-is-it-a-migrant-magnet/> [<https://perma.cc/NR3D-GXPB>].

39. Luis Fieldman, *7 Things to Know about Mass. ‘right-to-shelter’ as budget vote looms*, MASSLIVE (Nov. 14, 2023), <https://www.masslive.com/politics/2023/11/7-things-to-know-about-mass-right-to-shelter-as-budget-vote-looms.html> [<https://perma.cc/LEA2-DU9T>] (noting Massachusetts and New York City’s unique right to shelter laws); NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, RIGHT TO HOUSING FACT SHEET IN THE UNITED STATES, 1 (2009) (noting U.S. has not ratified international covenant on right to housing nor would it likely uphold a federal right to housing in court); [https://nhlp.org/files/\(2\)%20Right%20to%20Housing%20-%20in%20the%20U.S.pdf](https://nhlp.org/files/(2)%20Right%20to%20Housing%20-%20in%20the%20U.S.pdf); see also N.Y.C. BAR ASS’N INT’L HUM. RTS. COMM., “ADVANCING THE RIGHT TO HOUSING IN THE UNITED STATES: USING INTERNATIONAL LAW AS A FOUNDATION” 8–9 (2016), <https://www2.nycbar.org/pdf/report/uploads/20072632-AdvancingtheRighttoHousingIHR2122016final.pdf>

D. Renters and Climate Change

The threats of climate change are generally known and understood already, as many parts of the country have already started regularly experiencing extreme heat and extreme cold, fires, hurricanes, and flooding in great excess of historical weather patterns.⁴⁰ In 2021 alone, one in 10 US homes—more than 14 million—was damaged by disasters.⁴¹

Renter households will increasingly struggle with the impacts of climate change. For renters, climate change means increased risks of damage to their rented property; meanwhile, the risks of rental home permanent destruction through sea level rise, owner failure to repair and maintain, or government condemnation in coastal or other vulnerable communities is also on the rise.⁴² According to a report from the Harvard Joint Center for Housing Studies on America's Rental Housing,

10.5 million of the country's 43.7 million renter households live in zip codes that incurred at least \$1 million in home and business losses due to natural disasters between 2008 and 2018. Moreover, 8.1 million renter households report that they do not have the financial resources to evacuate their homes if and when a disaster strikes.⁴³

Any location can be affected in some way by the impacts of climate change,⁴⁴ but an online insurance marketplace compiled a list of ten cities that are “worst for climate change” in 2023. It based this assessment on data

40. Renee Cho, *With Climate Impacts Growing, Insurance Companies Face Big Challenges*, COLUMBIA CLIMATE SCH. (Nov. 3, 2022), <https://news.climate.columbia.edu/2022/11/03/with-climate-impacts-growing-insurance-companies-face-big-challenges/> [<https://perma.cc/ES28-HD5X>].

41. Samantha Fu, *How Cities Can Tackle Both the Affordable Housing and Climate Crises*, URB. INST. (Nov. 2, 2022), <https://housingmatters.urban.org/articles/how-cities-can-tackle-both-affordable-housing-and-climate-crises> [<https://perma.cc/DQT6-QKDH>].

42. See Sophia Weeden, *The Threat of environmental Hazards to the Rental Stock*, HARVARD JOINT CTR. HOUS. STUD. BLOG (Mar. 9, 2022), <https://www.jchs.harvard.edu/blog/threat-environmental-hazards-rental-stock> [<https://perma.cc/C8JQ-U39F>].

43. Press Release, Harvard Joint Center for Housing Studies, *New Report Shows America's Rental Affordability Crisis Climbing the Income Ladder* (Jan. 31, 2020), https://www.jchs.harvard.edu/sites/default/files/interactive-item/files/Harvard_JCHS_Americas_Rental_Housing_Press_Kit.pdf [<https://perma.cc/GV9L-EMWZ>].

44. See Alexa K. Jay et al., *Overview: Understanding Risks, Impacts, and Responses, in THE FIFTH NATIONAL CLIMATE ASSESSMENT* 6–7 (2023), https://nca2023.globalchange.gov/downloads/NCA5_Ch1_Overview.pdf

from the Federal Emergency Management Agency (FEMA) and the U.S. Environmental Protection Agency (EPA), as well as the University of South Carolina's Social Vulnerability Index, and combined six key climate-related projections for the next several decades: (1) heat and humidity levels; (2) flooding and sea-level rise; (3) climate-related disasters; (4) air quality; (5) social vulnerability; and (6) community resilience.⁴⁵ Based on that assessment, a list of the "ten worst U.S. cities" in terms of climate change impacts was generated.⁴⁶ For many of these high-climate-change-impact cities, there are large portions of non-owner-occupied housing:

45. Logan Sachon & Pat Howard, *The best and worst cities for climate change in 2023*, POLICYGENIUS (Dec. 22, 2022), <https://www.policygenius.com/homeowners-insurance/best-and-worst-cities-climate-change/> [<https://perma.cc/B6CA-N5C7>]. Other groups, including other insurers, compile similar lists using their own metrics and weights; this list is an example only and does not represent a value judgment on the method employed. *See, e.g.*, Adam Kamins, *The Impact of Climate Change on U.S. Subnational Economies*, MOODY'S ANALYTICS (Feb. 2023), <https://www.moodyanalytics.com/articles/pa/2023/the-impact-of-climate-change-on-us-subnational-economies> [<https://perma.cc/WP32-LHHB>]; Dana Hanson, *The 20 Worst U.S. Cities for Climate Change*, MONEY INC. (Mar. 7, 2023), <https://moneyinc.com/worst-u-s-cities-for-climate-change/> [<https://perma.cc/XZZ5-47T8>].

46. Sachon & Howard, *supra* note 45.

Owner-occupied housing unit rate, 2017-2021 for “10 Worst Cities” for Climate Change

1. Houston, TX:	42% ⁴⁷
2. Miami, FL:	30.1% ⁴⁸
3. Tampa, FL:	50.5% ⁴⁹
4. Jacksonville, FL:	57% ⁵⁰
5. Orlando, FL:	39.2% ⁵¹
6. New Orleans, LA:	49.3% ⁵²
7. Los Angeles, CA:	36.6% ⁵³
8. Memphis, TN:	46.6% ⁵⁴
9. Riverside, CA:	55.5% ⁵⁵
10. Virginia Beach, VA:	64.6% ⁵⁶

47. In the case of Houston, news reports indicate that the city is around 60% renters. Matt Dulin, *More Houston neighborhoods became majority-renter over the past decade*, KINDER INST. FOR URB. RSCH. (Dec. 5, 2022), <https://kinder.rice.edu/urbanedge/more-houston-neighborhoods-became-majority-renter-over-past-decade> [https://perma.cc/BQR9-JXCJ]; U.S. CENSUS BUREAU, QuickFacts: Houston City, Texas, <https://www.census.gov/quickfacts/fact/table/houstoncitytexas,US/PST045223>

48. *QuickFacts: Miami City Florida, U.S. CENSUS BUREAU*, <https://www.census.gov/quickfacts/fact/table/miamicityflorida,US/PST045223> [https://perma.cc/5MBQ-RWEK] (Last visited Feb. 19, 2024) –.

49. *QuickFacts: Tampa City, Florida, U.S. CENSUS BUREAU*, <https://www.census.gov/quickfacts/fact/table/tampacityflorida,US/PST045223> [https://perma.cc/PC7N-E6GU] (Last visited Feb. 19, 2024).

50. *QuickFacts: Jacksonville City, Florida, U.S. CENSUS BUREAU*, <https://www.census.gov/quickfacts/fact/table/jacksonvillecityflorida,US/PST045223> [https://perma.cc/J74V-UX5Q] (Last visited Feb. 19, 2024).

51. *QuickFacts: Orlando City, Florida, U.S. CENSUS BUREAU*, <https://www.census.gov/quickfacts/fact/table/orlandocityflorida,US/PST045223> [https://perma.cc/BYC3-HWG3] (Last visited Feb. 19, 2024).

52. *QuickFacts: New Orleans, Louisiana, U.S. CENSUS BUREAU*, <https://www.census.gov/quickfacts/fact/table/neworleanscitylouisiana,US/PST045223> [https://perma.cc/327L-5PNW] (Last visited Feb. 19, 2024).

53. *QuickFacts: Los Angeles City California, U.S. CENSUS BUREAU*, <https://www.census.gov/quickfacts/fact/table/losangelescitycalifornia,US/PST045223> [https://perma.cc/F8YQ-XVBQ] (Last visited Feb. 19, 2024).

54. *QuickFacts: Memphis Tennessee, U.S. CENSUS BUREAU*, <https://www.census.gov/quickfacts/fact/table/memphiscitytennessee,US/PST045223> [https://perma.cc/F5B7-6KDW] (Last visited Feb. 19, 2024).

55. *QuickFacts: Riverside City California, U.S. CENSUS BUREAU*, <https://www.census.gov/quickfacts/fact/table/riversidecitycalifornia,US/PST045223> [https://perma.cc/AYN7-PBN9] (Last visited Feb. 19, 2024).

56. *QuickFacts: Virginia Beach City Virginia, U.S. CENSUS BUREAU*, <https://www.census.gov/quickfacts/fact/table/virginiabeachcityvirginia,US/PST045223> [https://perma.cc/32KU-AUPF] (Last visited Feb. 19, 2024).

The majority of these high-risk cities have huge renter populations, as half or more of the population does not live in owner-occupied housing. Miami, Florida – at risks of flooding, extreme heat, and hurricanes, with low scores on the social vulnerability and community resilience scales, has extremely high numbers of renters – as does Houston, the city at greatest risk.⁵⁷

The U.S. Environmental Protection Agency’s definition of “environmental justice,” calls for both the “*fair treatment* and *meaningful involvement* of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”⁵⁸ EPA considers fair treatment to mean that “no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.”⁵⁹ Renters who shoulder the impacts of climate change while being sidelined by government policies that favor property owners do not receive “fair treatment” within the framework of environmental justice.

Renters everywhere – but especially renters in high-risk cities like those listed above – need protection.⁶⁰

57. Sachon & Howard, *supra* note 45. Houston’s struggles with climate adaptation are discussed in greater detail in Part III below with respect to how the city, Harris County, and State of Texas responded to Hurricane Harvey.

58. *Environmental Justice*, EPA (Sept. 6, 2023), <https://www.epa.gov/environmentaljustice> [<https://perma.cc/KGP6-RKJD>] (emphasis added).

59. *Learn About Environmental Justice*, EPA (Aug. 16, 2023), <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> [<https://perma.cc/PWF4-MHU8>].

60. *See generally* Cummings & Singh Lemar, *supra* note 30.

II. AN OVERVIEW OF EXISTING PLANS, PROGRAMS AND SUPPORTS AVAILABLE TO RENTERS AFFECTED BY CLIMATE CHANGE

In the face of this demonstrable need, federal, state, and local governments continue to direct few resources to renters who are navigating the impacts of climate change in their homes and communities. Indeed, there are few widespread or standardized programs made especially for renters, and the growing number of homeowner assistance programs intended to address post-disaster recovery assistance, climate adaptation, mitigation, and managed retreat, are largely not available to tenants.⁶¹ Disaster recovery programs overwhelmingly favor homeowners.⁶² And many of the formal public planning documents that lay out longer-term efforts aimed at living with climate change simply make no mention of leaseholders.⁶³

Protections are needed. Both rational emergency relief and long-term, sensible, and realistic planning for non-property owners is long overdue. According to Fu, “[t]hese dual crises are particularly acute for people with

61. Even where programs are nominally available for both homeowners and renters, states and localities using federal grant money to implement programs overwhelmingly use those funds to support homeowners. *See, e.g.* Carlos Martin et al., *DISASTERS AND THE RENTAL HOUSING COMMUNITY: SETTING A RESEARCH AND POLICY AGENDA*, BROOKINGS METRO 1 (2023), https://www.brookings.edu/wp-content/uploads/2023/09/Disasters-and-the-Rental-Housing_final.pdf. For instance, one study by the Government Accountability Office (GAO) that reviewed federal assistance for permanent housing after Hurricanes Katrina and Rita in Louisiana and Mississippi found that a full 62% of funds dispersed, or \$13 billion, was directed at homeowner units, while only 18%, \$1.8 billion, was directed at rental units. *See* U.S. GOV'T ACCOUNTABILITY OFF., *GAO-10-17, DISASTER ASSISTANCE: REPORT TO CONGRESSIONAL REQUESTERS ON DISASTER ASSISTANCE, FEDERAL ASSISTANCE FOR PERMANENT HOUSING PRIMARILY BENEFITED HOMEOWNERS; OPPORTUNITIES EXIST TO BETTER TARGET RENTAL HOUSING NEEDS* (Jan. 2010), <https://www.gao.gov/assets/gao-10-17.pdf> [<https://perma.cc/45YG-V4HB>].

62. Jasmine Butler et al., *Turning the tide toward equity: improving federal flood programs to serve marginalized populations*, AM. FLOOD COAL. BLOG, <https://floodcoalition.org/2020/05/turning-the-tide-toward-equity-improving-federal-flood-programs-to-serve-marginalized-populations/> [<https://perma.cc/H2UU-Y299>].

63. For instance, the Louisiana Climate Action Plan barely references benefits available to renters or the landlords who own their homes, only homeowners. *See Louisiana Climate Action Plan: Climate Initiatives Task Force Recommendations to the Governor*, STATE OF LA. (Feb. 1, 2022), https://gov.louisiana.gov/assets/docs/CCI-Task-force/CAP/Climate_Action_Plan_FINAL_3.pdf [<https://perma.cc/3M7P-BGLZ>]; *see also Minnesota's Climate Action Framework* 1, 55, <https://climate.state.mn.us/sites/climate-action/files/Climate%20Action%20Framework.pdf> [<https://perma.cc/68YU-VDDC>].

low incomes and people of color, who are both disproportionately cost burdened and more vulnerable to the effects of climate change.”⁶⁴

The few existing assistance programs for renters do not offer sufficient funds to meet need and are often not efficiently or equitably administered.⁶⁵ Additionally, renters have critical information deficits regarding the climate risks they face and whether they may need these programs. For instance, homeowners often know whether their homes were impacted by past weather events, whether their homes are currently physically secure, and whether they face potential future environmental risks.⁶⁶ Renters have comparatively little information about the risks to their homes, most especially future flood risk.⁶⁷ Indeed, in many states where landlords have received benefits to recover from natural disasters in the past; where they are currently required to carry disaster-related insurance policies; or where they may avail themselves of other climate change mitigation programs, such as weatherization initiatives, they are not required to share that information with their tenants.⁶⁸ The EPA’s Environmental Justice Screening and Mapping tool shows *current* environmental and demographic indicators relating to environmental risks by census-tract.⁶⁹ But it does not

64. Fu, *supra* note 41 (“These disparities partly stem from historical racist policies that have led to today’s separate and unequal neighborhoods but are compounded by ongoing practices like exclusionary zoning and land-use policies that prevent development close to job centers and other desirable amenities, as well as inequitable disaster recovery allocations that privilege homeowners over renters and white people over people of color.”).

65. Christopher Flavelle, *Why Does Disaster Aid Often Favor White People?*, N.Y. TIMES (Oct. 27, 2021), <https://www.nytimes.com/2021/06/07/climate/FEMA-race-climate.html> [<https://perma.cc/H7YX-32W4>].

66. Indeed, thirty states require flood risk disclosure to homeowners. See *How States Stack Up on Flood Disclosure*, NAT’L RESOURCES DEF. COUNCIL (Aug. 31, 2023), <https://www.nrdc.org/resources/how-states-stack-flood-disclosure> [<https://perma.cc/95RM-E34C>] (counting states with adequate disclosure or better).

67. Rebecca Hersher, *Most Tenants Get No Information About Flooding. It Can Cost Them Dearly.*, NPR (Oct. 22, 2020, 4:50 AM), <https://www.npr.org/2020/10/22/922270655/most-tenants-get-no-information-about-flooding-it-can-cost-them-dearly> [<https://perma.cc/K4Z5-XPLP>]. It can be difficult for tenants to obtain any information about federal programs—including climate related programs—that their landlord may have availed themselves of. Even determining whether a landlord has a federally backed mortgage can be a challenge because obtaining that information requires a Social Security Number or Tax Identification Number. See *How the Law Fails Tenants*, *supra* note 6, at 150 n.10.

68. “An NPR review of the laws in 30 states that require disclosure of flood risk during real estate transactions found that only one mentions tenants. That law, in Georgia, doesn’t apply to everyone who rents: Landlords must only make a disclosure if an apartment or rental home has flooded at least three times in the previous five years.” See Hersher, *supra* note 67].

69. *EJScreen: Environmental Justice Screening and Mapping Tool*, EPA (Sept. 6, 2023),

overlay any information about future risks or the impact that the changing climate could have on communities.⁷⁰ What's more, it does not track whether individuals in a given area are residents or homeowners.⁷¹

This information gap creates major barriers to adequate planning for those who may need it most, especially because many low-income renters may occupy apartments that are especially vulnerable to climate change.⁷² Additionally, neighborhoods that were previously redlined, especially neighborhoods with a majority African American population, are more at risk of future flooding as compared with majority-white counterparts.⁷³ Yet many renters simply have no idea that they are at risk.

This section of our paper will examine programs that do exist for renters, assessing both reactive, post-disaster benefits and more proactive, mitigation and adaptation efforts. It will first review federal funding streams, most of which are administered by individual states and localities that apply for grants. Next, it will assess how two states—New Jersey and Texas—have used those federal funds in the wake of serious disasters to different effect. Finally, it will introduce two nascent programs at the municipal level—one in New Orleans and one in Philadelphia—which are designed to help renters stay in their homes and to prepare those homes for coming climate risks.

<https://www.epa.gov/ejscreen> [<https://perma.cc/6MAH-2D7R>].

70. *Id.*

71. *Id.*

72. Sophia Weeden, *supra* note 42. Research from the MIT Department of Urban Studies and Planning tracks this connection especially clearly. See *Effects of Climate Change Related Disasters on Low-Income Renters*, MASS. INST. TECH. DEPT. URB. STUD. & PLAN., <https://dusp.mit.edu/projects/effects-climate-change-related-disasters-low-income-renters> [<https://perma.cc/4SXM-G9CV>].

73. Formerly redlined areas are at 25% higher risk of flooding. Lily Katz, *A Racist Past, a Flooded Future: Formerly Redlined Areas Have \$107 Billion Worth of Homes Facing High Flood Risk—25% More Than Non-Redlined Areas*, REDFIN NEWS (June 23, 2021), <https://www.redfin.com/news/redlining-flood-risk/> [<https://perma.cc/JY69-BY4E>]; see also Thomas Frank & E&E News, *Flooding Disproportionately Harms Black Neighborhoods*, SCI. AM. (June 2, 2020), <https://www.scientificamerican.com/article/flooding-disproportionately-harms-black-neighborhoods/> [<https://perma.cc/A589-RTV5>].

This paper does not attempt an exhaustive account of all programs available to renters. The landscape of programs designed to respond to our current climate crisis is diverse and rapidly shifting, ranging from far-reaching, nationally funded initiatives to smaller community-based programs. However, the overall lack of programs available for examination in this section is a striking reflection of the resource gap for renters nationally.

A. Federal Programs for Renters

Though federal relief for homeowners is substantially more robust than help for renters,⁷⁴ the federal government does administer several programs for renters facing the impacts of the changing climate through FEMA, the Department of Housing and Urban Development (“HUD”) Community Development Block Grant (“CDBG”) program, the Department of Homeland Security (“DHS”), and the Small Business Administration (“SBA”).

