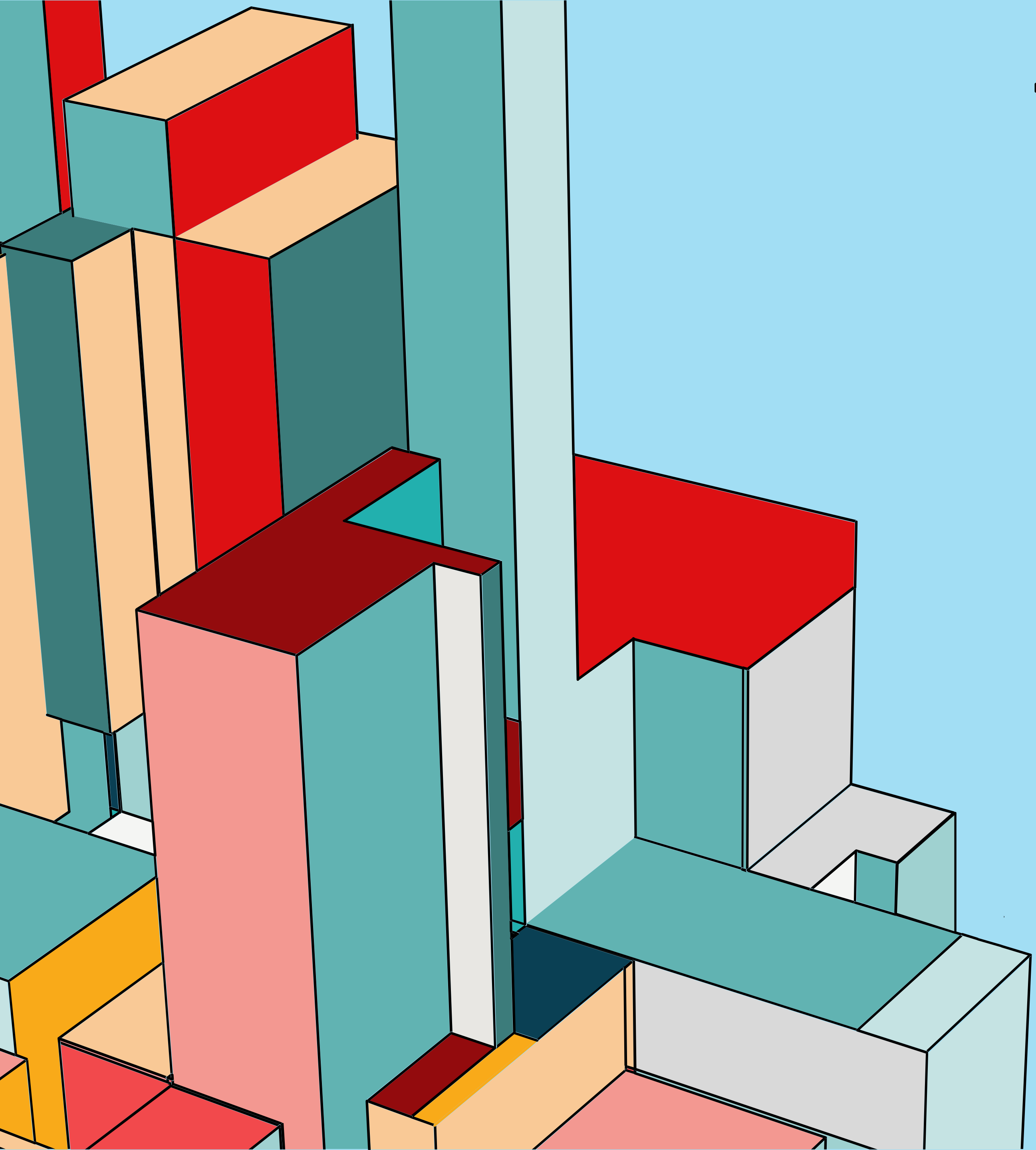

THE BENEFIT OF HOME: ERISA WELFARE FUNDS AND HOUSING ASSISTANCE

NCCMP CONFERENCE
MARCH 8, 2025

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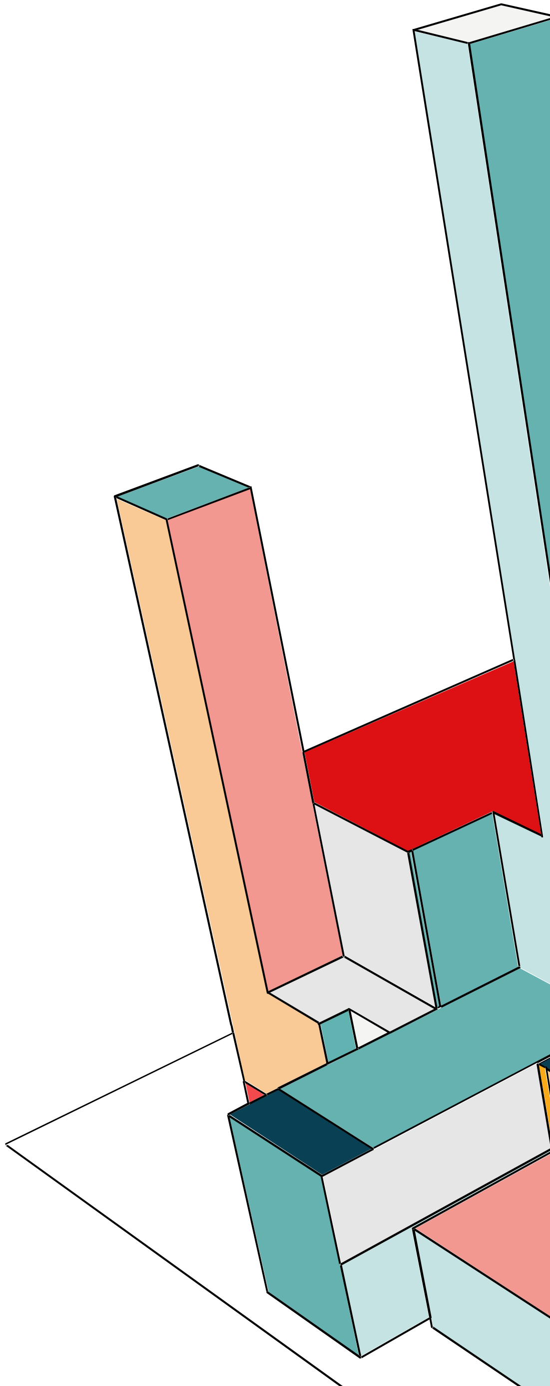
AGENDA

- Housing Affordability
- Early DOL Guidance on ERISA Investment in Housing
- 1990 Amendment of Taft Hartley creating "Housing Assistance"
- VEBAs and Housing Benefits in Boston and Las Vegas
- Issues and Challenges for Multiemployer Plans
- Alternatives
- Questions?
- <u>Disclaimer: The Following is Not Legal Advice.</u>



THE PROBLEM WITH HOUSING

WORKING AMERICANS ARE OFTEN PRICED OUT OF THE REAL ESTATE MARKET

Middle- and low-income buyers with annual incomes below $75,000, the median household income in the United States, are effectively priced out of the housing market as only 23 percent of real estate listings were affordable for those households.

Research has shown that, for the 100 largest metro areas in the country, 96 percent had supply shortages of homes that families earning under $75,000 a year could afford to buy.

The problem of affordable housing is not limited to large cities.

In Boise, Idaho, for instance, a city with fewer than 236,000 people, just 2 percent of the homes were affordable for households earning $75,000.

The shortage of available affordable housing stock in both major cities and places like Spokane, Washington, El Paso and McAllen, Texas, Fresno and Riverside, California effectively keeps low- and middle-income families from obtaining adequate housing.

