

PART 3

HEALTH EQUITY IN HOUSING: EVIDENCE AND EVIDENCE GAPS



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The Legal Levers for Health Equity through Housing Report Series

This is the third in a series of reports exploring the role of law in housing equity and innovative uses of law to improve health equity through housing. The reports are based on extensive literature scans and semi-structured interviews with people who are taking action in housing policy and practice. The full series includes: Report I: A Vision of Health Equity in Housing; Report II: Legal Levers for Health Equity in Housing: A Systems Approach; Report IV: Creative People and Places Building Health Equity in Housing; Report V: Governing Health Equity in Housing; Report VI: Health Equity through Housing: A Blueprint for Systematic Legal Action.

HEALTH EQUITY IN HOUSING: EVIDENCE AND EVIDENCE GAPS

"People can make healthier choices if they live in neighborhoods that are safe, free from violence, and designed to promote health. Ensuring opportunities for residents to make healthy choices should be a key component of all community and neighborhood development initiatives. Where we live, learn, work, and play really does matter to our health. Creating healthy communities will require a broad range of players—urban planning, education, housing, transportation, public health, health care, nutrition and others—to work together routinely and understand each other's goals and skills."

— Robert Wood Johnson Foundation Commission to Build a Healthier America (Robert Wood Johnson Foundation Commission to Build a Healthier America, 2014)

Introduction

The law is one of many forces that has given us a country with less healthy housing than we need, and more segregation and inequality than we should tolerate. Changing laws that sustain health inequity in housing, enforcing laws that promote housing equity, and enacting new laws to support change, are important elements of a strategic plan to change the housing system in America. Achieving legal change can be difficult, given powerful conflicting interests, but it is possible. A less obvious but equally important challenge is figuring out what reforms and innovations to advocate. Laws that don't work, or cause harm, squander the efforts that went into enacting and enforcing them. Worse, as long as they are perceived as "solutions," they can stand in the way of further policy innovation and reform. Successful use of the many legal levers we described in Report Two in this series depends heavily on our understanding of whether and how they work alone and in combination.

The deficits in our knowledge of the law's impact on housing cannot be understated. Laws make big promises, but rarely are the intended and side effects of law tested by strong, timely research. This report takes a cold-eyed view at the evidence base. This foundation of evidence is, by any conventional measure, thin. Aside from evaluations of the federal Moving to Opportunity program, programs providing free legal representation to tenants in housing court, and the Family Self Sufficiency program, we did not

find randomized controlled trials or sophisticated quasi-experimental studies on the impact of law on housing-related outcomes. Rather, the literature is largely comprised of what would ordinarily be considered low-quality evidence: observational studies of one or a few instances over short time spans without strong design elements to support causal inference. There are few studies exploiting changes in policy as a rigorous, natural experiment over time. Most studies are peer-reviewed, but not-for-profit groups' reports comprise much of the literature in some domains. We therefore do not explicitly rate the strength of evidence, but start with the general caveat that virtually all our knowledge of the workings of the legal levers we describe should be approached with caution.

In this report we provide an in-depth account of the evidence base for each lever. (A table in the Appendix offers a concise summary of some of the most important things we don't know.) Our findings can be seen as a blueprint for badly needed research, but that's not our primary purpose. Rather, this report is meant to wipe the slate of misconceptions and unwarranted confidence in legal levers, to help us better structure future efforts as the experiments they are.

Domain 1: Increasing the Supply of New Affordable Housing

The Low-Income Housing Tax Credit Program (LIHTC)

Between 1987 and 2016, the federal government subsidized the building of more than 3 million housing units through LIHTC.¹ The program has an annual budget of nearly \$8 billion, and between 1995 and 2016 has created an average of 108,810 units per year.² Nonetheless, demand for affordable housing

“Despite advances in technology and increased collaboration among innovators across disciplines, we still lack the empirical research necessary to illuminate best practices in housing law and policy. ... There's so much more that we can do to evaluate laws and policy proposals. For example, we should be conducting research that determines how policy changes will affect real lives and to surface strategies that will work. ... Let's start asking the people most affected by poor housing conditions and other social problems, 'What would you change? What barriers have you experienced in the past? How would you address them?' ... We need to better understand and more accurately define the problem, and to test any proposed solutions to truly improve housing and the health outcomes that stem from it. Without this examination, we are engaged in guesswork that could have unintended consequences.”

– Emily A. Benfer, Columbia Law School



In the United States, a demand for affordable housing continues to outpace supply. Photo via Unsplash.

continues to outpace supply.³ It is plausible that more tax credits would lead to more units, but the “big” empirical policy question is whether a system of tax credits is the most efficient way to build the affordable housing we need.* That question is extremely difficult, if not impossible to answer. The decentralized, public-private approach to affordable housing finance, of which LIHTC is the fulcrum, emerged from a more traditional government production model that was itself not meeting the need, and was vigorously attacked by proponents of a more conservative, free-market approach.⁴

In the matter of health equity in housing (HEIH), we ask how and to what extent LIHTC contributes to greater economic and racial integration. The majority of LIHTC developments are sited in low-income neighborhoods,⁵ which often means predominantly neighborhoods of color with fewer jobs, more pollution, and lower performing schools.⁶ That is a feature of the program, rather than a bug. Decisions as to the locations for LIHTC development are based on the Qualified Allocation Plan (QAP), which every state must create. The Internal Revenue Code requires that the QAP give preference to projects located in high-poverty census tracts, and gives developers in those tracts a tax credit increase of up to 30 percent. Developers respond to this incentive by building more in high-poverty neighborhoods.⁷ The program also incentivizes building developments that are not mixed income, as states reward developments that have more affordable units by giving more tax credits to those developers.⁸

These rules of the game raise concern that LIHTC contributes to racial segregation and poverty concentration.⁹ Overall, studies of LIHTC’s impact on segregation show mixed results with modest

* That is, assuming that LIHTC survives. By slashing the corporate tax dramatically enough to seriously reduce what corporations owe, the Tax Cuts and Jobs Act dramatically decreased the demand for tax credits, but since LIHTC has bi-partisan support, however, Congress may yet maintain historical funding levels by other means. Conor Dougherty, Tax Overhaul Is a Blow to Affordable Housing Efforts, N.Y. TIMES (Jan. 18, 2018), <https://www.nytimes.com/2018/01/18/business/economy/tax-housing.html>.

effects either way. While LIHTC might not contribute actively to increased racial segregation and poverty concentration, it is clear that it is not a major force for racial and socioeconomic integration.¹⁰ Another concern is that owners of LIHTC properties may seek relief from the affordability obligation after as few as 15 years, which in the life-cycle of affordable housing that could take a decade to plan and build, is a short time.¹¹

There are efforts to make LIHTC a stronger force for socioeconomic integration. Some states have included provisions in the QAP that encourage siting of developments outside of high-poverty areas. A pre-post analysis of LIHTC developments in San Antonio found that after a provision was added to Texas' QAP to award points to developments in high opportunity areas, more LIHTC units were sited in low-poverty neighborhoods.¹² Similarly, since 2013, New Jersey's QAP requires 60 percent of the tax credits to be allocated in low-poverty areas, such as prosperous suburbs. This change has been shown to increase the number of LIHTC developments next to public transit, placing half of the credits in "job-center municipalities," and in "proficient school districts."¹³ Authors of a HUD report published in 2015 analyzed changes in the QAPs of 21 states between 2002 and 2010, and found that various types of opportunity provisions impact the siting outcomes of LIHTC developments.¹⁴ The report shows considerable variation in how states define an opportunity area, the mechanism through which the state incorporates opportunity in the QAP (set asides, point changes, or others), and the impact of the provision on locational outcomes. The effects of QAP innovations on LIHTC housing will continue to be an important research need.

Land Use Regulation

Land use regulation (or zoning) is a primary instrument of planning that potentially has effects on health equity in housing across all the domains of our model.

“In addition to producing new LIHTC units, we need to preserve existing LIHTC units that were developed 10, 15, 20, 25, 30 years ago, whose affordability restrictions are expiring and are in need of new resources to keep them affordable, and keep them in the affordable inventory.”

– Beth McConnell, Philadelphia Association of Community Development Corporations

“[LIHTC is] probably the single most inefficient way one could possibly imagine to produce affordable housing. But ... it has survived because there's a whole bunch of intermediaries, lawyers, accountants who make money off of it in the transaction costs that keep it politically alive, which is sad, but people have to play the game because it's literally the only game in town.”

– Tim Iglesias, University of San Francisco School of Law

It can influence the cost of new housing, and can be a means of affirmatively encouraging, or preventing, integration. Zoning law also governs what types of land uses exist near housing (e.g., factories, dumps, payday loan stores) that can impact residents' health, particularly in neighborhoods of color. The classical economic argument against zoning is that it raises costs, which constricts the supply of affordable housing, and that the most expeditious way to get people the housing they need is not to subsidize rent, but to relax regulations that restrict supply. There is evidence to support this theoretical position, although it varies both in significance and magnitude.¹⁵ In its broadest form, the claim ignores the potential benefits of land use regulation, and its many particular forms. In contrast to the traditional economic position, two urban economists assert that deregulating zoning to allow for higher density is not the answer to the lack of affordable housing. They argue that too much emphasis is placed on housing supply as the solution, rather than addressing issues of income inequalities and their effect on the demand for housing in urban areas.¹⁶

Land use regulations can be divided into five categories: limits of density and intensity,[†] design and performance standards, shifting costs (such as sewerage) from locality to developer, banning development on specific lots, and controls on growth.¹⁷ The majority of studies that attempt to estimate the impact of land use regulation use crude measures to capture the regulation, so we remain in the dark as to the costs and benefits of particular elements of regulation. A review of empirical evidence concluded that “the most promising strategy for improving our understanding of the economic effects of zoning and land use restrictions would be to devote resources to measuring regulatory conditions systematically in a large cross-section of cities and metropolitan

“[E]xclusionary zoning . . . is a major factor, maybe the major factor in the persistence of racial residential segregation. . . In my view, exclusionary zoning is a really key factor, and if we could deal with exclusionary zoning and flip it and get inclusionary zoning, that would make a huge difference.”

– Alexander Polikoff, *Business and Professional People for the Public Interest*

areas.”¹⁸ A few years after this recommendation, researchers from Wharton conducted a survey of land use regulations in more than 2,000 jurisdictions. The survey results, along with additional data, were used to create a measure of the stringency of the regulatory environment in each community, called the Wharton Residential Land Use Regulatory Index.¹⁹ Using the Index, the researchers were able to model a demand curve for housing,²⁰ correlate housing elasticity to amount of developable land,²¹ and found that coastal markets are more highly regulated.²²

Vacant Properties, Land Banks, and Land Trusts

In 2017, 9.3 percent of housing units in the U.S. were estimated to be vacant year-round.²³ Vacant lots and properties have been shown to be associated with neighborhood crime, illicit drug use, and reduced perception of safety.²⁴ Some 500 jurisdictions have

[†] In October 2019, the Minneapolis City Council adopted a resolution to approve Minneapolis 2040, a comprehensive plan that includes the city's intent to allow duplexes and triplexes to be developed in places currently zoned only for single-family homes. MINNEAPOLIS 2040 – THE CITY'S COMPREHENSIVE PLAN (2019), <https://minneapolis2040.com/pdf/>. See Erick Trickey, *How Minneapolis Freed Itself From the Stranglehold of Single-Family Homes*, POLITICO MAGAZINE (July 11, 2019), <https://www.politico.com/magazine/story/2019/07/11/housing-crisis-single-family-homes-policy-227265>.

enacted vacant property registration ordinances.²⁵ The popularity of these ordinances does not translate to research and evaluation. We found only one study that suggests that these registration requirements actually reduce vacancy rates.²⁶

Once the property is vacant, land banks are a popular mechanism to acquire and dispose of the land with reasonable dispatch. Along with securing a marketable title, land banks can (or should) become integral to the community development and planning process, helping to define and promote desirable uses of vacant property.²⁷ A limited evaluation of literature finds mostly positive results. An implementation study of five land banks shows how “a land bank can operate as a local government authority to transcend the legal and structural impediments to conversion” of vacant properties to “assets.”²⁸ The challenge in major land banking cities, where tens of thousands of properties may be vacant, is scaling up disposition.²⁹ While land banks can have measurable success locally,³⁰ there is a question of whether they can be scaled to address the magnitude of the vacancy problem. For example, if the Philadelphia Land Bank disposed of 500 vacant parcels per year, and not a single new parcel became vacant, it would take about 83 years for Philadelphia to dispose of all of its 40,000 vacant properties.³¹ Scaling up is possible in theory, and would be expected to increase the magnitude of benefits compared to mechanisms like sheriff’s sales, but it also increases administrative costs considerably.³² This is particularly problematic since research shows that the major challenge for land banks is funding.³³ While there is general agreement, mainly from non-peer reviewed evaluations, that land banks are a force for good in communities, it is unclear if they can be scaled to address systemic vacancy in cities with distressed housing stock.

Another mechanism to increase the utilization of vacant land parcels is a community land trust. Similarly to land banks, community land trusts show a lot of promise, but do not seem to scale. Compared to

“There is a great push-pull even within the ... administration on whether the land bank should be acquiring and disposing the property that it has for market rate to bring in revenue, to fund the land bank’s operations versus for affordable housing. So, there’s a lot of frustration that not enough of the land in the land bank is going to affordable housing. And then you’ll also hear from some of the land bank staff, ‘Well you don’t have any money to build it, so why am I giving you land?’ ... So, this has been a little bit of a challenge. I think it’s a great tool and it holds great promise, but we haven’t quite figured out how to use it in a way that really advances equity, which is what we wanted.”

– Beth McConnell, Philadelphia Association of Community Development Corporations

other homeowners, community land bank homeowners had a much lower rate of completed foreclosures throughout the foreclosure crisis of 2008-2010.³⁴ This was due, in part, to the fact that the land trust helped delinquent homeowners sell their houses and avoid foreclosure.³⁵ A few case studies on specific land trusts show that they were able to help low-income people achieve homeownership, while retaining affordable housing.³⁶ A national study of community land trusts in 2006 found that nearly 190 land trusts throughout the U.S. hold 6,495 units.³⁷

Building Codes

Like land use regulations, building codes are mechanisms to promote safety³⁸ and support rational planning, but also they affect the cost of new housing.³⁹ Empirical interest in the basic costs and benefits of building codes seems to have peaked in the 1970s and 1980s. A 1969 report to the Douglas Commission on Urban Problems identified several building codes as wasteful practices.⁴⁰ While multiple early studies found that more restrictive building codes (often unclear how defined) led to an increase in cost of construction,⁴¹ a study that aimed to determine the magnitude of the increase found that “the effects of local building codes on housing costs is, at most, small.”⁴²

Building codes can be separated into various types. Fire codes, plumbing codes, and general safety codes are directly related to public health.⁴³ On the other hand, regulations on room dimensions, though they may reflect older notions of public health, are harder to justify epidemiologically and may unnecessarily inflate housing costs; the general trend is for these type of codes to reduce in scope in recent years.⁴⁴

A review of the current literature suggests that there is a need for an update to address today’s code and technology. As in the broader land use law literature, the majority of existing studies utilize a more or less fuzzy measure of restrictiveness, and measure cost without consideration of the potential

benefits of these codes. For the policymaker, it is imperative to know if the increased cost of codes has a greater societal benefit, but we found only a few studies conducting this type of cost-benefit analysis of building codes.⁴⁵ One study helped distinguish code requirements that improve safety (fire codes/ structural requirements) from those that are outdated or excessive.⁴⁶

Domain 2: Maintaining Existing Housing Affordable, Stable, and Safe

Housing Code Enforcement

Housing codes have existed in the U.S. since New York enacted the first systematic building and housing code, the Tenement Housing Act of 1867. Today most municipalities in the U.S. have adopted local housing codes, and have established agencies that enforce them.⁴⁷ While there is a small body of literature suggesting that code enforcement improves housing quality⁴⁸ and reduces incidence of childhood lead poisoning,⁴⁹ the effects on the housing market are still largely unevaluated. A study of enhanced lead enforcement in Rochester, NY found no negative impact on housing markets.⁵⁰ A case study from Minneapolis supports these results.⁵¹ However, an older study of three cities found that strict housing code enforcement contributed to urban blight.⁵² Given differing results and limited evidence, the debate remains open and policymakers who want to improve the adequacy of the rental housing stock without increasing rents are left in the dark. Research is needed on the impact strict housing code enforcement may have on factors such as rent levels, eviction rates, and number of rental units on the market. In addition, evaluation is needed on the effectiveness and impacts of potentially promising models, such as strategic code enforcement.⁵³

Many communities face challenges in their efforts to enforce housing codes. Some of these barriers include insufficient resources for code enforcement, use of enforcement mechanisms that do not aid in achieving compliance, vague code language, and unattainable standards (e.g., “middle-class” standards that are hard to achieve in lower income markets).⁵⁴ In addition, most cities use a complaint-based enforcement system, which relies on residents to be proactive in reporting violations. A study of landlords and tenants in Milwaukee offers compelling evidence that renters face significant legal and practical barriers to enforcing housing standards themselves. Landlords may retaliate against tenants who make direct complaints to city authorities, and tenants whose rent is in arrears may be prevented from raising code violations in a defense to eviction.⁵⁵ These findings suggest that any new approach to code enforcement must consider the inequity, and possible futility, of relying on tenant complaints to drive the process.

Landlord-Tenant Law

One-third of Americans rent their home. High transaction costs and the dynamics of the rental market can result in unequal bargaining power between landlords and tenants.⁵⁶ A variety of laws regulate the relationship between landlords and tenants, including the implied warranty of habitability and state landlord-tenant laws. The 1970s “revolution” in landlord-tenant law, which saw the wider adoption of laws favoring renters,⁵⁷ sparked a vigorous debate about the effects that tenant rights and the implied warranty of habitability would have on the poor: did more legal protection for tenants enhance housing quality and well-being, or push rents up and the supply of units down? “Despite all the ink spilled in this debate, little empirical research has been conducted to inform either position.”⁵⁸

The state of the evaluation of other landlord-tenant law is not much better. A 1980 study using mixed methods to evaluate the utilization of landlord-tenant

“In Alabama, a tenant isn’t allowed to withhold rent, or do repairs and bill the landlord, or anything like that. If they have problems with the unit, they have to vacate or sue, neither of which are really options for a low-income tenant. ... That kind of legal problem ... is a real issue in terms of protecting tenants.”

—John Pollock, Public Justice Center

laws in two cities found that legislation has had little effect on landlord and tenant litigation.⁵⁹ Since then, we found no evaluation of the effect of landlord-tenant law on relations between the two groups, and experts seem to know little about the effect.⁶⁰ Matthew Desmond’s study of the Milwaukee market powerfully demonstrates the failure of landlord-tenant law to give some leverage to tenants.⁶¹ The tenants he followed were consistently bullied by their landlords, and found little help in court. It is unclear to what extent states enforce landlord-tenant laws, and to what extent tenants know about these laws or how to use them to protect their rights. Additionally, it is unknown how parties typically operate in the shadow of these laws where many, if not most, evictions are handled informally.

Lead Law

Lead-based paint (LBP) hazards are regulated at the federal, state, and local level, using a variety of approaches. Federal lead laws do not impose an affirmative obligation to evaluate or address lead paint hazards, and do not authorize federal agencies to order risk reduction work. Rather, most federal LBP enforcement programs strive to promote compliance with the law and voluntary risk reduction work.⁶² At least 43 states and the District of Columbia have a lead poisoning prevention statute,⁶³ and many cities enact local lead laws in an attempt to fill the gaps left by federal and state laws.⁶⁴ Despite these laws, lead-based paint hazards continue to be a problem in many homes.

Most state-level policies are based on secondary prevention, in which children with high blood levels are identified through blood screening programs, then attempts are made to remove the hazards that caused the exposure.⁶⁵ Maryland, Massachusetts, and Rhode Island have adopted primary prevention approaches, which require inspections and controls before children become poisoned by lead;⁶⁶ however, more evaluation is needed on the impact of these approaches. At the

“Only 17 cities and states have any pre-rental lead hazard inspection laws that identify lead hazards before children are exposed. Children in all other private market housing and in the Housing Choice Voucher Program and project-based Section 8 units that receive less than \$5,000 must develop lead poisoning, and the permanent brain damage it causes, before any meaningful lead hazard inspection is required. ... It’s not until the children have elevated blood lead levels and the neurological harm that that causes that any interventions are triggered. In addition to the unconscionable nature of a policy that uses children’s bodies to detect lead hazards, this approach costs society upwards of \$10.9 billion dollars for one cohort of children in the direct costs of medical bills, special education, lead-related ADHD, lost lifetime earnings, and parental work loss.”

—Emily A. Benfer, Columbia Law School

local level, the proactive approach used in Rochester, NY, has been effective.⁶⁷ Rochester adopted a Lead Based Paint Poisoning Prevention Ordinance, which went into effect in 2006,⁶⁸ and is widely recognized for its success in reducing the number of children in the county with elevated blood lead levels.⁶⁹ Diffusion of this apparent success has been limited.