Many of these programs were born of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act”). Passed in 1988, the Stafford Act instituted a standardized system for federal disaster response, creating a process for federal disaster declaration, FEMA aid distribution after disaster declaration, and pre-disaster hazard mitigation programs.⁷⁵ It was also intended to encourage state and local governments to create comprehensive disaster response plans, and by its very terms prioritizes concerns about property loss.⁷⁶

Three types of assistance are available under the Stafford Act: Individual Assistance, Public Assistance, and Hazard Mitigation Assistance.⁷⁷ Section (a) explores the types of Individual Assistance that renters can receive after federally declared disasters to help them obtain temporary shelter and recover the cost of lost possessions.⁷⁸ Section (b) looks at the Hazard Mitigation Assistance programs which, in theory, could help renters plan for managed retreat, but which ultimately tend to prioritize

74. U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-17, *supra* note 61.

75. *See* 42 U.S.C. §5121.

76. 42 U.S.C. § 5121(b)(1)

77. *How a Disaster Gets Declared*, FEMA, <https://www.fema.gov/disaster/how-declared> [<https://perma.cc/9E2K-U84E>] (last updated Apr. 25, 2023).

78. *See Infra* Part II(a).

homeowners, often to the detriment of renters left in communities where homeowners have taken buyouts.⁷⁹ These sections will also examine how these two types of federal aid—post-storm and pre-storm hazard mitigation—create an imperfect framework for helping renters who are responding to increasingly severe weather events.⁸⁰ Ultimately, the current federal programs tend to reflect and even reinforce the existing inequalities discussed in Part I.

i. Individual Assistance- post-disaster benefits for renters through FEMA, HUD, and NFIP.

FEMA benefits are among the primary type of post-disaster relief made immediately available to most renters.⁸¹ HUD then supplies much of the long-term rebuilding money through its disaster recovery Community Development Block Grants.⁸² Finally, the National Flood Insurance Program provides a third pillar of federal support to renters facing disaster losses.⁸³

a. FEMA

FEMA offers several types of limited emergency assistance to people residing in a qualifying state or locality, but for each type of assistance, certain requisite triggering conditions must be met for the initial authorization of funds, and subsequent conditions must be met by individual applicants.⁸⁴

79. See *Infra* Part II(b).

80. See *Infra* Parts II(a)–(b).

81. See, e.g. Daniel Teles, Carlos Martin, *Why Does Disaster Recovery Take So Long? Five Facts About Federal Housing Aid After Disasters*, Urban Institute, (Jan. 25, 2021), <https://www.urban.org/urban-wire/why-does-disaster-recovery-take-so-long-five-facts-about-federal-housing-aid-after-disasters> (noting that FEMA assistance typically spans the first 18-months after a disaster);

82. Manny Fernandez, *Two Years After Hurricane Harvey, One Group Says It Has Been Overlooked: Renters*, N.Y. TIMES (Oct. 11, 2019), <https://www.nytimes.com/2019/10/11/us/hurricane-harvey-lawsuit-texas.html> [<https://perma.cc/N2EJ-CA2F>].

83. NAT'L FLOOD INS. PROGRAM, FLOOD INSURANCE FOR RENTERS (2022), available at https://agents.floodsmart.gov/sites/default/files/nfip-flood-insurance-for-renters_brochure_02-2022.pdf.

84. *You asked: I'm a renter, can I get assistance from FEMA?*, FEMA (Sept. 16, 2021), <https://www.fema.gov/fact-sheet/you-asked-im-renter-can-i-get-assistance-fema-0>

First, for the federal government to release FEMA relief to individuals and localities, there must be a qualifying, federally declared disaster.⁸⁵ There are three types of disasters: Major Disaster Declarations, Emergency Declarations, and Fire Management Declarations.⁸⁶ Under the Stafford Act, “[a]ll requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State.”⁸⁷ Then FEMA’s regional office conducts a Preliminary Damage Assessment (PDA) to determine whether a disaster qualifies.⁸⁸

If a disaster or emergency is declared, funds can be released under the Individuals and Households Program (IHP), which grants Individual Assistance (IA) to impacted individuals and households.⁸⁹ More IA funds tend to be available under major disaster declarations than emergency declarations.⁹⁰ Once disbursed, these funds do not need to be repaid.⁹¹

Of those IA funds, FEMA relief available to renters falls broadly into two categories: Housing Assistance and Other Needs Assistance.⁹² Housing Assistance may be financial—in the form of cash payments or reimbursements—or direct, in the form of actual temporary shelter.⁹³ For instance, FEMA Rental Assistance is a form of financial assistance that covers monthly rent and the cost of utilities.⁹⁴ It can be used for hotel or motel stays, and the amount is awarded based on the fair market rent where

[<https://perma.cc/N9CD-F5NX>].

85. See *How a Disaster Gets Declared*, *supra* note 77.

86. See *How a Disaster Gets Declared*, *supra* note 77; *OpenFEMA Dataset: Disaster Declarations Summaries-v1*, FEMA (Nov. 12, 2023), <https://www.fema.gov/openfema-data-page/disaster-declarations-summaries-v1#:~:text=This%20dataset%20lists%20all%20official,emergency%2C%20and%20fire%20management%20assistance> [<https://perma.cc/3K8S-KEJ2>].

87. *How a Disaster Gets Declared*, *supra* note 77; 42 U.S.C. § 5170.

88. *How a Disaster Gets Declared*, *supra* note 77.

89. *How a Disaster Gets Declared*, *supra* note 77.

90. FEMA, INDIVIDUAL ASSISTANCE PROGRAM AND POLICY GUIDE, VERSION 1.1 at 4 (2021), available at https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf [Hereinafter Policy Guide].

91. *FEMA’s Individual Assistance Program*, FEMA (Sept. 3, 2020), <https://www.fema.gov/fact-sheet/femas-individual-assistance-program> [<https://perma.cc/2BAP-TVM7>].

92. *Help After A Disaster: FEMA Individual Assistance Can Help You Recover*, FEMA (Apr. 2019), https://www.fema.gov/sites/default/files/2020-08/fema_help-after-disaster_english_trifold.pdf [<https://perma.cc/4PE6-V3XW>].

93. *Assistance for Housing and Other Needs*, FEMA, <https://www.fema.gov/assistance/individual/housing> [<https://perma.cc/6TAN-8DC7>] (last updated Aug. 16, 2023).

94. FEMA, Policy Guide, *supra* note 90.

the pre-disaster residence was located, as well as the number of bedrooms a household needs.⁹⁵ It is disbursed while repairs are made to an applicant's primary residence or, if they are unable to return to their primary residence, while transitioning to new, permanent housing.⁹⁶ Additionally, FEMA may provide after-the-fact financial assistance in the form of Lodging Expense Reimbursement to renters who pay for hotel lodging out-of-pocket and later seek to recoup for the cost of the lodging.⁹⁷

FEMA also offers the longer-term Transitional Sheltering Assistance Program (TSA) which allows people to pay for stays in hotels or other lodging while their homes are uninhabitable because of disaster.⁹⁸ However, this program requires fund recipients to have a credit card or enough money or cash for a security deposit, which they must put down at the time of applying to cover incidentals that arise during their stay.⁹⁹ Many low-income Americans cannot meet this requirement.¹⁰⁰

FEMA direct housing assistance is provided when there are inadequate temporary housing resources within a reasonable distance of a person's damaged home. These shortages are more common in rural areas, where hotels or other temporary lodging may be more scarce.¹⁰¹ This type of direct housing assistance most commonly takes the form of FEMA trailers, made infamous after Hurricane Katrina for the use of the dangerous chemical,

95. *Id.*

96. *Id.*

97. *Id.*

98. *Transitional Sheltering Assistance*, FEMA (Sept. 3, 2021), <https://www.fema.gov/fact-sheet/transitional-sheltering-assistance> [<https://perma.cc/HP8V-XRKP>].

99. DISASTER HOUS. RECOVERY COAL., *SETTING THE RECORD STRAIGHT: FEMA'S FAILURE TO ADDRESS LONG TERM HOUSING NEEDS OF SURVIVORS* (2018), available at https://nlihc.org/sites/default/files/FEMA_Setting-The-Record-FEMA-TSA.PDF.

100. Indeed, according to the Flood Coalition, "Disasters can set off a chain reaction by causing people with lower credit scores, an attribute correlated with low-income levels, to lose access to credit, making them ineligible to receive TSA funds. People with pre-disaster credit scores below 650 are 4.5% less likely to have access to credit within a year after a disaster because they miss bills or are evicted. Responding to this crisis, some groups suggest activating the Disaster Housing Assistance Program (DHAP), which was created in response to Hurricane Katrina. Unlike TSA, DHAP provides temporary rental assistance and wraparound case management and is, therefore, more accessible to lower-income individuals. Whatever the solution, changes to FEMA procedures could ensure that unbanked Americans aren't left behind after disasters." Butler et al., *supra* note 62.

101. Sophie Kasakove & Katy Reckdahl, *Three Months After Hurricane Ida, Residents are Still Waiting for FEMA Housing*, N.Y. TIMES (Dec. 5, 2021), <https://www.nytimes.com/2021/12/05/us/hurricane-ida-fema-housing.html> [<https://perma.cc/52VU-EGT8>].

formaldehyde.¹⁰² Since Katrina, FEMA has replaced trailers with sturdier pre-fabricated units and followed stricter rules in their construction, but these heightened manufacturing standards can create delays for desperate families.¹⁰³

In addition to housing assistance, as part of its “Other Needs” benefits, FEMA provides limited Personal Property Assistance to renters who lost personal property as a result of the federally declared disaster.¹⁰⁴ Eligible expenses include “furniture, appliances, clothing, textbooks or school supplies; replacement or repair of tools and other job-related equipment; vehicle repair; and medical/dental bills.”¹⁰⁵ Some miscellaneous help for specific items not owned prior to the disaster may also be available.¹⁰⁶ For instance, renters (and all eligible individuals) may apply for the purchase of wet/dry vacuums, chainsaws, and generators, all of which may help with the cleanup and recovery after a declared disaster.¹⁰⁷ Finally, a limited amount of “Critical Needs Assistance” may be available to qualifying individuals to receive one-time payments to help with costs for critical items including water, food, first aid, prescriptions, infant formula and diapers, fuel for transportation, and personal hygiene items.¹⁰⁸

According to the Center for American Progress, however, how these direct cash benefits are calculated can reinforce existing inequalities.¹⁰⁹ For instance, FEMA calculations relying on personal property loss as a proxy to

102. Mike Brunker, *CDC tests confirm FEMA trailers are toxic*, NBC NEWS (Feb. 14, 2008, 12:34 PM), <https://www.nbcnews.com/id/wbna23168160> [<https://perma.cc/Z49M-EJ73>]. Additionally, delays with receiving trailers in the wake of disasters can create prolonged housing shortages as families navigate the most vulnerable months after a storm and try to rebuild. Kasakove & Reckdahl, *supra* note 101.

103. See Hannah Dreier, *New FEMA program would place homeless disaster survivors in apartments instead of trailer parks*, WASH. POST (Jan. 16, 2022), <https://www.washingtonpost.com/nation/2022/01/16/disaster-survivors-fema-housing-trailers-apartments/> [<https://perma.cc/NBE8-HQKB>] (discussing the expense of trailers used after the Camp Fire in Chico, CA, which ultimately far exceeded the cost of renting an apartment in the area); see also Kasakove & Reckdahl, *supra* note 101.

104. *You Asked: I'm a renter, can I get assistance from FEMA?*, *supra* note 84.

105. *Id.*

106. FEMA, FEMA B-545, *Help After a Disaster* (2019), available at https://www.fema.gov/sites/default/files/2020-08/fema_help-after-disaster_english_trifold.pdf.

107. *Id.*

108. *Assistance for Housing and Other Needs*, *supra* note 92.

109. Justin Dorazio, *How FEMA Can Prioritize Equity in Disaster Recovery Assistance*, CTR. FOR AM. PROGRESS (Jul. 19, 2022), <https://www.americanprogress.org/article/how-fema-can-prioritize-equity-in-disaster-recovery-assistance/> [<https://perma.cc/4Y5C-GWVK>].

quantify storm impact “underestimates the needs of renters and low-income communities who see their personal property undervalued.”¹¹⁰

There are many other limitations on the programs that FEMA offers. To start, assistance with repair and replacement of homes is only available for owner-occupied homes.¹¹¹ Longer-term hazard mitigation assistance, discussed in greater detail in the next section, is also primarily only available to homeowners.¹¹²

To qualify for the assistance that is made available to renters, applicants must verify their identity, citizenship status, give proof of occupancy, and demonstrate that their disaster needs have not been met by another source.¹¹³ Each of these requirements can present serious barriers, especially after a major storm or other disaster where personal documents may have been lost or damaged. For instance, if FEMA cannot verify a person’s identity during the application process and must seek supporting documentation, a driver’s license alone is not sufficient proof of identity.¹¹⁴ And FEMA relief is only available for U.S. Citizens, non-citizen nationals and qualified non-citizens.¹¹⁵ Moreover, technology access issues, literacy barriers, language accessibility and disability also all present compounding problems for vulnerable individuals attempting to access services.¹¹⁶

Disturbingly, recent research into FEMA’s distribution of disaster benefits indicates vast racial inequities in benefit distribution. White individuals and predominantly white communities tend to get more benefits from the agencies than people of color or people residing in majority-

110. *Id.*

111. *See Assistance for Housing and Other Needs, supra* note 92.

112. *See generally* FEMA, FP-206-21-0001, *Hazard Mitigation Assistance Program and Policy Guide*, (2023), available at <https://www.fema.gov/grants/mitigation/guide>; *see also* Martin et al., *supra* note 61, at 1.

113. *Eligibility Criteria for FEMA Assistance*, FEMA, <https://www.fema.gov/assistance/individual/program/eligibility> [<https://perma.cc/7JLW-CKPJ>] (last updated Oct. 3, 2023).

114. *Options to Verify Your Identity with FEMA*, FEMA (Aug. 4, 2023), <https://www.fema.gov/fact-sheet/options-verify-your-identity-fema> [<https://perma.cc/4WYA-78UM>] (FEMA requires a social security card or other official document with the last four digits of a person’s social security number, military identification or U.S. passport might be required).

115. *Qualifying for Disaster Assistance- Citizenship and Immigration Status Requirements*, FEMA, <https://www.fema.gov/fact-sheet/qualifying-disaster-assistance-citizenship-and-immigration-status-requirements> [<https://perma.cc/5Z4P-JMCT>].

116. *Objective 1.2-Remove Barriers to FEMA Programs Through a “People First” Approach*, FEMA <https://www.fema.gov/about/strategic-plan/goal-1/objective-1-2> 2__ [<https://perma.cc/T458-MSFS>] (last updated Oct. 16, 2023).

minority communities.¹¹⁷ Indeed, FEMA’s own advisory panel suggested that the agency must do more to correct for these racially disparate allocations of resources.¹¹⁸

FEMA has recognized that historically, many individuals who need their benefits the most have faced substantial barriers to accessing resources. In its 2018-2022 strategic plan, FEMA acknowledged these deficits in its benefit disbursement, vowing to take a “people first” approach that makes “programs simpler, more accessible, and more user-friendly.”¹¹⁹ To this end, Executive Order 13985, entitled “Executive Order on Furthering Racial Equity and Support for Underserved Communities Through the Federal Government,” was designed to further access to government benefits for eligible individuals, including by accepting more forms of documentation to prove ownership and occupancy—an especially important change where documents may have been destroyed in a disaster or where none may exist for certain types of living arrangements—and contacting ineligible applicants who were denied on account of verification issues to help them navigate the process of re-applying.¹²⁰

But substantial barriers persist. For instance, and as previously introduced, to access available funds, renters must demonstrate that they are not already receiving comparable funds from another source, like a private insurer.¹²¹ And FEMA has historically sowed deep distrust in its programs

117. Recent reporting from the New York Times details how this has played out. “The pressure on FEMA to address racial disparities is growing. The Government Accountability Office is looking at FEMA’s actions ‘to ensure more equitable outcomes’ in its disaster programs. The agency’s own advisory council said FEMA isn’t meeting its legal requirement to provide aid without discrimination on racial or other grounds. During her Senate confirmation, the first question faced by Deanne Criswell, President Biden’s choice to run FEMA, was how she would ensure Black, brown and Latino survivors get equal access to disaster aid.” Christopher Flavelle, *FEMA Says It’s Still Working to Fix Racial Disparities in Disaster Aid*, N.Y. TIMES (Oct. 27, 2021), <https://www.nytimes.com/2021/10/27/climate/fema-aid-racial-disparities.html> [<https://perma.cc/FAR2-HW8X>].

118. *National Advisory Council Report to the FEMA Administrator*, FEMA, (Nov. 2020), https://www.fema.gov/sites/default/files/documents/fema_nac-report_11-2020.pdf [<https://perma.cc/XF9R-4H6Y>].

119. *Objective 1.2- Remove Barriers to FEMA Programs through a “People First” Approach*, *supra* note 116.

120. Exec. Order No. 13,985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

121. *Duplication of Benefits: What it Means*, FEMA, (Dec. 8, 2021), <https://www.fema.gov/fact-sheet/duplication-benefits-what-it-means> [<https://perma.cc/3FC6-64CQ>].

through a practice of demanding after-the-fact receipts and reimbursement of its funds if it suspects funds were improperly spent.¹²²

Finally, many FEMA benefits do not fully cover the actual needs of renters in the immediate aftermath of disasters, putting low-income renters at serious risk of longer-term displacement.¹²³ As the American Flood Coalition, a non-partisan organization focused on adaptation to increased flooding, notes,

while individuals wait for home repair funds, buyout approval, or permanent relocation, they need ample monetary and social resources to find adequate interim housing. As rents rise and replacement housing is slow to be built, disasters can lead to shortages in affordable rental housing.¹²⁴

For example, in Houston after Hurricane Harvey, a dearth of available units drove rents in some areas up 50% after the storm, and as many as 50% of residents faced significant housing-related challenges a full three months after the storm.¹²⁵ Though its Strategic Plan is a start, FEMA should do more to ensure its funds to renters are equitably targeted and tailored to actual need.

b. HUD

In addition to FEMA funds, HUD also makes funds available to households impacted by natural disasters through its Community Development Block Grant Disaster Recovery (DR) program.¹²⁶ These HUD funds tend to target longer-term recovery efforts and can be used for a

122. *Id.*; see also Richard A. Webster et al., *The Federal Program to Rebuild After Hurricane Katrina Shortchanged the Poor. New Data Proves It.*, PROPUBLICA (Dec. 11, 2022, 5:00 AM), <https://www.propublica.org/article/how-louisiana-road-home-program-shortchanged-poor-residents> [<https://perma.cc/B2WR-UP89>].

123. Butler et al., *supra* note 62.

124. *Id.*

125. *Id.*

126. Martin et al., *Housing Recovery and CDBG-DR: A review of the Timing and Factors Associated with Housing Activities in HUD's Community Development Block Grant for Disaster Recovery Program*, U.S. DEP'T OF HOUS. & URB. DEV., 19-20, (Apr. 2019), https://www.huduser.gov/portal/sites/default/files/pdf/HousingRecovery_CDBG-DR.pdf [<https://perma.cc/E9KK-UMZ2>].

variety of housing activities including acquisition of property, affordable rental housing, construction of housing, homeownership assistance, rehabilitation, relocation payments and assistance, homeowner compensation, and rental assistance.¹²⁷ Despite congressional appropriations mandating that rental housing programs be included in HUD grantee Action Plans, including in some cases requiring appropriations for public housing, rental programs have historically been vastly under-funded by these HUD programs.¹²⁸ For instance, from FY 2006 through FY 2015, HUD administered CDBG-DR assistance to 51 different grantees.¹²⁹ Of those, 20 assisted with accessing affordable rental housing and 8 provided rental assistance.¹³⁰ However, of the \$24.8 billion total spend on CDBG-DR programs, those expenditures for renters accounted for only 12% or \$3.54 billion.¹³¹

Moreover, scant resources were directed at creating new, affordable housing units for low-income renters as a part of disaster recovery efforts, and research suggests that those programs designed to address this problem were extremely slow to generate new units. On average, CDBG-DR programs took 4.6 years to build new affordable rental housing, compared with the average of 3.7 years that homeowner rehabilitation programs took to complete.¹³² Neither timeline offers impacted families a reasonable timeframe for recovery, especially given the increasing frequency of weather-related disasters in the era of climate change. A review by the Government Accountability Office (GAO) of CDBG-DR spending in Mississippi and Louisiana after Hurricanes Katrina and Rita suggested that while those states allocated almost \$11 billion of CDBG funds to homeowner programs, only \$1 billion went to rental properties.¹³³

Additionally, the disparity in grant allocation often does not match residential housing patterns and need.¹³⁴ In other words, homeowners are not receiving more funds because they comprise a greater proportion of

127. *Id.*

128. *Id.* at 20 (required rental appropriations in 2005 and 2008).