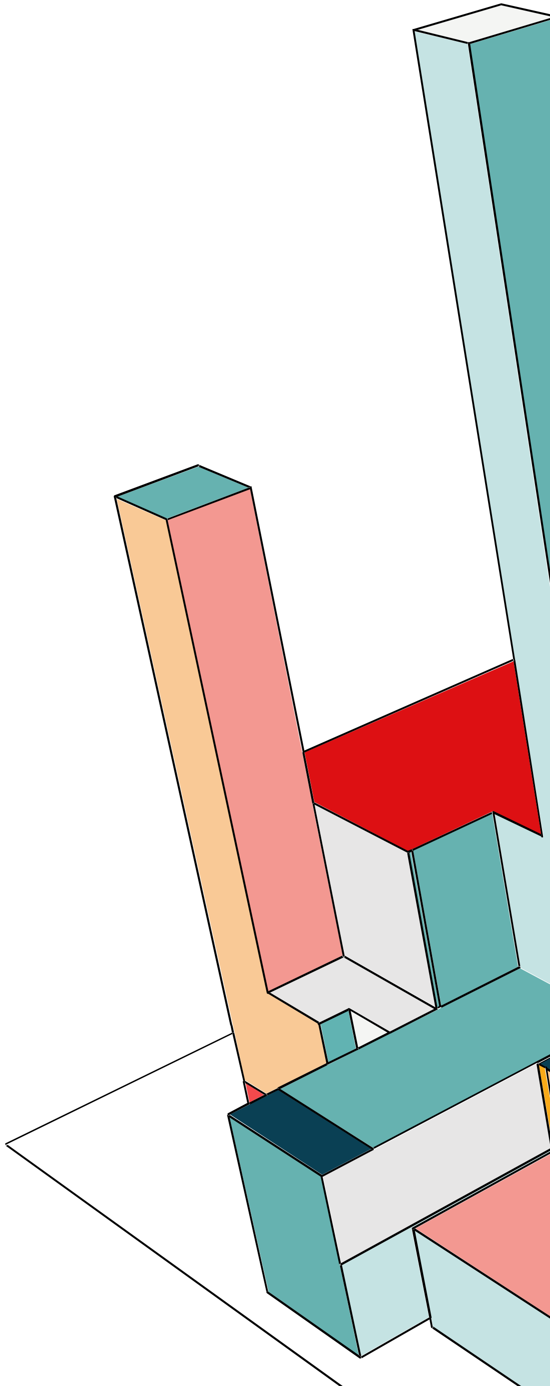
Source: National Association of Realtors, 2023 Housing Affordability and Supply Report, https://cdn.nar.realtor/sites/default/files/documents/2023-housing-affordability-and-supply-report-06-08-2023.pdf?_gl=1*1y6re46*_gcl_au*MTg0NDU3NjQzMi4xNzEzNDYyOTY2

WHAT AFFORDABLE HOUSING GIVES

THE BENEFIT OF A HOME

- Affordable housing is the most cost-effective strategy for reducing childhood poverty and increasing economic mobility in the US.
- Children who move from high-poverty to low-poverty neighborhoods saw
  - their earnings as adults increase by approximately 32%;
  - An increased likelihood of living in better neighborhoods as adults;
  - Lowered likelihood of becoming a single parent.
- Children living in stable, affordable homes are more likely to thrive in school and have greater opportunities to learn inside and outside the classroom.

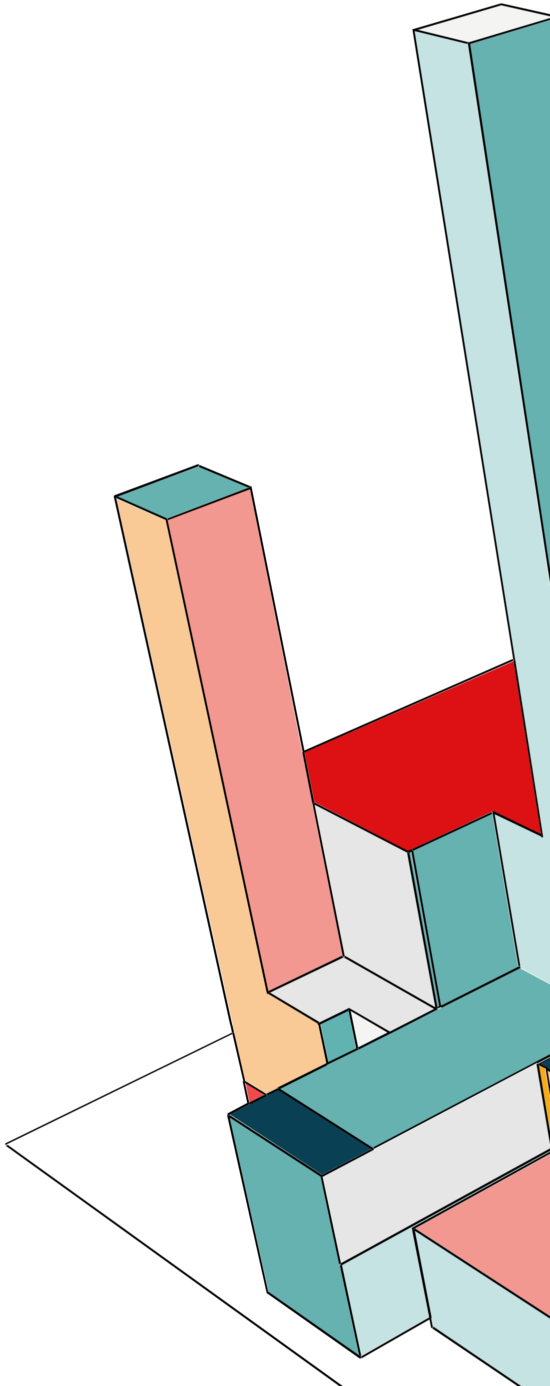
Source: Chetty, Herdren and Katz," The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project," 106 American Economic Review 4 (2016).



EARLY EFFORTS TO USE ERISA FUNDS FOR HOUSING BENEFITS

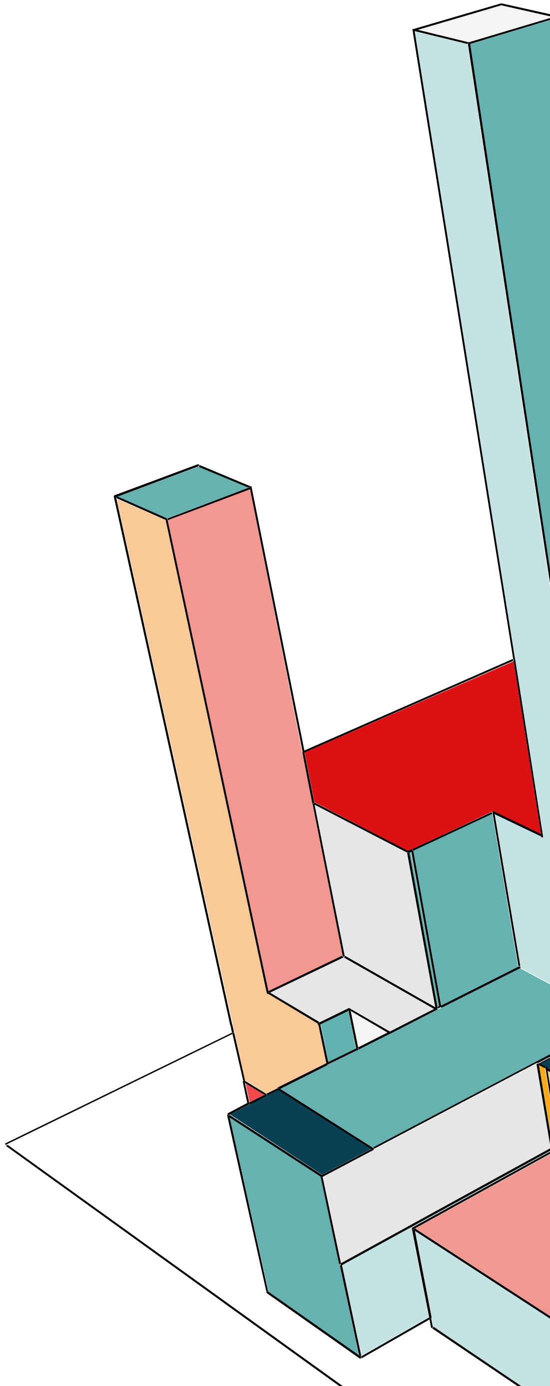
- In 1980, the NCCMP submitted a request to the DOL for an opinion letter regarding investment programs where multiemployer plans may offer mortgage loans to plan participants and beneficiaries.
- In response, the DOL stated that the request raised three issues:
  - Whether the program is "prudent" under ERISA 404(a)(1)(B);
  - Whether particular loans are "prudent"; and
  - If the loan is to a participant, would the rate of interest be "reasonable" under ERISA 408(b)(1).