Disability Discrimination Laws

Litigation under laws that prohibit housing discrimination based on disability — including the Americans with Disabilities Act (ADA),⁷⁰ the Fair Housing Act,⁷¹ and Section 504 of the Rehabilitation Act⁷² — is a lever available to help people with disabilities secure and maintain access to safe, stable housing. For example, the reasonable accommodation provisions of these laws might be used to address housing hazards such as lead and mold.⁷³ According to the U.S. Census Bureau, more than 85 million people living in the U.S. had a disability in 2014.⁷⁴ Approximately one-in-six renter households with worst case needs (defined as renters with very low incomes “who do not receive government housing assistance and who pay more than one-half of their income for rent, live in severely inadequate conditions, or both”) included a person with a disability.⁷⁵ An analysis of the 2011 American Housing Survey indicated that less than one percent of all housing units are wheelchair accessible, 3.8 percent of units are livable for people with moderate mobility challenges, and 33.3 percent of all housing units are potentially modifiable to be accessible to people with disabilities.⁷⁶

In 2018, disability was the basis for 56 percent of housing discrimination complaints filed throughout the U.S.⁷⁷ Some cases of housing discrimination based on disability are resolved successfully;⁷⁸ however, many instances of discrimination may go undetected or unreported. We did not find any evidence on the impact these laws have on overall housing stability for people with disabilities. See the Fair Housing Protections section below for further discussion on



In 2018, disability was the basis for 56 percent of housing discrimination complaints filed throughout the United States. Photo via Pixabay.

problems with enforcement of anti-discrimination laws generally.

Nuisance Property Ordinances

It is estimated that more than 2,000 municipalities have nuisance or “crime-free” property ordinances.⁷⁹ A review of laws in the 40 most populous U.S. cities shows that there is wide variation regarding the type of conduct the city defines as a nuisance, along with other key elements.⁸⁰ There has been little research on the effects of these laws. An analysis of nuisance citations issued in Milwaukee in 2008 and 2009 found that almost one-third were generated by domestic violence incidents, and that most property owners abated these nuisances by evicting abused women. Properties in predominantly black neighborhoods had the highest likelihood of receiving a nuisance designation. The authors concluded that a nuisance property ordinance “has the effect of forcing abused women to choose between calling the police on their abusers (only to risk eviction) or staying in their apartments (only to risk more abuse)” and could explain “why women from poor black neighborhoods are evicted at significantly higher rates than men.”⁸¹ An analysis of two cities in New York State found that domestic violence was the largest grouping of enforcement under both cities’ nuisance ordinances.⁸² A qualitative study interviewing 27 low-income African American women who survived domestic violence found that the ordinances hinder access to safe and secure housing, as well as discouraging them from calling 911.⁸³ An empirical analysis of the effect of nuisance ordinances on domestic violence in California, published in a thesis paper, indicates that these ordinances result in a decrease in domestic violence-related 911 calls, and an increase in self-reported domestic violence incidence.⁸⁴ Some states have enacted laws protecting the right to call for emergency assistance or otherwise preempted local nuisance ordinances.⁸⁵

The harm of nuisance property ordinances may not be limited to people in need of emergency intervention.

“[T]hese ordinances contain a lot of different types of provisions that target everything from dead trees on a property to calls for service and criminal activity ... we don’t have any issue with an ordinance that may be more focused on physically hazardous property conditions, building conditions. ... Our overall recommendation is that they should repeal any provisions that are based on calls for emergency or police service or criminal activity occurring at the property regardless of who’s responsible for it.”

– Sandra Park, ACLU Women’s Rights Project

“Local rent and eviction control ordinances help build communities, because people can foresee that they can be there for the foreseeable future. ... Children are not forced to relocate from schools periodically, and we know ... about the benefits of staying put. The benefits of not having to move schools, the benefits of developing relationships with local health care providers and other community members. We know the health benefits of those are well documented. So, when you have these local ordinances that allow people to remain in their homes, communities are built, and all the benefits that flow out of that and back into the individuals involved are great and they’re certainly well documented.”

– Marc Janowitz, East Bay Community Law Center

Some argue that these ordinances reduce the supply of rental housing by resulting in the revocation of property rental licenses, or by discouraging homeowners from providing rental housing because they do not want to be exposed to the possibility of nuisance enforcement.⁸⁶ While the intuition behind the argument is plausible, we found no empirical evaluation to support it.

There is a need for further research on the effects nuisance property ordinances have on people needing emergency services, black renters, and on the rental market in general. Potential positive impacts of nuisance property ordinances must also be explored. Nuisance ordinances could be a tool for addressing vacant or poorly maintained properties,⁸⁷ and there is some evidence that these ordinances may decrease crime rates in specific locations.⁸⁸ The problem with these ordinances seems to be the punishment of people in emergency situations, not the duty imposed on a landlord to be responsible for hazards on the property. We did not find any studies evaluating the effects of nuisance ordinances on blight and vacant properties.

Eviction-Related Levers: "Just-Cause," Free Legal Representation, and Eviction Record Laws

In response to what some have called an eviction crisis, cities and states are looking for solutions to help protect renters. One solution is the enactment of just-cause eviction laws. Opponents argue that these laws, like other tenant protections, hurt low-income renters by raising the cost of affordable housing, and reducing the number of affordable units that can be built.⁸⁹ Proponents assert that any costs are justified by the decrease in unfair and expensive evictions, which can result in localities bearing the cost of emergency housing and homelessness.⁹⁰ Supporters also argue that just-cause protections promote housing stability, particularly in areas where landlords

“[W]hen the city started really increasing its investment as part of the efforts to get a right to counsel, in the span of just from 2014 to 2016, the city increased representation from 1 percent to 27 percent. And in that same time period, the eviction rate went down by 24 percent. ... In terms of the ripple effect outside of the court and the justice system ... we’re hoping that we’re going to see impact on tenant health, and tenant financial stability... it’s going to take five years for the right to counsel to be implemented. So, it’s going to be awhile before we fully know what’s happening. ... [T]he city ... has an office of civil justice that is analyzing the impact of providing counsel . . .”

– John Pollock, Public Justice Center

might want to evict tenants to get higher rents.⁹¹ As with other tenant protections, in order to be effective, landlords and tenants must know about them and believe they will be enforced.⁹² As of now, despite the salience of both the just-cause approach and eviction generally, little or no research has been done to explore the implementation and effects of just-cause laws.

Just-cause and other changes in landlord-tenant law do not eliminate, and may increase, the need for legal services. In recent years there has been a push for free legal representation of low income tenants in housing courts. At least three jurisdictions—New York City, Newark, NJ, and San Francisco—have laws requiring that free legal representation in housing court be provided for tenants facing eviction.⁹³ San Francisco’s law covers all tenants facing eviction, while New York City’s law and Newark’s law provide for representation for tenants under a specific income level. Some studies — including a randomized controlled trial — suggest, not surprisingly, that lawyers improve outcomes for tenants.⁹⁴ These improvements take many forms: higher rates of staying in the unit, less money owed to landlords, more days to move in the event the tenant cannot remain in the unit, and a much higher likelihood of having an eviction not appear on the tenant’s credit history.⁹⁵

One report concluded that providing free representation to eligible tenants in eviction cases in New York City would provide a net cost savings of \$320 million to the city.⁹⁶ While there is not yet extensive evaluation of what happens once a city starts providing these services to all low-income tenants, the year-one report from New York City found that 84 percent of represented tenants remained in their homes and the decline in the eviction rate in the ZIP codes where right to counsel has been implemented was five times greater than the decline in other ZIP codes.⁹⁷ Key questions for additional evaluation include: whether representation reduces informal evictions, how much added cost the measure creates for legitimate evictions, whether

systemic representation reduces the eviction filing rate, whether represented tenants are less likely to face another eviction within a defined period of time; whether renters have better long-term results regardless of whether they stay in their home, and whether a case-by-case system of dispute resolution at the point of eviction is the best use of public resources for helping low-income tenants.

Once a tenant is evicted, the eviction mark on their record may make it extremely difficult for them to find new housing, as landlords may refuse to rent to someone who has been evicted. At least one state has a law that provides some level of privacy protection regarding eviction records. California mandates that eviction case records may become public only after 60 days have passed since the filing of the complaint, and only if the plaintiff prevailed.⁹⁸ Some other states have laws that either automatically restrict access to certain eviction records or allow courts to restrict access.⁹⁹ The impact of such laws is unknown.

Rent Control

For most of the last 50 years, rent control has been unpopular among both economists and policymakers. A survey conducted in the 1990s found that 76 percent of economists working in the U.S. agreed that “a ceiling on rents reduces the quantity and quality of available housing.” No other of the 40 propositions in the questionnaire had a higher consensus rate.¹⁰⁰ A 2009 review of economic studies found that rent control “creates many more problems than it solves,” and the negative impacts for strict and soft rent controls go beyond housing supply.¹⁰¹ One study found that, “far from eliminating segregation, at least in New Jersey, rent control has appeared to increase it.”¹⁰² For their part, policymakers expressed their views in a lack of new rent control legislation.

The growing pressure for affordable housing, especially in booming areas like the San Francisco Bay area and New York City, and new evidence, have begun to disrupt the dismissal of legal mechanisms for

“In looking at major policy changes, I would highlight the growth of rent control ordinances in California. Most of the ordinances that existed before 2016 were from the 1970s. And then, last year, three jurisdictions passed rent control ordinances. The growth of rent control ordinances reflects a change in organizing around rental housing. It reflects a change in the impact that housing costs are having on people. So, that’s an interesting dynamic that’s playing out, and having ripple effects across the country, as groups are organizing around rent control.”

– Shamus Roller, National Housing Law Project

“Rent control has not built one single unit of affordable housing. But what it does is preserve a stock of affordable housing. Units covered by rent control become what I call a public resource. That is, they create a supply of housing where people can live affordably and predictably, economically and socially. So, it does have that advantage. It does not create housing, but it does have the advantage of allowing people to remain where they are at affordable rates. And so, I do think it is a part, a part. Not the solution, but a part of an overall scheme to solve what is a crisis, an epidemic of lack of affordability and lack of housing generally in the United States.”

—Marc Janowitz, East Bay Community Law Center

controlling or stabilizing rent.[‡] Whether it is conceived as strictly controlling rents over the long term, or smoothing rents in bubble markets, supporters can point to measurable benefits for both individual renters and their communities. Rent regulation may be a tool to slow gentrification,¹⁰³ and can be an immediate and cost-effective way to stabilize rents in booming markets.¹⁰⁴ Certainly the benefits to tenants and their communities are plain. A 2018 examination of the evidence on rent stabilization found that “there is a general consensus that tenants in rent-regulated apartments stay in their apartments longer and typically benefit from rent discounts.”¹⁰⁵ A study in San Francisco found that tenants living with rent control protections paid less rent than tenants without such protections, with an estimated benefit totaling about \$214 million annually for San Francisco renters in regulated units. It also found that tenants living in rent-controlled units were less likely to be forced to move, and that rent control helped prevent displacement of racial minorities.¹⁰⁶

There is also some evidence and opinion to the effect that at least some forms of rent control will not inevitably reduce the supply of housing.¹⁰⁷ Indeed, one economist recently went so far as to suggest that in some rental markets rent control could increase housing supply – if developers do not generate enough profit from rents from existing units, they might have an incentive to build more units.¹⁰⁸ This is consistent with evidence from California showing that substantially more apartments are being built in cities with rent control policies than in those without them.¹⁰⁹

‡ In June, 2019, New York passed legislation which, among other things, extends and makes permanent some of the existing provisions addressing rent control and stabilization, repeals provisions of New York law that remove rent stabilization for units that becomes vacant, establishes a new cap for the maximum rent increase for tenants in some rent-regulated units, and limits landlords’ ability to remove tenants from rent-stabilized units for their own personal use. S. 6458, 2019-2020 Reg. Sess. (N.Y. 2019). See also Sharon Otterman & Matthew Haag, Rent Regulations in New York: How They’ll Affect Tenants and Landlords, N.Y. TIMES (June 12, 2019), <https://www.nytimes.com/2019/06/12/nyregion/rent-regulation-laws-new-york.html> (providing a summary of the legislative changes); Luis Ferré-Sandurní et al., Landmark Deal Reached on Rent Protections for Tenants in N.Y., N.Y. TIMES (June 11, 2019), <https://www.nytimes.com/2019/06/11/nyregion/rent-protection-regulation.html?module=inline> (discussing the changes to New York’s rent regulations).

Even with these positive findings, however, the issue remains difficult. The effects of rent control may depend on the specific regulatory design: while moderate rent regulation does not appear to impact new construction, stricter rent control can result in the conversion of rental properties to condos or other owner-occupied housing.¹¹⁰ There is also the endemic problem of landlord strategic behavior to get around controls, and tenant behavior to exploit them, which requires a robust enforcement response, and which many of our interview respondents noted. Landlord misbehavior includes targeting long-term tenants with rents significantly below market for harassment or eviction, using pretexts like reclaiming the unit for an owner's family member, and failing to maintain the unit.¹¹¹ Tenants for their part may illegally sublet or hold on to units that are no longer a primary residence. For a community considering rent regulation in the face of rapidly rising rents or gentrification, the unanswered questions include how to write rules that minimize market losses and non-compliant behavior while ensuring that benefits go to the tenants at greatest need. In the face of an affordability crisis, however, more communities may be ready to attempt these trade-offs, and research on the overall effects of rent control on individual and community well-being remains an unmet need.

Mortgage Foreclosure and Property Tax Foreclosure

There is substantial evidence on the impact of foreclosure on health. Through similar mechanisms to eviction, foreclosure impacts vulnerable populations and leads to demonstrated poorer health.¹¹² There is ample evidence that foreclosure is correlated with decline in mental health including an increase in the likelihood of suicide.¹¹³ Foreclosure also has serious implications for communities, such as: decreasing property values; deteriorating the appearances of homes; increasing crime and social disorder, population turnover, fiscal stress on local governments; and reducing the quality of local

government services.¹¹⁴ In this section we examine legal levers for avoiding mortgage foreclosure and property tax foreclosure.

Mortgage Foreclosure. Some states have laws that protect homeowners who are at risk of losing their home to mortgage foreclosure by establishing an emergency fund or similar program to assist borrowers in default.¹¹⁵ We found very little research evaluating these types of programs. The only review we found was an analysis published by the Federal Reserve Bank of New York of the Homeowners' Emergency Mortgage Assistance Program (HEMAP) in Pennsylvania. HEMAP was created in December 1983 by Act 91¹¹⁶ to help homeowners who were facing foreclosure due to circumstances beyond their control by providing loans to bring mortgages current, with repayment based on income.¹¹⁷ The authors of the review found the program was able to successfully reduce the number of foreclosures (with approximately 80 percent of HEMAP loan recipients having retained ownership of their homes), and there was a high rate of HEMAP loan repayment.¹¹⁸ Other states have laws providing for emergency assistance for homeowners at risk of foreclosure,¹¹⁹ but we did not find any evaluation of those laws.

In addition to emergency assistance programs, foreclosure mediation programs (sometimes called mitigation programs) can reduce mortgage foreclosure. Foreclosure mediation is a process where a neutral third party works with a homeowner and a lender in an attempt to negotiate a settlement to avoid foreclosure.¹²⁰ At least 24 states and D.C. have foreclosure mediation programs that were established by state statute or the courts.¹²¹ Six of these states have automatic mediation or negotiation, which is mandatory and automatically scheduled when a foreclosure is initiated. In 18 states and D.C., the program is optional, meaning that homeowners must receive notice that mediation is available, but homeowners have to request a mediation session if they wish to participate.

“Once these houses are unable to pay their property taxes within three years, they go through tax foreclosure, and once foreclosed, they go into auction, where, investors are able to buy these homes, and that’s a huge issue in the city. In some areas, it has caused further blight and depopulation when investors don’t do anything with these homes. And we have issues with blight, and vacancies, and abandonment of homes, which then have rippling effects on the neighborhood by devaluing the homes and causing further disinvestment in the neighborhood. And so, what we’re trying to do is show, it’s not just one house, it’s one house that has all these effects on all these other homes.”

– Roshanak Mehdipana, University of Michigan School of Public Health

Several reports analyze foreclosure mediation programs in a specific state or part of the U.S. These reports have showed consistent positive results.¹²² The literature indicates that one factor that is crucial to participation rates is whether or not a homeowner is automatically enrolled in a mediation program. The highest participation rate for programs where homeowners have to opt in to mediation is about 20 percent, whereas participation can be as high as 70 percent in programs with automatic enrollment. However, sizable reductions in foreclosures have been reported for both types of programs.¹²³

Property Tax Foreclosure. Many homeowners lose their homes not only to mortgage foreclosure, but also for failure to pay property taxes. A 2018 report from the University of Michigan noted that more than 47,000 occupied tax delinquent properties entered the foreclosure auction in Detroit since 2010.¹²⁴ A 2014 analysis of tax sale issues in Baltimore found that a homeowner could lose their house for an unpaid tax bill as low as \$250.¹²⁵

Most states have laws providing some type of property tax relief.¹²⁶ There are four common types of property tax relief programs, which typically aim to help the elderly, veterans, individuals with disabilities, or people with low incomes:¹²⁷ Homestead Exemptions or Credits,¹²⁸ Circuit-Breakers,¹²⁹ Property Tax Deferral Programs,¹³⁰ and Property Tax Limits.¹³¹ Each of these programs use slightly different mechanisms for making property taxes more affordable for homeowners. Homestead exemptions and credits work by decreasing the appraised property value. Circuit breaker programs target low-income families and reduce property taxes through the use of a sliding scale or threshold based on income. Property tax deferral programs allow people to defer property taxes until the settlement of the estate or until the property is sold. Finally, property tax limits (including caps or freezes) exist in almost every state but do not guarantee that property taxes will not increase from year to year.¹³²

“If government agencies had sufficient enforcement resources, victims of housing discrimination would be filing many more complaints, and securing more relief. As it is, most people worry that filing a complaint is too risky. They hear that few complaints succeed and settlement amounts are small. Rather than risk losing their housing in the process, they just put up with discrimination and poor housing conditions.”

– Michael Allen, Relman, Dane & Colfax

burdensome documentation for everyone in the house.¹³⁹

While there is an enormous body of literature in the area of foreclosure, there seem to be very few studies rigorously evaluating laws aimed at preventing foreclosures. Empirical research is needed to identify the effectiveness and impacts of these laws. One big question here is what is the proper balance between the social cost of unpaid property taxes versus the social cost of having vacant properties and homeless families?

Domain 3: Affirmatively Furthering Fair Housing

Fair Housing Protections

Though officially outlawed, housing discrimination persists in the rental, sales, and lending markets.¹⁴⁰ (See Protections against Discriminatory and Predatory

Consumer Lending section for further discussion of discrimination in lending.) The persistence of discrimination is reported both by the U.S. Department of Housing and Urban Development (HUD)¹⁴¹ and by non-for-profit groups helping home-seekers with their complaints — tens of thousands every year.¹⁴² The actual magnitude of housing discrimination is probably understated in complaint statistics, as many instances of discrimination go unreported. A 2017 Robert Wood Johnson Foundation-Harvard University survey reported that 45 percent of African-Americans, 25 percent of Asian-Americans, and 31 percent of Hispanic Americans report having been discriminated against when seeking housing.¹⁴³ Further, there is reason to believe that many people of color are so discouraged by the persistence of segregation, and expect discrimination, that they don't seek housing in predominantly white areas at all.

The persistence of discrimination in housing markets is evidence that half a century after the enactment of the Fair Housing Act, the law achieved neither sufficient social norm change nor deterrence to make landlords stop discriminating. Although the evidence raises concerns about anti-discrimination efforts,¹⁴⁴ there is a dearth of literature evaluating the impact of fair housing law on racial residential segregation. There is almost no empirical evaluation of either federal or state fair housing laws' effect on residential segregation, and the little evidence that does exist suggests that such laws may be insufficient as a tool of large-scale integration.¹⁴⁵

Although anti-discrimination law alone could not be expected to solve the problems of racism and segregation, research on other civil rights laws suggests that enforcement could be a significant limiting factor.¹⁴⁶ Civil rights enforcement can be deficient in several ways. First, many victims may not come forward because they do not realize they have experienced discrimination, they may not trust the complaint system or wish to invest time and energy in litigation, or simply because their focus is on trying to fill their housing needs.¹⁴⁷ Second, the system may

not process claims efficiently, which could reduce the incentives for victims to complain and housing providers to abstain from discrimination.¹⁴⁸ Less than 3 percent of HUD complaints result in a charge of discrimination, about one-third are settled, and nearly half are dismissed or withdrawn. There is also a considerable backlog of incomplete cases.¹⁴⁹ Often the complaints that are resolved result in very small settlements for victims with no effective policy changes, which reduces motivation for housing providers to stop discriminating.¹⁵⁰

Third, the enforcement system may not use its investigatory mechanisms optimally. Fair housing law has been enforced in large part by funding non-governmental fair housing organizations to assist people who suffer discrimination, investigate claims, and conduct pro-active efforts like testing. The National Fair Housing Alliance (NFHA) reports on these activities, and supports organizations across the country that investigate potential discrimination in dozens of cities and states. For its part, the U.S. Department of Justice (DOJ) brings a small but impactful number of pattern and practice cases each year. While these efforts successfully identify discriminatory activity and produce significant positive legal outcomes, NFHA recognizes that “this work receives neither the support nor respect it deserves.”¹⁵¹

Private non-profit organizations throughout the country work to enforce laws prohibiting housing discrimination. These organizations investigate claims of housing discrimination (often through testing), and file administrative complaints and lawsuits to enforce fair housing laws.¹⁵² In 2018, these organizations processed more than 23,000 fair housing complaints (75 percent of the total complaints for the year), which is more than three times the amount handled by HUD, DOJ, and state and local government agencies combined.¹⁵³ In addition to providing many other fair housing services, these organizations work with industry groups “to address fair housing issues in the rental, real estate, lending, and insurance

sectors.”¹⁵⁴ Over the past decade, private fair housing organizations have addressed the majority of housing discrimination complaints, and their investigations have resulted in significant individual and systemic relief.¹⁵⁵

Many of these organizations are funded through HUD’s Fair Housing Initiatives Program (FHIP).¹⁵⁶ For fiscal year 2017, HUD awarded a total of \$38.5 million in FHIP grants to more than 130 fair housing organizations across the country.¹⁵⁷ We found only one recent study (published by HUD in 2011) assessing FHIP, which analyzed outcomes but did not evaluate the efficiency or effects of the program.¹⁵⁸ The study found that FHIP organizations act as a filter, screening and helping to resolve many cases without referring them to HUD, ensuring that the majority of cases referred to HUD are within its jurisdiction.¹⁵⁹ Seventy-one percent of the cases in which a FHIP organization was a complainant were closed by HUD either because of conciliation or a finding of reasonable cause that discrimination occurred. Of the complaints that were referred to HUD without involvement by a FHIP organization, only 37 percent were closed for such favorable reasons.¹⁶⁰ Those conducting the study also concluded that the majority of the testing evidence associated with complaints came from FHIP organizations. An Urban Institute study from 1994 found that FHIP increased the quality of fair housing complaint processing, including aspects related to testing.¹⁶¹ Given the significant involvement of private fair housing organizations in the enforcement of fair housing laws, empirical evaluation of the impacts of FHIP is greatly needed.