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.* at 3.

133. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-17, *supra* note 61, at 32.

134. Martin et al., *supra* note 61, at 5 (noting that “the evidence unambiguously points to worse impacts and outcomes for renters and rental markets following a disaster, relative to homeowners and for-sale housing markets.”)

necessitous households after disasters—to the contrary, renters are often a large and substantially underserved population by HUD after disasters.¹³⁵ In fact, in the aforementioned GAO study, demand for rental property assistance in Louisiana after Hurricane Katrina was seven or eight times what the state chose to allocate to rental properties.¹³⁶

HUD has recognized the need to expand its programs to renters and has committed to undertaking several research projects to better serve this population.¹³⁷ But to date, the over-emphasis on homeowner programs to the detriment of renters remains. HUD could play a unique role in the disaster recovery landscape for renters because of the vast affordable housing stock it already oversees. But, as explored below in Part III, to achieve this goal, the agency must place an increased emphasis on climate adaptation in its existing housing stock and the construction of new, affordable and resilient units.¹³⁸

c. NFIP

Finally, in addition to these FEMA- and HUD-administered direct, post-disaster benefits, renters may also avail themselves of funds through the federally funded National Flood Insurance Program (NFIP). Insurance for losses from floods is often not included in standard renters' insurance coverage through private insurers. Those private policies usually cover only personal property loss and damage from wind, fire, or theft.¹³⁹ The NFIP will insure a renter's belongings up to \$100,000.¹⁴⁰ The cost of the policy depends on the flood risk of a renter's building, the year of the building's construction, building occupancy, number of floors, location of a renter's contents, the flood zone of the building, the location of the lowest floor in relation to the elevation requirement on the flood map, and the deductible a renter chooses.¹⁴¹

135. *Id.*

136. U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-17, *supra* note 61, at 32.

137. See FY 2022 HUDRD CDBG Disaster Recovery Outcomes of Renter Households, U.S. DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingopps/fy22_hudrd_cdbg [<https://perma.cc/RQF6-XCQM>].

138. See Part III(E) *infra*.

139. NAT'L FLOOD INS. PROGRAM, *supra* note 83.

140. *Id.* at 3.

141. *Yes, renters can buy flood insurance*, FEMA (May 4, 2018), <https://www.fema.gov/press->

But many renters are unaware of the flood risk of their building or that the purchase of flood insurance to protect their belongings might be prudent.¹⁴² Federal law mandates that lenders require flood insurance on homes with federally backed mortgages that are in “Special Flood Hazard Areas.”¹⁴³ However, this program does not require disclosure of this fact to *tenants* who rent from homeowners required to carry flood insurance.¹⁴⁴ In fact, there are scant mandatory disclosure requirements that landlords must make to tenants, many of whom may live in high-risk zones.¹⁴⁵ As discussed in Part III of this paper, this is an area where substantial policy improvements should be made.

ii. Hazard Mitigation Programs: Federal Funding Available for Adaptation and Mitigation

Beyond post-disaster benefit programs, there are some federal initiatives designed to proactively address hazard mitigation and climate adaptation. These “blue skies” programs, which do not just respond to an already-materialized threat but rather help adapt proactively to changing climate conditions¹⁴⁶, are vastly underdeveloped and under-resourced, especially for renters.¹⁴⁷ The lack of strategic investment in this area is especially striking when research suggests that investment in these

release/20210318/yes-renters-can-buy-flood-insurance [https://perma.cc/6QXR-VFSL].

142. See, e.g. Saif Amin and Li-Ning Huang, *Challenges Remain in Raising Consumer Awareness of Flood Risk*, Fannie Mae (Dec. 12, 2023), <https://www.fanniemae.com/research-and-insights/perspectives/challenges-remain-raising-consumer-awareness-flood-risk> [https://perma.cc/WLM5-AWQJ]; see also Martin et al., *supra* note 61, at 5; Ryan Kellman, Rebecca Hersher, & Lauren Sommer, *Undisclosed: Most Homebuyers and Renters Aren't Warned About Flood or Wildfire Risk*, NPR, (Oct. 18, 2020), <https://www.npr.org/2020/10/18/918725965/undisclosed-most-homebuyers-and-renters-arent-warned-about-flood-or-wildfire-ris> [https://perma.cc/U9FE-MS9K].

143. National Flood Insurance Reform Act of 1994, Pub. L. No. 103-325, 108 Stat. 2255, 2258, available at <https://www.fema.gov/sites/default/files/2020-07/national-flood-insurance-reform-1994.pdf> [https://perma.cc/AA6L-RWMC].

144. *Id.*

145. See *How States Stack Up on Flood Disclosure*, *supra* note 66.

146. CARLOS MARTIN ET AL., BROOKINGS METRO, *DISASTER AND THE RENTAL HOUSING HOUSING COMMUNITY 4* (noting that “hazard mitigation and resilience activities occur after recovery and before the next disaster”).

147. *Id.* (Emphasizing that “[t]he lack of investment in long-term disaster mitigation strategies such as structural improvements and insurance poses a risk to all rental community stakeholders . . .”).

programs is money especially well-spent because every one dollar spent on mitigation can save six dollars in post-disaster recovery funds.¹⁴⁸

Mitigation and adaptation can take many forms. This section considers two types of federal programs in particular: those that encourage the development of more resilient infrastructure, including upgrades to existing housing stock, and those that incentivize moving communities in high-risk areas out of harm's way. Although most of these programs are not specifically designed for renters, and in fact many explicitly target homeowners to the exclusion of renters, there are still some limited funding sources directed at helping vulnerable tenants who are navigating changing environmental conditions in their homes and neighborhoods.

a. Adaptation Through Federal Weatherization Programs

Part of the federal push to build a more resilient housing stock includes weatherization programs, including the Weatherization Assistance Program (WAP) administered by the Department of Energy, which provides local entities with grants to implement discrete weatherization projects.¹⁴⁹ On average, this program helps 35,000 homes annually and has assisted over 7.2 million households since its inception in 1976.¹⁵⁰

To qualify, applicant households must be at or below 200% of the federal poverty line.¹⁵¹ Both homeowners and renters are eligible to apply for WAP resources, but historically, renters have not been able to take as much advantage of the program as homeowners.¹⁵² Although the passage

148. *Natural Hazard Mitigation Saves Interim Report*, FEMA (Jun. 2018), https://www.fema.gov/sites/default/files/2020-07/fema_mitsaves-factsheet_2018.pdf [<https://perma.cc/934K-E2EZ>].

149. *Weatherization Assistance Program*, U.S. DEP'T OF ENERGY, <https://www.energy.gov/scep/wap/weatherization-assistance-program> [<https://perma.cc/74KV-RHFN>] (last visited January 7, 2024).

150. *Weatherization Assistance Program*, U.S. DEP'T OF ENERGY, (Aug. 2023), <https://www.energy.gov/sites/default/files/2023-08/2023-WAP-Fact-Sheet.pdf> [<https://perma.cc/J6H3-DPWN>].

151. *How to Apply for Weatherization Assistance*, U.S. DEP'T OF ENERGY, <https://www.energy.gov/scep/wap/how-apply-weatherization-assistance> [<https://perma.cc/RD99-S9UP>] (January 7, 2024).

152. Martin et al., *Targeting Weatherization: Supporting Low-Income Renters in Multifamily Properties through the Infrastructure Investment and Jobs Act's Funding of the Weatherization Assistance Program and Beyond*, HARVARD JOINT CTR. FOR HOUS. STUD. (Jan. 2023), <https://www.jchs.harvard.edu/research-areas/working-papers/targeting-weatherization-supporting-low-income-renters-multifamily> [<https://perma.cc/QN8P-FKS9>].

of the Infrastructure Investment and Jobs Act (IIJA) and Inflation Reduction Act (IRA) made it significantly easier for small, multifamily units with 2-4 apartments to access weatherization benefits, there must be a concerted push to ensure that eligible landlords actually take advantage of the substantial resources for which they are eligible.¹⁵³ As detailed in a recent report from the Harvard Joint Center for Housing Studies, there are historic barriers to landlord uptake of WAP programs, including some identified by DOE itself, such as reticence “to have ‘outsiders’ work on their buildings,” or “fear that WAP is a tenant advocacy program or they are not interested in waiving any of their rights through a landlord and tenant agreement.”¹⁵⁴

Coordination between federal, state, and local actors will be necessary to overcome these barriers and effectively enact the program.¹⁵⁵ For instance, as suggested by Martin et al., on the federal level, the DOE could partner with other federal agencies like HUD to find and target eligible rental properties, state agencies could similarly help with property identification and with funding and implementation targets, and in turn, those state agencies could help local contractors and community agencies connect with necessitous property-owners and tenants.¹⁵⁶ Additionally, coordination with individual landlords and landlord associations, as well as individual tenant households and tenant advocacy groups might assist overcoming barriers to uptake.¹⁵⁷

b. Federal Support for Managed Retreat for Renters

In some especially climate-insecure localities, the increasing threats from climate change are making ongoing human habitation too risky to human safety, and too costly to public and private insurers, causing reconsideration of future habitability by residents and policymakers alike.¹⁵⁸ “Managed retreat” describes a growing practice of moving residents away

153. *Id.* at 27.

154. *Id.* at 25 (citing WEATHERIZATION ASSISTANCE PROGRAM, WEATHERIZATION OF RENTAL UNITS FREQUENTLY ASKED QUESTIONS, at 2 (2015), available at <http://docplayer.net/170977233-Weatherization-of-rental-units-frequently-asked-questions.html>).

155. *Id.* at 31.

156. *Id.* at 1–2.

157. *Id.* at 25.

158. See, e.g. A.R. Siders, *Managed Retreat in the United States*, 1 ONE EARTH 216, 216 (2019), available at <https://www.sciencedirect.com/science/article/pii/S2590332219300806>.

from high-risk areas, prone to storm damage, and preventing future habitation or development in those areas. Professor James Elliott of Rice University, who recently conducted a comprehensive study on the impacts of federal managed retreat programs, defines managed retreat as follows:

Officials call it “retreat” because the aim is to pull property back from areas of growing risk, whether that risk comes from major hurricanes, rising seas, heavy inland rains or other climate hazards. It is managed in the sense that government officials use cost-benefit formulas to determine where it makes the most financial sense to spend taxpayer money to tear down at-risk homes.¹⁵⁹

Managed retreat can be a legally challenging and emotionally complex topic for impacted communities to navigate. It requires confronting painful truths about our climate-insecure futures and the potential for community fracture. Most importantly, there are a host of nonmonetary factors associated with home and place, including intangible and invaluable qualities associated with culture and heritage, that are at stake.¹⁶⁰ Most programs that incentivize managed retreat do not force community relocation through eminent domain or other involuntary relocation programs but instead encourage relocation through buyout programs.¹⁶¹ Any program advocating relocation must of course be effectuated primarily by and for impacted community members with their preferences, opinions, and autonomy being centered at every stage.¹⁶²

Some of the current “managed retreat” programs are administered by FEMA. The Stafford Act authorizes FEMA to “enter into agreements with eligible entities to make capitalization grants to such entities for the establishment of hazard mitigation revolving loan funds.”¹⁶³ These funds

159. James R. Elliott & Zheyue (Jay) Wang, *When Homes Flood: Why Distance and Race Play a Role in FEMA Buyouts After a Natural Disaster*, MILWAUKEE INDEP. (July 17, 2023), <https://www.milwaukeeindependent.com/syndicated/homes-flood-distance-race-play-role-fema-buyouts-natural-disaster/> [<https://perma.cc/7S35-UEFQ>].

160. A.R. Siders & Idowu Ajibade, *Introduction: Managed retreat and environmental justice in climate change*, 11 J. ENV. STUD. SCI. 287, at 289 (2021), available at <https://link.springer.com/article/10.1007/s13412-021-00700-6>.

161. Siders, *supra* note 158, at 221.

162. See, e.g., Robin Bronen, *Climigration: Creating a National Governance Framework for Climate-Forced Community Relocation*, 45 N.Y.U. L. REV. L. & SOC. CHANGE 574, 586 (2022).

163. 42 USC 5135 (a)(1).

are to be dispersed to local government entities to “reduce disaster risks for homeowners, businesses, nonprofit organizations, and communities.”¹⁶⁴ Though conspicuously absent from the text of the statute itself, renters can benefit from some of the Hazard Mitigation Assistance Programs, as discussed below.¹⁶⁵

There are several sub-programs under the Hazard Mitigation Program that provide different forms of mitigation to communities facing increased natural disasters from climate change. These programs are the Hazard Mitigation Grant Program (HMGP); Building Resilient Infrastructure and Communities (BRIC); Flood Mitigation Assistance (FMA); and the HMGP Post-Fire Assistance Program.¹⁶⁶ Since 1989, FEMA has funded managed retreat in over 1,100 counties across 49 states, acquiring more than 40,000 properties.¹⁶⁷ However, this represents only a small portion of those communities and homes facing serious climate risk if they remain in place, and an especially small percentage of renter-occupied homes.¹⁶⁸

The HMGP Property Acquisition program is the largest managed retreat program in the country and operates by offering homeowners voluntary buyouts.¹⁶⁹ Between 1990 and 2017, it authorized the purchase of over 10,000 homes.¹⁷⁰ The program is funded 75% by FEMA with remaining

164. *Id.*

165. *Summary of FEMA Hazard Mitigation Assistance (HMA) Programs*, FEMA, <https://www.fema.gov/fact-sheet/summary-fema-hazard-mitigation-assistance-hma-programs> [https://perma.cc/R98B-F6MC] (last visited Jan. 7, 2024).

166. *Hazard Mitigation Assistance Grants*, FEMA, <https://www.fema.gov/grants/mitigation> [https://perma.cc/8TUK-SM7L] (last visited Jan. 7, 2024). According to a recent NRDC report, “HMGP funding, which is made available only when the president declares a major disaster, accounts for 89% of the buyouts in FEMA’s data set. Funding for FMA and PDM is appropriated annually by Congress and is not associated with a particular event; these programs account for only 5% and 4% of buyouts, respectively. The remaining 2% were funded by legacy programs that are no longer active.” ANNA WEBER & ROB MOORE, NAT’L RESOURCES DEF. COUNCIL, *GOING UNDER: LONG WAIT TIMES FOR POST-FLOOD BUYOUTS LEAVE HOMEOWNERS UNDERWATER*, 1, 7 (2019), available at <https://www.nrdc.org/sites/default/files/going-under-post-flood-buyouts-report.pdf> [https://perma.cc/9UHW-U5XL].

167. Siders, *supra* note 158, at 216.

168. *Id.*

169. James R. Elliott & Zheyue (Jay) Wang, *When homes flood, who gets FEMA buyouts and where do they go? We mapped thousands of moves and found distance and race both play a role*, CONVERSATION (June 15, 2023) <https://theconversation.com/when-homes-flood-who-gets-fema-buyouts-and-where-do-they-go-we-mapped-thousands-of-moves-and-found-distance-and-race-both-play-a-role-206590> [https://perma.cc/69H8-5BTA].

170. *Id.*, see also FEMA, *OpenFEMA Data Sets, Hazard Mitigation Grant Program- Property Acquisition- v-3*, available at <https://www.fema.gov/openfema-data-page/hazard-mitigation-assistance-projects-v3> [https://perma.cc/SG3M-TDZH] (last visited Jan. 7, 2024).

funds provided by state and local governments.¹⁷¹ Property owners are offered the fair market value of a property prior to when disaster strikes, and any purchased property must subsequently be restricted to open space, recreational, and wetlands use in perpetuity.¹⁷²

Few rental properties benefited from the HMGP program. A recent report by the Natural Resources Defense Council studying FEMA-funded buyouts between 1989 and 2017 found that, of the more than 43,000 properties acquired by FEMA using grants provided to local or state governments, only half included information about property characteristics; of those, 72% were buyouts of an owner's primary residence.¹⁷³ Only 12% were used for rental property buyouts.¹⁷⁴ A detailed survey of the benefits disbursed to homeowners and renters in Mississippi and Louisiana after Hurricanes Katrina and Rita suggested that those states did not use *any* HMGP funds for renters, despite renters technically being eligible under federal guidelines.¹⁷⁵

In addition to HMGP, HUD CDBG-DR funds may also be used to fund home buyouts.¹⁷⁶ Like FEMA programs, these tend to benefit homeowners, but unlike FEMA buyouts, however, HUD-backed buyouts do not prohibit future site development.¹⁷⁷

In addition to depriving renters of the benefits of buyouts, these FEMA and CDBG programs can hollow out neighborhoods, leaving renters behind after assisting their homeowner neighbors with relocation.¹⁷⁸ The result are neighborhoods that suffer from the "checkerboard effect," or patterns of piecemeal residential placement where some homeowners have accepted

171. *Hazard Mitigation Assistance Cost Share Guide*, FEMA at 1-1 (May 2016) https://www.fema.gov/sites/default/files/2020-08/fema_hma_cost-share-guide.pdf

172. Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. §§ 5121-5207); OpenFEMA Dataset: Hazard Mitigation Grant Program - Property Acquisitions - v3, *supra* note 170. HUD offers homeowner buyout programs through the CDBG-DR program, but buyouts through that program do not have a prohibition on redevelopment. Weber & Moore, *supra* note 166, at 21 n.12.

173. Weber & Moore, *supra* note 167, at 6.

174. *Id.*

175. U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-17, *supra* note 61, at 27.

176. Weber & Moore, *supra* note 167, at 21 n.12.

177. *Id.*

178. See, e.g. *A look At GoogleMaps reveals unsettling reality of recovery for Houston renters.*, TEX. HOUSERS (Mar. 19, 2018), <https://texashousers.org/2018/03/19/a-look-at-googlemaps-reveals-unsettling-reality-of-recovery-for-houston-renters/> [<https://perma.cc/BF38-NPP2>].

buyouts and moved away, allowing their homes to turn into empty lots.¹⁷⁹ But other homeowners and renters, who are unable to leave, stay behind in increasingly under-developed neighborhoods.¹⁸⁰ Without federally funded relocation for tenants, many low-income renters are left watching as their communities slowly move away.¹⁸¹ As detailed by the Congressional Research Service, this can contribute to “blight, community fragmentation, difficulty with providing municipal services, and inability to restore full floodplain functionality.”¹⁸² Moreover, because it may not serve to increase floodplain capacity, it could render those who remain even more at risk.¹⁸³

Research suggests that the neighborhoods experiencing this hollowing out are predominantly communities of color because FEMA disproportionately targets demolishing homes in neighborhoods that are majority minority.¹⁸⁴ This could be so because, as discussed in Part 1, redlining and other factors contributing to residential segregation have concentrated communities of color in climate vulnerable areas.¹⁸⁵ But the result is increased environmental precarity and economic devaluation, patterns all too familiar in the history of this country.¹⁸⁶

179. *Id.*

180. *Id.*

181. For a report on this effect in Harris County, see *id.*

182. DIANE P. HORN, CONG. RSCH. SERV., IN11911, FLOOD BUYOUTS: FEDERAL FUNDING FOR PROPERTY ACQUISITION, CONGRESSIONAL RESEARCH SERVICE 2 (2023), available at <https://crsreports.congress.gov/product/pdf/IN/IN11911>.