Source : DOL Op. Ltr. 81-12A (January 15, 1981)



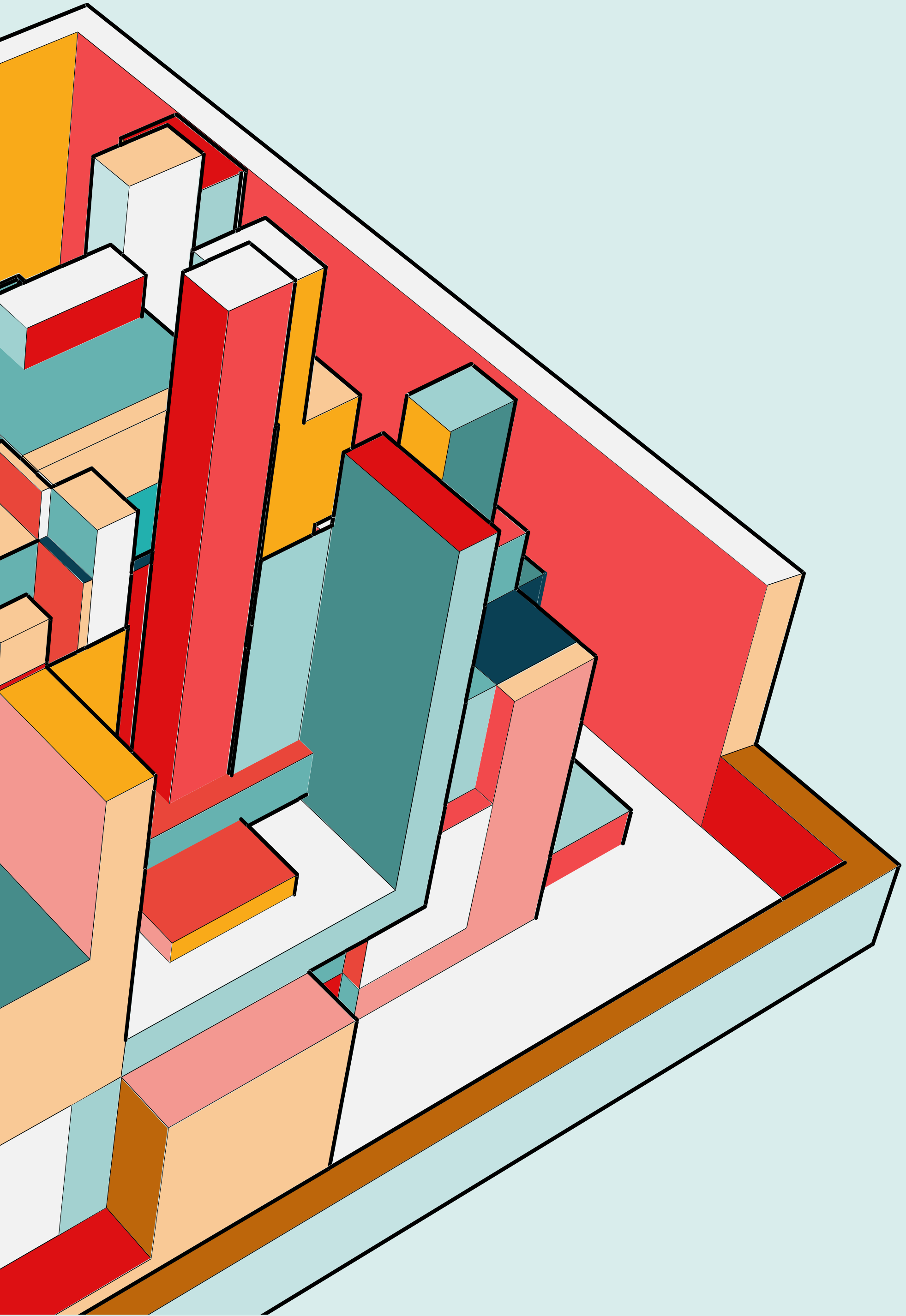
EARLY EFFORTS TO USE ERISA FUNDS FOR HOUSING BENEFITS

- Whether the program or a particular loan is “prudent” under ERISA 404(a)(1)(B)?
- Citing its regulations, DOL noted that fiduciaries must give appropriate consideration to all relevant facts and circumstances, including portfolio diversification, the plan’s liquidity needs, the projected return relative to the funding objections of the plan, the opportunity for gain and the risk of loss and how the investment is reasonably designed to further plan purposes.
- As a plan investment and not a plan benefit, incidental advantages to participants are not a relevant factor.



EARLY EFFORTS TO USE ERISA FUNDS FOR HOUSING BENEFITS

- The Department opined that the "reasonable" rate of interest would be the rate established under a similar "arm's length" loan.
- As ERISA fiduciaries could not consider the "incidental advantages" that a lower-than-market interest rate for plan participants would provide in evaluating an investment strategy, the Department held that *a mortgage loan program adopted to provide mortgage financing for plan participants would be unlawful if it did not meet the requirements of the Department's regulations on the investment duties of plan fiduciaries.*
- Given this position, ERISA pension plans are effectively prohibited from providing below-market rate mortgages to their participants.
- Consequently, hardship withdrawals from 401(k) plans may be the only means whereby an individual plan participant may use the assets of a qualified retirement plan to help finance the purchase of a primary residence. Treas. Reg. § 1.401(k)-1(d)(3)(ii)(B)(2).

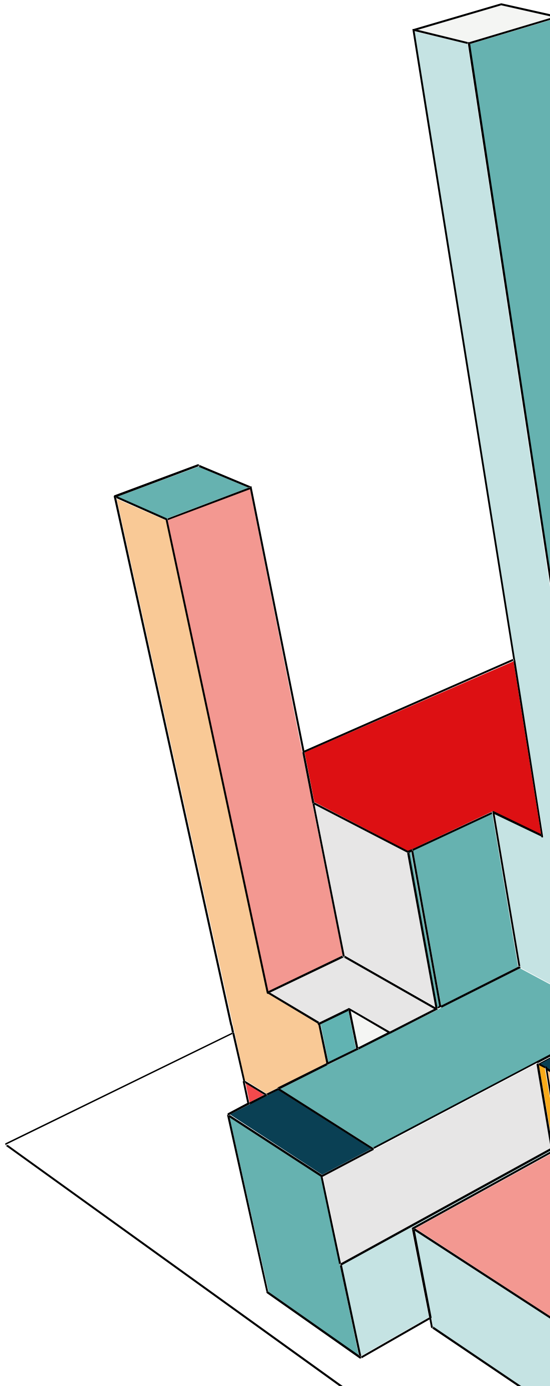


HOUSING ASSISTANCE THROUGH ERISA WELFARE PLANS

The creation of a housing assistance program that can help low- and moderate-income workers and their families achieve housing security through an ERISA welfare plan can be the start of addressing the housing needs of workers and their communities to create housing that is affordable, climate resilient, and energy efficient.