Affirmatively Furthering Fair Housing Rule

The Fair Housing Act not only prohibits discrimination in housing-related transactions, but it also imposes a duty on HUD and its program participants to affirmatively further fair housing (“AFFH”).¹⁶² This duty applies to state and local governments that receive HUD funds,¹⁶³ but has never been systematically

and vigorously enforced by HUD against recipients who have not undertaken concrete and meaningful steps to identify and overcome barriers to fair housing.¹⁶⁴ Despite some protracted and high-profile enforcement litigation,¹⁶⁵ noncompliance has persisted throughout the country. In 2010, the U.S. Government Accountability Office (GAO) published a report highlighting HUD's general ineffectiveness in enforcing the AFFH mandate. Subsequently, HUD undertook to promulgate new regulations to clarify the AFFH process and standards for grantees.¹⁶⁶

Published in 2015, the new rule requires grantees to use an Assessment Tool prescribed by HUD to conduct and submit an Assessment of Fair Housing ("AFH") to HUD that describes the state of (un)fair housing and a plausible course of affirmative action. The AFH must identify integration and segregation patterns, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity for any protected class, and disproportionate housing needs for any protected class.¹⁶⁷ The AFH must include goals to overcome fair housing issues, and the public must be given an opportunity to participate in the development of the AFH.¹⁶⁸ Program participants are encouraged to collaborate and submit a single AFH for multiple jurisdictions.¹⁶⁹ The rule was well-received among fair housing proponents, and communities receiving HUD funds began the first round of assessments. In May of 2018, however, HUD issued a rule withdrawing the Assessment Tool, claiming that it was deficient.¹⁷⁰ Because the Assessment Tool must be used to complete the AFH, this rule in effect suspended the AFH submission requirement. As of the publication of this report, HUD is in the process of developing a proposed rule to amend the existing AFFH regulations.

The AFFH rule could in theory promote HEIH through a number of mechanisms: the process of organizing across municipal boundaries and gathering information could on its own mobilize stakeholders and instigate cooperation for healthy, affordable and integrated housing; the information gathered through the process could raise awareness, and inspire and

"AFFH is an attempt to implement the 1968 Fair Housing Act 50 years after the fact. It's almost pathetic to think they're really finally stating what is the implication of this law for people who are getting federal funds to build fair housing in the suburbs or anywhere, and how does it apply to them. And so it's a little bit sad in a way that it comes so late in the game. But it's positive development, and it establishes the principle that we have to look more broadly. We can't just look at each unit separately and ignore how the aggregate impact of these different housing policies generates affordable housing."

— Paul Jargowsky, Rutgers University-Camden, Center for Urban Research and Education

"The AFFH rule itself is laudable. But I am concerned that there are not sufficient mechanisms and incentives for enforcement."

— Liza Cristol-Deman, Brancart & Brancart

“I’m sure there’s a way to create an inclusionary housing policy that does work, and does create quality affordable housing for low-income communities, and strengthens and stabilizes neighborhoods.”

– Rasheedah Phillips, Shriver Center on Poverty Law (formerly with Community Legal Services of Philadelphia)

“I think there are more than 800 policies like this across the country, most of which are mandatory, some of which are voluntary. They’re ... all designed very differently, every one is a snowflake. So, they’re all unique but the vast majority of the research that exists, shows that it does not significantly or meaningfully or at all slow down construction, if they’re designed properly”

– Beth McConnell, Philadelphia Association of Community Development Corporations

inform political action; the threat or use of HUD enforcement measures could overcome resistance to concrete action. Our interviewees generally expressed modest hopes for the mobilization and information mechanisms,¹⁷¹ but also concern that neither the rule itself nor HUD’s track record showed any commitment to use the lever of funding to force true affirmative measures.¹⁷² For the moment the initiative is stalled, and in this sense, the Rule is consistent with 50 years of failed or aborted efforts at HUD to strongly enforce the AFFH mandate. Because there is hope among housing advocates that the AFFH duty could be an effective way to mobilize communities to improve affordability at the metropolitan level, research on the effect of the planning mechanism would be helpful in guiding future investment in the AFFH process.

In addition to the federal mandate, eight states have an AFFH requirement in their state fair housing law.¹⁷³ However, the impact of these state requirements on segregation levels is unknown.

Inclusionary Zoning

Inclusionary zoning is a legal lever that could be used to reduce the exclusionary impact of conventional zoning. Inclusionary zoning ordinances vary, but generally include the following elements: a required share of affordable units in a development; target income levels; a time limit on the affordability requirements; and a payment-in-lieu of affordable units option. Some inclusionary zoning ordinances are mandatory, while others are voluntary and use incentives such as density bonuses.¹⁷⁴ In considering the evidence of its impact, it is important to recognize that inclusionary zoning is a nuanced legal mechanism that can be tailored to the needs of a specific community given the market pressures, housing resources, and the regulatory environment.

From an economic theory perspective, inclusionary zoning raises the costs of housing construction. Developers must build some units below the market price, which economists would predict would result in

affordable housing that is smaller or of lower quality, and market-rate housing that is more expensive than it otherwise would have been. These specific effects — marginally higher prices for market rate houses and smaller affordable units — have been observed, but the size of the effect varies depending on location and study design, and often the overall effect on the market is small.¹⁷⁵

The economic critique of inclusionary zoning is merely a variant of the argument against zoning itself. The most important question for HEIH is whether inclusionary zoning provides as many (or perhaps more) affordable units as the market or other mechanisms would supply, in locations that create racial and socioeconomic integration. A recent review finds that inclusionary zoning can increase affordable housing production and integration, and indeed “produce[s] as much affordable housing as the Low Income Housing Tax Credits (LIHTC) program,” though there may be trade-offs between the production and integration goals.¹⁷⁶

The challenge for research is to better identify what particular elements of inclusionary zoning — i.e., which regulatory strategies — are most effective in producing both goals without significant adverse effects. There has been some debate within the affordable housing community as to the ideal elements of inclusionary zoning laws (e.g., the proper balance between on-site affordable units and in-lieu fees, and which populations the law should target).¹⁷⁷ Study of effective strategies can also inform normative debates about any tradeoffs that inclusionary zoning creates: if there are less overall housing units, but the share of affordable housing increases, do we define that as a net positive or net negative from an equity lens with the goal of promoting a culture of health?¹⁷⁸

Fair Share and other State-Level Inclusionary Development Mandates

While zoning is usually left to localities, some states have created inclusionary development requirements

“[S]ome of the common concerns were that, if you ... introduce subsidized housing to a middle-class community, that this could increase taxes ... there might be a greater social need, so, there’s going to be a bigger need for tax expenditures, to support social welfare programs. There’s a concern that crime will go up. There is a concern that property values will decrease, and that school quality will go down. So, we measured all these things. We compared Mount Laurel to a number of other suburban towns in South Jersey with similar demographic characteristics, similar built environment, similar transportation ... infrastructure. And, we found that, in this case, taxes did not increase. Crime rates did not go up. And, property values didn’t go down. In some cases, actually, property values went up.”

– Len Albright, Facebook (formerly with Northeastern University)

and procedures. These requirements are based on income, not race, but given how closely associated race and income are, the requirements may work as a force against racial segregation as well as poverty concentration. Litigation in Mount Laurel, NJ, led to a still-unique legal lever, a requirement that all municipalities develop/accommodate their “fair share” of affordable housing.¹⁷⁹ The three-decade process of defining, implementing and applying the requirement statewide has involved local governments, courts, and the state legislature. The results of the *Mount Laurel doctrine* are “a proof of concept for the further development of affordable family housing, both as a social policy for promoting racial and class integration in metropolitan America and as a practical program for achieving poverty alleviation and economic mobility in society at large.”¹⁸⁰ Outcomes for low-income individuals who acquired affordable housing through the Mount Laurel litigation were better than those for similar people who remained in an area of concentrated poverty on numerous measures, including welfare use, employment, mental health, and income.¹⁸¹ However, the doctrine has neither substantially desegregated New Jersey, nor been widely adopted by other states. Commentators have argued that “economics cannot be used as a proxy for race, that economic remedies cannot be used to solve racial problems, and that steps in addition to the economic remedies are required to promote racial integration in the suburbs.”¹⁸²

A few other states have tried to discourage exclusionary local zoning by giving developers or other stakeholders a mechanism for overriding local decisions or expediting the appeal of unfavorable treatment. For example, the Massachusetts Comprehensive Permit Act (Chapter 40B)¹⁸³ allows developers to seek one permit instead of applying to multiple local boards if at least 20-25 percent of the units in the developments have long term affordability restrictions. Connecticut law allows developers in municipalities with little or no affordable housing

“Chapter 40B essentially provides a backdoor entry for the development of affordable housing for communities that don’t have such housing and lack many other available options. I think 40B would be very hard to pass today in Massachusetts ... I think there should be less focus on the areas that are already deeply entrenched zoning environments, and more focus on the many areas that are relatively open but on a trajectory that could lead towards a very tough zoning environment. A bit of legal action now might be helpful in this area.”

– Edward Glaeser, Harvard University

stock to appeal unfavorable zoning and planning decisions to the superior court, and places the burden of proof on the municipality, rather than the developer, to show that its decision was necessary to protect substantial public interests.¹⁸⁴

There is some evaluation of these “fair share-ish” laws. For example, there is a small body of literature that argues that Chapter 40B played a role in increasing density in Massachusetts, combating exclusionary zoning,¹⁸⁵ and generating economic activity.¹⁸⁶ Further, research indicates that in California, New Jersey, and Massachusetts, LIHTC produces more affordable housing units per year than the statewide affordable housing programs.¹⁸⁷ For all these state mechanisms, the questions seems to be less whether they work in promoting more affordable housing than how to

overcome the political barriers to their wider adoption in areas where local rules are affirmatively furthering unfair housing.

Domain 4: Enhancing Economic Choice for the Poor

When housing costs exceed 30 percent of a family’s income, rent and wages are both in play. Addressing regulatory factors that inflate the cost of housing is only one way to use legal levers for housing equity. It is also important to explore putting more resources in the hands of lower-income people making housing choices, giving them more agency in deciding where to live. The question of money has special resonance in the matter of housing for people of color. As historian



There is general agreement that federal rental assistance programs can and do work to protect families from homelessness, and make housing affordable for many low-income individuals and families. Photo via Unsplash.

Richard Rothstein has documented, 20th century housing laws, policies and enforcement practices have confined millions of Americans to what were in effect ghettos, and denied them access to mortgages. This did not just influence where people lived then, when black people were barred from or hounded out of new developments like Levittown, PA; it also exposed them to a life course of higher rents, exploitative housing finance instruments, and lagging home prices, all of which set millions of people on a slower, weaker path of wealth creation. Rothstein argues that current income and wealth disparities between white and black Americans are the direct result of past government policy, and should be considered legally actionable *de jure* discrimination.¹⁸⁸ We will consider this argument and its implications in later reports in this series, but Rothstein’s historical research highlights the importance of economic choice to health equity in housing.

In this section, we explore the evidence on the housing effects of income support, subsidy, and other measures addressed at the economic resources of low-income people. Income support mechanisms also go to the core of social inequality as a driver of public health. The legal mechanisms we discuss in this domain are meant to increase the resources available to lower income people and to protect what they have from fraud and exploitation. Because the legal drivers of poverty are generally neglected in research and policy discussions, and because the link between resources and HEIH is so important, we will go into somewhat more detail on the evidence in this domain than we have in previous ones.

Federal Rental Assistance Programs

There are three primary rental assistance programs in the United States aimed at making housing affordable for families with low incomes: Public Housing, Section 8 Project-Based Rental Assistance (PBRA), and the Section 8 Housing Choice Voucher (HCV) program. There is general agreement that these programs

“Over 90 percent of the evictions happening, at least in our city, are over money. This is in part because many people can’t afford to pay the rent and that’s for various reasons. You hit one little bump or crisis, it sends you into tailspin. So many people are living paycheck to paycheck.”

– Rasheedah Phillips, Shriver Center on Poverty Law (formerly with Community Legal Services of Philadelphia)

can protect families from homelessness and make housing affordable for many low-income individuals and families.¹⁸⁹ In short, they work. There are legal elements that can detract from or enhance their effects, but the primary limitation on their impact is fiscal. None of these are entitlement programs, but rather, are funded through annual appropriations, so there is no guarantee that people in need will receive any of this assistance, and in fact, only a minority do so: 77 percent of eligible low-income renter households receive no federal rental assistance, and 92 percent of low-income adults without children (6.3 million households) receive no assistance.¹⁹⁰ Law explicitly limits access to these programs via eligibility requirements, such as bans on individuals or households with a record of drug crimes.¹⁹¹ There is evidence that public housing authorities (PHAs) implement even stricter rules than those required by federal policy,¹⁹² and that the search for housing among re-entrants seeking to navigate this varied policy landscape creates stress for them and their families and perpetuates stigma associated with criminal history that may in turn have implications for health.¹⁹³

Public Housing. There are currently approximately 1.2 million households living in public housing units across all 50 states and the District of Columbia.¹⁹⁴ HUD oversees the program, which is run locally by about 3,300 PHAs.¹⁹⁵ While the public housing program allows some low-income renters to live in subsidized housing (even if in poor condition),¹⁹⁶ the discrepancy between those who participate in the program and those who apply for public housing is shocking. In 2013, Washington, D.C., closed its waiting list for the public housing program because the number of households waiting for 8,000 units had reached 70,000.¹⁹⁷ There are similar stories across the country. Waiting list counts from 2012 show there were approximately 1.64 million families waiting for public housing, and it was estimated that the figure would be closer to 2 million if some of the waiting lists were not closed.¹⁹⁸

Congress has not appropriated funds to build new public housing units since the mid-1990s.¹⁹⁹ The public housing program was funded for operations and maintenance at \$7.428 billion for 2019, up from \$7.3 billion in 2018.²⁰⁰ However, those funds have largely been inadequate to repair deteriorating properties,²⁰¹ contributing to the loss of about 250,000 public housing units since the mid-1990s.²⁰² It was estimated in 2010 that \$26 billion would be required to repair or replace existing public housing units to make them decent and economically sustainable.²⁰³ To “preserve and improve public housing,” Congress authorized the Rental Assistance Demonstration (RAD) program as part of the Consolidated and Further Continuing Appropriations Act of 2012.²⁰⁴ It provides for the voluntary, permanent conversion of public housing developments to the Section 8 housing program (described below), to enable the leveraging of private capital to finance the rehabilitation or replacement of properties.²⁰⁵ The program is currently being evaluated.²⁰⁶

Section 8 Project-Based Rental Assistance. The PBRA program currently provides affordable housing to approximately 1.2 million households.²⁰⁷ Through this

program, HUD contracts with private owners to provide subsidized housing to low-income residents.²⁰⁸ Funds are no longer provided for new properties under this program, but funding is available for the renewal of existing PBRA contracts.²⁰⁹ The PBRA program was funded in the amount of \$11.747 billion for 2019, up from \$11.515 billion in 2018.²¹⁰ Owners can choose to opt out of the program when their contracts expire, and owners of buildings in neighborhoods with rising property values have an incentive to not renew contracts with HUD, and instead move into the private market to get higher rents.²¹¹ When owners opt out of the program, a housing voucher is the only support option for low-income renters.²¹² HUD reports that more owners have renewed their Section 8 contracts in recent years than in the past,²¹³ which could suggest increased stability in the PBRA program. However, opting out remains more likely in neighborhoods where rent under the program is lower than fair market rent for the area, meaning that gentrification, which is potentially an opportunity for greater socio-economic integration, can instead lead to existing residents being forced to move.²¹⁴

Section 8 Housing Choice Voucher (HCV) program. Most of the literature we found evaluating federal rental assistance programs concerns the HCV program. The evidence is clear that the HCV program can help low-income renters afford housing. Housing vouchers have been shown to reduce homelessness and housing instability.²¹⁵ The HCV program can also benefit property owners. In 2016, owners received \$17.5 billion in voucher payments, which can help to pay property taxes and maintain properties in good condition.²¹⁶ There is limited, and mixed, evidence on the question of whether and under what circumstances substantial voucher programs result in higher rents for unsubsidized units.²¹⁷

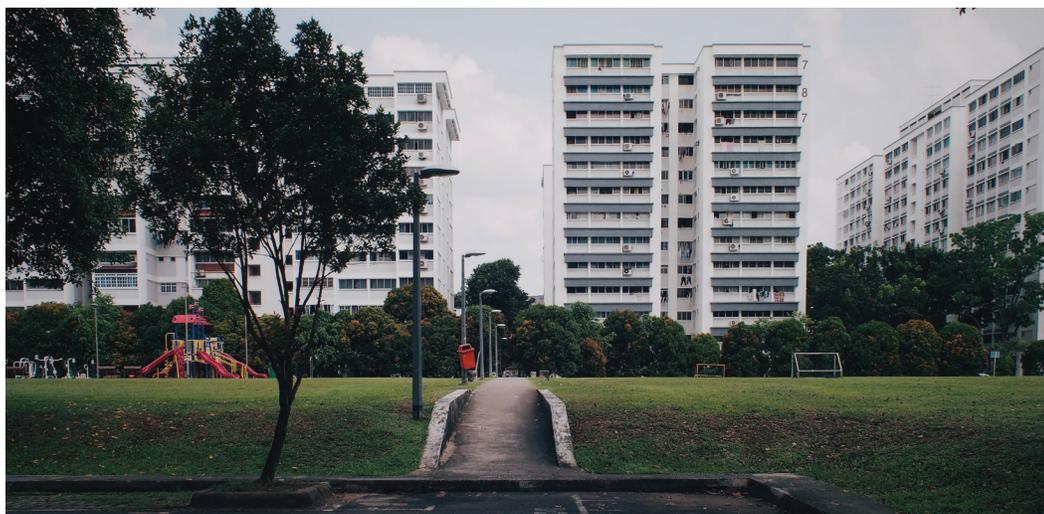
Given the broad evidence of the program’s positive impact on housing stability, the most obvious defect with vouchers is that they are chronically, and substantially, underfunded. Although the HCV program is the largest rental assistance program in the U.S.,

servicing more than 5 million people in 2.2 million low-income households,²¹⁸ the demand for vouchers substantially outweighs the supply: overall, only one-in-four households eligible to receive a voucher actually gets one.²¹⁹ Most housing authorities maintain HCV waiting lists and, as of 2016, the median waiting list had a 1.5-year wait time, and 53 percent of housing authorities had closed their HCV waiting lists to new applicants.²²⁰

The extensively studied Moving to Opportunity (MTO) experiment showed long-term positive effects for children of voucher families who moved into lower poverty neighborhoods.²²¹ Outside of the MTO context, some studies using secondary data from HUD or a PHA have found that vouchers reduced poverty concentration and/or racial segregation in particular places.²²² However, neighborhood gains may be disproportionately experienced by white voucher holders compared to minority voucher holders.²²³ Notwithstanding these narrow advances and the positive results for MTO participants, multiple studies indicate that overall the HCV program as a whole has not dramatically deconcentrated poverty or increased

racial integration.²²⁴ Several implementation problems with the HCV program have been identified. Some of these include discrimination by landlords,²²⁵ frictions arising from the PHA process for approving units and leases,²²⁶ time limits placed on the voucher holder to find a unit, barriers to use vouchers across PHA boundaries, and the method used to determine the amount of the subsidy.²²⁷ These contribute to the striking fact that nearly one-third of recipients do not use their vouchers.²²⁸

A large proportion of households report refusal to rent by landlords based on their use of a voucher. A pilot study found that across five sites surveyed, rates of voucher denials by landlords ranged from 15 percent (Washington, DC) to 78 percent (Fort Worth, TX), with 59 percent of the total tests conducted resulting in voucher denials by landlords.²²⁹ Only 11 states and D.C. have laws that prohibit discrimination based on source of income (SOI) including receipt of a housing voucher.²³⁰ SOI protections have been found to increase voucher utilization,²³¹ and may be associated with more voucher holders moving to lower poverty areas.²³² Important research gaps include the impacts



Income support, subsidies, and other measures address the economic resources of low-income people. Photo via Unsplash.

of SOI discrimination—actual and perceived—on the housing search; the extent to which patterns of discrimination and segregation are based on SOI and/or race, having children, or other protected classes; the degree to which landlords are even aware of prohibitions against SOI discrimination; and the mechanisms through which SOI antidiscrimination laws increase voucher utilization in higher opportunity neighborhoods.²³³

Housing authority rules and processes add friction to the process of using a voucher. For landlords to be eligible to accept HCVs, their units must be inspected to ensure that they meet program standards. Numerous studies document that the time this process takes (for both the inspection and the related paperwork) acts as a deterrent to landlords whose property goes unrented until the process is completed.²³⁴ Tenants are also under time pressure. Under federal regulations, a voucher holder's request for PHA approval of tenancy must be submitted during a specific time frame. The regulations set a minimum search period of 60 days, with extensions allowed at the PHA's discretion.²³⁵ Most PHAs set a voucher term of 60 days, with extensions up to 120 days.²³⁶ Studies document how long it can often take to find an available unit, get landlord approval, secure a successful PHA inspection, and complete all the paperwork.²³⁷ For poor people trying to move to a neighborhood of opportunity, transportation problems can add to the delay.²³⁸ A review of this literature documents that the “use it or lose it” mentality, as well as the cost associated with looking at homes, drives many voucher holders to settle for lower quality housing, or housing in less desirable neighborhoods, than they might be able to find with more time.²³⁹ Time constraints are one reason that some applicants who make it off the wait list end up losing their vouchers altogether.²⁴⁰ A lack of information and resources for finding a unit can also interfere with a household's ability to take full advantage of a voucher.²⁴¹

In theory, vouchers are portable, meaning they can be used in any PHA jurisdiction, regardless of which

PHA issues them.²⁴² Voucher portability has been called “one of the most powerful tools for poverty de-concentration,” and research demonstrates that this option, on average, decreases the level of racial and income segregation in voucher recipient neighborhoods.²⁴³ Yet the way the program operates leaves receiving PHAs responsible for a variety of administrative burdens (e.g., unit inspection and rent determination), but does not provide additional funds or vouchers for either the receiving or the sending PHAs, and thus offers little incentive to encourage use of the option.²⁴⁴ In addition, voucher holders seeking to move must complete multiple steps, such as submitting information to several PHAs, which can discourage them from taking advantage of program portability.²⁴⁵ HUD changed its portability regulations in 2015, with the goal of improving the portability process,²⁴⁶ but we did not find any studies evaluating the impact of those changes.