183. NATURE CONSERVANCY, STRATEGIC PROPERTY BUYOUTS TO ENHANCE FLOODPLAIN RESILIENCE 2, available at <https://www.nature.org/content/dam/tnc/nature/en/documents/harveybuyoutsummary.pdf>; see also Daniel Cusick, *Leave No House Behind in Flood Buyout Programs, Group Says*, POLITICO, CLIMATEWIRE (Feb. 28, 2019), <https://subscriber.politicopro.com/article/eenews/2019/02/28/leave-no-house-behind-in-buyout-program-group-says-032072>, [<https://perma.cc/47PE-M2FM>].

184. James R. Elliott, Phylcia Lee Brown, & Kevin Loughran, *Racial Inequalities in the Federal Buyout of Flood-Prone Homes: A Nationwide Assessment of Environmental Adaption*, 6 SOCIUS 1, 12 (2020), <https://journals.sagepub.com/doi/full/10.1177/2378023120905439> [<https://perma.cc/HGC7-GGEA>]; Flavelle, *supra* note 65.

185. See *supra* Part I; see also Daniel Cusick & E&E News, *Past Racist “Redlining” Practices Increased Climate Burden on Minority Neighborhoods*, SCI. AM. (Jan. 21, 2020) <https://www.scientificamerican.com/article/past-racist-redlining-practices-increased-climate-burden-on-minority-neighborhoods/> [<https://perma.cc/FLP3-JNBS>].

186. See *supra* Part I.

B. State Programs to Assist Renters

At the state level, benefits available to renters are often a reflection of that state's "blue skies" habitability and eviction protections, meaning how a state treats renters when not in crisis is often amplified during times of crisis.¹⁸⁷ This is because, as previously discussed throughout this paper, "[d]isaster recovery is not a time of exception, it is a time when existing social, economic, and racial inequalities are reproduced and exacerbated."¹⁸⁸

Baseline habitability and tenant protections vary widely by state.¹⁸⁹ This is in large part because, as discussed in Part I, landlord-tenant law is a creature of state statute and local ordinance.¹⁹⁰ For instance, some states have comprehensive habitability standards that offer robust protections against landlords who attempt post-disaster evictions, or who do not maintain safe housing in the face of climate-related damage.¹⁹¹ But other states offer scant legal recourse to tenants whose landlords do not maintain safe dwelling units, prioritizing instead the rights of property owners over the rights of leaseholders.¹⁹² Perhaps unsurprisingly, research suggests that

187. E. L. Raymond, T. Green, & M. Kaminski, *Preventing Evictions After Disasters: The Role of Landlord-Tenant Law*, HOUS. POL'Y DEBATE, July 2021, at 1, <https://www.nlihc.org/sites/default/files/Preventing-Evictions-After-Disasters-The-Role-of-Landlord-Tenant-Law.pdf> [<https://perma.cc/2R49-7KY4>].

188. *Id.* at 13 (noting that "research shows that evictions rise sharply after a disaster in places that have more landlord-friendly laws.").

189. *See, e.g. Tenant Rights by State*, U.S. DEPT. OF HOUS. & URB. DEV., https://www.hud.gov/topics/rental_assistance/tenantrights [<https://perma.cc/Z8JW-LMKP>] (last visited Mar. 1, 2024).

190. The Uniform Law Commission has drafted a Revised Uniform Residential Landlord and Tenant Act. Initially created in 1972, twenty-one states adopted the original version but none have adopted the revised version and only Georgia has introduced it as of January 2024. Additionally, that law does not mandate flood or other risk disclosure to tenants. And it permits a landlord to terminate a lease with only five days notice after a unit has been rendered uninhabitable by a "fire, other casualty, or natural disaster." *See* REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT § 403(b) (UNIF. L. COMM'N 2015); *see also* 2015 Residential Landlord and Tenant Act, Revised, UNIF. L. COMM'N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=e9cd20a1-b939-4265-9f1e-3a47a538d495> [<https://perma.cc/36QC-BMKG>].

191. For instance, California, Colorado, and New Hampshire have detailed requirements for what constitutes a habitable dwelling unit, including meeting certain weatherization standards. *See* Noble-Allgire, *supra* note 30, at 8 n.33; *see also* Anna P. Kambhampaty, *Which States Are the Most Safe and Secure for Renters?*, N.Y. TIMES (July 14, 2022), <https://www.nytimes.com/2022/07/14/realestate/renters-safety-state-ranking.html> [<https://perma.cc/HDP7-VETB>].

192. For instance, Louisiana consistently tops lists of states friendly to landlords because of the

states that are more landlord friendly during blue skies times have more evictions after natural disasters, and conversely that states that prioritize robust tenant protections offer tenants greater housing security in the wake of natural disasters.¹⁹³

Although habitability and eviction standards vary greatly by state, few states mandate disclosure of climate-related risks to tenants. For example, although flood risk disclosure to homebuyers is currently required by 30 states,¹⁹⁴ only eight states require landlords to disclose that an apartment has previously flooded or is at risk of future flood to tenants. Those states—Oregon, California, Texas, Oklahoma, Georgia, Indiana, New York and New Jersey—only passed their laws after serious, historic flood events, suggesting that this patchwork of protections is largely reactive.¹⁹⁵ Indeed, there are few examples of proactive measures to anticipate and disclose risks that have yet to materialize.

As discussed in the preceding section, most federally funded disaster and hazard mitigation programs are administered by state and local governments applying for grants. In the immediate aftermath of a natural disaster, some benefits are administered directly by the federal government, but many are channeled through states and municipalities via grant programs.¹⁹⁶ Through those federally funded grant programs, states can access relief funds to help their communities address urgent short-term shelter needs and medium- to longer-term housing support.¹⁹⁷

rapid rate of evictions, which can happen in as little as five days, and the lack of standardized habitability requirements. LA. CODE CIV. PROC. ANN. art. 4701 (2022); see also Agnes A. Gaddis, *Top 20 Most and Least Landlord Friendly States of 2023*, REALWEALTH (Feb. 27, 2023), <https://realwealth.com/learn/landlord-friendly-states/> [https://perma.cc/DT74-AGGE].

193. Raymond, Green, & Kaminski, *supra* note 187, at 2.

194. *How States Stack Up on Flood Disclosure*, *supra* note 66; see also *NJ Votes to Disclose Flood History to Homebuyers and Renters*, NRDC (Feb. 27, 2023), <https://www.nrdc.org/press-releases/nj-votes-disclose-flood-history-homebuyers-and-renters> [https://perma.cc/NZ8G-ZGG6] (updating the count of states to 30).

195. Dan Mathis, *Risky Renting: Renters Should Have the Right to Know their Flood Risk*, NEXT 100 (May 26, 2022), <https://thenext100.org/risky-renting-renters-should-have-the-right-to-know-their-flood-risk/> [https://perma.cc/F42X-XDF7]; see also *Flood risk disclosure coming for New York landlords*, THE REAL DEAL (May 30, 2023), <https://therealdeal.com/new-york/2023/05/30/flood-risk-disclosure-coming-for-new-york-landlords/> [https://perma.cc/5NDP-9DQP].

196. *Assistance for Governments and Private Non-Profits After a Disaster*, FEMA, <https://www.fema.gov/assistance/public#:~:text=FEMA's%20Public%20Assistance%20Program%20provides,from%20major%20disasters%20or%20emergencies..>

197. See generally FEMA, FP 104-009-2, PUBLIC ASSISTANCE PROGRAM AND POLICY GUIDE, VERSION 4 (2020), available at https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-

This section will look at how two states, New Jersey and Texas, are navigating the impacts of changing weather events on tenants. Both states have had Major Disaster Declarations in recent years and have endured unexpected and unprecedented weather events. But the responses of the two states to their changing climate conditions demonstrates how, in the absence of uniform, federally-required protections for tenants, piecemeal and reactive responses can either generate unique opportunities for reform or exacerbate existing conditions of precarity. And from a comparison of the two it becomes clear that certain parts of the country will be increasingly inhospitable to vulnerable renters as climate conditions worsen, while other communities may be better equipped to support non-property-owning residents.

i. New Jersey: A Potential Paradigm Shift Towards Renter-Inclusive Adaptation and Mitigation

On September 1, 2021, three days after touching down in Louisiana, Hurricane Ida brought unexpected devastation to the Northeast of the United States.¹⁹⁸ New Jersey was especially hard-hit by the storm.¹⁹⁹ Flash flooding caused tragic loss of life—30 people were killed—and damage to infrastructure totaling over \$2.02 billion.²⁰⁰ At the time, the state had an action plan aimed at addressing climate change, but that report looked only

updated-links_policy_6-1-2020.pdf. The various federal agencies administering funding often have overlapping mandates, and it can be difficult for renters to untangle the various streams of funding available to them. These challenges are especially pronounced when communities are reeling from the impacts of storms and may not be able to access the basic necessities for survival, let alone the means to navigate complex webs of federal and local bureaucracy. *See, e.g.,* Carlos Martin et al., *Digital Dialogue No. 4- Improving the Disaster Recovery of Low Income Households*, WHARTON SCH. UNIV. OF PENN. (Oct. 2019), (noting that “[d]isaster survivors may receive assistance from as many as 19 different agencies—each with its own paperwork and processes.”), <https://esg.upenn.edu/engagement/digital-dialogues/improving-disaster-recovery/> [https://perma.cc/U39E-5Q2S].

198. Mike Deak, *A year since Hurricane Ida: Horror, heroism, anxiety awaiting the next catastrophic storm*, MY CENT. JERSEY (Sept. 1, 2022, 5:54 AM), <https://www.mycentraljersey.com/story/news/local/2022/09/01/nj-hurricane-ida-floods-deaths/65418809007/> [https://perma.cc/CNQ5-HKUD].

199. *Id.*

200. *Id.*; Dustin Racioppi, *Hurricane Ida one of the deadliest storms to hit New Jersey*, NORTHJERSEY.COM (Sept. 3, 2021), <https://www.northjersey.com/story/news/new-jersey/2021/09/02/storm-ida-2021-deadliest-storms-hit-new-jersey/5704497001/> [https://perma.cc/7SPS-J8LN].

to how the state would reduce greenhouse gas emissions by 2050, and did not attempt to comprehensively plan for how residents, including and especially renters, should prepare to adapt to changing climate conditions and increased risk.²⁰¹ In fact, many renters did not know that their homes were located in floodplains because the state did not mandate flood risk disclosure to tenants at that time.²⁰²

In the immediate aftermath of the storm, the state's response reified and reinforced existing inequalities between renters and homeowners, prioritizing immediate funding to the latter over the former. Indeed, reporting suggests that homeowners received far more FEMA Individual Assistance in the wake of the storm: 55,828 owner-occupied applicants applying for IA received over \$276 million in assistance, or roughly \$7,000 in verified loss per applicant.²⁰³ Comparatively, only 28,101 tenants received IA for a total of \$26.6 million in aid, or roughly \$2,223 per applicant.²⁰⁴

These inequities in disbursement were especially conspicuous because in 2013, state residents had filed a HUD Complaint against New Jersey officials accusing them of discriminating against minority and low-income victims of Hurricane Sandy, a population that included many renters.²⁰⁵ As

201. HELAINE BARR ET AL., DEP'T OF ENV'T PROT., NEW JERSEY'S GLOBAL WARMING RESPONSE ACT 80X50 REPORT (2020), <https://dep.nj.gov/wp-content/uploads/climatechange/nj-gwra-80x50-report-2020.pdf> [<https://perma.cc/DVN5-2E33>].

202. New Jersey only mandated flood risk reporting to tenants in 2023. *NJ Votes to Disclose Flood History to Homebuyers and Renters*, *supra* note 194.

203. N.J. DEP'T OF CMTY. AFFS., ACTION PLAN FOR STATE OF NEW JERSEY: TROPICAL STORM IDA 18-19 (2022), https://www.nj.gov/dca/ddrm/pdf_docs/Ida%20Action%20Plan%20FINAL_English_508.pdf [<https://perma.cc/EP5U-T3ET>]. For a full breakdown of funds distributed one-year after Ida, see *Hurricane Ida Recovery One Year Later: New Jersey*, FEMA (Sept. 6, 2022), <https://www.fema.gov/fact-sheet/hurricane-ida-recovery-one-year-later-new-jersey> [<https://perma.cc/N5R6-Q4D7>]; Gillian B. White, *A Long Road Home: The systems in place to provide aid after natural disasters often fail those who need help the most*, ATLANTIC (Aug. 3, 2015), <https://www.theatlantic.com/business/archive/2015/08/hurricane-katrina-sandy-disaster-recovery-400244/> [<https://perma.cc/WX8U-XS4B>].

204. *Id.* at 19. This pattern of undervaluing renter losses was not new. Data suggests that New Jersey did the same in the wake of Hurricane Sandy in 2012. See Justin Dorazio, *How FEMA Can Prioritize Equity in Disaster Recovery Assistance*, CTR. FOR AM. PROGRESS (July 19, 2022), <https://www.americanprogress.org/article/how-fema-can-prioritize-equity-in-disaster-recovery-assistance/> [<https://perma.cc/4H7C-DDS2>].

205. Latino Action Network, No. 02-13-0048-6, No. 02-13-0303-8 (HUD filed Apr. 3, 2013), https://www.relmanlaw.com/media/news/216_NewJerseyAgreementsigned5-30-2014.pdf [<https://perma.cc/2FW5-56B9>] (voluntary compliance agreement); Fernandez, *supra* note 82.

a result of a settlement reached to resolve that administrative complaint, the state had to increase benefits available to renters, including the creation of a \$15 million pool to help displaced tenants.²⁰⁶

Building from these experiences, New Jersey has established a robust planning framework for living with climate risk and is one of few states to affirmatively consider how renters might play into plans for “managed retreat.”²⁰⁷ In early 2023, the state passed a law mandating flood risk disclosure not only to homeowners but also tenants.²⁰⁸ Additionally, the federal government approved New Jersey’s plan to spend \$228 million in HUD CDBG-DR funds, allocated after Ida, to help state residents navigate the ongoing aftermath of the storm and plan for a more secure future.²⁰⁹

This plan explicitly focuses on the state’s most vulnerable residents – many of whom are renters - offering both disaster recovery and adaptation and mitigation efforts geared toward living with climate change. First, it offers ongoing rental assistance for residents who are renters and remain displaced after the storm.²¹⁰ Indeed, \$15 million was dedicated to rental assistance for impacted families, with priority given to households at 30% of or below the area median income.²¹¹ In addition, it will dedicate \$30 million to the “Smart Move” program, an effort designed to help spur development of “‘quality, energy-efficient, resilient, and affordable housing’ in lower flood risk areas within or near storm impacted communities that are participating in residential property buyout programs.”²¹² The Smart Move program therefore explicitly contemplates subsidizing managed retreat for communities that were living in climate-

206. Latino Action Network, *supra* note 205 at 11.

207. See, e.g. STATE OF N. J., CLIMATE CHANGE RESILIENCE STRATEGY at 108 (Draft) (2021) (discussing tenant protections in Blue Acres Buyout Program), available at https://www.njspotlightnews.org/wp-content/uploads/sites/123/2021/04/Draft_CCRS_042121_emailfriendly-1.pdf ; see also KATIE SPIDALIERI et al., GEORGETOWN CLIMATE CTR., MANAGING THE RETREAT FROM RISING SEAS: STATE OF NEW JERSEY, BLUE ACRES BUYOUT PROGRAM 3 (2020), available at https://www.georgetownclimate.org/files/MRT/GCC_20_NewJersey-3web.pdf.

208. *NJ Votes to Disclose Flood History to Homebuyers and Renters*, *supra* note 194.

209. *Hurricane Ida Action Plan*, N.J. DEP’T OF CMTY. AFFS., <https://www.nj.gov/dca/ddrm/home/Idaactionplan.shtml> [<https://perma.cc/9FCM-AUSK>].

210. Christian Wade, *Feds approve New Jersey’s plan to spend Hurricane Ida aid*, THE CENTER SQUARE (Jan. 18, 2023), https://www.thecentersquare.com/new_jersey/article_e37d3032-9783-11ed-9424-37033f257702.html [<https://perma.cc/K4VZ-K7YN>].

211. *Id.*

212. *Id.*

vulnerable locations, offering affordable and resilient housing solutions to those who choose to move. The “Small Rental Repair Program” will dedicate \$20 million to “provide zero-interest, forgivable loans to owners of rental properties with one to seven units that need to be rehabilitated because of damage from the storm.”²¹³

But for all the relative benefits that will accrue to renters, New Jersey’s program still overwhelmingly prioritizes the needs of homeowners—a full \$68.9 million of the CDBG-DR funding will go to providing homeowner assistance grants aimed at rehabilitation and mitigation activities, including energy retrofits and elevation grants.²¹⁴ This is a missed opportunity. As previously discussed, the lessons of past storms should have demonstrated the acute and disproportionate need of the state’s low-income renters, and their climate vulnerabilities should have been a proportionate priority in allocating future funding toward climate resilience.

ii. Texas after Harvey: A Study in Unequal Benefit Distribution

Like New Jersey, Texas has faced unprecedented climate-related disasters in recent years. Texas has provided some programs that include renters in the disaster recovery and future adaptation and mitigation planning frameworks. But overwhelmingly, its disaster recovery response demonstrates how climate change can and will perpetuate existing income and racial inequalities if affirmative measures are not taken to separately plan for renters.

In 2017, Hurricane Harvey ravaged the Gulf Coast and brought catastrophic flooding to the greater Houston area.²¹⁵ The storm directly claimed 68 lives and additional 35 indirectly, making the storm the deadliest hurricane to hit Texas in almost a century.²¹⁶ Additionally, the storm exceeded \$155 billion in damage, making it the second-most-costly storm

213. *Id.*

214. *Id.*

215. ERIC S. BLAKE & DAVID ZELINSKY, NATIONAL HURRICANE CENTER TROPICAL CYCLONE REPORT: HURRICANE HARVEY, NATIONAL HURRICANE CENTER 1 (2018), available at https://www.nhc.noaa.gov/data/tcr/AL092017_Harvey.pdf.

216. *Id.* at 8; Chris Huber, *Hurricane Harvey: Facts, FAQs, and how to help*, WORLD VISION (Oct. 17, 2023), <https://www.worldvision.org/disaster-relief-news-stories/2017-hurricane-harvey-facts> [<https://perma.cc/S7JP-WL34>].

ever in the United States, after Hurricane Katrina.²¹⁷ Over 155,000 homes were flooded in Harris County, the area around Houston, alone, with roughly 15,000 of those being rental units.²¹⁸

In the wake of the storm, a panoply of post-disaster benefits was made available to impacted Texans. Many of these utilized the previously discussed framework of federal grants made to state administrators.²¹⁹ The state created several programs specifically designed to assist renters. For instance, the Affordable Rental Program dedicated \$250 million to the “rehabilitation, reconstruction, and new construction of affordable multi-family housing projects in areas impacted” by the storm.²²⁰ That program used CDBG funds and was aimed specifically at low-income renters.²²¹ Additionally, low-income renters who received HUD rental assistance prior to the storm were provided with temporary assistance to pay for shelter while their homes were uninhabitable and grants to replace damaged belongings through FEMA.²²²

But the disaster relief patterns after Harvey also tracked the inequities built into the existing homeowner/renter housing paradigm. For instance, although “homeowners and renters were equally likely to apply for government assistance . . . renters were more likely to have their claims denied.”²²³ Specifically, 45.8% of homeowners who applied for IHP FEMA assistance were approved but only 34.2% of renters.²²⁴

217. NAT’L CTRS. FOR ENV’T INFO., COSTLIEST U.S. TROPICAL CYCLONES 2 (2024), available at <https://www.ncei.noaa.gov/access/billions/dcmi.pdf>.