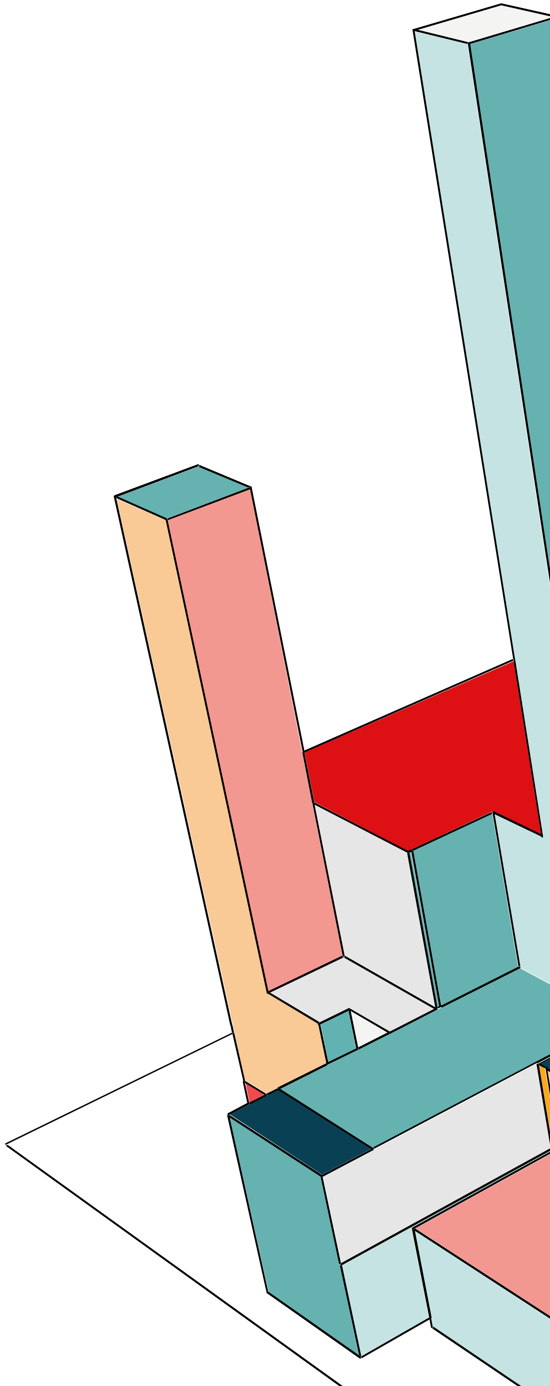
A WICKED GOOD ALTERNATIVE: HOUSING ASSISTANCE UNDER THE LMRA

- In 1988, Boston hotel workers and their employers negotiated a housing assistance benefit but, to permit the benefit to meet the requirements of federal law, the Union conducted an 18-month campaign to amend Section 302(c) of the Labor Management Relations Act of 1947, 29 U.S.C. § 186(c) ("Taft-Hartley Act" or "the LMRA") to permit the bargaining parties to create a housing fund.
- Prior to the 1990 amendment, welfare plans were limited to the benefits enumerated in Section 302(c) of the LMRA that addressed health, retirement, apprenticeship and training.
- With the amendment, ERISA welfare funds were able to include housing assistance with the benefits that could be provided by an ERISA welfare plan.



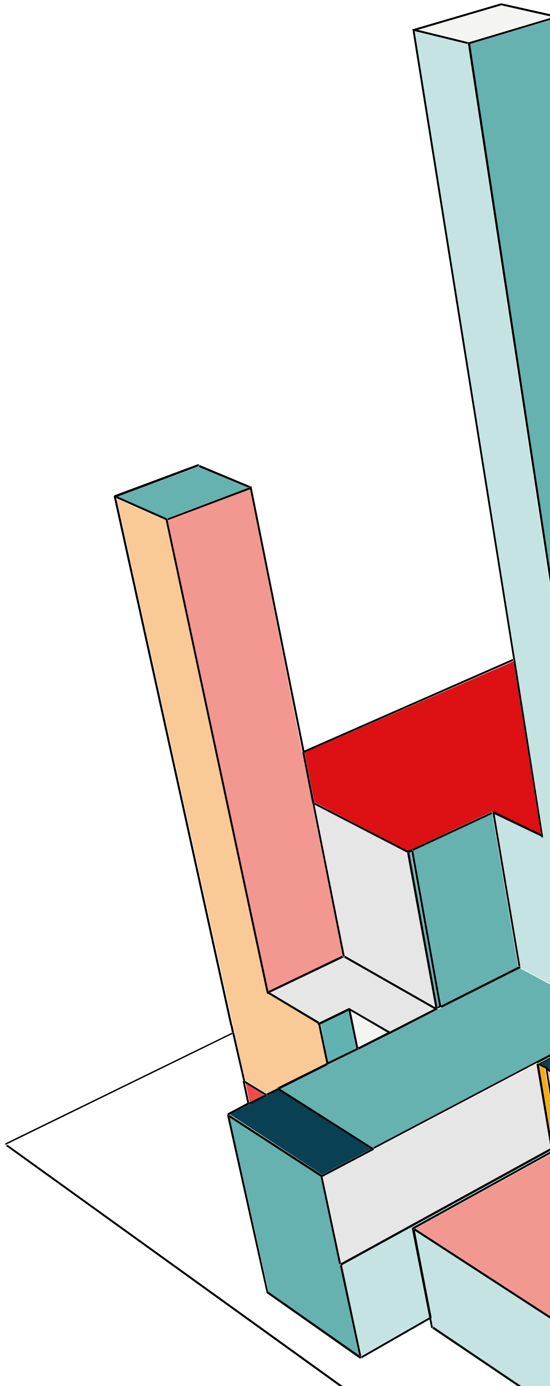
WHY WAS IT A WICKED GOOD IDEA?

- In Boston in the 1980s, while the majority of unionized hotel workers held down more than one job,
    - 78 percent could not afford to buy an apartment in metropolitan Boston and
    - 98 percent could not afford to buy a house.



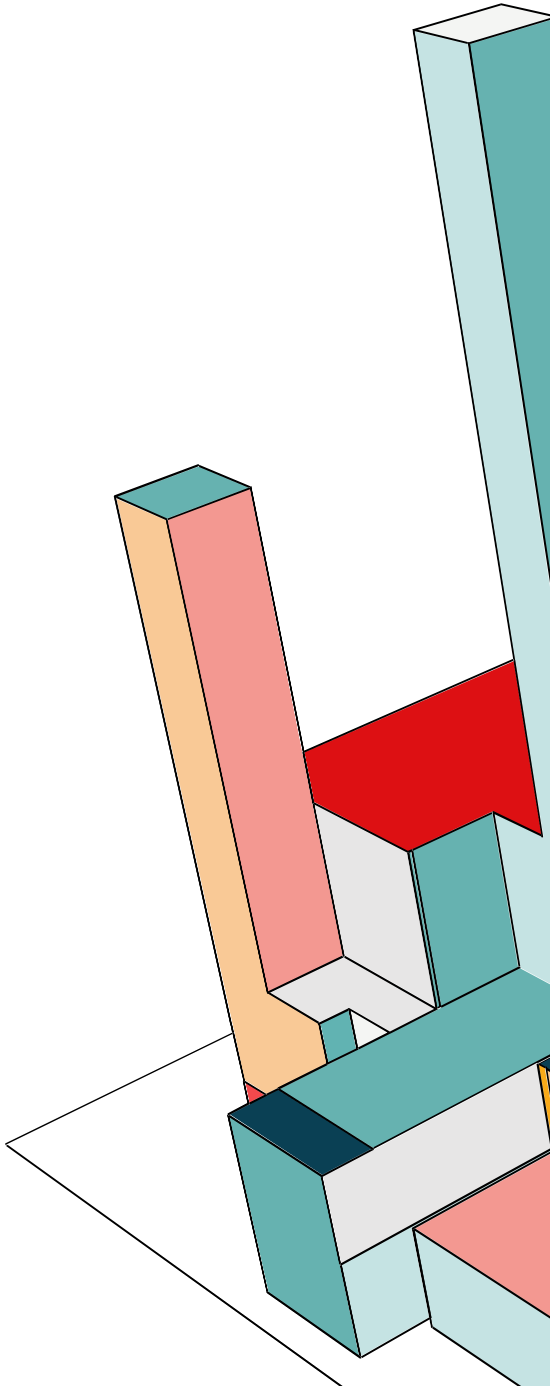
WHAT IS A HOUSING ASSISTANCE BENEFIT?