Another barrier to mobility out of high-poverty areas for voucher holders is the method by which the subsidy is calculated. The subsidy is generally the difference between the PHA payment standard and approximately 30 percent of the voucher holder's income. The basic PHA payment standard is anywhere between 90 percent and 110 percent of the rent ceiling for housing in the area set by HUD, called the fair market rent (FMR).²⁴⁷ Typically, HUD has set a FMR across an entire metropolitan area, which means that the FMR may be too high in lower income neighborhoods, and too low in higher income neighborhoods.²⁴⁸ This can make it harder for voucher holders to move to areas of opportunity, may incentivize landlords to aggressively recruit voucher holders in high-poverty areas, and can result in housing authorities paying too much for vouchers.²⁴⁹ We found only a few localized studies supporting these propositions,²⁵⁰ so further research needs to be done to determine whether the FMR pricing structure does in fact contribute to overpayments for HCV units, or to the concentration of poverty and/or racial segregation.

One response to these concerns has been to change the method of calculating FMR. As of April 1, 2018, HUD began requiring PHAs in 24 metropolitan areas to use Small Area FMRs (SAFMR); other PHAs may use them voluntarily.²⁵¹ This method of calculation is based on U.S. Postal ZIP codes and is a means of establishing rent standards that are more closely aligned with neighborhood markets, and promoting the use of vouchers in higher opportunity neighborhoods. To date, research exploring the impact of SAFMRs on HCV location outcomes is mixed. Researchers have found that SAFMR does enable households to move to lower poverty neighborhoods by increasing the availability of units in those neighborhoods, and decreasing the number of HCV units in lower-rent areas. However, there is evidence that in some cities there will be a net loss of HCV units as the increased number of units available in higher-rent ZIP codes does not compensate for the units lost in moderate and low-rent ZIP codes.²⁵²

Just as the voucher program was expected to assist low income renters in relocating to more resourced neighborhoods, so too was it expected to promote employment and economic self-sufficiency among voucher holders. Evidence of the employment and economic impacts of the program is mixed.²⁵³

Other Federal Renter Support Mechanisms

Over the past several decades, there have been multiple strategies aimed at increasing the economic and employment enhancing impacts of rental assistance programs. Two of these approaches are the Family Self Sufficiency (FSS) program and the Moving to Work (MTW) demonstration program. (A third model, the Rent Reform Demonstration, is currently under evaluation.²⁵⁴) Evidence on the effect of these programs can inform policies that require work or training as a condition of housing benefits. The FSS program,²⁵⁵ in which many PHAs participate, was established in 1990 by the National Affordable

Housing Act, and is governed by federal regulations.²⁵⁶ Through the program, PHAs connect participating families with employment-related services, and establish an escrow account into which any rent increase that results from an earnings increase is placed. Once a family successfully completes the program, they have access to the funds in the escrow account.²⁵⁷ There have been multiple studies of FSS programs. The most rigorous evaluation to date was conducted by MDRC in New York City using a randomized controlled trial.²⁵⁸ The researchers concluded that the FSS intervention alone did not produce positive effects on earnings or employment. However, FSS, when combined with a cash incentive, led to gains in earnings and employment for household heads that were not working at the start of the study.²⁵⁹ While this study did not find positive results for FSS participants who did not get the incentive, findings from less rigorous evaluations showed that FSS led to benefits for graduates of the program, such as higher household earnings and rates of purchasing a home.²⁶⁰

The MTW demonstration program was established in 1996. MTW allows participating PHAs to spend some of the money designated for rental assistance on approaches to, among other things, increasing the economic self-sufficiency of households in rental assistance programs.²⁶¹ There are 39 PHAs participating in MTW,²⁶² with plans to expand the program to another 100 agencies.²⁶³ As of 2018, nine MTW agencies have implemented work requirements.²⁶⁴ There have been two major studies to date — an evaluation of the Charlotte Housing Authority and, most recently, the Chicago Housing Authority — that aimed to understand the impacts of work requirements authorized by MTW.²⁶⁵ Results from Charlotte indicate that resident employment increased significantly when work requirements were enforced, but average hours worked did not increase; sanctions for noncompliance did not increase evictions or other forms of negative move-outs, although this is

attributed to the emphasis placed on helping residents comply rather than on penalizing them; and most residents (80 percent) generally support the work requirement.²⁶⁶ The authors of the Charlotte report warn that the costs of making work requirements successful may serve as a substantial obstacle to bringing this strategy to scale.²⁶⁷

Results from Chicago's study also showed an increase in employment, as well as an increase in household income, although the authors note these findings could have been influenced by recession recovery efforts and a rise in Chicago's minimum wage. The study also indicated that lack of access to affordable and reliable child care was a barrier to employment. Similarly to Charlotte, the Chicago work requirement was not enforced using eviction, and most residents supported the policy.²⁶⁸

It is urged that, before MTW is expanded, more evidence is needed through quality evaluations as to whether and how work requirements would promote self-sufficiency.²⁶⁹

The Mortgage Interest Deduction

In contrast to rental vouchers, the home mortgage interest deduction (MID) has traditionally been fully funded via the tax system. Before the changes made to the MID by the Tax Cuts and Jobs Act (TCJA) in 2017,²⁷⁰ its \$70 billion plus annual cost was more than double the combined cost of LIHTC and the HCV program.²⁷¹ Despite its popularity, this policy favoring tax-payer subsidized home ownership over rental residency has contributed to poverty concentration and racial segregation.²⁷² Its benefits have gone primarily to higher-income households with larger mortgages and itemized deductions; it has also favored people who could make the necessary down payment, which is the biggest barrier to homeownership for those with low-incomes.²⁷³

Leaving aside the social differential of investing in renting versus owning, the belief that the MID promotes more home ownership is not supported

by the literature, particularly for those in the lowest income brackets.²⁷⁴ In fact, one paper suggests that eliminating the MID would cause a reduction in housing prices, an increase in homeownership, a decline in the amount of mortgage debt, and improvement in welfare.²⁷⁵ We did not find any evidence on the effects of the recent change to the MID. Research is needed to evaluate the impacts of a reduction in the MID on housing outcomes, especially considering the high costs of the deduction.

The Earned Income Tax Credit

The earned income tax credit (EITC) has become one of the largest federal antipoverty mechanisms in the U.S.²⁷⁶ The federal government, 29 states, and the District of Columbia have EITCs, and all states but Minnesota base the amount on the federal credit.²⁷⁷ Evidence shows that implementing an EITC can result in poverty reduction for households.²⁷⁸ There is also evidence that the credit is beneficial for maternal and infant health,²⁷⁹ and may increase a child's future earnings.²⁸⁰ Some EITC recipients use a portion of the money received to pay debts,²⁸¹ but is EITC a resource for better housing?

Research from multiple studies using surveys and/or interviews found that some people use the EITC to pay housing-related costs such as rent, utilities, outstanding housing bills and debts, or as a down payment for a house.²⁸² However, the literature on the impact of EITC on housing stability is limited to one peer-reviewed article and a working paper. The former presents mixed evidence that EITC helps families stay in gentrifying neighborhoods.²⁸³ The working paper assessed a \$1,000 expansion of the EITC and found that, while it decreased the doubling up of families in a home, and may decrease the number of moves per year, it did not reduce homelessness or eviction.²⁸⁴ While the EITC might not have a known effect on housing stability, it is plausible to believe that by covering other expenditures the EITC helps families pay rent.²⁸⁵

Using the EITC directly for rental housing can be difficult because housing expenses typically are incurred monthly, while the EITC refund comes once a year; thus, using the EITC for housing costs depends upon the beneficiary's ability to budget the credit throughout the year, or upon a landlord's agreement to take a lump sum to cover future months of rent.²⁸⁶

The Minimum Wage

It would be reasonable to posit that a “minimum wage” is the amount a working person needs to earn to cover basic life expenses, but the disconnect between the minimum wage and housing costs is striking. In no state does the minimum wage allow a full-time worker to pay less than 30 percent of annual income on a two-bedroom home at fair market rent.²⁸⁷ In 2018, a full-time minimum wage earner would need to work 122 hours a week to afford a two-bedroom apartment, or 99 hours a week to afford a one-bedroom apartment, at the national average fair market rent.²⁸⁸ As of August 2018, seven states, 10 large cities, and dozens of smaller cities and counties have increased or are increasing minimum wages to the \$12–\$15 range.²⁸⁹

Although research on this topic “is in its infancy,”²⁹⁰ rapidly emerging health research is finding benefits in a higher minimum wage. Studies show that a higher minimum wage is associated with a reduced likelihood of unmet medical needs,²⁹¹ reduced heart disease,²⁹² decreased suicide rates,²⁹³ lower rates of new HIV diagnoses for heterosexual black adults,²⁹⁴ decreased smoking prevalence,²⁹⁵ reduced adolescent births,²⁹⁶ and reduced infant mortality.²⁹⁷ Minimum wage increases seem to have little, if any, harmful health effects.²⁹⁸

There is chronic divergence in the literature about whether increasing the minimum wage reduces employment, starting with what data and methods should be used for analysis.²⁹⁹ While the weight of evidence seems to support the view that minimum wage hikes can and do benefit low-wage workers and

do not reduce net employment,³⁰⁰ we could not find any peer-reviewed studies estimating the specific impact of an increase in the minimum wage on housing-related outcomes – prices, availability, or stability.³⁰¹

Given the positive health and earnings effects of increases in the minimum wage, research is urgently needed on the impacts such increases have on housing affordability and stability.³⁰²

Legal Protections Against Discriminatory and Predatory Lending

Affordable credit is an important resource for people who want to purchase homes, or who are renting on a tight budget. The category of “predatory lending” encompasses a variety of lending devices and practices that exploit consumers, both in housing finance and other kinds of borrowing. These practices may include: making loans to borrowers that they probably cannot afford to repay; inducing a borrower to repeatedly refinance a loan in order to charge additional fees; and concealing the true nature or terms of a loan.³⁰³ While there is no question about the value of credit to the poor or the wrongfulness of deceptive practices, regulation of predatory lending runs into the practical and political challenge of distinguishing exploitation from market pricing and reasonable legal risk management.

This section discusses legal levers meant to address discrimination and predatory lending in three areas: mortgage lending, contracts for deed, and consumer lending outside of the housing context. Predatory lending is bad in and of itself; it is also a common feature of discrimination. The comfortable notion that racial discrimination in housing finance is a thing of the past is belied by the current state of the market and predatory activities persisting right now. Rates of black home-ownership are now at levels last seen before the Fair Housing Act.³⁰⁴ As we report below, enforcement continues to uncover racially

discriminatory lending patterns in the banking sector, and the exploitation of the contract for deed seems to be growing.

Mortgage Lending. Discrimination in mortgage lending based on race or national origin — once the official government policy known as redlining — has long been outlawed but persists in practice, taking shape both in the outright denial of credit, and the provision of credit at higher interest or under more burdensome terms.³⁰⁵ An analysis of 31 million mortgage records in 61 metro areas in 2015 and 2016 found that black applicants were more likely to be denied a loan in 48 of the cities, and Hispanic applicants were more likely to be denied in 25 cities.³⁰⁶ An analysis of mortgages from 2015 conducted by the Pew Research Center found that black and Hispanic borrowers paid higher mortgage rates than White borrowers.³⁰⁷

The Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating against an applicant for credit based on race, color, religion, national origin, sex or marital status, or age.³⁰⁸ The Federal Trade Commission (FTC) and the CFPB are generally responsible for enforcing ECOA, although other federal agencies are responsible for enforcing ECOA as it relates to certain types of banks and other entities. When the FTC or CFPB believe a creditor has violated ECOA, they may refer the matter to DOJ recommending that a civil action be initiated. CFPB must refer the matter to DOJ if it believes a pattern or practice of discrimination regarding credit applications has occurred.³⁰⁹ In addition to ECOA, the Fair Housing Act prohibits discrimination in the mortgage lending context.³¹⁰ DOJ may initiate a lawsuit under the Fair Housing Act if it believes a pattern or practice of discrimination has occurred in violation of the law, or when it receives a fair housing referral from HUD.³¹¹

In recent years, multiple banks entered settlements to resolve allegations that they engaged in a pattern or practice of discriminatory mortgage lending against black and/or Hispanic borrowers. These settlements include amounts of \$335 million (Countrywide

“We sue HSBC Bank, we sue Wells Fargo Bank, we sue Bank of America. We get \$500,000 here, we get \$300,000 there. ... That’s a lot of money for our clients. It is, of course, nothing at all for the banks, and the banks don’t learn anything from that.”

—Marc Janowitz, East Bay Community Law Center

Financial Corporation),³¹² \$175 million (Wells Fargo),³¹³ \$21 million (SunTrust Mortgage, Inc.),³¹⁴ and \$9 million (Union Savings Bank and Guardian Savings Bank),³¹⁵ among others.³¹⁶ While these seem to be large settlements, a look at the revenue for some of these entities puts these amounts in perspective. In 2018, Wells Fargo had revenue of \$86.4 billion,³¹⁷ and SunTrust had revenue of \$9.2 billion.³¹⁸ Given these financials and the persistence of racial bias in lending practices, it is reasonable to question whether enforcement is frequent enough or penalties high enough to secure durable institutional change and compliance.

Predatory mortgage lending can also occur outside of the discrimination context. Generally, lending practices are considered predatory if they are deceptive, fraudulent, manipulate a borrower using aggressive sales tactics, or take unfair advantage of a borrower’s lack of knowledge about the mortgage lending process.³¹⁹ A few frequently identified predatory practices and terms include: charging excessive fees and/or interest rates; lending regardless of the borrower’s ability to repay; and balloon payments.³²⁰ While predatory loans can be found in the prime market, it is much more likely that predatory lending will occur in the subprime market. Subprime loans are those that are provided to

borrowers with relatively low credit scores; are made with little or no documentation; or have high loan-to-value ratios. Subprime lenders typically set interest rates on a sliding scale based on the credit risk of the borrower, and charge higher fees than lenders in the prime market.³²¹ Although most predatory loans are made in the subprime market, not all subprime loans are predatory.³²²

In addition to the Fair Housing Act and ECOA, federal laws protecting credit consumers include the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank);³²³ the Community Reinvestment Act (CRA);³²⁴ the Truth in Lending Act (TILA);³²⁵ the Home Ownership and Equity Protection Act (HOEPA);³²⁶ the Real Estate Settlement Procedures Act (RESPA);³²⁷ and the Housing and Economic Recovery Act (HERA).³²⁸ Dodd-Frank was one of the most expansive laws to result from the foreclosure crisis. Among other provisions, Dodd-Frank established the CFPB as a new consumer protection agency; created a requirement that creditors must determine a borrower's ability to repay before making a mortgage loan; and provided for rules for the ability-to-repay determination. In 2018 the Economic Growth, Regulatory Relief, and Consumer Protection Act was passed, which made changes to Dodd-Frank, including specifying different terms that constitute a qualified mortgage for banks or credit unions below a specified threshold.³²⁹ Other protections in federal law include requiring the assessment of how banks are helping to meet the credit needs of the communities in which they are located; requiring the uniform disclosure of credit terms and settlement costs; restricting the use of some terms, such as balloon payments and prepayment penalties, in high-cost loans; and requiring states to create a licensing and registration system for mortgage loan originators.

There is limited empirical evidence on the impact that federal regulation has had on mortgage lending. There have been few studies looking at the effects of Dodd-Frank on mortgage lending,³³⁰ we found one study

looking at some impacts of HERA,³³¹ and the literature on the impact of the CRA consists of disputes among commentators.³³²

All states have their own laws addressing predatory lending.³³³ These vary in the practices they regulate, and there is little data on their impact. Most of the studies evaluating the impact of these laws have focused on North Carolina because it was the first state to enact anti-predatory lending laws in 1999.³³⁴ Researchers have consistently found that North Carolina's laws are effective at reducing loans with abusive characteristics while still allowing low-risk consumers to access loans without risky terms.³³⁵ The states with more restrictive laws result in increases in subprime rejections, and decreases both in loans with risky terms and in default rates.³³⁶ There is not a consensus on the effects these laws have on subprime originations.³³⁷

Contracts for deed. The “contract for deed,” also known as a land installment contract, is a home finance mechanism in which the seller, rather than a bank, finances the loan. The seller retains the ownership of the home until the buyer has fully paid the purchase price in installments. The contract is executed without the costs and formalities of a mortgage. This makes it attractive to buyers who are unlikely to qualify for a mortgage, but also carries far fewer protections for the buyer. Contracts for deed typically place all the obligations of homeownership (such as making substantial repairs) on buyers without the benefits of equity, while allowing the seller to retake possession of the property in the event a payment is missed.

These contracts have long been a tool for predatory sellers, and there has been a racial disparity in their use.³³⁸ A 2019 report from a Duke research center used land title records to investigate the widespread use of the contract for deed in Chicago in the 1950s and 1960s, an era when real-estate speculators were instigating and profiting from “white flight” and high demand for home ownership among blacks. Their conservative estimates paint a picture of acute

exploitation with long-term effects. The researchers estimated that the speculators using contracts for deed flipped houses at an average price that was 84 percent higher than the price they had paid,³³⁹ while black Chicago residents buying homes through contracts for deed paid an average of \$587 more per month than they would have with an FHA mortgage. Taking into consideration that many of the contracts were designed to fail, and the willingness of courts to evict buyers who missed their payments, the total amount of money collectively lost by the black community in Chicago by virtue of this mechanism was estimated at between \$3.2 billion and \$4 billion.³⁴⁰

This is not just a question of the lingering effects of past wrongs. Since the foreclosure crisis of the late 2000s, large investors have bought large quantities of foreclosed homes and appear to be selling them through contracts for deed.³⁴¹ In the Twin Cities metro area, recorded contracts for deed increased by 50 percent between 2007 and 2013.³⁴² In Detroit, contracts for deed outnumbered mortgage transactions in 2015.³⁴³ According to the 2009 American Housing Survey (the last survey to track contract for deed ownership), there were almost 3.5 million contracts for deed outstanding in the U.S.³⁴⁴ The rise in such sales is also notable in that, in at least some places, the houses in the commercial inventory have largely come from Fannie Mae's and Freddie Mac's inventory of failed loans, meaning that federal policies have in part influenced the revival of this mechanism.³⁴⁵ Housing and consumer advocates have expressed concern that the contract for deed supports a systematically exploitative business model in which the contract is designed to enrich the seller but "built to fail" for the buyer.³⁴⁶

The federal TILA applies to sellers of contracts for deed who engage in more than five transactions per year, unless the deed is paid for in four installments or less and no interest payments are required.³⁴⁷ TILA requires CFPB to issue regulations to prohibit mortgage terms that are unfair, deceptive, or designed to evade TILA's

regulation,³⁴⁸ but to date CFPB has not regulated contracts for deed.³⁴⁹ State regulation of contracts for deed varies, but is mostly light.³⁵⁰ Some states, like Oklahoma and Texas, have provided extensive protection for buyers, making contracts for deed more like, or effectively equivalent to, mortgages.³⁵¹ Other states regulate contracts for deed by establishing required contents of a contract;³⁵² requiring sellers to record contracts;³⁵³ allowing contracts to be converted into a deed and mortgage after a certain point;³⁵⁴ providing extended cure periods;³⁵⁵ requiring sellers to proceed with foreclosure rather than forfeiture to recover the property under certain conditions;³⁵⁶ and capping interest rates charged on contracts for deed.³⁵⁷ Given the continued heavy use of these instruments, and the potential for unfairness or abuse, the distribution, character and effectiveness of regulation is an extremely important question – and a largely unanswered one.³⁵⁸

We found only one study that attempted to assess state regulatory impact. Reported in an article by Way and Wood, a study commissioned by the state legislature in Texas found that several reforms between 1995 and 2005 had substantially reduced the use of contracts for deed by investors, but that individual home owners in lower-income communities were still using the device, often illegally. The study also found that investors were finding work-arounds and other ways to exploit buyers in the housing market.³⁵⁹ The study shows that state regulation can influence the commercial use of contracts for deed, but more research on this topic is urgently needed.