218. Kendra Garret, *Hurricane Harvey’s Impact: Resilience & Opportunity*, TEX. AFFILIATION OF AFFORDABLE HOUS. PROVIDERS (July 23, 2018), <https://taahp.org/hurricane-harveys-impact-resilience-opportunity/> [<https://perma.cc/9S9B-9926>].

219. *Id.*

220. *Id.*

221. *Id.*

222. *Fact Sheet: Did You Receive HUD Rental Assistance Before Hurricane Harvey? You May Be Eligible for FEMA Help*, FEMA (Sept. 18, 2017), <https://www.fema.gov/press-release/20230728/fact-sheet-did-you-receive-hud-rental-assistance-hurricane-harvey-you-may-be> [<https://perma.cc/S435-7WZ8>].

223. Amal Ahmed, *How the government fails low-income renters after natural disasters*, SOUTHERLY (Nov. 14, 2019), <https://southerlymag.org/2019/11/14/how-the-government-fails-low-income-renters-after-natural-disasters/> [<https://perma.cc/7V2T-QKXH>].

224. Leah Binkovitz, *Evictions Before and After Harvey*, KINDER INST. FOR URB. RSCH.: URBAN EDGE (Aug. 23, 2018), <https://kinder.rice.edu/urbanedge/evictions-and-after-harvey> [<https://perma.cc/77RE-G8WQ>].

In 2019, two years after Harvey, Texans voted to amend the constitution to grant temporary tax exemptions on damaged property, a benefit that subsidized homeowners impacted by Harvey but not renters.²²⁵ Although the state did start mandating flood risk disclosure in 2022 for renters and homeowners alike, including whether a home has experienced flood damage in the past or if a landlord is required to carry flood insurance, this reform requires notice only and no further action on the part of landlords with rental properties in the floodplain to protect potentially at-risk tenants.²²⁶

Compounding the inequities in disaster aid, evictions increased for some of Texas's most vulnerable renters after the storm.²²⁷ In Houston, for instance, where the city's housing stock was greatly depleted by the storm, evictions spiked in neighborhoods with rapidly-rising rents.²²⁸ In fact, a Rice University study suggested that "higher shares of cost-burdened renters, Black residents and households at twice or below the poverty level, were all negatively associated with increases in eviction case filings before and after the storm."²²⁹

The inequities in disaster benefits were so pronounced after Harvey that, like in New Jersey, they were the subject of legal action.²³⁰ That federal lawsuit, brought against the Texas General Land Office, challenged the state's Hurricane Harvey State Action Plan for violating the Fair Housing Act, Title VI of the 1964 Civil Rights Act, 42 U.S.C. § 1982, and Equal Protection under the Fourteenth Amendment.²³¹ Specifically, it alleged that four types of benefits that were provided to homeowners were systematically denied to renters: Tenant-Based Rental Assistance, Utility Assistance, reimbursements for replacing essential appliances and systems, and programs to encourage homeownership.²³² Because of the pre-existing

225. See *TEXAS PROPOSITION 3, TEMPORARY PROPERTY TAX EXEMPTION FOR DISASTER AREAS AMENDMENT* (2019), BALLOTPEDIA, https://ballotpedia.org/Texas_Proposition_3_Temporary_Property_Tax_Exemption_for_Disaster_Areas_Amendment (2019) [<https://perma.cc/ET9R-RGDV>] (last visited Jan. 7, 2024); Ahmed, *supra* note 223.

226. See TEX. PROP. CODE ANN. § 92.0135; see also Hersher, *supra* note 67.

227. Binkovitz, *supra* note 224.

228. *Id.*

229. *Id.*

230. Wharton v. U.S. Dept of Housing and Urban Dev., 2:2019-cv-00300 (S.D. Tex. Oct. 11, 2019) (dismissed in 2021 for lack of standing). See *infra* Part III; see also Fernandez, *supra* note 82; see also Ahmed, *supra* note 223.

231. Complaint for Injunctive and Declaratory Relief at 33, Wharton v. U.S. Dept of Housing and Urban Dev., 2:2019-cv-00300 (S.D. Tex. Oct. 11, 2019).

232. John Henneberger, *Lawsuit by four Texas renters says State of Texas, HUD discriminate on*

inequities in housing, the suit alleged that this created a disparate racial impact.²³³

As in New Jersey, some areas in Texas have also spearheaded a formidable managed retreat plan to begin disincentivizing development in the flood plain with Houston engaging in the largest home buyout program in the United States history.²³⁴ The Harris County Flood Control District has bought over 3,000 homes, spending \$342 million to remove residences from the floodplain and returning the land to open space for natural storm water management.²³⁵ However, none of these buyouts have gone to assisting renters. Indeed, the state does not have a comprehensive adaptation plan, and there do not appear to be any other comprehensive state plans addressing how renters might receive assistance with moving away from areas prone to climate risk.²³⁶

C. Local Efforts: Two Pilot Programs to Help Renters and Their Landlords with Climate Adaptation

Local municipal governments often have the closest connection to residents and therefore the best understanding of what their communities need. However, they are also often less well-resourced than state or federal agencies. Moreover, because of their proximity to the residents they serve, they may simultaneously experience the negative impacts of disasters or the economic hardships that can come with adaptation. For instance, in the wake of natural disasters, municipalities' central command bodies may be reeling from serious disruptions to their operations alongside struggling residents. This can make timely, coordinated assistance to residents a

race in Hurricane Harvey Aid, TEX. HOUSERS (Oct. 14, 2019), <https://texashousers.org/2019/10/14/lawsuit-by-four-texas-renters-says-state-of-texas-hud-discriminate-on-race-in-hurricane-harvey-aid/> [<https://perma.cc/8KQK-CL9J>].

233. Complaint for Injunctive and Declaratory Relief at 3, *Wharton*, 2:2019-cv-00300.

234. Siders, *supra* note 158, at 221.

235. *Home Buyout Program: Active Buyouts*, HARRIS CNTY. FLOOD CONTROL DIST. <https://www.hcfcd.org/Activity/Additional-Programs/Home-Buyout-Program> [<https://perma.cc/9SWP-29RC>] (last visited Nov. 10 2023); see also Spidalieri et al., *Managing the Retreat from Rising Seas: Harris County, Texas: Flood Control District Local Buyout Program*, GEORGETOWN CLIMATE CTR., https://www.georgetownclimate.org/files/MRT/GCC_20_Harris-4web.pdf [<https://perma.cc/AC7Q-MH8W>] (assessing the program).

236. *Preparing for Climate Change in Texas*, GEORGETOWN CLIMATE CTR., <https://www.georgetownclimate.org/adaptation/state-information/texas/overview.html> [<https://perma.cc/UGQ6-CZB5>].

challenge. And when it comes to longer-term planning for managed retreat, a decision to engage in local buyouts or assisted move programs could mean hollowing out the local tax base, contributing to future economic hardship for government functioning and for residents who stay.²³⁷

As with state efforts, municipal programs vary greatly. Some municipalities are pioneering creative new strategies to help renters facing climate change. This section will look at two local programs designed to make rental units more secure to better face coming climate threats: One program, the Healthy Homes Ordinance in New Orleans, Louisiana, is aimed at empowering renters to ask more of delinquent landlords who allow rental units to lapse into unsafe conditions. The other, in Philadelphia, Pennsylvania, is aimed at helping small landlords make affirmative repairs and upgrades to their units to provide better living conditions for their tenants. Both initiatives provide frameworks for how cities may begin to help renters adapt in place.

i. Adaptation Through Habitability Laws: New Orleans Healthy Homes Ordinance

New Orleans offers a powerful case study because not only does the city face well-documented current climate challenges, but it also serves as an example of the challenges of long-term recovery when communities endure successive storms. On August 29, 2005, Hurricane Katrina devastated the city, damaging 70% of its housing stock.²³⁸ New Orleans is a predominantly non-homeowner city with over half of all residents renting.²³⁹ Additionally, 61% of those renters are cost-burdened, meaning these renters pay over a third of their income towards rent, and roughly 60% of the city's renters are Black.²⁴⁰

237. Robin Bronen, *Rights, Resilience, and Community-Led Relocation: Creating a National Governance Framework*, 45 HARBINGER 25 (April 19, 2021).

238. Kathleen Flynn, *New Orleans renters face toxic mix of crumbling homes, weak rights, eviction worries*, REUTERS (Aug. 25, 2020, 11:22 AM), <https://www.nbcnews.com/news/nbcblk/new-orleans-renters-face-toxic-mix-crumbling-homes-weak-rights-n1238019> [<https://perma.cc/ZVR2-LGT9>].

239. Jennifer Larino, *Is New Orleans a city of renters or buyers? 7 stats on local housing*, TIMES-PICAYUNE (July 22, 2019), https://www.nola.com/news/business/is-new-orleans-a-city-of-renters-or-buyers-7-stats-on-local-housing/article_7685a66f-dd98-521f-90fa-3b12d370dc63.html [<https://perma.cc/2QNT-NLUB>].

240. *Id.*; see also Flynn, *supra* note 238.

After the serious damage caused by Katrina, some of the city's housing stock was never fully rebuilt and repaired, with long-term disrepair was centralized in already-vulnerable, low-income neighborhoods.²⁴¹ Additionally, the city demolished its public housing stock, largely replacing those units with Housing Choice vouchers that pushed tenants into the private rental market.²⁴² In the years following Katrina, the city has faced other extreme weather events, including tornadoes, rising temperatures, and stronger storms like Hurricane Ida.²⁴³ As a result, many homes are under increasing strain, and tenants have faced compounding issues with their living conditions.²⁴⁴ According to tenant advocates, it is not uncommon for

241. Jeff Adelson, *After Hurricane Katrina, a look at New Orleans' uneven recovery among its neighborhoods*, ADVOCATE (Aug. 23, 2015), https://www.theadvocate.com/baton_rouge/news/after-hurricane-katrina-a-look-at-new-orleans-uneven-recovery-among-its-neighborhoods/article_9906ab1b-a1e7-5eb7-8e52-824adb52d6a3.html [<https://perma.cc/8UCW-FEC2>]. After Katrina, New Orleans area renters faced myriad other hardships. Not only was housing stock physically damaged, but in some neighboring parishes, restrictive laws were passed to make it more difficult for renters to access housing stock that was available—for instance, in 2006 St. Bernard Parish passed Code #670-09-06, which prohibited homeowners from renting to anybody other than blood relatives. See Stacy E. Seicshnaydre, *How Government Housing Perpetuates Racial Segregation: Lessons from Post-Katrina New Orleans*, 60 Cath. U. L. Rev. 661, 696 (2011). Because St. Bernard was predominantly white, and predominantly comprised of homeowners, and neighboring Orleans Parish was more diverse, with many Black and Hispanic renters, this had the effect of excluding renters of color impacted by Katrina from moving there. *Id.* at 697–98. The ordinance was successfully challenged and struck down for violating renters' rights under 42 USC Sections 1981, 1982, 1983, the Fair Housing Act and the Equal Protection Clause of the Fourteenth Amendment. See *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish*, 641 F. Supp. 2d 563 (E.D. La. 2009). However, the case stands as an example of the discriminatory policy practices that can crop up after extreme weather events generate housing scarcity in an environment of residential segregation. See Eloisa Rodriguez-Dod & Olympia Duhart, *Evaluating Katrina: A Snapshot of Renters' Rights Following Disasters*, 31 NOVA L. REV. 467 (2007).

242. See Davida Finger et al., *New Orleans Eviction Geography: Results of an Increasingly Precarious Housing Market*, LOY. UNIV. NEW ORLEANS COLL. OF L. 1, 10 (Mar. 2019).

243. See, e.g. Blake Paterson, Jerry Dicolo, & Michelle Hunter, *Tornadoes hit New Orleans area, killing one in St. Charles Parish and causing damage in Gretna, Arabi*, NOLA.COM (Dec. 14, 2022), https://www.nola.com/news/weather/tornado-hits-gretna-moves-towards-new-orleans/article_b37107be-7bfa-11ed-9917-ffb7b6c58291.html [<https://perma.cc/9T8Y-B2UG>]; Roshaun Higgins, *New Orleans ties for 2nd longest streak of 2023 extreme heat in the world, study says*, NOLA.COM (Nov. 9, 2023), https://www.nola.com/news/environment/new-orleans-la-heat-wave-streak/article_2aab1510-7e5a-11ee-a0bb-c3617230ed73.html [<https://perma.cc/4BF7-97EV>]; Sam Karlin, *Hurricane Ida Brings "havoc" to huge swath of Louisiana, but levees prevent mass casualties*, NOLA.COM (Aug 30, 2021), https://www.nola.com/news/hurricane/hurricane-ida-brings-havoc-to-huge-swath-of-louisiana-but-levees-prevent-mass-casualties/article_a0a90bc2-09d2-11ec-a5fe-0b351e97fce1.html [<https://perma.cc/D7M7-NPV9>].

244. Madeline Aruffo, *Housing advocates: weak renter protections can result in 'life-endangering crisis' after storms*, LENS (Sept 7, 2021), <https://thelensnola.org/2021/09/07/housing-advocates-weak-renter-protections-can-result-in-life-endangering-crisis-after-damaging-storms/> [<https://perma.cc/RA76-MZDA>].

renters to have leaking or caved-in roofs and pervasive mold and water damage.²⁴⁵ Additionally, until recently, there was no requirement that landlords provide air conditioning.²⁴⁶ In the middle of summer, with temperatures regularly in the high 90s, this meant interior temperatures that pose a serious risk to tenant health.

This habitability crisis intersects with two other problems that create a catch-22 for tenants: (1) Louisiana law is notoriously unprotective of tenants—a renter can be evicted in only five days for violating their lease,²⁴⁷ and there is no legal recourse for renters who face retaliation from their landlords after reporting issues with the safety of their homes, and (2) there is also a deficit of affordable housing.²⁴⁸ Furthermore, because of rising rents and stagnating wages, many Louisiana renters are at high risk of eviction.²⁴⁹ Indeed, the Aspen Institute calculated that 56% of Louisiana renters were at risk of eviction upon the expiration of the CARES Act, second in the nation only to Mississippi.²⁵⁰ And subsequent research by Professor Davida Finger of Loyola Law School and the Jane Place Neighborhood Sustainability Initiative, a non-profit based in New Orleans, suggests that “evictions are most strongly correlated with block groups that have the highest degree of residential segregation.”²⁵¹

In 2022, a group of renters’ rights organizers at Jane Place partnered with advocates at the Louisiana Fair Housing Action Center and a large coalition of city residents to combat these related crises by introducing the Healthy Homes Ordinance to the New Orleans City Council.²⁵² That ordinance confronted the city’s habitability crisis head on. Though its

245. *Id.*

246. Josie Abugov, *Newly effective New Orleans Law seeks to protect tenants from landlord retaliation*, VERITE NEWS (July 6, 2023) <https://veritenews.org/2023/07/06/healthy-homes-anti-retaliation/> [https://perma.cc/F8ZT-84PS].

247. LA. CODE CIV. PROC. ANN. art. 4701 (2022).

248. Abugov, *supra* note 246; Carly Berlin, *New Orleans gets a failing grade for affordable housing, according to report*, WWNO, (Oct. 10, 2022) <https://www.wwno.org/news/2022-10-10/new-orleans-gets-failing-grade-for-affordable-housing-according-to-report> [https://perma.cc/S2PV-AJNW].

249. See Davida Finger, *The Eviction Geography of New Orleans: An Empirical Study to Further Housing Justice*, 22 U.D.C.L. REV. 23 (2020) (detailing the pervasiveness of New Orleans’ eviction crisis and its disproportionate impact on black communities).

250. Flynn, *supra* note 238.

251. Finger, *supra* note 249, at 37.

252. Kenny Lopez, *NOLA city leaders consider protections against slum lords with “Healthy Homes” ordinance*, WGNO (Sept. 29, 2022) <https://wgno.com/news/local/nola-city-leaders-consider-protection-against-slum-lords-with-healthy-homes-ordinance/> [https://perma.cc/6W2U-2EV2].

provisions are common in other parts of the country,²⁵³ it proposed a sea change for New Orleans renters.

The original version of the law introduced robust habitability guarantees for tenants, including minimum standards for rental units including heating and cooling systems, proper roofs, windows and doors, periodic inspections of rental properties by the City Department of Safety and Permits, a registry of non-compliant landlords, and anti-retaliation provisions for tenants who report unsafe living conditions in their rentals.²⁵⁴ It offered an opportunity for renters to hold delinquent landlords accountable, potentially forcing much-needed habitability improvements to the city's damaged housing stock and ensuring a more storm-secure and climate resilient rental landscape for tenants.²⁵⁵ The law passed and went partially into effect in July of 2023, though the final version did not include the originally proposed affirmative inspection requirements.²⁵⁶

Although it is still in the early stages of implementation, advocates are hopeful that the ordinance could result in positive change.²⁵⁷ For one, the excruciating heat that has become a normal hallmark of Southern summers will no longer be an issue for tenants who will now have an enforceable right to an apartment that is cooled to at least 80 degrees in summer.²⁵⁸ Additionally, landlords will no longer be able to evict when a tenant demands repairs: the law creates a rebuttable presumption that adverse action taken against a tenant within six months of reporting a habitability issue is retaliatory and therefore impermissible.²⁵⁹ However, without an affirmative mandate to create new affordable housing, or funding for much-needed upgrades to affordable housing, it is unclear whether New Orleans-based renters will actually receive climate-stable housing in the long-run.

253. Abugov, *supra* note 246.

254. Michael Isaac Stein, *Mixed reactions after council passes narrowed "Healthy Homes" ordinance*, LENS NEW ORLEANS (Nov. 3, 2022), <https://thelensnola.org/2022/11/03/mixed-reactions-after-council-passes-narrowed-healthy-homes-ordinance/> [<https://perma.cc/ZK32-N6VX>].

255. *Id.*; see Proposed Ordinance Calendar No. 33,898 (Sept. 15, 2022), pp. 8-9 (Minimum Rental Standards), and pp. 15-16 (Rights of Lessees; Retaliation Prohibited); available at https://cityofno.granicus.com/MetaViewer.php?view_id=40&clip_id=4268&meta_id=604806.

256. Stein, *supra* note 254.

257. *Id.*

258. NEW ORLEANS CODE ORDINANCES art. XIII § 26-656(f) (2023).

259. *Id.* at § 26-680(d); see also *Healthy Homes Law Protects Renters in New Orleans*, SLLS (June 26, 2023), <https://slls.org/healthy-homes-law/#:~:text=The%20law%20makes%20landlords%20take,to%20rent%20their%20properties%20any%20more> [<https://perma.cc/RUH6-WXZ3>].

ii. Philadelphia's Landlord Retrofit Assistance Programs

A new program in Philadelphia offers assistance to landlords, rather than centering renters, providing funding to owners of smaller apartment buildings with fewer units to help with maintenance, repairs, and upgrades. Run by the Philadelphia Housing Development Corporation, the Rental Improvement Fund is designed to help “small landlords . . . access capital to make much-needed repairs while maintaining reasonable rents.”²⁶⁰ The program is intended to help the city's aging housing stock from falling into disrepair while preserving affordability for low-income residents.²⁶¹

The eligibility requirements are fairly straightforward and are aimed at small landlords renting to low-income folks. Specifically, to be eligible, a landlord must own no more than 15 rental units across 5 rental properties, must rent to households earning at or under 60% of area median income (AMI), must be current with taxes, and have valid rental licenses and property insurance.²⁶²

Many of the eligible repairs address climate change-related habitability concerns. For instance, the loans cover the cost of new and repaired roofs, windows, and doors; repairs to walls, floors, and ceilings; asbestos, mold, and lead remediation; electrical and plumbing improvements; heating and cooling systems; and energy efficiency upgrades.²⁶³ The loan fund offers two types of loans: the first is between \$10,000 and \$25,000 to be repaid over a period of ten years, with 20% forgiven annually beginning in the sixth year if certain conditions are met, and \$25,000 to \$50,000 loans to be repaid over 15 years but with a 0% interest rate. Landlords can receive up to \$100,000 in loans.²⁶⁴

260. *Rental Improvement Fund*, PHDC, <https://phdcphila.org/residents-and-landlords/landlords/rental-improvement-fund/> [<https://perma.cc/WHZ4-PUQD>] (last visited Nov. 11, 2023).