- LMRA 302(c)(7) made the creation of a housing trust a permissive subject of bargaining under the framework established for benefit funds under the Taft-Hartley Act.
- Allowable assistance by a housing assistance plan would include "*payments to employees for down payments, closing costs, bank fees, mortgage interest buydowns, and initial rental costs such as security deposits and first month's rent.*"
- Housing assistance trusts contemplated by the amendment would be employee welfare benefit plans subject to ERISA and its general fiduciary and prohibited transaction provisions.
- Passed with bipartisan support, the amendment was signed by President Bush on April 18, 1990.
- Source: 136 Cong. Rec. 6323 (1990) (Statement of Cong. Clay).



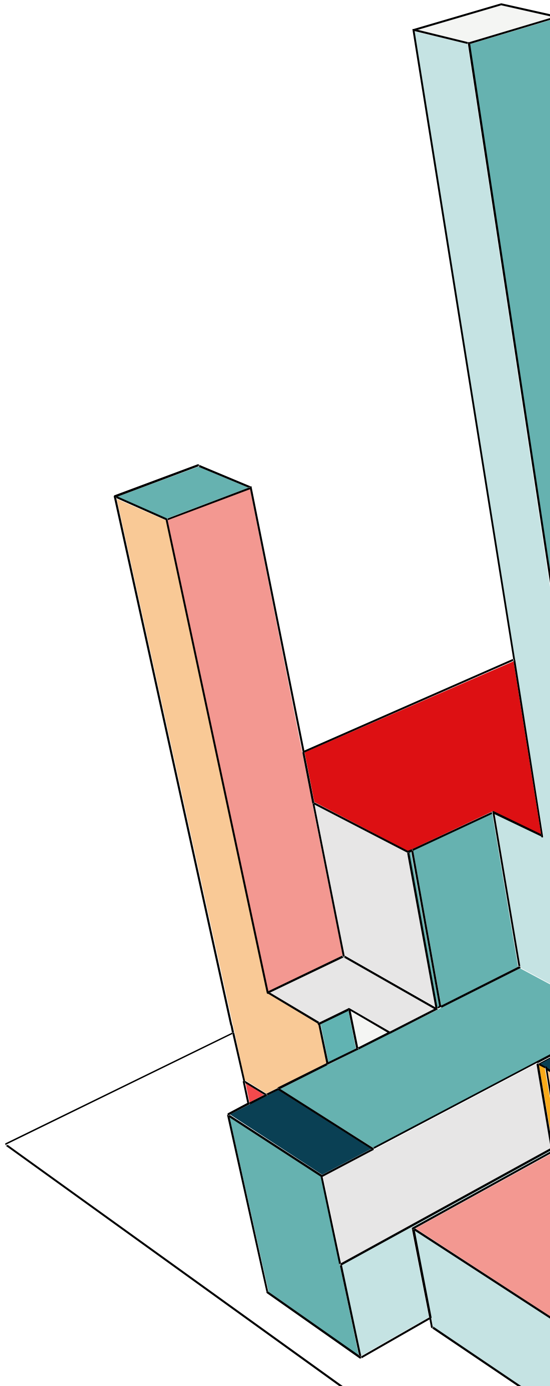
WELFARE PLANS AND VEBAS

- ERISA welfare plans are able to offer housing assistance benefits in conformance with the provisions of the new section 302(c)(7).
- Many ERISA welfare plans are exempt from income taxation under Internal Revenue Code section 501(c)(9) as Voluntary Employees' Beneficiary Associations ("VEBAs).
- VEBAs can provide life benefits, sick and accident benefits and other benefits intended to safeguard or improve the health of a member and their dependent or protect against a contingency that interrupts or impairs a member's earning power, including any benefit provided in a manner permitted by paragraphs 5 *et seq*. of section 302(c) of the Labor Management Relations Act of 1947.
- Housing assistance improves the health of the members and their families as homelessness affects both physical and mental health.



ADMINISTERING HOUSING ASSISTANCE BENEFITS

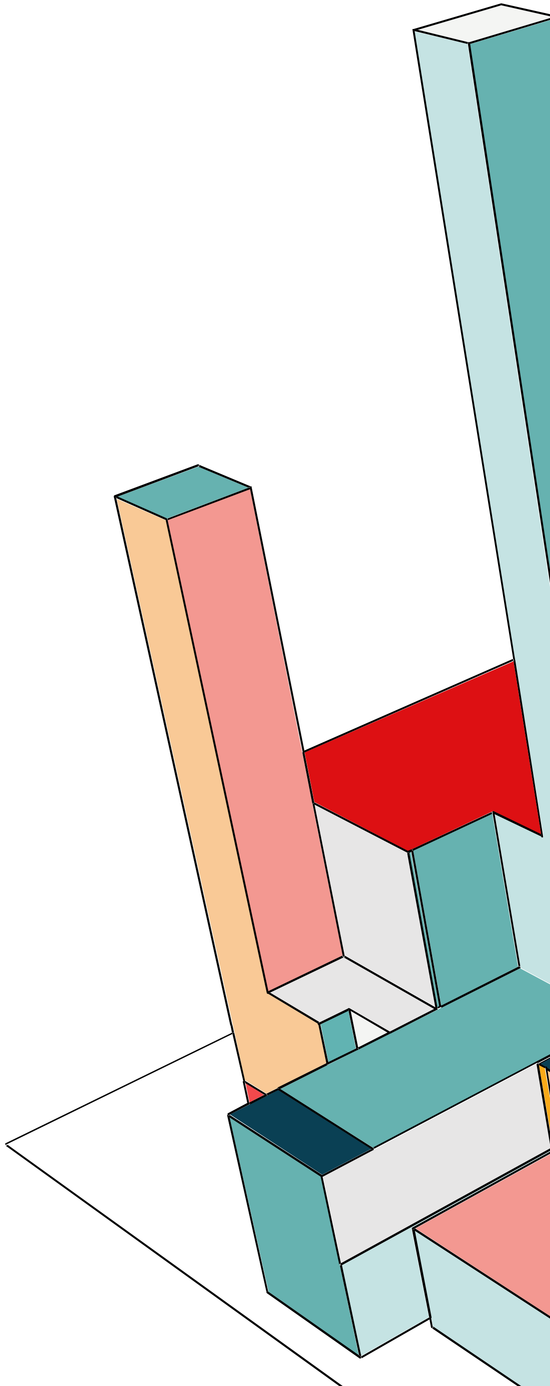
- An interest-free loan for the purchase of a primary residence is a relatively simple concept that offers a potentially life-changing benefit for workers and their families.
- Administering this form of benefit places a small administrative burden on the plan, making it an attractive option for plans whose participants are struggling with housing insecurity.
- The interest-free loan is not includible as income to the participant and the loan becomes a receivable to the fund for audit and reporting purposes. Secured by a lien on the primary residence of the participant, the fund will have a secured interest in the residence that it retains until the loan is paid off upon sale or refinancing of the primary residence. In the event of foreclosure or bankruptcy, the fund retains its position as a secured interest.
- Challenges of implementing such a benefit may include difficulty in determining how much the fund can commit to a housing assistance benefit and what criteria will be used to determine eligibility for the program.