Consumer lending outside of the housing context. For many renters and lower-income homeowners, keeping the home requires short-term credit to smooth shocks and plug gaps between needs and spending. Those who have bank accounts and equity in their homes can often get credit on favorable terms, but less affluent people by necessity turn to short-term, unsecured loans such as bank overdrafts or so-called "payday loans." In recent years some banks and credit unions

have started to offer small dollar loans, but most have not entered that market.³⁶⁰ Use of fringe services for loans is associated with a 38 percent higher prevalence of poor or fair health.³⁶¹ Although there has been limited epidemiological research on short-term loans to date, one study indicates that a history of short-term borrowing is associated with worse health outcomes such as higher blood pressure, obesity, self-reported physical health symptoms, and anxiety.³⁶²

Literature in the area of short-term credit has predominantly focused on payday loans, describing the characteristics of the borrowers and the impacts of state-level regulations. Payday loans are a frequently used form of short-term credit, with 12 million borrowers every year,³⁶³ and some taking 12 or more loans per year.³⁶⁴ Payday loans are expensive, so borrowers often end up spending more in interest and fees than they borrowed in principle.³⁶⁵ The large expenditure on interest often forces borrowers to forgo a hefty chunk of their paycheck to repay the loan, and to need another loan to meet other expenses.³⁶⁶ For 1-in-10 borrowers, the first loan is for a housing-related expense.³⁶⁷

The CFPB issued a rule in 2017 requiring payday lenders to determine a borrower's ability to pay before making a loan.³⁶⁸ However, prior to the compliance date for that part of the rule (August 19, 2019), the CFPB issued a proposed rule to rescind that provision.³⁶⁹ The CFPB has yet to issue a final rule on the matter. At the state level, 37 states have laws that allow payday lending.³⁷⁰ Many of these laws impose restrictions, such as establishing a maximum interest rate (typically 36 percent),³⁷¹ capping loan amounts or loan payments based on income, limiting the number of loans that can be taken within a specific time period, and extending loan terms.³⁷²

The evidence on the impact of payday lending regulation is mixed. Some evidence indicates that payday lending restrictions can protect consumers in a way that does not limit access to credit (e.g., regulation decreases the number of payday lending

“I have been doing research with people with mental illness about debt. I realized that the debt that burdens them most isn't from borrowing, it's from unpaid bills – arrears. Utility arrears is the most common one. But also being behind on your rent and therefore having a late fee, so owing the back rent and the fee. There can be also fees associated with not paying your utility bill – if you get disconnected you not only have to pay your bill, you have to pay a fee to get reconnected.”

– Annie Harper, Yale School of Medicine

stores, but increases the number of borrowers per store), but most of the literature in this area focuses on restrictions in Colorado.³⁷³ The little research we found addressing other states looks specifically at the effectiveness of regulation in the form of rate and/or fee caps, and indicates that these mechanisms may protect consumers from unfair practices.³⁷⁴ However, the Center for Responsible Lending has reported that, other than rate caps of 36 percent, payday lending regulations did not stop borrowers from being trapped in long-term debt.³⁷⁵ Research suggests that in states where the interest rate cap is 36 percent or lower, payday lenders will not operate stores,³⁷⁶ and there may be an increased use of other potentially unfavorable credit options for payday borrowers such as overdraft services or pawnbrokers.³⁷⁷ More research is needed to know if payday lending restrictions can effectively protect consumers without cutting off access to short-term credit, and what impacts such regulations have.

Much less has been written about overdraft fees as a routine resort for short-term credit. Overdraft credit offers services to low-income borrowers similar to payday loans, but the cost of overdraft credit tends to be even higher.³⁷⁸ In 2017, the median overdraft fee for frequent over-drafters was \$34 per transaction.³⁷⁹ A Pew Charitable Trust study found that for approximately a quarter of payday loan borrowers, overdrafts were used to repay their payday loans.³⁸⁰ Currently the only federal regulation of overdraft credit is the Federal Reserve mandate that consumers consent to the possibility of overdrawing on their ATM or debit transactions.³⁸¹ The focus of this regulation is ensuring that consumers do not unintentionally use overdraft services,³⁸² rather than ensure that the resulting credit is fair. In the few years following the promulgation of that rule, almost one-third of frequent overdraft users opted in to overdraft services.³⁸³ Some states have laws regulating overdraft fees,³⁸⁴ but we did not find any evaluation of those laws.

Households can become indebted to landlords,

private companies, and the government. Arrears in general can function as a form of short-term credit,³⁸⁵ though little is known about the scale of arrears in the overall debt of those with low incomes. Research shows that over 30 percent of families choose not to pay rent and/or utilities when faced with monthly financial shortfalls.³⁸⁶ Like other forms of short-term credit, non-payment of debts is expensive: arrears can accrue substantial amounts in surcharges and interest.³⁸⁷ Unlike formal credit, insufficient payments can eventually result in loss of property or services.³⁸⁸ Late or nonpayment of rent can result in eviction, and utility arrears are a “trigger for home loss” when utility companies shut off service for nonpayment.³⁸⁹ Most states have usury laws regulating interest rates, which may apply to arrearages, but these laws vary widely and many have exceptions for certain types of transactions.³⁹⁰ The evidence base on the effects of usury laws is small and out of date.³⁹¹

Legal Financial Obligations (LFOs)

With little cash assistance and access to credit, and with predatory practices such as payday lending being the only option for millions, any financial shock can be the difference between having a home or not. Being poor, especially a poor person of color, means that too often the financial shock comes in the form of an encounter with the police or other government authority. The imposition of legal financial obligations, which include fees, fines, and bail, in connection with criminal justice charges or civil offenses has become a widespread sanction in the U.S.³⁹² In this section we focus on fees and fines for minor municipal code and traffic violations. (The financial impact of bail and fees that stem from incarceration raise the same issues of financial stress, but, like incarceration in general, is beyond the scope of this report.³⁹³) To be able to make rent, households need stable incomes, good wages, ability to borrow, and to avoid shocks that affect both their pocket and their stability.

Arrest is a widespread phenomenon throughout the

country. The FBI estimated that in 2017 more than 10.5 million people were arrested in the U.S.³⁹⁴ Arrest has multiple potential collateral consequences. Pre-trial detention due to inability to pay bail could lead to job loss, or to debt if loans are used to make bail.³⁹⁵ A criminal record or on-going process, even if for a minor offense, could prevent a person from getting their next job, or cause loss of eligibility for housing. Involvement in the criminal justice system is a well-documented barrier to acquiring and maintaining stable housing.³⁹⁶ The impact continues as a person's involvement with the criminal justice system proceeds. With 2.2 million Americans in prisons and jails,³⁹⁷ families pay hundreds of dollars every month just to keep in touch with their incarcerated loved ones.³⁹⁸ Even people who are not detained may suffer negative health effects from exposure to intrusive policing. In 2016, during the peak of stop-and-frisk in New York City, the New York Police Department stopped 685,724 people, the majority of whom were black or Hispanic.³⁹⁹ Although the vast majority of these stops (94 percent) did not lead to arrest,⁴⁰⁰ there was evidence of widespread harm including post-traumatic stress and anxiety.⁴⁰¹

Less dramatic events than arrests and incarceration also have impacts on ability to make rent or mortgage payments. Municipal offenses like traffic and “quality of life” violations can have significant economic consequences. We lack comprehensive national data on the number of such fines or the amount of revenue they generate,⁴⁰² but local investigations have raised concern at a time when cities face harsh fiscal constraints.⁴⁰³ Municipalities such as Ferguson, MO, have used enforcement of minor code violations to fund city operations. In 2015, the Justice Department found that in Ferguson “revenue generation is stressed heavily within the police department, and that the message comes from City leadership.”⁴⁰⁴ Not far from Ferguson, in Pagedale, MO, the violation of barbecuing in the front lawn or “wearing one’s pants below the waist” could be punished with a citation and monetary penalty.⁴⁰⁵ This practice of using citizens

“as human ATMs,” to cite former Missouri state senator Eric Schmitt,⁴⁰⁶ is not unique to Missouri. In Las Vegas, the income level of a neighborhood is a strong determinant of the likelihood of a parking ticket.⁴⁰⁷ As of 2015 in California, 4 million people had their license suspended, and African-Americans were between two-to-four times more likely to be pulled over for a traffic stop than white people.⁴⁰⁸ Court-ordered license suspensions for people who can’t pay minor traffic tickets lead to people either losing their tool of commute or driving without a license, which exposes them to more fines.⁴⁰⁹ Every year Chicago issues 3 million tickets for minor offenses such as parking offenses and car compliance violations,⁴¹⁰ and low-income black residents of Chicago are more likely than other groups to be pushed to bankruptcy due to unpaid ticket debt.⁴¹¹ In New Orleans, black residents bear most of the weight of paying bail, fines and fees.⁴¹²

We do not know the exact number of such fines or the amount of revenue they generate, as there are few, if any, publicly available data.⁴¹³ However, as illustrated in the examples above, this method of collecting revenue through LFOs has grown as localities face budget shortfalls.⁴¹⁴ These fines are expensive and unexpected,⁴¹⁵ making it particularly difficult for the poor to pay them in a timely manner.⁴¹⁶ The fines for petty citations and violations can worsen the situation of the poor, and may disproportionately affect black and Hispanic individuals.⁴¹⁷ Paying these monetary sanctions increases the risk of losing housing, transportation, employment, community services, driver’s licenses, and government benefits.⁴¹⁸ While such citations and violations are theoretically too minor for incarceration, missed court appearances or nonpayment of fines can lead to warrants and jail sentences.⁴¹⁹

Some states and municipalities have enacted laws that aim to reduce the impact of legal financial obligations on those with low incomes.⁴²⁰ Some of these laws include provisions capping fine amounts;⁴²¹

prohibiting court costs for indigent defendants;⁴²² requiring the reinstatement of drivers' licenses that were suspended for failure to pay certain fees or fines;⁴²³ allowing waivers or reduced fees or costs for low-income individuals;⁴²⁴ allowing participation in community service as an alternative to paying fees or fines;⁴²⁵ and allowing installment plans.⁴²⁶ Although two cities experimented with the idea several decades ago, as far as we can determine, no U.S. jurisdictions have adopted the European model of "day fines," in which monetary penalties are set in terms of a number of days of the offender's annual income.⁴²⁷

Just as there is no comprehensive research on the prevalence of burdensome monetary sanctions for municipal or traffic offenses, we found virtually no evidence on the efficacy of laws aimed at reducing them. We did find one report publishing results of California's 18-month Statewide Infraction Amnesty Program,⁴²⁸ which was a one-time program to provide relief to people with unpaid court-ordered debt. According to the report, the program resulted in a large reduction of debt, the collection of more than \$45 million in gross revenue, and more than 246,000 individuals who qualified to have their driver's license reinstated.⁴²⁹ Most of these putatively protective state laws are relatively new, and there seems to be a trend towards passing this type of legislation. They present an urgent case for evaluation.

The Supreme Court's ruling in *Bearden v. Georgia* could potentially protect against harm resulting from unpaid fees or fines.⁴³⁰ In *Bearden*, the Court held that if a fine is imposed as a penalty for a crime, a person cannot be imprisoned for failure to pay if they do not have the resources to make the payment.⁴³¹ We found one report and a couple of articles discussing the impact of this case on reducing the harms of legal financial obligations. These sources noted that the practices of many courts do not adhere to *Bearden*,⁴³² and most defendants are not aware of the rights provided to them under that case.⁴³³

"Actually, we know exactly what we need to do, and now the question is, do we have the political will, and do we have the leadership that would get us to those goals, to find a way through the politics, through the many layers of government that have some say in this area? How do we get all those people to work together? That is hard."

– Paul Jargowsky, Rutgers University-Camden, Center for Urban Research and Education

Domain 5: Governance and Planning

Governance, broadly defined, is "the management of the course of events in a social system."⁴³⁴ This open-textured definition is meant to capture not just the governing work of governments, but also the often equally or more powerful influence of corporations, foundations, not-for-profits, and other formal and informal entities outside government. As we observed in Report Two, housing in America exemplifies a tough governance problem. For the most part, the research illuminating housing governance confirms that the layers and silos are many, and the success stories are few. Although the research on individual legal levers we have presented above provides some insight on powers that actors in the housing system can wield, research provides little in the way of direct evidence for any particular approach to organizing the governance of housing.

Local Government Law

The fact that so much of the direct regulation of housing is vested in local government, and therefore heavily determined by local politics and opinion, is perhaps the single most important characteristic of housing governance in the U.S. Local governments enact and/or manage domains including zoning, building and housing codes, code enforcement, nuisance property laws, housing courts, and rent control. Local opinion and interest groups drive these decisions. That does not mean that local control is exclusive. Federally-funded housing authorities are often established at the city level, but are more or less independent of local mayors and city councils in that they are regulated by federal rules. Even at the local level, legal powers related to housing are often splintered: schools are often managed by independent school boards, governing districts that cross city lines; transportation may be overseen by a regional transit agency over which individual municipalities have only limited control.

There are success stories of local governments working to promote health equity in housing. The cases of Oak Park, IL, and Montgomery County, MD, were both cited by our interviewees and in the literature as important, if unique, instances of long-term work to ensure and preserve affordability and socio-economic diversity. Other places, like Seattle and Spokane, WA, the Twin Cities, MN, and Oakland, CA, are given credit for trying, but while local governments appear to have the ability to fight off health equity in housing, their power to build it on their own is limited.

Although local government entities are powerful, their power is a function of state law. The boundaries and authority of local government, school boards, transportation and other agencies are set by state law. States decide how to allocate authority among them, and what powers to grant or withhold. States can do this through broad local government legislation, or the creation of city home rule charters, or by selectively preempting areas of regulation such as inclusionary

zoning, rent control, and source of income anti-discrimination laws.⁴³⁵ States therefore can require or allow local governments to enact housing-related policies, or can prohibit them from doing so.⁴³⁶ An Oregon statute, for example, bars any city or county in the state from using its charter to prohibit multifamily housing, attached housing, or subsidized housing from residential zones.⁴³⁷ Some states (e.g., California, Florida, and Oregon) have enacted legislation requiring that municipalities include affordable housing in their local housing plans,⁴³⁸ or making it easier for developers to build affordable housing (e.g., Massachusetts 40B).⁴³⁹ We have discussed other mechanisms of state control, like the *Mount Laurel* doctrine, earlier in this Report. Of course, state power over local authority can itself be blunted by local politics.⁴⁴⁰

Given the considerable evidence that localities are powerful forces in supporting or suppressing affordable housing and socio-economic integration, the important research question in the realm of local governance is whether and how moderating influences available in state or federal law can be effective in pushing localities to more inclusive policies. We will discuss regional planning, litigation and various rules related to housing money below. In this section we look at the evidence that state limits on local discretion are effective in producing more affordable and diverse places.

The California Housing Element Law requires that all municipalities in the state create a plan addressing housing needs, production, and affordability.⁴⁴¹ The evidence on the impact of this law indicates that it has helped to slightly increase affordable housing in California, but has not come close to meeting the affordable housing demand in the state.⁴⁴²

An evaluation of Massachusetts' Comprehensive Permit Law (40B) and local regulation found some evidence that the law was being successfully used for its intended purpose. This evaluation, which analyzed data in approximately one-third of Massachusetts'

municipalities (all surrounding Boston), indicates that the majority of rental units studied were built using 40B provisions, and that developers were more likely to use 40B in municipalities that had strict regulation of multifamily development.⁴⁴³ A study of Massachusetts and three other states suggests that laws aimed at reducing the ability of municipalities to limit affordable housing, or making it easier for developers to build such housing, can result in restrictively zoned localities having more affordable housing than they would if no such laws existed.⁴⁴⁴ We found only one analysis of Florida’s Growth Management Act, which indicates that initially after the Act was passed there was no association with increased affordability, but when municipalities updated their plans later, affordable housing increased.⁴⁴⁵ Overall, the evidence is slim, but the presumption remains that states have the legal authority to dramatically limit local suppression of affordable housing.⁴⁴⁶

State government may impact housing indirectly through its authority over schools. It has been argued that consolidating school districts so that they operate regionally, rather than operating over a small unit of government, could result in more equitable land use decisions.⁴⁴⁷ Schools are a large part of local government expenditures, and often account for a large portion of property taxes collected. In New Jersey, average school tax revenues generated by a residential property fall far short of the average public school expense for one student. Property taxes paid by commercial properties and households without school-aged children make up the difference. Therefore, municipalities have an incentive to enact exclusionary zoning laws that encourage non-residential properties and discourage higher-density residential properties. If school districts were operated over a larger unit of government such as a county, then the school expense would be shared by the all of the municipalities in the county. With a regional approach to school districts, the incentive for a municipality to have a mall or office park is reduced since the tax

revenue it generates will go to a county-wide pool of money that pays for all the schools in the county. Similarly, the incentive to discourage higher density, affordable housing would be diminished because “when one municipality approves a residential development, any children who move into that development will be educated at schools that are paid for using revenues raised from taxing the entire county’s property tax base, not just those properties located within the municipality hosting the new development.”⁴⁴⁸

Throughout the 20th century there was a trend towards the consolidation of school districts. Between 1940 and 2013, the number of school districts in the United States reduced from about 117,000 to 14,000.⁴⁴⁹ Consolidation is not as common today as it once was, but multiple states continue to encourage school districts to consolidate through a variety of incentives, including financial aid.⁴⁵⁰ However, some states discourage consolidation by compensating small scale school districts.⁴⁵¹ The evidence is mixed regarding the impacts of school consolidation on costs and academic achievement. Much of the literature indicates that consolidating small districts into larger districts may result in substantial cost savings.⁴⁵² However, some studies show that there may be offsetting costs that minimize savings, and others indicate that costs savings are not likely.⁴⁵³ As for student performance, one examination of the literature noted that about half of the research suggests there is higher academic achievement for students in smaller schools, and the other half indicates no difference in achievement based on school size.⁴⁵⁴ We found few studies looking at the housing-related effects of school district consolidation.⁴⁵⁵

Regional Planning Law

In the United States, the challenge of integrating action on housing, economic development, transportation, education, population growth and urban design across city, county, and school district

“So, you need to have regional entities with real capacity, real ability to cross barriers, real ability to create incentives to work cooperatively, and you have to solve the combination of problems in every single metro area in the United States that are a combination of center city, first-ring, inner ring suburban city.”

– Nestor Davidson, Fordham University School of Law

lines is vested, if anywhere, in regional planning entities with varying degrees of legal authority. Most states have laws that enable regional governance of some kind.⁴⁵⁶ Seventeen distinct types of regional governance approaches have been identified in the United States, including interstate compacts,⁴⁵⁷ informal cooperation, inter-local contracts, regional councils, and annexation.⁴⁵⁸

Although there is support for the idea that cooperation across local boundaries is a good thing,⁴⁵⁹ there is limited research evidence on the housing-related impacts of regional planning generally in the United States. This is not surprising, given that planning and its legal forms unfold over long periods of time in complex ways in a relatively small number of heterogeneous instances.⁴⁶⁰ A case study of the well-known Metropolitan Council of Minneapolis-St. Paul (Metro Council) provides some insights into the potential and limitations of the regional council mechanism. The Metro Council is a regional planning agency, policy-making entity, and coordinator of services for the Twin Cities metropolitan region. In 1971, the Metro Council established regional housing policies that encouraged subsidized housing developments in the suburbs.⁴⁶¹ During the 1970s the percentage of cities within the region that

provided subsidized housing rose from 8 percent to 51 percent,⁴⁶² and by 1979, 73 percent of the region’s new subsidized housing was located in the suburbs.⁴⁶³ Unfortunately, the Metro Council’s progressive policies did not last. Its commitment to fair share policies diminished due to pressure from “conservative suburban politicians, who characterized integration as social engineering, and an increasingly organized housing community” that favored the development of affordable housing in inner-city areas. As a result, the proportion of subsidized housing in the central cities of the region (Minneapolis and St. Paul) is now the highest it has been since the 1960s.⁴⁶⁴

Another regional planning tool that is used for land-use issues is an urban growth area, or urban growth boundary (UGB). Urban growth areas can be used to influence patterns of development in a region, and they determine land use density.⁴⁶⁵ They generally reflect a preference for higher density development and can reduce urban sprawl. Studies on the effectiveness of UGBs in curbing urban sprawl have found differing results, with some indicating UGBs can control sprawl and others finding a lack of effectiveness.⁴⁶⁶ There has been no empirical research specifically on the impact UGBs have on housing supply,⁴⁶⁷ and the little evidence regarding UGB effects on housing prices does not indicate a significant impact.⁴⁶⁸ Rigorous evaluation is needed to determine the housing-related impacts of UGBs.