261. *Philadelphia is offering loans for landlords to repair properties and maintain the city's affordable housing*, The PHILA. INQUIRER (Aug. 23, 2023), <https://www.inquirer.com/real-estate/housing/home-repair-landlord-loan-philadelphia-rental-improvement-fund-phdc-20230823.html>.

262. *Rental Improvement Fund*, *supra* note 260.

263. *Id.*

264. *Id.*

A pilot version of the project had slow uptake.²⁶⁵ A report from the Urban Institute suggests several explanations, including that “community development stakeholders reported that small landlords are often unaware of these financial resources, or that they hesitate to apply for these programs because of concerns about potential enforcement penalties and eligibility and general program requirements that could be difficult to follow and might impose additional costs,”²⁶⁶ concerns that have echoes in the previously-discussed federal weatherization program.

But efforts to overcome these barriers between the pilot and initial implementation appear to be paying off—although the full program is in its early stages, it appears that eligible landlords have begun to utilize the fund and that roof repairs have been overwhelmingly popular.²⁶⁷ Additionally, many landlords have availed themselves of plumbing, electric, and HVAC upgrades, and some landlords were able to install air conditioning for the first time.²⁶⁸ This is especially important for Philadelphia’s many low-income renters that live in neighborhoods experiencing increasing heat island effects in the summer due to climate change.²⁶⁹ The result could be future resiliency and affordability for those who would otherwise be most at-risk for climate-related housing hardships.

265. JOSEPH SCHILLING ET AL., URB. INST., IMPROVING PHILADELPHIA’S RENTAL REGULATORY AND HOUSING SUPPORT SYSTEMS, 25 (2022), available at <https://www.urban.org/sites/default/files/2022-09/Improving%20Philadelphia%27s%20Rental%20and%20Housing%20Support%20Systems.pdf>.

266. *Id.*

267. Michaëlle Bond, *Philly is offering loans for landlords to repair properties and maintain the city’s affordable housing*, PHILA. INQUIRER (Aug. 23, 2023, 4:50 PM), <https://www.inquirer.com/real-estate/housing/home-repair-landlord-loan-philadelphia-rental-improvement-fund-phdc-20230823.html> [<https://perma.cc/LCA8-MBKM>].

268. *Id.*

269. Frank Kummer & John Duchneskie, *These Philly neighborhoods get the worst of the summer heat*, PHILA. INQUIRER (July 26, 2023, 6:00 AM), <https://www.inquirer.com/science/climate/philadelphia-urban-heat-island-climate-change-climate-central-20230726.html> [<https://perma.cc/97N6-W563>].

III. LOOKING FORWARD TO POTENTIAL SOLUTIONS

A. Introduction

The glaring resource inequities between renters and homeowners leaves ample room for improvement. Indeed, a recent study looking at how several communities will navigate coming climate pressures put it well when it noted, “Renter status is another instance of a characteristic that is not itself a risk factor, but in the current policy context, it has become one. Policy adaptations that put renters on a level playing field with homeowners would mitigate the current risk factors associated with renting.”²⁷⁰

The previous two sections of this paper have explained why renters are particularly at-risk from climate change and how the current patchwork of law and policy falls short of offering meaningful protections to renters’ health, safety, and legal rights. This section considers how we can use or reimagine existing legal tools to protect the rights of renters. None of these are perfect tools, as none of these was designed with the societal risks of climate change in mind, but they may, nonetheless, be useful. This is a survey of potential “fixes” to the inequitable treatment of renters in the face of climate change, some that will involve rethinking immediate emergency relief and others that may require more comprehensive social change.

Communities and government entities are considering and discussing the very real possibility that there must be managed retreat from the coast or areas prone to extreme flooding.²⁷¹ The U.S. Government Accountability Office has suggested that “a climate migration pilot program could enhance the nation’s resilience and reduce federal fiscal exposure,” citing unclear federal leadership as the key challenge to addressing climate migration.²⁷²

270. Jennifer Moon & Zully Juarez, *The Perfect Storm of Extraction, Poverty, and Climate Change*, JUST SOLS. (May 2023), <https://justsolutionscollective.org/wp-content/uploads/2023/05/The-Perfect-Storm-of-Extraction-Poverty-and-Climate-Change-A-Just-Solutions-Report.pdf> [<https://perma.cc/6S5C-S7QJ>].

271. ANNA MARANDI & KELLY LEILANI MAIN, *THE NEXT AMERICAN MIGRATION: WHAT CITIES SHOULD KNOW ABOUT CLIMATE CHANGE AND POPULATIONS ON THE MOVE* 32 (2022), available at <https://www.nlc.org/resource/the-next-american-migration-what-cities-should-know-about-climate-change-and-populations-on-the-move/> [<https://perma.cc/42YC-ZUJT>].

272. U.S. GOV’T ACCOUNTABILITY OFF., GAO-20-488, *CLIMATE CHANGE: A CLIMATE MIGRATION PILOT PROGRAM COULD ENHANCE THE NATION’S RESILIENCE AND REDUCE FEDERAL FISCAL EXPOSURE* (July 6, 2020), <https://www.gao.gov/products/gao-20-488> [<https://perma.cc/23A8-KX9B>].

The focus, however, remains on property owners: “Voluntary property acquisitions, or buyouts, are one tool local governments can deploy to help *homeowners* relocate if they are at risk.”²⁷³ The concern for renters is that homeowners will be considered the exclusive qualified recipients of such buyouts, and the non-owning residents of coastal areas could find themselves “managed” out of their homes.²⁷⁴ Any managed retreat must, to be equitable, consider all residents of any areas of retreat and find alternative housing.

Another thing to be considered are the *indirect* impacts on renters in city centers away from the coasts if retreat from the coast – managed or haphazard – occurs:

As sea level rise inundates low-lying land, those living in flood-prone areas may be displaced, placing more pressure on the housing market at higher elevations. In the case of Miami, land farther from flood danger at higher elevation is primarily found in Black and Latino low-income communities, increasing the risk of displacement as wealthier renters and homeowners relocate.²⁷⁵

Long-term social planning for climate change must consider the risks to renters of both direct retreat and getting squeezed out by inland retreat from coastal areas. Protections must be built into coastal cities’ retreat planning, which should include eviction moratoriums and rent controls/freezes for existing renters away from the coast; relocation assistance for renting coastal communities; and planning for multi-family development away from the coast to account for lost housing supply.²⁷⁶ These are all long-term

273. Anna Marandi & Kelly Leilani Main, *supra* note 271, at 32.

274. Lean Dundon and Janey Camp, “Climate justice and home-buyout programs: renters as a forgotten population in managed retreat actions,” *J. of Env’l Studies & Sciences* (April 2021) 11:420, 428, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8092994/pdf/13412_2021_Article_691.pdf; *see also id.* at 426–29.

275. Sasha Forbes, *Protecting Renters from Displacement and Unhealthy and Climate-Vulnerable Housing*, SPARCC, <https://www.sparcchub.org/wp-content/uploads/2018/11/Issue-Brief-Protecting-Renters-from-Displacement-and-Unhealthy-and-Climatic-Vulnerable-Housing-11.13-1.pdf> [<https://perma.cc/LG8V-RJCV>] (last visited Nov. 8, 2023).

276. Housing rights group, Right to the City, released its platform and report on policy proposals that would protect renters’ rights in the face of climate change. Kristen Hackett, *Resilient Roots and Canopies of Community Stewardship: A Framework for Housing and Climate Justice Policy*, RIGHT TO THE CITY 1, 9, https://drive.google.com/file/d/12if7HWOYN8e_rkl28t5S9RO1mkml6g2u/view

responses that need to be planned and enacted in advance – preferably now – so renters are not lost in a panicked shuffle as the ocean encroaches.

In addition, the role of renters and renter-advocates in planning ahead to address the impacts of climate change on tenancy cannot be overlooked. The housing rights group, Right to the City, has suggested a “resilience hub” model to build in community cohesion and stability in the face of major housing changes.²⁷⁷ Many of the suggestions below could fold into the resilience hub model that would allow for communities to remain intact, barring physical retreat and relocation.

B. Mandatory Disclosure Laws

As previously discussed in Part II, few states require landlords to alert tenants to risks in their rental units.²⁷⁸ Indeed, only eight states currently require tenant notification when a home has previously flooded or if a landlord is required to carry flood insurance on the property because it is in a Special Hazard Area under the National Flood Insurance Act.²⁷⁹ As a result, tenants can be caught completely unaware that they are renting in a high-risk area.

And, as discussed above, this lack of reporting disproportionately impacts low-income renters of color. Formerly redlined areas are at 25%

[<https://perma.cc/Y6VD-EASM>] (last visited Nov. 8, 2023) (This report focuses on many of the forward-looking policies outlined here, including the need for eviction moratoriums and beyond).

277. *Id.* at 16 (“Local efforts can be reinforced and strengthened by local-regional community infrastructure that connects communities and resilience efforts across neighborhoods, cities, and regions, and forms a foundation for coordinating organizing efforts towards larger transformational goals. Resilience Hubs are community centers that centralize and extend networks and resources to strengthen communities in the context of climate change. The community-based nature of these hubs is especially useful in addressing institutional gaps that exclude undocumented community members and ignore the unique needs of seniors and people with disabilities.”).

278. *See* sources cited *supra* note 197.

279. Those states include Oregon, California, Texas, Oklahoma, Georgia, Indiana, New York and New Jersey. *See* Mathis, *supra* note 195; *see also* HUD EXCH., <https://www.hudexchange.info/programs/environmental-review/flood-insurance/>

[<https://perma.cc/38CZ-MQ6A>] (last visited Nov. 17, 2023); *Special Flood Hazard Area (SFHA)*, FEMA,

<https://www.fema.gov/glossary/special-flood-hazard-area-sfha#:~:text=The%20SFHA%20is%20the%20area,purchase%20of%20flood%20insurance%20applies> [<https://perma.cc/G4SX-6WLZ>] (last updated July 7, 2020).

higher risk of flooding,²⁸⁰ with majority-Black neighborhoods especially negatively impacted by flooding.²⁸¹

This lack of information disclosure can have horrifying consequences. For instance, after Hurricane Ida, New York renters who were renting in basement apartments—units that tend to be less desirable, more affordable, and rented to lower-income folks—were trapped by rapidly rising flood waters. Tragically, 11 individuals died, and many others lost their homes and possessions when flood waters poured in rapidly and unexpectedly.²⁸²

Mandatory disclosure laws could be relatively easy to implement on a national scale if tethered to federal requirements that property-owners already must meet under the National Flood Insurance Act. Most landlords likely have federally backed mortgages to which such disclosure requirements could attach.²⁸³ Comparable rules already exist in the context of lead hazards in homes. The Residential Lead-Based Paint Hazard Reduction Act of 1992 mandated disclosure of known information on lead-based paint and lead-based paint hazards prior to the rental or sale of most houses and apartments built before 1978.²⁸⁴

To be effective, flood risk disclosure should be designed to actually help renters make informed decisions *before* renting. For instance, it might not be sufficient for a renter to learn, at the time of lease signing or after, that an apartment has experienced past flooding, or that a unit is in a floodplain for which the landlord is required to carry flood insurance. Disclosures should be clear, in plain terms and in a language that the prospective tenant understands; share both past damage and future risk; and be presented to a

280. Lily Katz, *supra* note 73; see also Stacy Seicshnaydre et al., *Rigging the Real Estate Market: Segregation, Inequality, and Disaster Risk*, Data Ctr. (Apr. 2018), <https://s3.amazonaws.com/gnocdc/reports/TDC-prosperity-brief-stacy-seicshnaydre-et-al-FINAL.pdf> [<https://perma.cc/4H69-962Z>].

281. Frank & E&E News, *supra* note 73.

282. Mihir Zaveir et al., *How the Storm Turned Basement Apartments Into Death Traps*, N.Y. TIMES (Sept. 14, 2021), <https://www.nytimes.com/2021/09/02/nyregion/basement-apartment-floods-deaths.html> [<https://perma.cc/BQJ7-P9AU>].

283. If a property owner has a federally backed mortgage, a host of mandatory, disaster-related rights, duties, and benefits may attach. See, e.g., 42 U.S.C. § 4002. For instance, all homeowners with federally backed mortgages who live in Special Flood Hazard Areas, as defined by the National Flood Insurance Act must have flood insurance under that National Flood Insurance Program. *Id.* This is not so for renters living in comparable areas, despite the availability of NFIP plans for renters.

284. *The Lead Disclosure Rule*, U.S. DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/healthy_homes/enforcement/disclosure [<https://perma.cc/T7RR-BKB8>].

rental applicant early in the rental process, before any funds have been exchanged between landlord and tenant. Of course, such a legislative fix would require the political willpower to pass, and therefore could be subject to competing pushback from pro-landlord interests.

Additionally, there are some concerns that flood risk disclosure could have the unintended consequence of depressing property values in already-vulnerable communities.²⁸⁵ However, it is unclear whether there is actually a strong correlation between property value and climate risk.²⁸⁶ What's more, the disclosure itself would likely not have a greater effect on property values than the requirement to carry flood insurance in the first instance, which would already be required by any landlord required to comply. Finally, the competing value of the human life at risk should far outweigh concerns about property value. Discussions about climate risk must be normalized throughout the housing market and information about potentially deadly conditions should not be treated like a commodity available for purchase to homeowners. This information should be widely and freely disseminated, especially to those most economically vulnerable.

285. Mathis, *supra* note 195.

286. Miyuki Hino & Marshall Burke, *Does Information About Climate Risk Affect Property Values?* (Nat'l Bureau of Econ. Rsch., Working Paper No. 26807, 2020), https://www.nber.org/system/files/working_papers/w26807/w26807.pdf [<https://perma.cc/8KTZ-VWR3>].

C. Direct Payments: An Emergency Response

The COVID-19 pandemic demonstrated (or re-established the value of) direct cash payments in emergencies.²⁸⁷ In addition to an across-the-board relief payment, the federal government also established an Emergency Rental Assistance program.²⁸⁸

Evidence shows direct payments to tenants after a disaster effectively reduce housing instability. For example, “an evaluation of a program that provided one-time payments to people experiencing homelessness found that recipients spent fewer days unsheltered and moved into stable housing faster.”²⁸⁹ Another direct-payment program found that “one-time payments helped delay evictions for families, but additional support was needed to further stabilize households.”²⁹⁰ Perhaps the federal government has absorbed this lesson: during COVID-19, the federal government sent out three rounds of direct relief payments,²⁹¹ and in the aftermath of the Maui fires, President Biden announced a direct payment to those affected via a FEMA “Critical Needs Assistance” program.²⁹² Direct cash payments to

287. Thesia I. Garner et al., *Receipt and use of stimulus payments in the time of the Covid-19 pandemic*, U.S. BUREAU OF LAB. STATS. (Aug. 2020), <https://www.bls.gov/opub/btn/volume-9/pdf/receipt-and-use-of-stimulus-payments-in-the-time-of-the-covid-19-pandemic.pdf>. “One reason almost all modern cities that have experienced large scale disasters have recovered to some degree is that their resilience is, in the words of Lawrence Vale and Thomas Campanella, “underwritten by outsiders.” This underwriting can come in the form of federal disaster aid in the United States, international humanitarian aid outside the United States, and perhaps most importantly, private insurance proceeds.” Lovett, *supra* note 29, at 487.

288. *Treasury Emergency Rental Assistance (ERA) Dashboard*, NAT’L LOW INCOME HOUS. COAL., <https://nlihc.org/era-dashboard> [<https://perma.cc/4Q5M-BAGA>] (last visited Nov. 17, 2023).

289. Abby Boshart, *Direct Cash Transfers Can Deliver Housing Assistance More Efficiently and Equitably*, URB. INST. (May 25, 2022), <https://housingmatters.urban.org/articles/direct-cash-transfers-can-deliver-housing-assistance-more-efficiently-and-equitably> [<https://perma.cc/2KPF-RXCK>].

290. *Id.* In Austin, TX, the city distributed \$1,000 direct payments to 135 families; the Urban Institute then told reporters that participants in the program experienced substantial improvements in food security and household stability. See Blake DeVine, *One year into pilot program, how \$1K monthly checks are helping low-income Austinites*, KXAN (June 26, 2023, 7:44 AM), <https://www.kxan.com/news/local/austin/one-year-into-pilot-program-how-1k-monthly-checks-are-helping-low-income-austinites/> [<https://perma.cc/8SLC-FN5F>].

291. *Assistance for American Families and Workers*, U.S. DEPT. OF THE TREASURY, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-families-and-workers#> [<https://perma.cc/82CH-FFDS>] (last visited Mar. 1, 2024).

292. *Fact Sheet: Biden-Harris Administration’s Response to the Maui Wildfires*, THE WHITE HOUSE (Aug. 15, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/15/fact-sheet-biden-harris-administrations-response-to-the-maui-wildfires/> [<https://perma.cc/3TE5-C2P9>] (“FEMA has also authorized Critical Needs Assistance (CNA) which

people affected by a climate change-related disaster would be easier to administer and likely to benefit recipients, and they do not preference the needs of homeowners or property owners above others, as they would be distributed to all affected persons regardless of property-ownership-status.²⁹³ Given the recent national rollout of direct relief during COVID-19, and targeted direct-payment programs like that in Maui, the administrative structures for making such payments reach all residents in an affected area already exist, at least at the federal level. Renters and non-renters alike can benefit from a dispersion of cash across the board to those impacted.

The difficulty here lies not in the concept of direct payment but in the nature of climate change itself: in a sense, everyone on the planet will be or already is affected by a negative impact of climate change.²⁹⁴ A climate change-enhanced weather emergency, like a hurricane, is a single-event emergency, and the task of labeling the emergency, activating the response by the government, and reacting to it is understood; direct cash payments to renters can be arranged after those individual events as needed through that organized response that works rapidly in response to that singular event. But many of the climate change impacts are long range and less dramatic, including droughts, increased wildfire seasons, more excessive heat days per season, and slowly rising ocean levels.²⁹⁵

Direct cash payments are proven methods to ease burdens on renters after individualized events – floods, fires, and hurricanes – and should continue to be utilized as needed. But direct cash payments to renters alone are insufficient to address the more large-scale and long-term impacts and must be paired with other available response actions, such as advance planning and long-term policy changes, like those surveyed below.

provides a onetime payment of \$700 per household to applicants who were displaced from their homes and have critical needs.”).

293. Dorazio, *supra* note 109 (“[T]o ultimately create equitable outcomes in disaster assistance, FEMA should shift from damage-based to needs-based awards.”).

294. Mark Barna, *Climate change impacts almost entire global population*, PUB. HEALTH NEWSWIRE (Nov. 12, 2021), <http://publichealthnewswire.org/?p=climate-update-2021> [<https://perma.cc/RD4T-JTFB>].

295. *The Effects of Climate Change*, NASA, <https://climate.nasa.gov/effects/>, [<https://perma.cc/P79Y-F4EQ>] (last visited Mar. 1, 2024).