BOSTON HOTEL WORKERS LOCAL 26 HOUSING ASSISTANCE BENEFIT

- Housing assistance for Participants
  - with two or more years of enrollment in the health benefit fund
  - Benefit is a non-interest loan of up to $10,000 to be used for the down payment or closing costs of a participant's primary residence located within 55 miles of the member's workplace.
  - The interest-free loan is secured by a lien on the primary residence recorded at the appropriate Registry of Deeds.
  - The loan is repayable in full upon the earliest of the member's sale of the property at an amount equal to or greater than the original purchase price, relocation, or death.

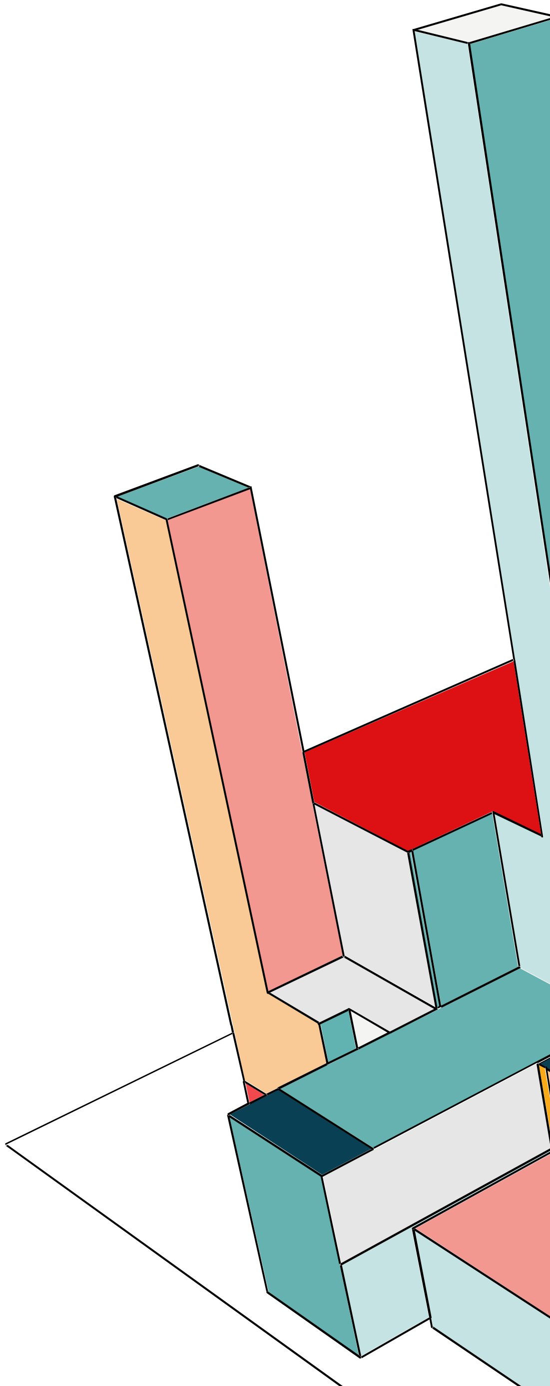
Source:https://www.local26.org/wp-content/uploads/Local-26-Housing-Application-Packet-1.pdf



VEBA LAS VEGAS!
CULINARY AND BARTENDERS HOUSING PARTNERSHIP

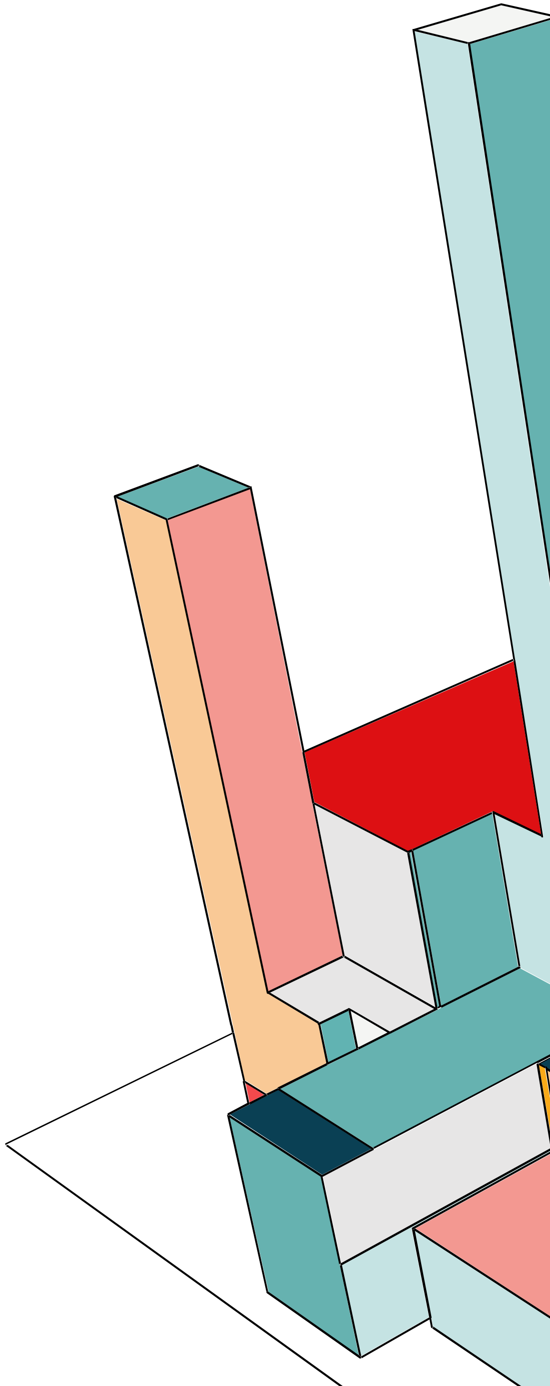
- A down payment assistance loan up to $20,000 with a 0% interest rate.
- The loan is due and payable when the participant sells the property, leases it out, vacates, or refinances for cash-out of equity.
- The property must be the primary residence.
- Participant must be a first-time homebuyer(s) as defined by HUD who qualifies for a 30-year fixed rate mortgage.
- Borrower(s) must make a minimum contribution from their own funds, according to loan type:
    - 3.5% of the purchase price with an FHA mortgage.
    - 1% of the purchase price with a Conventional mortgage.
- Total Household Income must fall below income limits:($100,750 for a household of 1-3 persons or $115,000 for a household of 4 or more persons).
- Homebuyer education workshop and a one-on-one housing counseling session with nonprofit organization required.

Source: https://culinaryunion226.org/affiliates/housing-fund



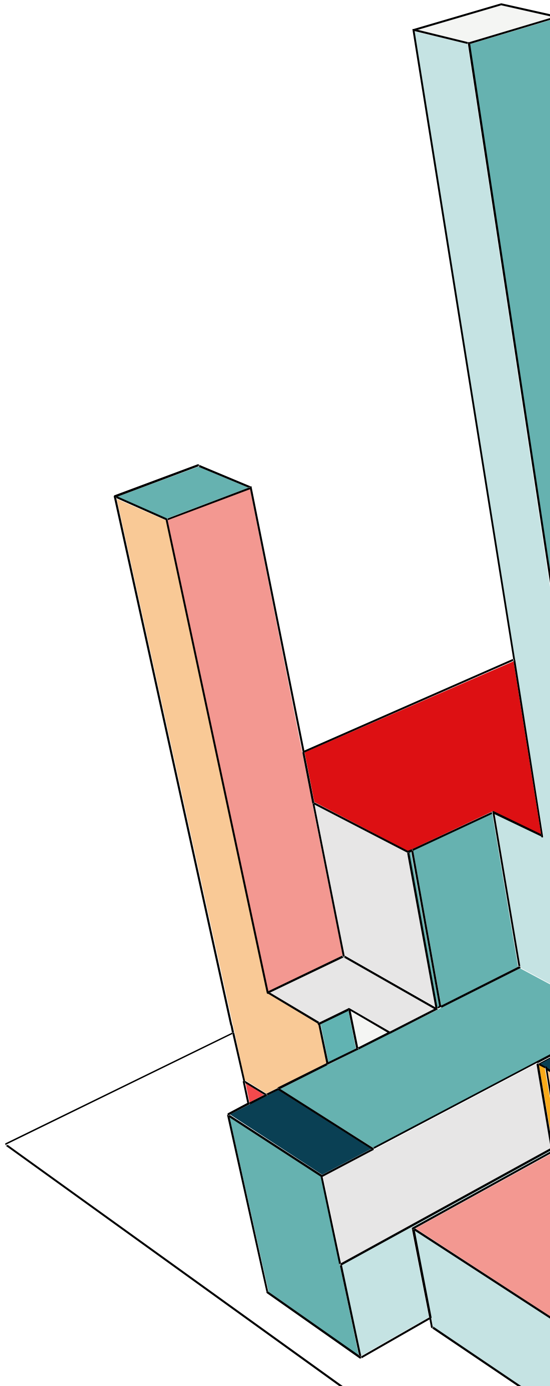
HOUSING ASSISTANCE IS NOT ENOUGH!