Governance Element of Other Legal Levers

Some of the legal levers previously discussed in this report are, in part, efforts to adopt a regional approach to housing problems. For example, the AFFH rule was intended to incentivize regional collaboration by encouraging multiple jurisdictions to submit an Assessment of Fair Housing (AFH) together (24 C.F.R. § 5.156). In addition, the rule requires that each AFH identify the following, within both the jurisdiction and the region: patterns of integration and segregation;

racially or ethnically concentrated areas of poverty; significant disparities in access to opportunity for a protected class; and disproportionate housing needs for a protected class (24 C.F.R. § 5.154 (d)). However, due to the effective suspension of the AFH submissions, it is unknown to what extent this regional collaboration will occur, or whether any such collaboration will succeed past the AFH submission to HUD.

Litigation is both a lever for enforcement by government, and a mechanism through which non-governmental entities can gain a formal legal role in housing governance. Businesses subject to regulation can use lawsuits to fend off or deter legislation. Tenants, citizens and non-governmental organizations can use lawsuits to enforce the law when government doesn't, and to gain a long-term seat at the decision-making table. Examples are many, including the *Mount Laurel* cases, *Hills v. Gautreaux*, *Thompson v. HUD*, and *Walker v. HUD*.

By creating an obligation for municipalities to provide a fair share of the region's affordable housing, the *Mount Laurel* cases brought light to the idea that a regional planning approach could be used to reduce exclusionary zoning practices.⁴⁶⁹ Many have resisted the *Mount Laurel* mandate of providing regional fair share housing for all communities, resulting in a series of lawsuits regarding the issue. However, the *Mount Laurel* doctrine has influenced how advocates think about regional housing policy in other states.⁴⁷⁰ Approximately 60,000 affordable housing units have been built in New Jersey suburbs as a result of the *Mount Laurel* cases.⁴⁷¹ A study of residents of affordable units, as certified by the Council on Affordable Housing, showed that 22 percent of respondents earning less than \$25,000 per year moved from an urban to a non-urban municipality (24 percent of all respondents made such a move).⁴⁷² Overall, white households with moderate incomes have benefited more than households with low incomes and people of color.⁴⁷³ In addition, the *Mount*

“No question but the leverage of Gautreaux has enabled us to play the role we're playing in the siting of public housing in the mixed income context.”

– Alexander Polikoff, Business and Professional People for the Public Interest

Laurel doctrine has not achieved racial integration in New Jersey. Nevertheless, even critics recognize that the *Mount Laurel* litigation has been effective in emphasizing the concepts of fair share and regionalism.

In *Hills v. Gautreaux*,⁴⁷⁴ the U.S. Supreme Court upheld the Seventh Circuit's order that a comprehensive metropolitan area plan be adopted to desegregate the public housing system in Chicago. The case “established the proposition that HUD shared responsibility with local defendants for intentional housing segregation, and could be required to promote regional housing integration as part of a comprehensive court remedy.”⁴⁷⁵ The *Gautreaux* litigation is a good example of the use of consent decrees as a governance mechanism. After the Court's decision, the *Gautreaux* plaintiffs and HUD reached an agreement regarding the remedy, which was formalized in a consent decree. The agreement established the *Gautreaux* mobility program in the Chicago metropolitan area – the first major housing mobility program in the U.S.⁴⁷⁶ As part of the agreement, HUD contracted with the Leadership Council for Metropolitan Open Communities (a Chicago-based public interest organization) to administer the program, rather than administration by the public housing authority.⁴⁷⁷ The Leadership Council was a private, non-profit organization that worked to eliminate housing discrimination in the Chicago region by providing counseling and education.⁴⁷⁸

The parties recognized the value the Leadership Council could add to the mobility program because of its knowledge of the area and experience in counseling. The Leadership Council played a significant role in administering the program, including selecting tenants to participate, providing housing counseling to participating tenants, identifying landlords to participate in the program, and educating landlords in order to dispel stereotypes.⁴⁷⁹ The mobility program established by *Gautreaux* helped at least 7,100 families move to new homes throughout the Chicago metropolitan area.⁴⁸⁰ Through the program, most families were able to move to lower-poverty communities that were much less racially segregated than those in which they had been living. In addition, most families participating in the program continued to live in lower-poverty, more integrated communities for at least 15-20 years.⁴⁸¹ The *Gautreaux* consent decree with HUD is an example of the ability of parties in litigation to agree to terms not specified in the law, which could include vesting in a private organization powers that are usually held by a public housing authority or government agency. This program influenced other housing mobility efforts, including the Baltimore Housing Mobility Program, which arose from *Thompson v. HUD*,⁴⁸² and Inclusive Communities Project's Mobility Assistance Program, which arose from *Walker v. HUD*,⁴⁸³ cases similar to *Gautreaux*.

The fair housing enforcement role of private organizations also gives them some governance purchase. HUD's Fair Housing Initiatives Program supports more than 130 agencies that can be a voice for fair housing beyond their specific enforcement role.⁴⁸⁴ Government funding of, and cooperation with, private organizations can be voluntary means to improve the management of public programs. A good example is mobility programs designed to make it easier for someone to use a housing voucher in the larger metropolitan region, rather than only within the city limits, thus providing opportunity to live in low-poverty, well-resourced neighborhoods.⁴⁸⁵

There are a few examples of providing housing vouchers at a regional level without the mandate of a court order or settlement. Some cities, including Portland, OR, Jacksonville, FL, Hartford, CT, and Rochester, NY, have housing authorities that administer the Housing Choice Voucher Program throughout the entire region.⁴⁸⁶ Four formal consortiums have been formed in various areas (Northwest Ohio; Pima County, AZ; Covington, KY; and The Dalles, OR, and Dallesport, WA) to establish a common set of forms and procedures across the jurisdictions within those regions.⁴⁸⁷ In the MTO demonstration nonprofit organizations partnered with some housing authorities to help voucher holders move to low-poverty neighborhoods.

LIHTC is another legal lever with an important governance element. As discussed in the LIHTC section of this report, tax credits are allocated mostly by state agencies, and by a few city agencies, through a QAP.⁴⁸⁸ This means that while the LIHTC program is administered by the Internal Revenue Service and governed by federal regulations,⁴⁸⁹ the decision regarding which developers receive credits is ultimately made by states and some localities.⁴⁹⁰ Adding to the complexity of LIHTC governance, multiple states require local approval before awarding tax credits for a project.⁴⁹¹ The IRS has issued a ruling stating that the tax code neither requires nor encourages state agencies to reject proposals that do not have local approval.⁴⁹² At least one state (Maryland) has removed the local approval requirement from its QAP and regulations as part of an agreement to resolve a HUD fair housing complaint filed against the state.⁴⁹³ Because there are multiple actors involved in the governance of the LIHTC allocation process, research is needed on the most efficient and effective way to distribute credits in a manner that promotes health equity in housing.

The issue of the governance of the housing system in the United States will be explored in more detail in our fifth report.

“Health people have been thinking for a long time about how to use data to improve both medical outcomes and public health. Housing people have ... I mean, we’re in the horse and buggy era in housing. ... We often have no idea if the interventions we’re doing work. So, I remain vehemently optimistic and vehemently realistic that we’re not close yet.”

– Nestor Davidson, Fordham University School of Law

Conclusion

In a systems perspective, lack of evidence is crippling to progress, but evidence alone is not enough. Research can and should be integrated into a strategic program of action within and eventually across levers and domains. Research can be used to understand insufficient impact: We know that the Fair Housing Act is being enforced to some degree, but not why its effects on segregation have been so disappointing. Research can be used to develop and test interventions: We reported here on research that suggests that proactive housing code enforcement built on complete landlord registration is a promising tool for reducing tenant exposure to lead and other hazards. What’s needed now is a deliberate, multi-city effort to test and refine this mechanism, to produce a scalable model that can be deliberately disseminated. And research can be used to draw attention to critical opportunities: evidence shows that housing vouchers can ease access to housing and even change lives, but the success has not brought the funding needed to make the program available to everyone who could benefit; more research on the system and its effects can support advocacy for funding.

Our Next Report

The gaps in existing knowledge about the many laws influencing housing raise several questions about whether and how these legal levers can be used efficiently to achieve health equity in housing. As part of our study, we conducted interviews with several thought leaders in the housing field to learn how they are using law in their work to promote safe, affordable housing, located in integrated healthy communities. In our fourth report, we explore the findings from these interviews, including examples of successful efforts to promote health equity in housing, and barriers to increasing racial and socio-economic integration. △

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²⁷⁸ ROBERT GREENSTEIN, CTR. ON BUDGET & POLICY PRIORITIES, THE EARNED INCOME TAX CREDIT: BOOSTING EMPLOYMENT, AIDING THE WORKING POOR (2005), <https://www.cbpp.org/archiveSite/7-19-05eic.pdf>; THE COUNCIL OF ECON. ADVISERS, GOOD NEWS FOR LOW INCOME FAMILIES: EXPANSIONS IN THE EARNED INCOME TAX CREDIT AND THE MINIMUM WAGE (1998), <https://clintonwhitehouse4.archives.gov/media/pdf/eitc.pdf>; SAUL D. HOFFMAN & LAURENCE S. SEIDMAN, HELPING WORKING FAMILIES: THE EARNED INCOME TAX CREDIT (2003), https://research.upjohn.org/cgi/viewcontent.cgi?article=1046&context=up_press; STEVE HOLT, THE BROOKINGS INST., THE EARNED INCOME TAX CREDIT AT AGE 30: WHAT WE KNOW (2006), https://www.brookings.edu/wp-content/uploads/2016/06/20060209_Holt.pdf. See also Hillary Hoynes & Ankur Patel, *Effective Policy for Reducing Poverty and Inequality? The Earned Income Tax Credit and the Distribution of Income* (Nat'l Bureau of Econ. Research, Working Paper No. 21340, 2015) (finding that the EITC had little effect on people with incomes below 50 percent of the poverty level, but had a statistically significant effect for those between 75 and 150 percent of the poverty level).

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²⁸⁵ MICHAEL A. STEGMAN ET AL., THE EARNED INCOME TAX CREDIT AS AN INSTRUMENT OF HOUSING POLICY (2003) <https://www.brookings.edu/wp-content/uploads/2016/06/stegmanhousing.pdf>.

²⁸⁶ See *id.* at 7 (discussing the timing of receipt of the EITC).

²⁸⁷ ANDREW AURAND ET AL., NAT'L LOW INCOME HOUS. COAL., OUT OF REACH: THE HIGH COST OF HOUSING, 2017 (2017), http://nlihc.org/sites/default/files/oor/OOR_2017.pdf.

²⁸⁸ *Id.*

²⁸⁹ SYLVIA ALLEGRETTO, ET AL., UNIV. OF CAL. BERKELEY: INST. FOR RESEARCH ON LABOR AND EMP'T, THE NEW WAVE OF LOCAL MINIMUM WAGE POLICIES: EVIDENCE FROM SIX CITIES (2018), <http://irle.berkeley.edu/files/2018/09/The-New-Wave-of-Local-Minimum-Wage-Policies.pdf>. One approach to making housing more affordable is providing full-time employment at non-poverty wages for all Americans over eighteen who are willing to work. William Darity Jr & Darrick Hamilton, *Full Employment and the Job Guarantee: An All-American Idea*, in FULL EMPLOYMENT AND SOCIAL JUSTICE: SOLIDARITY AND SUSTAINABILITY 195-204 (Palgrave Macmillan ed., 2018). Several times in our political history we have considered developing such a program. There have been proposals from President Franklin D. Roosevelt and advocated for by Dr. Martin Luther King, Jr. Helen Lachs Ginsburg, *Historical Amnesia: The Humphrey-Hawkins Act, Full Employment and Employment as a Right* 39 Rev. Black Pol. Econ. 121 (2012). In fact, early versions of the 1978 Full Employment and Balanced Growth Act, signed by President Jimmy Carter, had a federal Job Guarantee Office included. Jon D. Wisman & Aaron Pacitti, *Ending the Unemployment Crisis with Guaranteed Employment and Retraining* 48 J. ECON. ISSUES 679 (2014). Today there has been a resurgence of the idea in the world. Both India and Argentina have varying forms of a guaranteed job program. A growing number of politicians within the United States publicly support the idea. MARK PAUL, WILLIAM DARITY JR & DARRICK HAMILTON, CENTER ON BUDGET AND POLICY PRIORITIES, THE FEDERAL JOB GUARANTEE—A POLICY TO ACHIEVE PERMANENT FULL EMPLOYMENT (2018), <https://www.cbpp.org/sites/default/files/atoms/files/3-9-18fe.pdf>. Scholars suggest that the program in our country be modeled from the Works Progress Administration (WPA) and the Civilian Conservation Corps. Workers could maintain and build up the nation's (physical and human) infrastructure and engage in community development projects. Mark Paul, William Darity Jr., Darrick Hamilton & Khaing Zaw, *A Path to Ending Poverty by Way of Ending Unemployment: A Federal Job Guarantee*, 5 RUSSELL SAGE FOUND. J. SOC. SCI. 44 (2018).

²⁹⁰ J. Paul Leigh et al., *Minimum Wages and Public Health: A Literature Review*, 118 PREVENTIVE MED. 122 (2019).

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²⁹⁵ Leigh et al., *supra* note 290.

²⁹⁶ Lindsey Rose Bullinger, *The Effect of Minimum Wages on Adolescent Fertility: A Nationwide Analysis*, 107 AM. J. PUB. HEALTH 447 (2017).

²⁹⁷ Kelli A. Komro et al., *The Effect of an Increased Minimum Wage on Infant Mortality and Birth Weight*, 106 AM. J. PUB. HEALTH 1514 (2016).

²⁹⁸ Leigh et al., *supra* note 290. But see Elena Andreyeva & Benjamin Ukert, *The Impact of the Minimum Wage on Health*, 18 INT'L J. HEALTH ECON. MGMT. 337 (2018) (suggesting that higher minimum wages might be associated with less healthy eating habits).

²⁹⁹ Evan Totty, *The Effect of Minimum Wages on Employment: A Factor Model Approach* 55 (Inst. for Research on Labor and Emp't, Working Paper No. 110-15, 2015); David Neumark, J.M. Ian Salas, & William Wascher, *More on Recent Evidence on the Effects of Minimum Wages in the United States* 3 (Nat'l Bureau of Econ. Research, Working Paper No. 2069, 2014); Jonathan Meer & Jeremy West, *Effects of the Minimum Wage on Employment Dynamics* 51 (Nat'l Bureau of Econ. Research, Working Paper No. 19262, 2015); JOHN SCHMITT, CTR. FOR ECON. AND POLICY RESEARCH, WHY DOES THE MINIMUM WAGE HAVE NO DISCERNIBLE EFFECT ON EMPLOYMENT (2013), <http://cepr.net/documents/publications/min-wage-2013-02.pdf>; Sylvia Allegretto et al., *Credible Research Designs for Minimum Wage Studies: A Response to Neumark, Salas, and Wascher*, 70 INDUS. LAB. REL. REV. 559 (2017).

³⁰⁰ Allegretto et al., *supra* note 299.

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housing sales); DAVID COOPER, ECON. POLICY INST., BALANCING PAYCHECKS AND PUBLIC ASSISTANCE (2016), <https://www.epi.org/files/2015/balancing-paychecks-and-public-assistance.pdf> (arguing that increasing the federal minimum wage to \$12 per hour would lead to a \$17 billion annual savings for public assistance spending, “enough to double housing assistance benefits.”); Tim Aubry et al., *A Longitudinal Study of Predictors of Housing Stability, Housing Quality, and Mental Health Functioning Among Single Homeless Individuals Staying in Emergency Shelters*, 58 AM. J. COMMUNITY PSYCHOL. 123, 133 (2016) (finding that people with higher incomes were more likely to be housed, and that increasing the minimum wage is a “policy strategy worth pursuing”); CHRISTOPHER THORNBERG, ET AL., BEACON ECONOMICS, COST-BENEFIT ANALYSIS: LOS ANGELES MINIMUM WAGE PROPOSAL. BEACON ECONOMICS (2015), http://cao.lacity.org/minwagerfp-2014/Beaconpercent202015.03.19_Final.pdf (suggesting that a higher minimum wage could result in a rise in housing costs if there is no increase in the housing supply); THE SEATTLE MINIMUM WAGE STUDY TEAM, UNIV. OF WASH., THE SEATTLE MINIMUM WAGE ORDINANCE OCTOBER 2017 UPDATE: REPORT ON EMPLOYER ADJUSTMENTS, WORKER EXPERIENCES, AND PRICE CHANGES (2017), <https://www.seattle.gov/Documents/Departments/CityAuditor/auditreports/122917-Final-UW-Report.pdf> (noting that workers view a minimum wage increase on its own as insufficient to protect against rising housing costs); Joseph J. Sabia & Robert B. Nielsen, *Minimum Wages, Poverty, and Material Hardship: New Evidence from the SIPP*, 13 REV. ECON. HOUSEHOLD 95 (2015) (suggesting a higher minimum wage may not reduce housing stress); Tsu-Yu Tsao et al., *Estimating Potential Reductions in Premature Mortality in New York City from Raising the Minimum Wage to \$15*, 106 AM. J. PUB. HEALTH 1036 (2016) (estimating that a \$15 per hour minimum wage would reduce premature deaths).

³⁰² Universal basic income is another approach that has been discussed for assuring a living income. During the 1960s and 1970s, there were several local-level pilots in the U.S. and Canada. One study found that most households receiving income transfers moved to different neighborhoods with better housing. See Richard L. Kaluzny, *Changes in the Consumption of Housing Services: The Gary Experiment*, 14 J. HUM. RESOURCES 496, 496-506 (1979). Other results included higher birth weights for the most at-risk groups, higher elementary school test scores, school continuation rates, and adults continuing education, Jurgen De Wispelaere, *Basic Income in Our Time: Improving Political Prospects Through Policy Learning?*, 45 J. SOC. POL’Y 617, 617-634 (2016), reduced hospitalization rates and increased secondary level education, Evelyn L. Forget, *The Town with No Poverty: The Health Effects of a Canadian Guaranteed Annual Income Field Experiment*, 37 CANADIAN PUB. POL’Y 283, 283-305 (2011). However, by the late 1970s, many politicians withdrew their support for the program when researchers reported a significant increase in divorce rates. Scholars later rejected these findings as a statistical error, but the damage was done. De Wispelaere, *supra*. Since then, universal basic income has largely been a state and city level movement in the U.S., although it’s begun to make its way back into national policy discussions. For example, Alaska puts a share of its oil and mineral revenues into the Alaska Permanent Fund, which pays dividends to all Alaskans. See Chang-Tai Hsieh, *Do Consumers React to Anticipated Income Changes? Evidence from the Alaska Permanent Fund*, 93 AM. ECON. REV. 397, 397-405 (2003). Recently a multiyear pilot in Stockton, CA began, which provides low-income residents \$500 per month. See *In California, Stockton Experiments with Guaranteed Basic Income*, NPR (Jan. 29, 2018, 4:54 PM), <https://www.npr.org/2018/01/29/581674763/in-california-stockton-experiments-with-guaranteed-basic-income>.

³⁰³ FED. DEPOSIT INS. CORP., FIL-6-2007, FDIC’S SUPERVISORY POLICY ON PREDATORY LENDING (2007).

³⁰⁴ Laurie Goodman et al., *Are gains in black homeownership history?*, URBAN INST. (Feb. 14, 2017), <https://urbi.is/2gPebq2>.

³⁰⁵ ROTHSTEIN, *supra* note 188, at 109-113; Rugh & Massey, *supra* note 140.

³⁰⁶ AARON GLANTZ & EMMANUEL MARTINEZ, KEEP OUT: FOR PEOPLE OF COLOR, BANKS ARE SHUTTING THE DOOR TO HOMEOWNERSHIP, <https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/> (last visited Nov. 1, 2019).

³⁰⁷ DREW DESILVER & LRISTEM BIALIK, BLACKS AND HISPANICS FACE EXTRA CHALLENGES IN GETTING HOME LOANS <http://www.pewresearch.org/fact-tank/2017/01/10/blacks-and-hispanics-face-extra-challenges-in-getting-home-loans/> (last visited May 29, 2019).

³⁰⁸ 15 U.S.C. § 1691 (a) (2017).

³⁰⁹ 15 U.S.C. § 1691e (g) (2017).

³¹⁰ 42 U.S.C. § 3605 (2017).

³¹¹ 42 U.S.C. § 3614 (a)-(b) (2017).

³¹² Consent Order, *United States v. Countrywide Fin. Corp.*, No. CV11 10540-PSG (AJW) (C.D. Cal. 2011), <https://www.justice.gov/sites/default/files/crt/legacy/2012/01/27/countrywidesettle.pdf>.

³¹³ Consent Order, *United States v. Wells Fargo Bank*, No. 12-1150 (JDB) (D.D.C. 2012), <https://www.justice.gov/sites/default/files/crt/legacy/2012/09/25/wellsfargocd.pdf>.

³¹⁴ Consent Order, *United States v. Suntrust Mortg., Inc.*, No. 3:12CV397 (E.D. Va. 2012), <https://www.justice.gov/iso/opa/resources/313201253116253830420.pdf>.

³¹⁵ Consent Order, *United States v. Union Sav. Bank*, No. 1:16CV1172 (S.D. Ohio 2017), <https://www.justice.gov/crt/case-document/file/922551/download>.

³¹⁶ Annual ECOA reports containing information on DOJ’s fair lending work are located on DOJ’s website. See *Fair Lending Program*, U.S. DEP’T. OF JUSTICE, <https://www.justice.gov/crt/fair-lending-program-o> (last visited Oct. 31, 2019).