D. Tenant-Focused Habitability Legislation and Renters' Bills of Rights

Federal-level legislation would be the most direct way to address fairness to renters in light of potential retreat from the coast and corresponding impacts on housing availability, as well as long-term impacts from extreme weather and climate conditions, but achieving such sweeping legislation where climate denial is still an electable belief is unlikely.²⁹⁶

Partially in response to a post-pandemic groundswell of housing rights advocacy, the White House released a Blueprint for a Renters Bill of Rights in 2023.²⁹⁷ The Blueprint is aimed at adding renter protections and reducing evictions and the adverse effects of evictions.²⁹⁸ The Blueprint, however, offers suggestions and guidance only and, importantly, does not mention or consider the impacts of climate change on conditions for renters.²⁹⁹ Because the Blueprint does not take direct federal action and rather offers suggestions and models, “tenant advocates will have to continue to work at the state and local level to achieve any sought-after reforms.”³⁰⁰

Turning to more local activity, multiple cities that have enacted tenants’ bills of rights. Washington DC³⁰¹ enacted a tenants’ bill of rights in 2015,

296. See Tiffany Hsu, *Falsehoods Follow Close Behind This Summer’s Natural Disasters*, N.Y. TIMES (Aug. 30, 2023), <https://www.nytimes.com/2023/08/30/business/media/maui-idalia-disinformation-climate-change.html> [https://perma.cc/NK7C-XQX2] (noting a recent presidential debate that included a claim that climate change was a “hoax”).

297. *The White House Blueprint for a Renters Bill of Rights*, DOMESTIC POL’Y COUNCIL & NAT’L ECON. COUNCIL (Jan. 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf> [https://perma.cc/5UZU-M49X].

298. *Id.* at 4, 16.

299. *Id.* at 2.

300. Cummings & Singh Lemar, *supra* note 30, at 128. Other cities have focused efforts on right-to-counsel. The most robust example comes out of New York City, which became the first place in the country to guarantee a lawyer to every tenant facing eviction in 2017, dedicating \$155 million to the effort. Cities in Pennsylvania, California, and Massachusetts, as well as Washington D.C., are currently pursuing similar right-to-counsel measures. *Id.*; see also *Mayor de Blasio Signs Legislation to Provide Low-Income New Yorkers with Access to Counsel for Wrongful Evictions*, N.Y.C. (Aug. 11, 2017), <https://www.nyc.gov/office-of-the-mayor/news/547-17/mayor-de-blasio-signs-legislation-provide-low-income-new-yorkers-access-counsel-for/#/0> [https://perma.cc/C2BD-N45J]; *More States and Localities Pass Right-to-Counsel Legislation*, Nat’l Low Income Hous. Coal., (May 8, 2023), <https://www.nlihc.org/resource/more-states-and-localities-pass-right-counsel-legislation> [https://perma.cc/6Z53-7NGK].

301. *District of Columbia Tenant Bill of Rights*, D.C. OFF. OF THE TENANT ADVOC., <https://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/2015%2007%2003%20OTA%20DC%20Tenant%20Bill%20of%20Rights%20DAI-OTA%20FINAL.pdf> [https://perma.cc/R4QZ-AX77].

and Seattle,³⁰² Portland,³⁰³ and Palo Alto³⁰⁴ have all enacted similar protections for tenants. These are useful starting points for cities that are considering how best to ensure tenants are equitably treated as the effects of climate change increase; other cities can use these exemplars to structure their own tenants' rights bills and could amend them as necessary to add protections depending on their unique climate circumstances and to ensure continuing habitability of rental housing. This is especially significant to consider in cities that are experiencing greater days of extreme heat like Reno, Nevada and Panama City, Florida;³⁰⁵ for example, working air conditioning or the weatherization and insulation of buildings should be required for leases to be legal and enforceable in known "hot" cities, like with the New Orleans Healthy Homes ordinance. Tenants' bills of rights could be combined with the mandatory disclosure rules discussed above to provide a suite of protections for renters at the local level.

E. Weatherization as an Incentive

The U.S. Department of Energy has a well-designed program to incentivize landlord weatherization of rental units, requiring that the weatherization program benefits "accrue primarily to the low-income units" and that the rent of the improved, weatherized units cannot be raised before an established time.³⁰⁶ Unfortunately, the plan can be ignored by landlords who choose not to participate.³⁰⁷ But the plan's structure and support at the federal level exists; cities or states could adopt similar weatherization programs and create greater incentives for landlords to participate or make energy-efficiency and habitability improvements mandatory for tenants to be permitted. Combining energy efficiency legislation with other

302. *Know the Law*, CITY OF SEATTLE, <https://www.seattle.gov/housing/renters/know-the-law#landlordresponsibilities> [<https://perma.cc/3D24-9U8X>] (last visited Nov. 17, 2023).

303. *Tenant Notice of Rights and Responsibilities Associated with Portland Mandatory Relocation Assistance Under Portland City Code Title 30.01.085*, PORTLAND HOUS. BUREAU, <https://www.portlandoregon.gov/phb/article/737758> [<https://perma.cc/9PKF-D5AY>].

304. Gennady Sheyner, *To help Palo Alto renters, council adds new protections against evictions*, PALO ALTO ONLINE (June 5, 2023, 11:28 PM), <https://www.paloaltoonline.com/news/2023/06/05/to-help-tenants-council-advances-new-eviction-protections> [<https://perma.cc/SV2C-PZXX>].

305. Climate Central, "More Risky Heat Days in 232 U.S. Locations," <https://www.climatecentral.org/climate-matters/more-risky-heat-days-in-232-us-locations>

306. U.S. DEP'T OF ENERGY, *supra* note 151, at 1.

307. *Id.* at 3.

habitability-focused legislation could make “fringe” areas with existing rental housing stock (but where retreat is not under consideration) significantly more livable, enjoyable, and safe.

F. Expansion and Construction of New, Safe, Affordable Housing

Perhaps the single most influential, and therefore most challenging, programmatic change that could help tenants meet the mounting pressures of climate change would be the widespread construction of new affordable, climate safe housing. This is especially so as managed risk becomes an increasingly important policy tool. In the coming decades, many low-income families and individuals will have to move away from climate-insecure rental properties.³⁰⁸ The biggest unresolved question is where they will move.

Recipient communities must have sufficient housing stock to welcome newcomers. But the creation of any new largescale, affordable housing programs at significant density will require significant zoning and land use reform.³⁰⁹ Indeed, in a country long defined by suburban sprawl and single-family zoning,³¹⁰ it would be nothing short of a paradigm shift. In fact, 75% of the country’s residential land is zoned for single-family homes.³¹¹ As discussed in Part I of this paper, the prevalence of single-family zoning in the United States has disturbing and racist origins.³¹² The exclusionary motivations behind these laws are well-documented—they were explicitly designed to keep out low-income folks and people of color.³¹³ But today, these laws have the added negative effect of exacerbating adaptation to climate change by making it harder for residential areas to weather storms, cut their carbon footprints, and efficiently consolidate imperiled resources.

308. See discussion *supra* Part 1.D.

309. Nathaniel Meyersohn, *The invisible laws that led to America’s housing crisis*, CNN (Aug. 5, 2023), <https://www.cnn.com/2023/08/05/business/single-family-zoning-laws/index.html> [<https://perma.cc/G7CQ-MNRM>]; Emily Badger & Quoc Trung Bui, *Cities Start to Question an American Ideal: A House With a Yard on Every Lot*, N.Y. TIMES (June 18, 2019), <https://www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html> [<https://perma.cc/N463-YHE2>].

310. Emily Badger & Quoc Trung Bui, *supra* note 309.

311. *Id.*

312. Richard D. Kahlenberg, *How Minneapolis Ended Single-Family Zoning*, THE CENTURY FOUND. (Oct. 24, 2019), <https://tcf.org/content/report/minneapolis-ended-single-family-zoning/> [<https://perma.cc/8C65-QFR8>].

313. *Id.*

Some cities are taking promising steps towards changing this paradigm. For instance, in 2019, Minneapolis ended single-family zoning. Minneapolis' decision to do away with this zoning category opened up triple the capacity of housing in many neighborhoods.³¹⁴ It also created opportunities for more affordable, greener housing stock: more affordable because it allows for a much higher volume of new housing construction and greener because “[m]ultifamily units . . . have a smaller carbon footprint than housing the same number of residents in single-family homes, because apartments have fewer exterior walls, making them easier to heat and cool and thus more energy efficient than single-family homes.”³¹⁵ Indeed, a recent mapping initiative undertaken by the New York Times shows how households in denser neighborhoods have smaller carbon footprints than areas defined by sprawl.³¹⁶ If designed with climate adaptation in mind, denser housing can also promote resilience by leveraging community strengths and economies of scale.

But if building large-scale affordable, dense housing—and quickly—is an obvious policy solution, who will build it presents a more difficult challenge. A recent report from the Harvard Joint Center for Housing Studies on America's Rental Housing emphasized the need for federal reforms in this arena.³¹⁷ Chris Herbert, the Managing Director of the Joint Center for Housing Studies, emphasized that “only the federal government has the scope and resources to provide housing assistance at a scale appropriate to need across the country.”³¹⁸ However, such an expansion of federally-built affordable housing development runs headlong into the Faircloth Amendment and the related federal pivot away from public housing.

314. *Id.*; see also Jake Blumgart, *How Important Was the Single-Family Zoning Ban in Minneapolis?*, GOVERNING (May 26, 2022), <https://www.governing.com/community/how-important-was-the-single-family-housing-ban-in-minneapolis> [https://perma.cc/5DVT-8RFC].

315. Kahlenberg, *supra* note 312.

316. Nadja Popovich et al., *The Climate Impact of Your Neighborhood, Mapped*, N.Y. TIMES (Dec. 13, 2022), <https://www.nytimes.com/interactive/2022/12/13/climate/climate-footprint-map-neighborhood.html> [perma.cc/WR2J-2TMT].

317. Harvard JOINT CTR. FOR HOUS. STUD., *supra* note 25.

318. *Id.*

The Faircloth Amendment was passed as part of the Quality Housing and Work Responsibility Act of 1998.³¹⁹ It mandates that:

a public housing agency may not use any of the amounts allocated for the agency from the Capital Fund or Operating Fund for the purpose of *constructing* any public housing unit, if such construction would result in a net increase from the number of public housing units owned, assisted, or operated by the public housing agency on October 1, 1999, including any public housing units demolished as part of any revitalization effort.³²⁰

This amendment means that public housing authorities have had strict caps on the total number of units they can manage, caps that have not increased in the past two decades.³²¹ And in practice, additional funding constraints often limit public housing authorities from creating new units anyway, even when their total stock is under those limits.³²²

Indeed, since the 1980s, there has been a stark disinvestment in federal funding for public housing. The National Low Income Housing Coalition suggests that 10,000 units a year of public housing are lost because of maintenance issues or demolition.³²³ The complex web of incentives behind this disinvestment, as well as the impact of programs like HOPE VI, on the decline of public housing are outside the scope of this paper.³²⁴ However, the general trend away from public housing and toward Section 8 and Housing Choice vouchers has resulted in a net loss of affordable rental units because it has directed low-income prospective renters into markets that are already burdened by lack of affordable housing stock.³²⁵ Additionally, it

319. Louise Hunt et al., *Summary of the Quality Housing and Work Responsibility Act of 1998*, U.S. DEP'T OF HOUS. & URB. DEV. (Dec. 1998), https://www.hud.gov/sites/documents/DOC_8927.PDF [<https://perma.cc/93WL-LCXB>]; see also Jared Brey, What Is the Faircloth Amendment?, NEXT CITY (Feb. 9, 2021), <https://nextcity.org/urbanist-news/what-is-the-faircloth-amendment> [<https://perma.cc/EF43-8J4G>].

320. 42 U.S.C. §1437(g) (“limitations on new construction”)(emphasis added).

321. Brey, *supra* note 319.

322. *Id.*

323. *Public Housing: Where Do We Stand?*, NAT'L LOW INCOME HOUS. COAL. (Oct. 17, 2019), <https://nlhlc.org/resource/public-housing-where-do-we-stand> [<https://perma.cc/SY4A-A4DV>].

324. For more on the decline of public housing, see, for example, Eileen M. Greenbaum, *Quality Housing And Work Responsibility Act of 1998: Its Major Impact on Development of Public Housing*, 8 J. AFFORDABLE HOUS. & CMTY. DEV. L. 310 (1999); Seicshnaydre, *supra* note 19.

325. See G. THOMAS KINGSLEY, URB. INST., TRENDS IN HOUSING PROBLEMS AND FEDERAL

gives private landlords more discretion when accepting new tenants, which contributes to discriminatory rental practices.³²⁶ Finally, participants in the Housing Choice Voucher/Section 8 Program do not have the same legal protections as tenants who live in public housing.³²⁷ Public housing residents have a right to a pre-eviction administrative grievance process, but tenants in Section 8 do not have the same protections and are more vulnerable to eviction.³²⁸

To move away from this inadequate market-based system, new public housing units would have to be built. And to achieve this outcome, the repeal of the Faircloth Amendment would be both practically necessary and symbolically powerful, marking an end to the decades-long federal campaign demonizing public housing. With significant funding increases and resilient design assistance, it could mark a new era for federal housing construction—one prepared to meet the demands of our current moment. Public housing of the 20th century was indisputably plagued by many issues.³²⁹ Perhaps only a new federal system, one that prioritizes affordable, sustainably-built public housing, could provide the scale of housing needed to address the residential shifts that must happen with coming climate risks.³³⁰ Indeed, advocates at Data for Progress have recently put forward ambitious roadmaps for such an expansion.³³¹ These data-backed plans

HOUSING ASSISTANCE, 10–12(2017), available at <https://www.urban.org/sites/default/files/publication/94146/trends-in-housing-problems-and-federal-housing-assistance.pdf>.

326. See Stacy Seicshnaydre, *Expanding Choice and Opportunity in the Housing Choice Voucher Program*, in *The NEW ORLEANS INDEX AT TEN*, July 2015, at 4, available at <https://s3.amazonaws.com/gnocdc/reports/The+Data+Center-Expanding+Housing+Choice+in+New+Orleans.pdf>.

327. See Finger, *supra* note 242, at 10 (noting that in New Orleans, the eviction crisis for tenants using Section 8 vouchers was exacerbated by the post-Hurricane Katrina demolition of public housing).

328. *Id.*

329. See Rothstein, *supra* note 9, at 34.

330. See, e.g., Liam McSweeney, *Just Housing, Rooted in West Oakland: How Moms4Housing Challenged Real Estate Speculation and the Racial Hierarchy in our Property Laws*, 22 *BERKELEY J. AFR.-AM. L. & POL'Y* 54 (2022) (discussing the need to move away from market-based solutions back to public housing).

331. *A Green New Deal for American Public Housing Communities*, DATA FOR PROGRESS, <https://www.dataforprogress.org/green-new-deal-public-housing> [<https://perma.cc/EU4F-H4PA>].

propose building new units in more secure locations, investing in resiliency for existing secure housing stock, and moving away from public housing that is too at-risk of future climate-related degradation.³³² The end result, they assert, is not just secure housing, but decarbonization and jobs.³³³

Of course, there are many detractors of public housing who doubt that it will be a panacea to the country's affordable housing crisis.³³⁴ It could also be argued that governments make inefficient developers of new housing, or that it is more economically viable to rely on market-based systems than government-provided housing. But these arguments sound in shades of the status quo and rely on market-based systems that have failed time and again.³³⁵ Large scale mitigation efforts accessible to all, including renters, will require a real rupture with existing practice—a rupture that should include a new paradigm for public housing.³³⁶

332. FLEMING ET AL., DATA FOR PROGRESS, PUBLIC HOUSING AT RISK: ADAPTATION THROUGH GREEN NEW DEAL 3–5 available at https://www.filesforprogress.org/memos/public_housing_at_risk.pdf.

333. *Id.* at 4.

334. Jenny Schuetz, *Four reasons why more public housing isn't the solution to affordability concerns*, THE BROOKINGS INST. (Jan. 14, 2021), <https://www.brookings.edu/articles/four-reasons-why-more-public-housing-isnt-the-solution-to-affordability-concerns/> [https://perma.cc/955Y-633S].

335. See, e.g., *The Gap: A Shortage of Affordable Homes*, NAT'L LOW INCOME HOUS. COAL. 1, 21 (Apr. 2022), https://nlihc.org/sites/default/files/gap/Gap-Report_2022.pdf [https://perma.cc/2XGF-DXAF].

336. Community-owned low-income housing that residents can earn ownership shares in through their rent payments and labor is another method to increase the stock of available low-income housing outside of the traditional marketplace, but would require significant supports, as Right to the City has identified in its climate change and housing policy plan: "Funding to support the formation of resident management corporations at existing and new public housing developments can help tenants take control of their homes and neighborhoods and put them in charge of resiliency planning. Resident management corporations are an existing option for public housing residents, wherein residents can form a nonprofit and receive the federal funding for maintenance and operations for their development directly from HUD. However, funding for technical, legal, and other support needed to help residents explore and pursue resident management has been slashed and must be restored." Hackett, *supra* note 276, at 25.

G. Climate Change as part of the Permitting of Housing Projects

HUD already requires environmental assessments of proposed federally funded public housing projects to consider and proactively address climate change:

HUD-assisted projects need to consider the potential future impacts of climate change on occupants. This applies to both new and existing structures; though climate impacts may not have been considered during a project's initial environmental review, subsequent Environmental Assessment (EA)-level reviews (e.g., for major rehabilitations) should consider potential climate impacts on residents' safety, wellbeing, and property.³³⁷

HUD asks that environmental assessments consider flooding; sea level rise; hurricanes and extreme storms; drought; extreme heat; wildfire; landslides and extreme cold; and site suitability factors linked to climate change, such as changes in air quality, urban heat island effects, soil stability, water resources, groundwater availability, excessive storm water runoff and site flooding, and wastewater control systems and water treatment.³³⁸

HUD supports this practice by noting that under "Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad," it is federal policy to incorporate climate considerations into decision-making and build resilience against the impacts of climate change, such that HUD-assisted projects should protect human health and the environment by ensuring they are prepared to withstand the impacts of climate change.³³⁹

States and local municipalities should also consider climate change impacts in local environmental assessments involving housing projects and developments. Land use permitting or development and construction permits often trigger environmental review, under NEPA or state NEPA equivalents.³⁴⁰ It would not be unduly difficult to use the HUD model to add

337. *Environmental Assessment Factors and Categories eGuide*, U.S. DEP'T OF HOUS. & URB. DEV., <https://www.hudexchange.info/programs/environmental-review/environmental-assessment/guide/climate-and-energy/climate-change-impacts/> [https://perma.cc/N6ZX-QYGN] (last visited Nov. 17, 2023).

338. *Id.*

339. *Id.*

340. MATTHEW J. DOUGLAS, ENVIRONMENTAL IMPACT REVIEW IN REAL ESTATE

a requirement of climate change suitability assessments into the permitting of new projects or alterations and renovations of old projects.

H. Litigation as a Policy Solution

Litigation by tenants to fight adverse actions by landlords or government entities is a possibility, although litigation is typically in response to a wrong that has already occurred and often is not deployed in advance of the injury to avoid it.³⁴¹ Where any beneficial laws, regulations, or standards exist, litigation is an excellent tool for enforcement, but in the absence of such beneficial laws, regulations or standards, the judicial system may be hostile to attempts to enact pro-tenant policy changes through impact litigation.

i. FHA and Habitability Litigation

Lawsuits bringing Fair Housing Act claims could potentially force both equity in disaster relief to renters and provide better habitability standards. The Fair Housing Act (FHA) was passed in 1968 shortly after the passage of the Civil Rights Act and was intended to protect both renters and homebuyers from discrimination on the basis of race, religion, national origin, sex, handicap, and family status. Under 42 U.S.C. § 3604, it is impermissible to:

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

TRANSACTIONS, PRACTICAL GUIDANCE 2–4 available at <https://www.arnoldporter.com/-/media/files/perspectives/publications/2021/03/env-impact-review-in-real-estate-transactions.pdf> (last visited Feb. 19, 2024).