- While the availability of housing assistance through ERISA welfare funds can help workers achieve some measure of housing security, it is by no means a silver bullet.
- There remains a shortage of housing for low- and moderate-income families.
- Zillow reports that the United States is 4.5 million homes short of demand.
- The National Low Income Housing Coalition study shows that there is a shortage of 7.8 million rental units for extremely low-income families.
- The manifest need for investment in housing and home construction suggests that new and creative sources of funding are needed to address this gaping need.



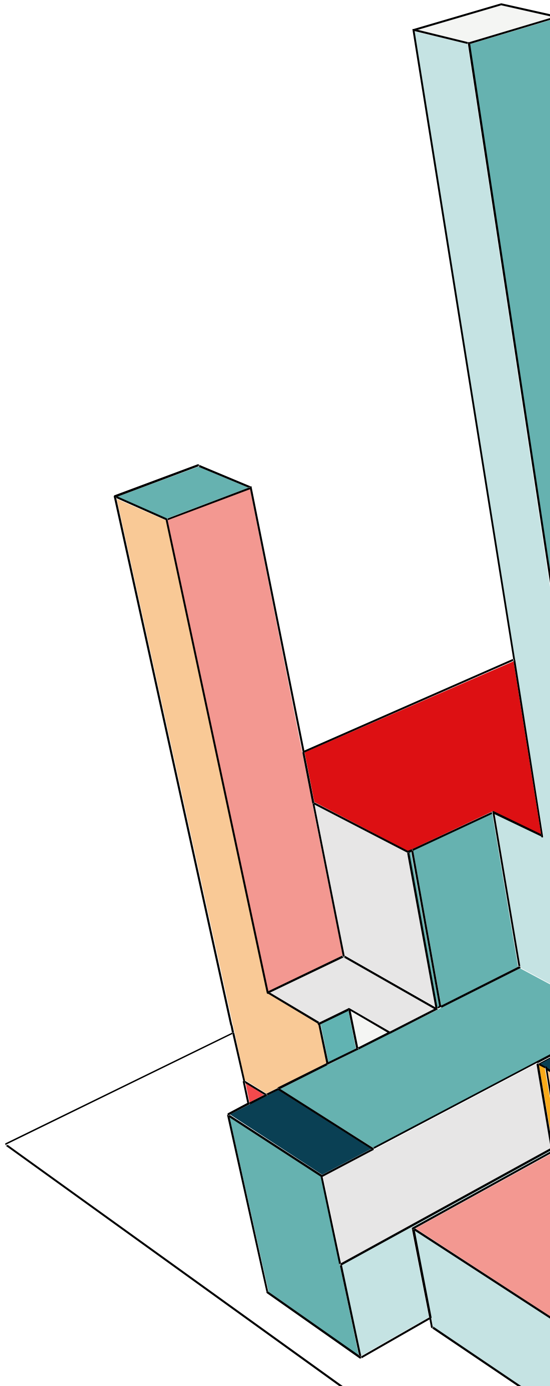
WHAT ELSE CAN BE DONE?

- In 2023, the Department of Labor issued its final rule on "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights." The final rule retained the core duty of ERISA fiduciaries to focus investment decisions on risk-return factors and not subordinate the interests of participants and beneficiaries to objectives unrelated to the provision of benefits under the ERISA plan.
- The final rule clarified that the duty of fiduciary prudence may include economic effects of climate change and other ESG considerations on a particular investment or investment course of action where such factors are relevant to the risk and return analysis to be considered within the scope of a fiduciary's duty of prudence.
- The final rule also provided for a "tiebreaker test" whereby a fiduciary may select an investment based on collateral benefits other than investment returns where the fiduciary prudently concludes that competing investments equally serve the financial interests of the plan over the appropriate time horizon.
- The Rule has been subject to legal challenge and no final ruling has issued.



WHAT ELSE CAN BE DONE WHEN ADMINISTRATIONS CHANGE?

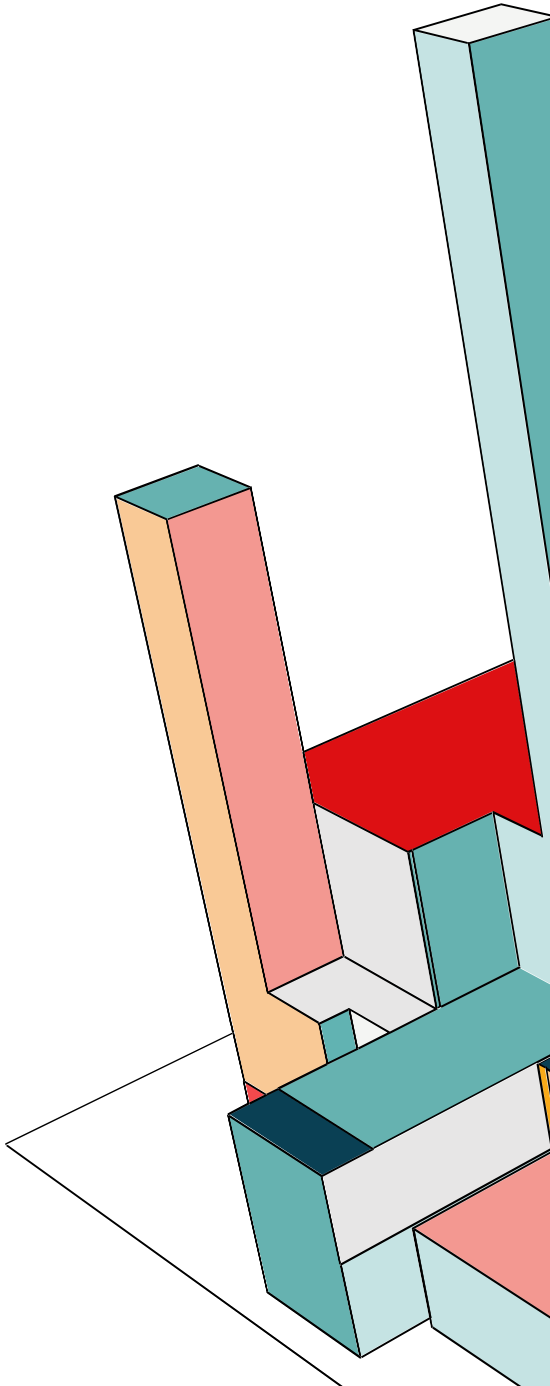
- While recent DOL guidance in 2023 on using environmental, social and governance (ESG) considerations in the investment of pension plan assets, suggested that plans may consider investments in affordable housing, the results of the recent election now portend that guidance from the incoming EBSA administration may revert to the narrower standard of “pecuniary factors” alone.
- Given this evolving change in policy, ERISA pension plans that might have considered investments in housing may need to focus on how investments in housing will meet this more narrow focus on financial return with no consideration of collateral benefits.