- ³¹⁷ WELLS FARGO, OUR ROAD AHEAD (2018), <https://www8.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2018-annual-report.pdf>.
- ³¹⁸ SUNTRUST, BUILDING FINANCIAL CONFIDENCE (2018), http://s2.q4cdn.com/438932305/files/doc_financials/2018/annual/SunTrust-2018-Annual-Report.pdf
- ³¹⁹ U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF POLICY DEV. & RESEARCH, CURBING PREDATORY HOME MORTGAGE LENDING (2000), <https://www.huduser.gov/portal/publications/hsgfin/curbing.html>.
- ³²⁰ *Id.* See also Elizabeth Renuart, *An Overview of the Predatory Mortgage Lending Process*, 15 HOUSING POL'Y DEBATE 467 (2004) (providing descriptions of prime, subprime, and predatory mortgage lending, and describing characteristics of predatory loans).
- ³²¹ *Id.*
- ³²² *Id.*
- ³²³ Pub. L. No. 111-203.
- ³²⁴ 12 U.S.C. §§ 2901 – 2908 (2017).
- ³²⁵ Pub. L. No. 90-321, 82 Stat. 146 (1968) (codified as amended at 15 U.S.C.A. §§ 1601-1667f (2019)).
- ³²⁶ Pub. L. No. 103-325, 108 Stat. 2190 (1994).
- ³²⁷ Pub. L. No. 93-533, 88 Stat. 1724 (1974) (codified as amended at 12 U.S.C. §§ 2601-2617 (2017)).
- ³²⁸ Pub. L. No. 110-289, 122 Stat. 2654 (2008).
- ³²⁹ 12 U.S.C. § 5491 (2017); Pub. L. No. 115-174, § 101; 15 U.S.C. § 1639c (a)-(b) (2017). See also CFPB's rule implementing the ability to repay requirement. 12 C.F.R. § 1026.43 (2019).
- ³³⁰ Data reported under the Home Mortgage Disclosure Act show that the 2014 rule implementing part of Dodd-Frank – the Ability to Repay and Qualified Mortgage (ATR/QM) rule – did not significantly reduce the availability of mortgages in 2014 relative to 2013. FED. RESERVE BULLETIN, THE 2014 HOME MORTGAGE DISCLOSURE ACT DATA (2015), https://www.federalreserve.gov/pubs/bulletin/2015/pdf/2014_HMDA.pdf. See also CTR. FOR RESPONSIBLE LENDING, MORTGAGE LENDING CONTINUES UNDER DODD-FRANK (2015), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/2014hmda_data_issuebrief_f.pdf. However, authors of a 2019 working paper noted that, because of the increased legal risk lenders incurred as a result of the ATR/QM rule, they made fewer loans and raised interest rates to account for the increased risk. Anthony A. DeFusco, Stephanie Johnson & John Mondragon, *Regulating Household Leverage* (2019) https://static1.squarespace.com/static/5b674378af2096c5aae02deo/t/5cd21996a4222ff16d917a3b/1557272984131/regulating_leverage.pdf. One of the amendments to TILA made by Dodd-Frank provides that lenders who fail to comply with the ability to repay requirement may be liable for reimbursing a borrower for all fees and charges paid. 15 U.S.C. § 1640 (a) (2017). Additionally, data from the Urban Institute points to a decrease in the number of foreclosures after Dodd-Frank was passed. URBAN INST., HOUSING FINANCE AT A GLANCE A MONTHLY CHARTBOOK (2019) https://www.urban.org/sites/default/files/publication/100034/march_chartbook_2019.pdf.
- ³³¹ Michela Zonta, *Do the GSEs Meet the Credit Needs of Underserved Communities of Color?*, 17 CITYSCAPE: J. POL'Y DEV. RES. 193 (2015) (finding that, in the period after HERA was passed, government-sponsored enterprises' performance in extending credit to underserved communities, particularly African American communities, continued to lag behind that of the primary market).
- ³³² Allen J. Fishbein, *The Community Reinvestment Act after Fifteen Years: It Works, but Strengthened Federal Enforcement Is Needed*, 20 FORDHAM URB. L.J. 293 (1993); Richard D Marsico, *Democratizing Capital: The History, Law, and Reform of the Community Reinvestment Act*, 49 N.Y. L. SCH. REV. 717 (2005); Michael S. Barr, *Credit Where it Counts: The Community Reinvestment Act and Its Critics*, 80 N.Y.U. L. REV. 513 (2005); RANDALL KROSZNER, THE COMMUNITY REINVESTMENT ACT AND THE RECENT MORTGAGE CRISIS (2008), <https://core.ac.uk/download/pdf/6705946.pdf>; Jonathan R Macey & Geoffrey P Miller, *The Community Reinvestment Act: An Economic Analysis*, 79 VA L. REV. 291 (1993); Timothy Bates & Alicia Robb, *Has the Community Reinvestment Act Increased Loan Availability Among Small Businesses Operating in Minority Neighborhoods?*, 52 URB. STUD. 1702 (2015).
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- ³³⁵ Roberto G. Quercia, *Assessing the Impact of North Carolina's Predatory Lending Law*, 15 HOUSING POL'Y DEBATE 573 (2004); Gregory Elliehausen & Michael E. Staten, *Regulation of Subprime Mortgage Products: An Analysis of North Carolina's Predator Lending Law*, 29 J. REAL EST. FIN. ECON. 411 (2004).
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and *Better Borrowers?*, 40 ATLANTIC ECON. J. 273 (2012); Giang Ho & Anthony Pennington-Cross, *The Impact of Local Predatory Lending Laws on the flow of Subprime Credit*, 60 J. URB. ECON. 210 (2006).

³³⁷ See Bostic et al., *supra* note 333 (indicating these laws have little impact on subprime originations); Ho & Pennington-Cross, *supra* note 336 (pointing to a decrease in subprime originations).

³³⁸ See Dan Immergluck, *Old Wine in Private Equity Bottles? The Resurgence of Contract-for-Deed Home Sales in US Urban Neighborhoods*, 42 INT'L J. URB. REGIONAL RES. 651 (2018); SARAH MANCINI & MARGOT SAUNDERS, NAT'L CONSUMER L. CTR., LAND INSTALLMENT CONTRACTS: THE NEWEST WAVE OF PREDATORY HOME LENDING THREATENING COMMUNITIES OF COLOR (2017), <https://www.bostonfed.org/publications/communities-and-banking/2017/spring/land-installment-contracts-newest-wave-of-predatory-home-lending-threatening-communities-of-color.aspx>; JERIMIAH BATTLE ET AL., NAT'L CONSUMER L. CTR., TOXIC TRANSACTIONS: HOW LAND INSTALLMENT CONTRACTS ONCE AGAIN THREATEN COMMUNITIES OF COLOR (2016), <https://www.nclc.org/images/pdf/pr-reports/report-land-contracts.pdf>.

³³⁹ THE SAMUEL DUBOIS COOK CENTER ON SOCIAL EQUITY AT DUKE UNIV., THE PLUNDER OF BLACK WEALTH IN CHICAGO: NEW FINDINGS ON THE LASTING TOLL OF PREDATORY HOUSING CONTRACTS (Sharon McCloskey & Bruce Orenstein eds., 2019), <https://socialequity.duke.edu/wp-content/uploads/2019/10/Plunder-of-Black-Wealth-in-Chicago.pdf>.

³⁴⁰ *Id.*

³⁴¹ MANCINI & SAUNDERS, *supra* note 338.

³⁴² BATTLE ET AL., *supra* note 338.

³⁴³ *Id.*

³⁴⁴ Immergluck, *supra* note 338.

³⁴⁵ See Eric Seymour & Joshua Akers, *Portfolio solutions, bulk sales of bank-owned properties, and the reemergence of racially exploitative land contracts*, 89 CITIES 46 (2019).

³⁴⁶ *Id.*; BATTLE ET AL., *supra* note 338.

³⁴⁷ BATTLE ET AL., *supra* note 338.

³⁴⁸ 15 U.S.C. § 1639(p) (2017).

³⁴⁹ MANCINI & SAUNDERS, *supra* note 338; BATTLE ET AL., *supra* note 338. See also MATTHEW GOLDSTEIN & ALEXANDRA STEVENSON, 'CONTRACT FOR DEED' LENDING GETS FEDERAL SCRUTINY, <https://www.nytimes.com/2016/05/11/business/dealbook/contract-for-deed-lending-gets-federal-scrutiny.html> (last visited May 29, 2018) (CFPB in early stages of investigating and formulating policy on contracts for deed). The National Consumer Law Center has recommended that, in accordance with the TILA provision, CFPB issue a comprehensive federal rule to regulate contracts for deed nationwide. Some of the features of a recommended regulation include: require independent inspections, appraisals, and disclosure of the cost of credit; require settlement of property taxes and liens at sale; require recordation; and provide protections upon default. MANCINI & SAUNDERS, *supra* note 338.

³⁵⁰ MANCINI & SAUNDERS, *supra* note 338; BATTLE ET AL., *supra* note 338.

³⁵¹ OKLA. ST. ANN. tit. 16, § 11A (West 2019); see Heather K. Way & Lucy Wood, *Contracts for Deed: Charting Risks and New Paths for Advocacy*, 23 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 37, 37-48 (2014); GOLDSTEIN & STEVENSON, *supra* note 349.

³⁵² ME. REV. STAT. ANN. tit. 33, § 482 (West 2019); N.C. GEN. STAT. ANN. § 47H-2 (West 2018).

³⁵³ *Id.*; IOWA CODE ANN. § 558.46 (West 2019).

³⁵⁴ MD. CODE ANN., REAL PROP. § 10-105(a) (West 2019).

³⁵⁵ ARIZ. REV. STAT. ANN. §33-742 (2019).

³⁵⁶ OHIO REV. CODE ANN. § 5313.07 (West 2019).

³⁵⁷ MINN. STAT. ANN. § 47.20 (3), (4a) (West 2019).

³⁵⁸ BATTLE ET AL., *supra* note 338.

³⁵⁹ See Way & Wood, *supra* note 351.

³⁶⁰ Eliza Platts-Mills & Justin Chung, *Challenging Payday Lenders by Opening up the Market for Small-Dollar Loans*, 33 BRIGHAM YOUNG U. J. PUBLIC L. 101 (2019).

³⁶¹ Jerzy Eisenberg-Guyot et al., *From Payday Loans to Pawnshops: Fringe Banking, the Unbanked, and Health*, 37 HEALTH AFFAIRS 429 (2018).

³⁶² Elizabeth Sweet et al., *Short-Term Lending: Payday Loans as Risk Factors for Anxiety, Inflammation and Poor Health*, 5 SSM-POPULATION HEALTH 114 (2018).

³⁶³ THE PEW CHARITABLE TRUSTS, PAYDAY LOAN FACTS AND THE CFPB'S IMPACT (2016), https://www.pewtrusts.org/-/media/assets/2016/06/payday_loan_facts_and_the_cfpbs_impact.pdf

³⁶⁴ THE PEW CHARITABLE TRUSTS, PAYDAY LENDING IN AMERICA: REPORT 2 HOW BORROWERS CHOOSE AND REPAY PAYDAY LOANS (2013), [http://www.pewtrusts.org/-/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-1\).pdf](http://www.pewtrusts.org/-/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-1).pdf)

³⁶⁵ THE PEW CHARITABLE TRUSTS, PAYDAY LENDING IN AMERICA: POLICY SOLUTIONS (2013), http://www.pewtrusts.org/-/media/legacy/uploadedfiles/pes_assets/2013/pewpaydayoverviewandrecommendationspdf.pdf

³⁶⁶ *Id.*

³⁶⁷ THE PEW CHARITABLE TRUSTS, PAYDAY LENDING IN AMERICA: WHO BORROWS, WHERE THEY BORROW, AND WHY (2012),

http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf.

³⁶⁸ Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54,472 (Nov. 17, 2017) (to be codified at 12 C.F.R. pt. 1041).

³⁶⁹ Payday, Vehicle Title, and Certain High-Cost Installment Loans, 84 Fed. Reg. 4252 (proposed February 14, 2019) (to be codified at 12 C.F.R. pt. 1041).

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LENDING IN 2017 STATES BATTLE TO RESTRAIN HIGH-COST LOANS (2017), <https://www.nclc.org/images/pdf/pr-reports/installment-loans/report-installment-loans.pdf> (examining state laws that allow non-bank lenders to make installment loans to consumers).

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³⁷² Eisenberg-Guyot et al., *supra* note 361; SUSANNA MONTEZEMOLO, CTR. FOR RESPONSIBLE LENDING, PAYDAY LENDING ABUSES AND PREDATORY PRACTICES (2013), <http://www.responsiblelending.org/state-of-lending/reports/10-Payday-Loans.pdf>.

³⁷³ Alex Horowitz, *Payday Loans Harm Consumers, But Reform is Possible*, 36 J. POL'Y ANALYSIS MGMT., 248 (2016); SIGNE-MARY MCKERNAN ET AL., URBAN INST., SMALL-DOLLAR CREDIT: PROTECTING CONSUMERS AND FOSTERING INNOVATION (2015),

<https://www.urban.org/sites/default/files/publication/76411/2000556-Small-Dollar-Credit-Protecting-Consumers-and-Fostering-Innovation.pdf>; THE PEW CHARITABLE TRUSTS, *supra* note 363; See also THE PEW CHARITABLE TRUSTS, *supra* note 365 (finding that after Colorado passed a law requiring lenders to allow borrowers to repay loan in installments, payday lenders continued to operate, but payments for borrowers were much more affordable). ROBERT B. AVERY, BOARD OF GOVERNORS OF THE FED. RESERVE SYSTEM, PAYDAY LOANS VERSUS PAWNSHOPS: THE EFFECTS OF LOAN FEE LIMITS ON HOUSEHOLD USE (2011), <https://www.frbsf.org/community-development/files/2-avery-handout.pdf>; But see Jonathan Zinman, *Restricting Consumer Credit Access: Household Survey Evidence on Effects Around the Oregon Rate Cap*, 34 J. BANKING & FIN. 546 (2010) (finding that a 2007 Oregon law, which capped the allowable amount of charges and fees and set a minimum loan term, reduced the supply of credit for payday borrowers).

³⁷⁴ See THE PEW CHARITABLE TRUSTS, HOW STATE RATE LIMITS AFFECT PAYDAY LOAN PRICES (2014),

https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs/content-level_pages/fact_sheets/stateratelimitsfactsheetpdf.pdf; Horowitz, *supra* note 373 (finding that the average cost of borrowing a payday loan is less in states with lower interest rate caps than in states with higher rate caps).

³⁷⁵ URIAH KING & LESLIE PARRISH, CTR. FOR RESPONSIBLE LENDING, SPRINGING THE DEBT TRAP: RATE CAPS ARE ONLY PROVEN PAYDAY LENDING REFORM (2007), <https://www.responsiblelending.org/payday-lending/research-analysis/springing-the-debt-trap.pdf>.

³⁷⁶ See PEW CHARITABLE TRUSTS, *supra* note 374 (noting that there are no payday lending stores in states that prohibit interest rates higher than 36 percent); Stephanie R. Ramirez, *Payday-Loan Bans: Evidence of Indirect Effects on Supply*, 56 EMPIRICAL ECON. 1011 (2019) (noting that a 28 percent APR limit on payday loans in OH effectively banned payday lending in the states).

³⁷⁷ Ramirez, *supra* note 376 (finding an increase in the small-loan, second-mortgage and pawnbroker industries after an Ohio law capped the APR on payday loans at 28 percent). See also Zinman, *supra* note 373 (finding that a restriction on loan charges and fees in Oregon led payday borrowers to use substitute forms of credit); Neil Bhutta et al., *Consumer Borrowing After Payday Loan Bans*, 59 J. L. ECON. 225 (2016) (finding that payday lending bans result in an increased use of pawnbrokers, and suggesting that payday borrowers may use bank overdrafts as a substitute when payday lending is prohibited).

³⁷⁸ Aluma Zernick, *Overdrafts: When Markets, Consumers, and Regulators Collide*, 26 GEO. J. ON POVERTY L. AND POL'Y 1 (2018).

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³⁸¹ 12 C.F.R. § 205.17 (2019). See also Zernick, *supra* note 378.

³⁸² Zernick, *supra* note 378.

³⁸³ LOW ET AL., *supra* note 379.

³⁸⁴ *E.g.*, 810 ILL. COMP. STAT. ANN. § 5/3 806 (West 2019); IND. CODE ANN. § 35-43-5-5 (West 2019); N.Y. COMP. CODES R. & REGS. tit. 3 §§ 32.1-32.2 (2019).

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³⁸⁹ Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 HOUSING POL'Y DEBATE 461 (2003); Seefeldt, *supra* note 385 (discussing payment plans).

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⁴²¹ MO. ANN. STAT. § 479.353 (West 2019).

⁴²² *Id.* See also CAL. PENAL CODE § 688.5 (West 2019) (prohibiting municipalities from charging defendants for certain costs).

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⁴²⁶ KY. REV. STAT. ANN. § 24A.175 (West 2019); TENN. CODE ANN. § 55-50-502 (d) (West 2019); WASH. REV. CODE ANN. § 10.01.170 (West 2019).

⁴²⁷ Elena Kantorowicz-Reznichenko, *Day Fines: Reviving the Idea and Reversing the (Costly) Punitive Trend*, 55 AM. CRIM. L. REV. 333 (2018).

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⁴²⁹ The program resulted in the resolution of more than 250,000 cases in which a person qualified for a 50 percent or 80 percent reduction in their debt owed, then either paid the reduced balance or agreed to a payment plan. JUDICIAL COUNCIL OF CALIFORNIA, 18-MONTH STATEWIDE INFRACTION AMNESTY PROGRAM REPORT (2017), <https://www.courts.ca.gov/documents/lr-2017-JC-statewide-traffic-amnesty.pdf>. We also found one report analyzing a municipal court program in Phoenix, Arizona that helps with driver's license reinstatement for people who have had their license suspended for failure to pay traffic fines. Researchers evaluating the program found that almost half of the participants surveyed reported an increase in income associated with joining the program, and that the program had an overall positive economic impact. L. WILLIAM SEIDMAN RESEARCH INSTITUTE, THE CITY OF PHOENIX MUNICIPAL COURT'S COMPLIANCE ASSISTANCE PROGRAM, 2016 *AN ECONOMIC ASSESSMENT* (2017), <https://finesandfeesjusticecenter.org/content/uploads/2018/11/Phoenix-license-restoration-pilot-THE-CITY-OF-PHOENIX-MUNICIPAL-COURT-percentE2-percent80-percent09S-COMPLIANCE-ASSISTANCE-PROGRAM.pdf>.

⁴³⁰ *Bearden v. Georgia*, 461 U.S. 660 (1983).

⁴³¹ *Id.*

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⁴³⁷ OR. REV. STAT. ANN. § 197.312 (West 2018).

⁴³⁸ CAL. GOV'T CODE § 65583 (c) (West 2019); FLA. STAT. ANN. § 163.3177 (West 2019); OR. REV. STAT. §§ 197.303 - 197.320 (West 2018).

⁴³⁹ MASS. GEN. LAWS ANN. ch. 40B, §§ 20-23 (West 2019).

⁴⁴⁰ Farhad Manjoo, *America's Cities Are Unlivable. Blame Wealthy Liberals*, N.Y. TIMES, May 22, 2019 (discussing demise of CA SB 50, a transit-oriented development bill overriding local zoning).

⁴⁴¹ CAL. GOV'T CODE § 65583 (c) (West 2019).

⁴⁴² See Darrel Ramsey-Musolf, *Evaluating California's Housing Element Law, Housing Equity, and Housing Production (1990-2007)*, 26 HOUSING POL'Y DEBATE 488 (2016) (indicating that compliance with the law was positively associated with production of affordable housing, but negatively associated with overall production of several types of housing -- affordable, market rate, single family, and multi-family). See also PAUL G. LEWIS, CALIFORNIA'S HOUSING ELEMENT LAW: THE ISSUE OF LOCAL NONCOMPLIANCE (2003), https://www.ppic.org/content/pubs/report/R_203PLR.pdf (finding no evidence of an association between compliance with the housing element law and the pace of housing production, though this study did not analyze the law's impact on affordable housing specifically); Paul G. Lewis, *Can State Review of Local Planning Increase Housing Production?*, 16 HOUSING POL'Y DEBATE 173 (2005) (finding no difference in the pace of overall housing development between municipalities that complied with the law and those that did not). One commentator has suggested the housing element law has not been effective in meeting the state's demand for affordable housing, due to gaps in the law that the legislature and the courts have failed to close. Jonathan Zasloff, *The Price of Equality: Fair Housing, Land Use, and Disparate Impact*, 48 COLUM. HUM. RIGHTS L. REV. 98, 98-157 (2017).

⁴⁴³ Fisher & Marantz, *supra* note 185. See also Ravit Hananel, *Can Centralization, Decentralization and Welfare Go Together? The Case of Massachusetts Affordable Housing Policy (Ch. 40B)*, 51 URB. STUD. 2487 (2014) (suggesting that 40B has allowed for more local control over affordable housing, resulting in municipalities being less resistant to affordable housing).

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⁴⁵² William D. Duncombe & John M. Yinger, *School District Consolidation: The Benefits and Costs*, SCH. ADMIN., May 2010, at 10-17, <http://www.aasa.org/SchoolAdministratorArticle.aspx?id=13218>; Timothy J. Gronberg et al., *School District Consolidation: Market Concentration and the Scale-Efficiency Tradeoff*, 82 SOUTHERN ECON. J. 580, 580-597 (2015).