341. The expansion of direct legal services, both before and after disaster strikes, should also be explored. For more on the inadequacies of the current direct legal services options for individuals reeling from natural disasters, see Davida Finger, *50 Years After the "War on Poverty": Evaluating the Justice Gap in the Post-Disaster Context*, 34 B.C. J.L. & SOC. JUST. 267, 278–79 (2014).

- (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.³⁴²

And under § 3608(e)(5), the Secretary of HUD must “affirmatively further” fair housing.³⁴³

Under 3604(a), renters could assert that several types of harm related to climate change make housing “unavailable,” a claim which only requires a showing of disparate impact, not intent, under the Supreme Court’s ruling in *Texas Dept of Housing and Comm. Affairs v. Inclusive Communities Project*.³⁴⁴ Renters could argue that (1) inequities in government disaster response benefits, (2) inequities in rental upkeep and weatherization, or (3) inequities in managed retreat assistance between renters and homeowners serve to make housing “unavailable.” Under 3604(b), renters could argue that they face discrimination in the provision of services because of race on similar grounds. And under 3608(e)(5), it might be possible to argue that the HUD Secretary failed to affirmatively further fair housing by allowing and even perpetuating gross racial disparities in the provision of climate-safe housing and disaster benefits.

Taking the example of HUD response to a storm a storm or other natural disaster: if HUD were to continue its current pattern of inequitable distribution of disaster benefits between renters and homeowners in an area where residential segregation tracked homeownership patterns, these provisions of the FHA could be invoked to bring suits challenging racially discriminatory disaster recovery distribution. This is precisely the approach taken by Texas renters after Hurricane Harvey in *Wharton v. U.S. Dept of Housing and Urban Development*.³⁴⁵ There, Plaintiffs were low-income African American and Hispanic renters who were temporarily or permanently displaced from their homes after Harvey but prohibited from

342. 42 U.S.C. § 3604. Both individuals and local governments can make housing “unavailable” under 3604(a). See, e.g., *Hallmark Developers, Inc. v. Fulton Cnty.*, 466 F.3d 1276, 1283 (11th Cir. 2006) (citing *Jackson v. Okaloosa Cnty.*, 21 F.3d 1531, 1542 n.17 (11th Cir. 1994)).

343. 42 U.S.C. § 3608(e)(5)

344. 576 U.S. 519 (2015).

345. Compl. for Injunctive and Declaratory Relief, *Wharton v. U.S. Dep’t of Hous. & Urb. Dev.* 2:2019-cv-00300 (S.D. Tex. Oct. 11, 2019).

applying for CDBG-DR funds when their homeowner counterparts were offered these funds.³⁴⁶ Specifically, they asserted that Texas' post-Harvey State Action Plan to provide tenant-based rental assistance, utility assistance, reimbursements for replacing essential appliances and systems, and programs to encourage homeownership to homeowners, but did not allow renters to access those same benefits.³⁴⁷ As a result, renters, who were disproportionately people of color, were less likely than homeowners, who tended to be white, to receive the benefits they needed to get back on their feet after the storm.³⁴⁸ The Plaintiffs argued, in part, that this violated HUD's duty to "affirmatively further fair housing under 42 U.S.C. § 3608(e)(5)."³⁴⁹ In their complaint, they asserted the duty to affirmatively further fair housing:

This obligation requires more than HUD refraining from discriminating itself. HUD's obligation in considering the State Action Plan is assess the elements of the plan by the effect on existing patterns of racial segregation, unequal treatment based on race, and the historic lack of equal access to opportunity without regard to race. HUD must then assess negatively those aspects of the proposed State Action Plan that would further limit the supply of genuinely open housing and assess positively those aspects of the action that would increase the supply of racially integrated and equal housing.³⁵⁰

Per Plaintiffs, HUD did not adequately review the State Action Plan for these predictable disparate outcomes.³⁵¹ That case was ultimately dismissed

346. *Id.* at 1.

347. *Id.* at 2–4.

348. *Id.* at 20–21.

349. *Id.* at 30–31. After many years of inaction on its rule to Affirmatively Further Fair Housing, HUD published a Notice of Proposed Rulemaking in the Federal Register in February 2023. *See* Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8516, 8516-90 (Feb. 9, 2023). Advocates commenting on the rule suggested that habitability should be better defined in the rule, an issue that could be grounds for climate-related litigation, and that the rule should require program participants to revise their Equity Plans following presidentially declared disasters. *See* The National Housing Law Project, Comment on Affirmatively Furthering Fair Housing, Docket No. FR-6250-P-01, 1, 5, 20 (Apr. 24, 2023), <https://www.nhlp.org/wp-content/uploads/AFFH-Comment-Sign-On.pdf> [https://perma.cc/7CFB-8MND].

350. Compl. for Injunctive and Declaratory Relief, *Wharton*, 2:2019-cv-00300., at 31.

351. *Id.* at 31–32.

for lack of standing because the Court found that Plaintiffs' claims against HUD were not redressable because of the intervening roles of state agencies, landlords, and local housing authorities.³⁵² Therefore, any suit seeking to invoke the duty to affirmatively further fair housing must carefully tether the harm and relief sought to the actions of HUD officials. However, the HUD Administrator is not the sole actor under the Fair Housing Act who has a duty to affirmatively further fair housing. Under 42 U.S.C. § 3608(d), “[a]ll executive departments and agencies shall administer their programs and activities relating to housing and urban development . . . in a manner affirmatively to further the purposes” of the Fair Housing Act.³⁵³ Therefore, other federal actors arguably have a duty to affirmatively further fair housing, and litigants could expansively construe this duty to extend to disaster response agencies, like FEMA, who have a direct role in perpetuating inequitable housing outcomes in the disaster recovery context.

But there are substantial barriers to successful litigation under the FHA. For instance, a court might not extend FHA protections to a potential plaintiff who asserts that their housing was made “unavailable” under 3604(a) when their home is severely damaged or otherwise climate insecure, but not technically uninhabitable. This is because not all courts recognize that the FHA extends to conditions of habitability; for instance, the Fifth Circuit has explicitly ruled that “the simple language of § 3604(a) does not apply to current homeowners whose complaint is that the value or ‘habitability’ of their houses has decreased because such a complaint is not about ‘availability.’”³⁵⁴ As such, renters asserting that HUD policies depriving their landlords, as property-owners, of sufficient recovery funds to make repairs to storm-damaged rental units might not prevail. The Fifth Circuit has emphasized that habitability concerns may only be recognized where they rise to the level of “constructive eviction.”³⁵⁵ That is to say, an FHA claim under § 3604(a) asserting that housing has been made unavailable because it is uninhabitable might only be cognizable if a person is actually forced to move. And by then, a renter has lost their housing, often without the possibility of finding a comparable, suitable replacement, especially in areas where disaster damage has depleted the affordable

352. *Wharton*, 2:19-cv-00300 (S.D. Tex., Sept. 30, 2021) at Doc. 128.

353. 42 U.S.C. § 3608(d).

354. *Cox v. City of Dallas*, 430 F.3d 734, 741 (5th Cir. 2005).

355. *See id.* at 742–43, n. 21; *see also Bloch v. Frischholz*, 587 F.3d 771 (7th Cir. 2009).

housing stock.³⁵⁶ By contrast, courts have interpreted section § 3604(b) as not requiring constructive or actual eviction.³⁵⁷ But under § 3604(b), a showing of discriminatory intent may be required—a substantially higher bar than impact.³⁵⁸

Additionally, FHA claims require rigorous evidentiary support.³⁵⁹ And tracing the parallels between renter status and race would require thorough data that tells a clear story. Another limitation to the Fair Housing Act angle is that the Act exempts owner-occupied buildings with no more than four units or single-family houses that are rented by the owner without the use of an agent, as well as housing operated by religious organizations or private clubs.³⁶⁰

ii. Administrative Complaints to HUD

An administrative complaint brought to HUD could serve as a corollary or alternative route to seeking relief akin to the FHA claims discussed above and lay the groundwork for future litigation. HUD's implementing regulation interpreting the Fair Housing Act provides for both disparate impact and discriminatory treatment claims.³⁶¹ As such, a complaint to HUD can capture a broad swath of conduct. And HUD settlements can provide more creative forms of relief than traditional federal court lawsuits.

For instance, in 2013, New Jersey renters of color brought a HUD complaint against the state for discrimination in the administration of its Superstorm Sandy program, alleging violations of the Fair Housing Act, Title VI of the Civil Rights Act, and Section 109 of Title I of the Housing and Community Development Act.³⁶² The settlement, entered into a year

356. Cox, 430 F.3d at 742 n.21; *see also* Miller v. City of Dallas, No. 3:98-CV-2955-D, 2002 WL 230834 (N.D. Tex. Feb. 14, 2002).

357. *See, e.g.,* Comm. Concerning Cmty. Improvement v. City of Modesto, 583 F.3d 690, 714 (9th Cir. 2009).

358. Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 558 F.2d 1283, 1290 (7th Cir. 1977).

359. Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc., 576 U.S. 519, 542–43 (2015).

360. *Housing Discrimination Under the Fair Housing Act*, U.S. DEP'T OF HOUS. URB. DEV., https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview#:~:text=The%20Fair%20Housing%20Act%20covers,that%20limit%20occupancy%20to%20members [<https://perma.cc/3E4Z-5VPM>] (last visited Nov. 17, 2023).

361. 24 C.F.R. § 100.5 (2023)

362. *Advocacy Groups Settle Civil Rights Complaint Against State of New Jersey Involving Superstorm Sandy*, RELMAN COLFAX (May 30, 2014), <https://www.reلمانlaw.com/news-Sandy>

later by the state and impacted residents, required the state to direct \$240 million in additional funds to the residents who were most impacted by the storm.³⁶³ It required the state to focus on serving low-income renters in particular, because they were more likely to be people of color than homeowners.³⁶⁴ This was achieved by directing additional resources to the restoration of multi-family housing that served the States' renters.³⁶⁵

Indeed, many advocates have argued that HUD can play an active role in furthering environmental justice goals. For example, Megan Haberle of the Poverty and Race Research Action Council carefully detailed the tools available to HUD to further these goals, noting that:

HUD can improve oversight of the siting of subsidized housing; provide housing choice away from environmental burdens through housing vouchers; offer funding to directly address household and community EJ needs; develop guidance, policies, and technical assistance regarding climate change and other EJ issues; and incentivize state and local EJ improvements through its spending power. Environmental justice is part of the agency's legal responsibilities.³⁶⁶

Because of the breadth of these tools available to HUD to rectify harms and further environmental justice, administrative complaints may be a viable path for renters seeking support for safer housing.

iii. Public Trust Litigation

The public trust doctrine is a principle of both common law and constitutional law that dictates that the state holds certain public resources

[<https://perma.cc/34HQ-BNKU>].

363. *Id.*

364. *Id.*

365. Latino Action Network, No. 02-13-0048-6, No. 02-13-0303-8 (HUD filed Apr. 3, 2013), https://www.reلمانlaw.com/media/news/216_NewJerseyAgreementsigned5-30-2014.pdf [<https://perma.cc/2FW5-56B9>] (voluntary compliance agreement); *see also* John Henneberger, *Statement on our Fair Housing settlement with the State of Texas*, TEX. HOUSERS (May 25, 2010), <https://texashousers.org/2010/05/25/statement-on-the-fair-housing-settlement-with-the-state-of-texas/> [<https://perma.cc/GMD5-LEJ3>].

366. Megan Haberle, *Fair Housing and Environmental Justice: New Strategies and Challenges*, 26 J. OF AFFORDABLE HOUS. & CMTY. DEV. L. 271 (2017), https://www.prrac.org/pdf/AH_26-2_06Haberle.pdf; *see also* this paper's discussion of HUD's climate considerations in the permitting process, above, in Part II.A(a).

“in trust” for the continuing use of the public.³⁶⁷ Some states have incorporated a public trust rule into their constitution. For example, Pennsylvania’s state constitution includes this provision:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.³⁶⁸

The public trust doctrine has been invoked in litigation against states in permitting pollution industries, selling public lands, and failing to protect public water resources.³⁶⁹ In *Held v. Montana*, a trial court ruled that the public trust doctrine could be applied to climate change claims, holding that the state must consider the future effects of climate change when approving new air permits.³⁷⁰ Creative use of the public trust doctrine by housing advocates could be contemplated if states fail to act to protect renters, and the public more broadly, from the worst impacts of climate change.

367. Erin Ryan, *A Short History of the Public Trust Doctrine and its Intersection with Private Water Law*, 38 VA. ENV’T. L.J. 135 (2020), <https://ir.law.fsu.edu/articles/719> [<https://perma.cc/F8DL-DLQV>].

368. PA. CONST., art. I, § 27.

369. Erin Ryan, *The Public Trust Doctrine, Property, and Society*, HANDBOOK OF PROP., L., & SOC’Y (Graham, Davies & Godden, eds., 2022), <https://ir.law.fsu.edu/articles/724> [<https://perma.cc/YR4Z-Q2EM>] (“If the public feels that the government is failing its obligations, citizens can enforce their rights in court.”).

370. *Held v. Montana*, No. CDV-2020-307 (Mont. 1st Dist. Ct.) (Aug. 14, 2023); David Gelles & Mike Baker, *Judge Rules in Favor of Montana Youths in a Landmark Climate Case*, N.Y. TIMES (Aug. 16, 2023), <https://www.nytimes.com/2023/08/14/us/montana-youth-climate-ruling.html> [<https://perma.cc/SW4Q-44DH>]. However, the ruling will be appealed and may not stand. See Zack Budryk, “*Montana appeals landmark climate change ruling in case brought by young advocates*,” HILL, (Oct. 2, 2023), <https://thehill.com/policy/energy-environment/4234450-montana-appeals-landmark-climate-change-ruling-in-case-brought-by-young-advocates/>. The use of litigation to enact climate change legislation is not without controversy. See, e.g., J. Peter Byrne, *The Public Trust Doctrine, Legislation, and Green Property: A Future Convergence?*, 45 U.C. DAVIS L. REV. 915, 928 (2012) (“Because implementation will require widespread and willing compliance, such measures require political legitimacy, which the courts lack. . . . Political debate and messy compromises will more likely mobilize such change than the judicial extensions of legal principles, notwithstanding the current stalled state of national discussions of climate change.”).

iv. Zoning Litigation

Municipalities may unlawfully zone to eliminate multi-family rental housing or prevent further development of desperately needed housing for protectionist or other unlawful reasons.³⁷¹ Zoning litigation is already used, often successfully, by tenants unable to obtain safe housing due to government interference.³⁷²

As previously discussed in Part III(F), in coastal cities especially, where encroaching oceans will reduce housing stock, the need for multi-family, denser housing types is plain. Renters on the coasts will lose housing; renters inland will be squeezed by coastal residents moving inland.³⁷³ Part of an adaptation to climate change should be an open-eyed approach to zoning that anticipates both loss of existing housing stock and increasing demand for housing from displaced residents and allows for environmentally friendly, denser multi-family development. The end of single-family detached home-zoning in cities, although politically unpopular,³⁷⁴ may be the only realistic future climate change will allow.

371. See, e.g., Seicshnaydre, *supra* note 19 at 1264–65.

372. Laura Glesby, *Advocates Sue Woodbridge Over Zoning*, NEW HAVEN INDEP., (Aug. 30, 2022, 3:04 PM) https://www.newhavenindependent.org/article/housing_advocates_sue_woodbridge_over_zoning [https://perma.cc/5XME-WHEL]; see also *Complaint, Open Communities Trust LLC v. Town Plan & Zoning Comm'n of the Town of Woodbridge* (Conn. Super. Ct.) (Aug. 30, 2022), https://assets.nationbuilder.com/opencommunitiesalliance/pages/846/attachments/original/1661882076/Woodbridge_Complaint_-_Updated_8-30-22_-_signed.pdf?1661882076 (“Plaintiffs request injunctive, compensatory, and declaratory relief on the grounds that the Zoning Regulations for the Town of Woodbridge (the “Zoning Regulations”) adopted by Defendant Woodbridge Town Planning & Zoning Commission (“TPZ”), acting on behalf of Defendant Town of Woodbridge (“Woodbridge” or “the Town”), violate the Connecticut Zoning Enabling Act, C.G.S. § 8-2; the Connecticut Fair Housing Act (“CFHA”), C.G.S. § 46a-64c; the general welfare requirement of the Due Process and Equal Protection Clauses of article first, §§ 8, 10, and 20 of the Connecticut Constitution; and the Anti-Segregation Clause of article first, § 2 20 of the Connecticut Constitution.”); Alexei Koseff, *California sues Huntington Beach to force it to plan low-income housing*, S.F. CHRON. (Feb. 1, 2019, 4:31 PM), <https://www.sfchronicle.com/news/article/California-sues-Huntington-Beach-to-force-it-to-13560602.php> [https://perma.cc/SSH4-MSWG].

373. Forbes, *supra* note 265.

374. Meyersohn, *supra* note 309 (“There is fierce political opposition to zoning reform from some local communities, however. Connecticut, Arizona and New York have attempted zoning changes, but efforts have stalled amid blowback. One New York lawmaker warned of a “suburban uprising” if Gov. Kathy Hochul’s plan to build 800,000 new homes over a decade went through.”).

CONCLUSION

Climate change is fundamentally altering the fabric of our cities and towns. Rising seas, storms of unprecedented ferocity, sweltering summers: the impacts of our changing earth will place tremendous pressures on our built environment, especially our homes. It verges on the trite to emphasize that this will require a paradigm shift in the way every family and every community lives, whether by choice or necessity.

But in the U.S., the way communities live is racially and historically determined. As this paper details, people of color have been systematically deprived of the opportunity to own and maintain property, especially homes.³⁷⁵ As a result, they represent a far greater share of the renting population.³⁷⁶ As discussed throughout this paper, renters tend to be lower income, from communities of color, and face systemic barriers to resource access before storms.³⁷⁷ After storms, these vulnerabilities create additional barriers to recovery.³⁷⁸ Any policy response to climate pressures that uses property ownership as the criteria for relief will be fundamentally inequitable because of this fact. And yet, that is precisely the paradigm that most government units—from the federal to the local—have adopted.

This paper humbly suggests several frameworks for centering the renters who have, for too long, been excluded from long-term planning conversations. From new policy to new units, to the courts and administrative tribunals, these potential solutions point to a path forward. These suggestions are neither comprehensive nor exhaustive but rather introduce a focus on the specific dangers faced by renters in cities affected by climate change and some potential solutions to those dangers. At some point, not far in the future, most cities will be forced to grapple with our new climate reality, and most cities will have significant renting populations who are suffering those impacts.³⁷⁹ Focusing on property owners will never

375. *How the Law Fails Tenants*, *supra* note 6, at 155–56; *see also The Anti-Tenancy Doctrine*, *supra* note 2 at 272.

376. *The Anti-Tenancy Doctrine*, *supra* note 2, at 274.

377. *See* Part II, *supra*; *see also* Katz, *supra* note 73; *see also* Frank & E&E News, *supra* note 73.

378. Lena P. Afridi, *10 Years After Sandy, Renters Remain Most Vulnerable to Impacts of Climate Change*, THE NATION (Oct. 28, 2022) <https://www.thenation.com/article/environment/10-years-after-sandy/> [<https://perma.cc/B9WC-GA7B>].

379. *See supra* Part I; *see also* Sachon & Howard, *supra* note 45.

achieve justice or equity for renters. As environmental justice expands to incorporate climate justice, so must U.S. housing policy expand to consider the plight of renters.