BONDS TO BUILD HOUSING

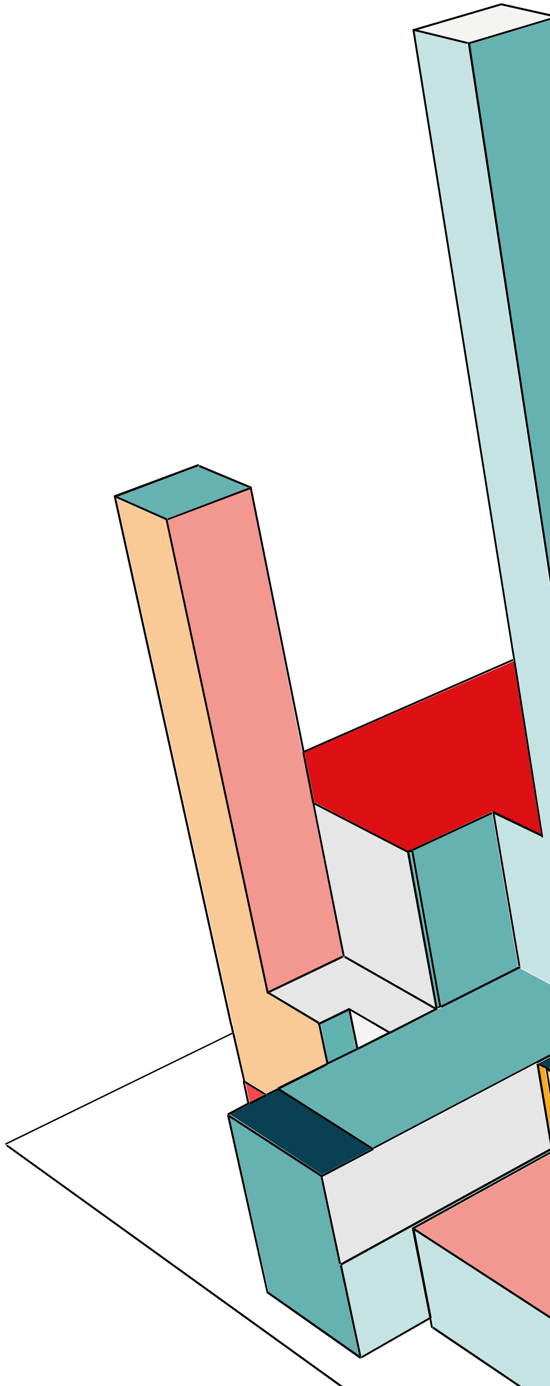
- While noting that tax-free municipal bonds have no appeal to tax-exempt pension funds, a recent report by the Americans for Financial Reform Education Fund and Georgetown's Kalmanovitz Initiative for Labor and the Working Poor noted that bonds to build housing that would be owned by an occupant or a nonprofit entity would not qualify for tax exemption but could be attractive as a low-risk investment in a fund's fixed income portfolio.
- The report also suggested alternative investments in cooperative housing and housing investment trusts.

Source: Brunsting, Lindsley, Palladino, et. al. *Investing for the Common Good: How Workers' Pensions Can Help Solve the Housing Crisis,* Americans for Financial Reform Education Fund and Georgetown University's Kalmanovitz Initiative for Labor and the Working Poor. November 2024.



STATE AND LOCAL INITIATIVES

- In 2007, the Nevada Legislature appropriated $1 Million to provide grants to encourage the creation of employer-assisted housing programs.
- An "employer-assisted housing program" means a program for the provision of down-payment assistance, closing-cost assistance, reduced-interest mortgages, mortgage guarantees, rental subsidies or individual development account savings plans, or any combination thereof, to assist employees in securing affordable housing in Nevada.
- State Housing Division promulgated regulations outlining criteria: https://www.leg.state.nv.us/nac/nac-319.html#NAC319Sec491



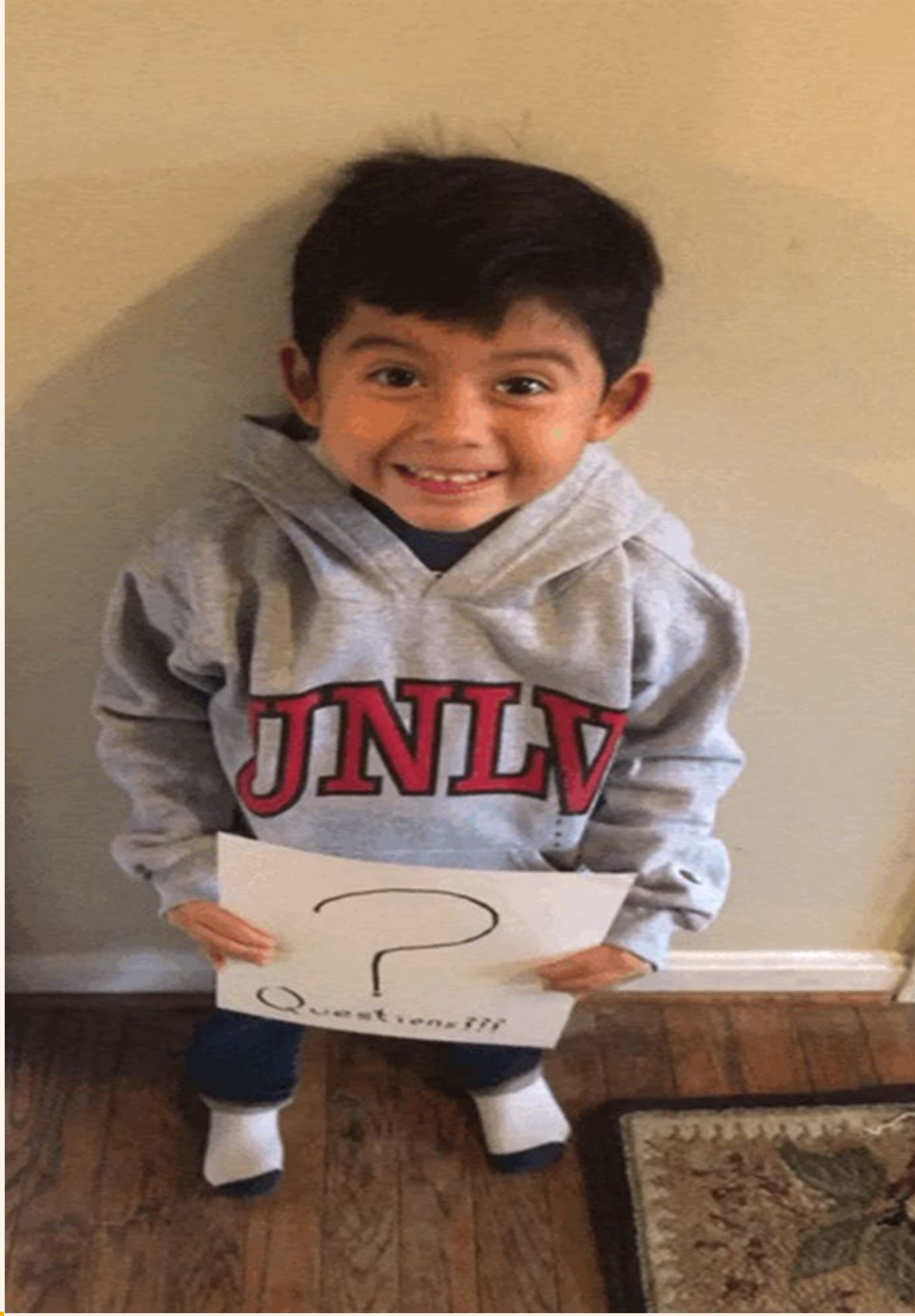
HOUSING SECURITY IS A HEALTHY OBJECTIVE

The 1990 amendment to Taft-Hartley provides a means to provide housing assistance that helps participants and their families get their start toward achieving housing security and home equity.

While some welfare plans can show how their program of interest-free loans secured by a lien on the principal resident can help workers make a down payment for a home, much more is needed to help American workers and their families secure a future without homelessness.

Where investment options in housing are available that meet the prudence standards required of ERISA fiduciaries, pension and welfare plans should be encouraged to make those investments working in coordination with state and local governments and other stakeholders in the housing sector to provide housing security for all.

QUESTIONS?



THANK YOU!

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