⁴⁵³ KATHRYN ROONEY & JOHN AUGENBLICK, AUGENBLICK, PALAICH AND ASSOCIATES, INC., AN EXPLORATION OF DISTRICT CONSOLIDATION (2009), <http://apaconsulting.net/~apa/wp-content/uploads/2014/06/16-co-district-consolidation.pdf>; Duncombe & Yinger, *supra* note 451; HOWLEY ET AL., *supra* note 450.

⁴⁵⁴ Jonathan A. Plucker et al., Center for Evaluation & Education Policy, *Assessing the Policy Environment for School Corporation Collaboration, Cooperation, and Consolidation in Indiana*, EDUC. POL'Y BRIEF, Summer 2007, at 1-15, <https://files.eric.ed.gov/fulltext/ED497535.pdf>.

⁴⁵⁵ An analysis using 1991 data from Ohio indicates that having a consolidated school district is associated with a 3.5 percent decline in the value of a home, holding all else constant. David M. Brasington, *House Prices and the Structure of Local Government: An Application of Spatial Statistics*, 29 J. REAL EST. FIN. & ECON. 211 (2004). However, some researchers assert that the Ohio analysis did not address limitations regarding empirical estimates of the impacts of consolidation. Yue Hu & John Yinger, *The Impact of School District Consolidation on Housing Prices*, 61 NAT'L TAX J. 609, 609-633 (2008). A couple of more recent studies in New York found that school district consolidation results in a rise in house values in low-income tracts (though it may take a few years to see the increase), and a decrease in house values in high-income tracts. William D. Duncombe et al., *How Does School District Consolidation Affect Property Values? A Case Study of New York*, 44 PUB. FIN. REV. 52, 52-79 (2014); Hu & Yinger, *supra*.

⁴⁵⁶ Brian W. Ohm, *Is There a Law of Regional Planning?*, 4 BELMONT L. REV., no. 1, 2017, at 35-64.

⁴⁵⁷ *Id.*

⁴⁵⁸ David B. Walker, *Snow White and the 17 Dwarfs: From Metro Cooperation to Governance*, NAT'L CIVIC REV., Jan./Feb. 1987, at 14-28.

⁴⁵⁹ NEIL MAYER & KENNETH TEMKIN, THE URBAN INST., HOUSING PARTNERSHIPS: THE WORK OF LARGE-SCALE REGIONAL NONPROFITS IN AFFORDABLE HOUSING (2007); Matthew McKinney et al., *Regionalism in the West: An Inventory and Assessment*, 23 PUB. LAND & RESOURCES L. REV. 101, 101-191 (2002) (91 percent of survey respondents indicated that they have improved communication and collaboration, 83 percent reported an increased understanding of the social, economic, and environmental characteristics of the region; 72 percent fostered policy outcomes and 63 percent implemented projects).

⁴⁶⁰ Interstate compacts – contracts between states to resolve some regional issue -- have become an increasingly popular form of regional planning. For an overview and commentary on interstate compacts, see Stephen David Galowitz, *Interstate Metro-Regional Responses to Exclusionary Zoning*, 27 REAL PROP., PROB. & TR. J. 49, 49-142 (1992) (reviewing successes and problems of interstate compacts that have promoted affordable housing initiatives, including the Missouri-Illinois Bi-State Compact, the Delaware Valley Regional Planning Authority, the Metropolitan Washington Council of Governments, the Tri-State Regional Planning Commission, and the Northwest Power Planning Council). See also Gerald E. Frug, *Beyond Regional Government*, 115 HARVARD L. REV. 1763, 1784-85 (2002) (noting that interlocal compacts may hinder more comprehensive regional organization).

⁴⁶¹ Myron Orfield, *Land Use and Housing Policies to Reduce Concentrated Poverty and Racial Segregation*, 33 FORDHAM URB. L.J. 101, 101-59 (2006).

⁴⁶² INST. ON METROPOLITAN OPPORTUNITY, WHY ARE THE TWIN CITIES SO SEGREGATED? (2015), https://scholarship.law.umn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1123&context=imo_studies; See also Myron Orfield & Will Stancil, *Why are the Twin Cities so Segregated?*, 43 MITCHELL HAMLIN L. REV. 1, 1-62 (2017).

⁴⁶³ *Id.*

⁴⁶⁴ *Id.*

⁴⁶⁵ STUART MECK, AM. PLANNING ASS'N, GROWING SMART LEGISLATIVE GUIDEBOOK (Stuart Meck ed., 2002 ed. 2002).

⁴⁶⁶ See Seong-Hoon Cho, Zhuo Chen, Steven T. Yen & David B. Eastwood, *Estimating Effects of an Urban Growth Boundary on Land Development*, 38 J. AGRIC. & APPLIED ECON. 287 (2006) (concluding that the UGB in Knox County, TN has been effective in discouraging urban sprawl); Seong-Hoon Cho, Olufemi A. Omiaomu, Neelam C. Poudyal & David B. Eastwood, *The Impact of an Urban Growth Boundary on Land Development in Knox County, Tennessee: A Comparison of Two-Stage Probit Least Squares and Multilayer Neural Network Models*, 39 J. AGRIC. & APPLIED ECON. 701 (2007) (suggesting that the UGB in Knox County, TN has not controlled urban sprawl); Myung-Jin Jun, *The Effects of Portland's Urban Growth Boundary on Urban Development Patterns and Commuting*, 41 URB. STUD. 1333 (2004) (finding that Portland's UGB has not controlled urban sprawl, and noting that some previous studies have reached the same conclusion while others have not); MECK, *supra* note 465 (discussing a 1991 study that found Oregon UGBs could contain urban growth); Arthur C. Nelson & Terry Moore, *Assessing Urban Growth Management: The Case of Portland, Oregon, the USA's Largest Urban Growth*

Boundary, 10 LAND USE POL'Y 293 (1993) (finding that while development is being directed to UGBs, "considerable development continues outside the UGB").

⁴⁶⁷ *But see* Rolf Pendall, *Local Land Use Regulation and the Chain of Exclusion*, 66 J. AM. PLAN. ASS'N 125 (2000) (finding UGBs have no impact on the exclusion of racial minorities). *See also* Orfield, *supra* note 461 (noting that a professional from the Portland real estate industry attributed Portland's high level of economic integration to the requirement that cities within the Portland UGB enable construction of a substantial amount of multi-family units).

⁴⁶⁸ *See* Myung-Jin Jun, *The Effects of Portland's Urban Growth Boundary on Housing Prices*, 72 J. AM. PLAN. ASS'N 239, 239-243 (2006) (finding that Portland's UGB had no significant effect on housing prices); Anthony Downs, *Have Housing Prices Risen Faster in Portland Than Elsewhere?*, 13 HOUSING POL'Y DEBATE 7, 12-14 (2002) (finding that for a period of four years, Portland's housing prices grew more rapidly than they did in other areas, but for the remainder of the time they grew less quickly); Seong-Hoon Cho, Zhuo Chen, & Steven T. Yen, *Urban Growth Boundary and Housing Prices: The Case of Knox County, Tennessee*, 38 REV. REGIONAL STUD. 29 (2008) (finding that, after the implementation of the UGB in Knox County, Tennessee, the value of new housing was likely to be higher inside the UGB than outside the UGB); Shishir Mathur, *Impact of Urban Growth Boundary on Housing and Land Prices: Evidence from King County, Washington*, 29 HOUSING STUD. 128, 128-148 (2014) (finding that while the UGB in King County, Washington raised *land* prices, it decreased *housing* prices).

⁴⁶⁹ *S. Burlington Cty. N.A.A.C.P. v. Twp. of Mount Laurel*, 336 A.2d 713 (N.J. 1975); *S. Burlington Cty. N.A.A.C.P. v. Twp. of Mount Laurel*, 456 A.2d 390 (N.J. 1983); *Hills Dev. Co. v. Twp. of Bernards*, 510 A.2d 621 (N.J. 1986).

⁴⁷⁰ Ohm, *supra* note 456.

⁴⁷¹ *Mount Laurel Doctrine*, FAIR SHARE HOUSING CTR., <http://fairsharehousing.org/mount-laurel-doctrine/> (last visited March 21, 2019).

⁴⁷² Stephanie R. Bush-Baskette et al., *Residential and Social Outcomes for Residents Living in Housing Certified by the New Jersey Council on Affordable Housing*, 63 RUTGERS L. REV. 879, 879-904 (2011).

⁴⁷³ Orfield, *supra* note 461.

⁴⁷⁴ 425 U.S. 284 (1976).

⁴⁷⁵ POVERTY & RACE RESEARCH ACTION COUNCIL, AN ANALYSIS OF THE *THOMPSON V. HUD* DECISION (2005),

<https://www.prrac.org/pdf/ThompsonAnalysis.pdf>.

⁴⁷⁶ The consent decree formalized an earlier agreement between the plaintiffs and HUD that was documented in a Letter of Understanding. *Gautreaux v. Landrieu*, 523 F.Supp. 665 (N.D. Ill. 1981), *aff'd sub nom.*, *Gautreaux v. Pierce*, 690 F.2d 616 (7th Cir. 1982). Although the *Gautreaux* plaintiffs were able to resolve their claims against HUD within a few years of the Supreme Court's decision, they only recently reached a settlement agreement resolving their claims against the Chicago Housing Authority, which had been subject to a remedial order issued by the court in 1969. Order of Final Approval of Settlement Agreement, *Gautreaux v. Chicago Hous. Auth.*, No. 66-C-1459, (N.D. Ill. Jan. 23, 2019). *See also* *Gautreaux Settlement*, CHICAGO HOUSING AUTHORITY, <https://www.thecha.org/residents/public-housing/gautreaux-settlement> (last visited Oct. 31, 2019).

⁴⁷⁷ *Id.*; KATHLEEN A. PEROFF ET AL., U.S. DEP'T OF HOUS. AND URBAN DEV., GAUTREAUX HOUSING DEMONSTRATION (1979), https://www.huduser.gov/portal/Publications/pdf/HUD_percent20-percent2050719.pdf; Janet K. Levit, *Rewriting Beginnings: The Lessons of Gautreaux*, 28 J. MARSHALL L. REV. 57 (1994).

⁴⁷⁸ Levit, *supra* note 477.

⁴⁷⁹ *Id.* *See also* PEROFF ET AL., *supra* note 477.

⁴⁸⁰ Business and Professional People for the Public Interest, *The Supreme Court and the Gautreaux Assisted Housing Program*, BPI BLOG (May 15, 2015), <https://www.bpichicago.org/blog/the-supreme-court-and-the-gautreaux-assisted-housing-program/>.

⁴⁸¹ Stefanie DeLuca & Peter Rosenblatt, *Walking Away From The Wire: Housing Mobility and Neighborhood Opportunity in Baltimore*, 27 HOUSING POL'Y DEBATE 519, 519-546 (2017).

⁴⁸² *Thompson v. U.S. Dep't of Hous. & Urban Dev.* 348 F.Supp.2d 398 (2005). The Baltimore Housing Mobility Program ("BHMP") was established as a result of a partial settlement of the *Thompson v. U.S. Dep't of Hous. & Urban Dev.* public housing desegregation case. DeLuca & Rosenblatt, *supra* note 481. Individuals or families participating in the BHMP can use their vouchers regionally in multiple counties -- including communities with high opportunity -- without having to go through the process of transferring their voucher from one housing authority to another. BHMP not only provides intensive housing counseling to voucher holders, but also makes it easier for residents of Baltimore City to use a voucher in more affluent neighborhoods. The BHMP can help participants move to more integrated and affluent neighborhoods, as compared to voucher holders in programs without additional supports. *Id.* Between 2003 and 2018, over 3,900 families received vouchers and pre- and post-move counseling through the BHMP. ANDREA JURACEK ET AL., HOUSING CHOICE PARTNERS ET AL., HOUSING MOBILITY PROGRAMS IN THE U.S. 2018 (2018), <https://prrac.org/pdf/mobilityprogramsus2018.pdf>. *See also* LORA ENGDahl, POVERTY AND RACE RESEARCH ACTION COUNCIL & THE BALT. REG'L HOUS. CAMPAIGN, NEW HOMES, NEW NEIGHBORHOODS, NEW SCHOOLS: A PROGRESS REPORT ON THE BALTIMORE HOUSING MOBILITY PROGRAM (2009), <https://files.eric.ed.gov/fulltext/ED535457.pdf> (discussing outcomes and keys to the program's success).

⁴⁸³ Walker v. U.S. Dep't of Hous. & Urban Dev., 734 F.Supp. 1231, 1247–62 (N.D. Tex.1989). The Mobility Assistance Program (MAP) in Dallas is a program of Inclusive Communities Project that assists families in accessing rental housing in higher-opportunity areas in Dallas County and six adjacent counties. MAP helps more than 350 families move to communities of high opportunity each year. JURACEK ET AL., *supra* note 482.

⁴⁸⁴ U.S. Dep't of Hous. & Urban Dev., *supra* note 157; ABEDIN ET AL., *supra* note 77.

⁴⁸⁵ See Peter Bergman et al., *Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice* (Nat'l Bureau of Econ. Research., Working Paper No. 26164, 2019) (finding that 54% of voucher holders in Seattle and King County, Washington who received assistance with housing searches, landlord engagement, and short-term financial assistance moved to areas of high opportunity, while only 14% of those who did not receive assistance moved to such areas).

⁴⁸⁶ Bruce J. Katz & Margery Austin Turner, *Who Should Run the Housing Voucher Program? A Reform Proposal*, 12 HOUSING POL'Y DEBATE 239, 239-262 (2001).

⁴⁸⁷ Bruce Katz & Margery Austin Turner, *Invest but Reform: Streamline Administration of the Housing Choice Voucher Program*, REMAKING FEDERALISM (Brookings Metro. Policy Program, Washington, D.C.) August 2013, <https://www.brookings.edu/wp-content/uploads/2016/06/Housing-Voucher-Program.pdf>.

⁴⁸⁸ See U.S. Dep't of Hous. & Urban Dev., *Low-Income Housing Tax Credit Database*, https://lihtc.huduser.gov/agency_list.htm (last visited Jun. 24, 2019) (listing the state and local LIHTC allocating agencies).

⁴⁸⁹ 26 C.F.R. § 1.42 (2018).

⁴⁹⁰ See CORIANNE PAYTON SCALLY ET AL., THE LOW-INCOME HOUSING TAX CREDIT: HOW IT WORKS AND WHO IT SERVES 4-6 (2018), https://www.urban.org/research/publication/low-income-housing-tax-credit-how-it-works-and-who-it-serves/view/full_report (depicting the levels of partnership involved in the LIHTC program).

⁴⁹¹ See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-16-360, LOW-INCOME HOUSING TAX CREDIT: SOME AGENCY PRACTICES RAISE CONCERNS AND IRS COULD IMPROVE NONCOMPLIANCE REPORTING AND DATA COLLECTION 14 (2016) (noting that there were 11 states (plus Chicago) that required letters of support from local officials in order to approve LIHTC applications).

⁴⁹² Rev. Rul. 2016-29 (IRS RRU), 2016-52 I.R.B. 875.

⁴⁹³ In 2017, HUD and a nonprofit housing coalition based in Baltimore reached an agreement with the state of Maryland and Maryland's Department of Housing and Community Development (DHCD) to resolve a fair housing complaint alleging, in part, that Maryland's local approval requirement for LIHTC projects perpetuated segregation in violation of civil rights laws. Housing Discrimination Complaint, Baltimore Regional Housing Campaign v. State of Maryland, HUD Case No. 03-12-0016-8, 03-11-0014-6, 03-11-0014-9 (Oct. 31, 2011), https://pryac.org/pdf/State_of_Maryland_Final_Complaint_signed.pdf. As part of the agreement, Maryland and DHCD removed the local approval requirement from the QAP and its regulations. Voluntary Compliance Agreement and Conciliation Agreement, Baltimore Regional Housing Campaign v. State of Maryland, HUD Case No. 03-12-0016-8, 03-11-0014-6, 03-11-0014-9 (Sept. 22, 2017), https://www.relmanlaw.com/media/news/7_MarylandVCA_HUD_Material.pdf.

Appendix: Important Unknowns about the Legal Levers for Health Equity in Housing (HEIH)

Lever	Key Functions	Important Questions for HEIH
Domain 1: Increasing the Supply of New, Affordable Housing		
Low-Income Housing Tax Credit Rules	Influences where affordable housing will be built	Can the allocation rules be used to promote more affordable housing in economically and racially mixed areas?
Zoning law	Governs where affordable units can be built	Is zoning as such a barrier to health equity in housing, or is it possible to identify specific rules or processes that block affordable housing development?
Vacant property regulations	Give local governments more authority to deal with vacant and abandoned properties	Do they reduce vacancy rates and support the maintenance of affordable units? How do they interact with other provisions, like rental property registration and tax forgiveness?
Land banks	Facilitate clearance and transfer of titles of vacant properties to spur development	Is the current level of activity sufficient? If not, what will it take to scale land-banking? Can land bank rules support affordability and integration in the face of gentrification?
Land trusts	Provide a land ownership mechanism to maintain long-term affordability	Is it scalable?
Building codes	Set minimum structural standards for new housing	How do the benefits of building codes compare with any increase in costs, and are there some requirements that have more health benefits than others?
Domain 2: Maintaining Existing Housing Affordable, Stable, and Safe		
Housing code enforcement	Ensure housing is free from health or safety hazards	Can promising models, such as strategic code enforcement and landlord registration, protect tenants and neighborhoods without pushing units out of the market?
Landlord-tenant law	Regulate the relationship between landlords and tenants	To what extent are tenant protections enforced? Are tenants aware of these laws and how to use them to protect their rights? Do these laws have any impact on formal or informal evictions?
Lead Law	Regulate lead-based paint hazards	What are the impacts of proactive approaches to remediating lead hazards? Can these approaches be scaled?

Lever	Key Functions	Important Questions for HEIH
Nuisance (or “crime free”) property ordinances	Make landlords responsible for regulating the conduct of their tenants	Do these laws influence the supply or cost of rental housing? Do laws that avoid treating emergency calls as nuisances have positive effects?
Just-cause (or “good-cause”) eviction laws	Require that landlords only evict tenants for a good reason	Do these laws raise the cost of affordable housing? Do they promote housing stability?
Free legal representation in housing court	Provide free lawyers for all low-income tenants in eviction proceedings	What is the impact on informal eviction, housing costs, and city budgets?
Eviction record laws	Regulate access to housing court records	Do these laws change the balance of power in informal evictions, help evicted tenants secure new housing, and/or create undue burdens for landlords?
Rent control	Prevent or delay large increases in rent	Can the benefits from rent control be achieved on a large scale? Can specific features of these laws avoid significant negative market effect?
Mortgage foreclosure and property tax foreclosure protections	Protect homeowners who are at risk of losing their home to foreclosure	How effective are these laws, and what are their impacts?
Domain 3: Affirmatively Furthering Fair Housing		
Fair housing protections	Prohibit housing discrimination based on specific protected classes	How can enforcement of fair housing laws be improved? What is the deterrent effect of these laws? How can fair housing law more effectively address segregation?
Affirmatively Furthering Fair Housing Rule	Require HUD and its program participants to take meaningful steps to promote integration	Assuming the rule is not permanently suspended or repealed, how can this tool be used effectively to achieve health equity in housing?
Inclusionary zoning	Promote affordable housing construction	What features of inclusionary zoning laws are most effective for the development of affordable housing in a way that achieves integration?
Fair Share and other state-level inclusionary development mandates	Require jurisdictions to provide their fair share of affordable housing, and make it easier to develop affordable housing	What are the most effective legal elements for promoting HEIH? Can they be scaled nationally?

Lever	Key Functions	Important Questions for HEIH
Domain 4: Enhancing Economic Choice for the Poor		
Federal Rental Assistance programs	Provide subsidized housing for eligible renters, limiting rent payments to 30 percent of income	How can the Housing Choice Voucher program be used to significantly reduce poverty concentration and racial segregation? What are the mechanisms through which source of income discrimination laws increase voucher utilization in higher opportunity areas? Does the use of the small area fair market rent standard allow households to move into lower poverty neighborhoods and reduce instances of housing authorities paying more than they should for a voucher? What changes are needed to the administration of the program to enable or encourage moves to higher opportunity neighborhoods? What administrative changes are needed so that more voucher holders can actually use them?
Earned Income Tax Credit	Provide financial support for low- and moderate-income working families with children	Is the EITC effective in helping families avoid eviction and homelessness?
Minimum wage	Establish a minimum wage that employers must pay	What is the impact of raising the minimum wage on housing prices, availability, and stability?
Consumer protections against predatory lending	Protect consumers from abusive and/or discriminatory terms in mortgages and other loans	Do current anti-discrimination and consumer protection laws as currently enforced sufficiently protect consumers?
Protections against legal financial obligations	Reduce the harmful impact of fees and fines that result from minor municipal code and traffic violations	What is the effectiveness of law aimed at reducing the harmful impact of legal financial obligations? What are the housing impacts of these laws?
Domain 5: Governance and Planning		
Local government law	Regulate domains such as inclusionary zoning, building and housing codes, code enforcement, nuisance property laws, housing courts, and rent control	How effective have state legal efforts been in shaping local land-use? Can we identify the most effective models?
Regional planning law	Enable regional governance through approaches such as regional councils and urban growth areas	What is the housing impact of formal legal structures for regional planning?
Governance elements of other legal levers	Attempt to adopt a regional approach to housing problems	How can levers such as the AFFH rule, litigation, and LIHTC be used to successfully adopt a regional approach to housing problems?