

PART 6

HEALTH EQUITY THROUGH HOUSING: A BLUEPRINT FOR SYSTEMATIC LEGAL ACTION



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The Legal Levers for Health Equity through Housing Report Series

This is the last in a series of six 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 III: Health Equity in Housing: Evidence and Evidence Gaps; Report IV: Creative People and Places Building Health Equity in Housing; and Report V: Governing Health Equity in Housing.

HEALTH EQUITY THROUGH HOUSING: A BLUEPRINT FOR SYSTEMATIC LEGAL ACTION

"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, 2014)

Getting to Health Equity in Housing

In our five prior reports, we have investigated 35 legal mechanisms, or “levers,” across five domains for moving the complex housing system toward getting more people in this country into safe housing they can afford, in diverse communities that support health and prosperity. We called this goal Health Equity in Housing (HEIH). Such a vision of a better future is integral to systems change. A shared goal guides the many loosely connected or unconnected actors across the far-flung system toward actions that complement and support each other. This kind of goal is also the ultimate metric of progress. If we take the Fair Housing Act and the Great Society vision of the 1960s to mark some kind of national commitment to safe, affordable, and demographically integrated housing, there is no question that progress has been slow and success incomplete. More than 1 in 20 Americans live in housing with dangerous lead, mold, or other structural defects. One in three households are paying more than 30 percent of their monthly income for shelter. Racial segregation persists and continues to take a toll on health and health equity. These are conditions that simply should not be tolerated in a fair, well-governed and productive society, and yet they have persisted for decades.

As we explained in our second report, assuring affordable, equitable housing for all in the United

States is a wicked problem. Even with a serious public commitment to the goal, fundamental change in America’s housing conditions requires sustained and effective cooperation across city planning, education, transportation, public health, health care, public safety and nutrition, as well as housing. In this system, no single legal lever can significantly change what our housing system is doing, and tuning a large set of levers to produce health equity in housing can be described, even with a healthy dose of optimism, as a long learning process. That said, our research and conversations with experts make clear that law is an important element in almost every aspect of housing.

Overall, the bodies of law most relevant to HEIH have been at work for a long time: fair housing law, landlord-tenant law, building codes, zoning, the Low Income Housing Tax Credit program, federal rental assistance programs, and the minimum wage have all been in their current form for decades or longer. In some of these instances, there has been little relevant research — let alone high-quality empirical work — on their operation or effects on housing (see Report 3 of this series for a more detailed discussion). Overall, we know far too little about the effectiveness of legal levers in achieving their discrete goals, and in achieving the broader goal of producing health equity in housing. We also support and test too few new ideas. If we truly regard current conditions as intolerable, where are the big plans and urgent efforts to radically change them?

Like other treatments, laws can fail in their goals, or have unexpected side-effects. This means that evaluation — and less formally, careful observation and frequent reflection — must be integral to strategies for change. Taking a broadly experimentalist, adaptive approach, in which tactics and strategies for change are consistently monitored as rigorously as possible and adapted in response to feedback, allows people working for change to learn as quickly as possible what seems to be working. Laws that don’t work — or cause harm — squander

the efforts that went into enacting and enforcing them. Worse still, as long as they are perceived as “solutions,” they can stand in the way of further policy innovation and reform. Successful use of the legal levers we identified depends heavily on our understanding of whether and how they work, alone and in combination. Likewise for developing and learning to use new levers.

Americans seem to trust that laws will do what they claim on their face to do, in the same way that we have apparently been content to assume that the market will produce the housing we need without much public planning or intervention to align schools, transportation, economic development, and housing needs. Instead, housing law has enabled, or at best failed to prevent, a system of inequitable, largely unsafe, and unaffordable housing. If we don’t like it, we have to do something very different. We need a combination of political will, public investment, citizen involvement, and legal innovation and reform. Changes in political will and public investment are incredibly important, and law can play a substantial role in solidifying such changes in a systemic way. Whether or not the goal of HEIH seems politically “realistic” in the short run is a secondary consideration. Any major change in the housing system will require a consensus on the right to safe and affordable housing and the value of physically embodying equity in the places where we live. Without such a consensus, the resources and policy changes needed will not happen. If a consensus for HEIH is what we need, then Job One for its supporters is to build social support and political power over time. The legal system is one place to do that work.

This project took an empirical, systems-informed approach. Information is the lifeblood of systems, and in our third report we found — and lamented — a dearth of quality empirical research exploring the implementation and impact of legal levers for health equity in housing. Given the thin evidence base, we will not commit the fallacy of “never mind,” as

in “never mind about the weak evidence, here are our recommendations.” We make only one true recommendation in this report, but it is a challenging one: that change agents — policy makers, advocates, funders — adopt a systematic, experimentalist approach to developing, testing, and diffusing legal interventions necessary to promote HEIH. With that as our starting point, we point to what we and our advisers believe to be six of the most important policy challenges to pursue right now. Given the state of evidence, we are framing them as hypotheses, rather than recommendations. By this we mean that they are plausible proposals for legal action rooted in theory and current knowledge, and offered for further empirical testing, not proven solutions that we can set and forget. They focus on legal levers currently in place, but we hope that experimentalist work in each area may inspire new ideas for law we have not imagined yet. We conclude this report with a brief discussion of a few key ingredients for accomplishing the goal of HEIH: addressing the enduring effects of systemic racism; making housing a national priority, and spending the money necessary to achieve HEIH. In Appendix A, we offer other hypotheses we have identified as promising.

An experimentalist approach marries knowledge and intention. Knowledge can point to promising and proven ways to make life better, but it is not lack of knowledge that has allowed us as a society to tolerate the stress, risk, suffering, sickness and death that is demonstrably caused by our failure to take on racism, growing economic inequality, and a housing system that does not work for everyone. We can point to flawed leaders, or the influence of money in politics, but we should also own up to our deep deficit in social solidarity and concern for each other, and our failures to confront structural racism in our housing system. We recommend experimentalism not just as a rational, fact-based way to deal with complex problems, but also as a meaningful commitment to change through learning, collaboration, and collective action. Writing at the intersection of COVID-19 and national revulsion

at the murder of George Floyd and the structural racism behind it, we choose hope that if there is a will, there are many ways to make HEIH part of a much-needed turn to policies that promote equity, anti-racism and real opportunity for everyone in America.

One Recommendation: Systematic Policy Experimentalism

The idea that social policy and change can be seen as “experiments,” and states or cities as “laboratories,” has come up again and again for a century at least (Campbell, 1969; Dorf & Sabel 1998; Green & Thorley, 2014; “New State Ice Co. v. Liebmann,” 1932; Nonet & Selznick, 1978; Weber, 2011). It takes but one analogy to drive home the point for law: We would not tolerate pharmaceutical companies launching new drugs into the market without careful research to assure safety and effectiveness, and without monitoring to detect unexpected side effects and measure long-term efficacy. Yet, we expose millions of people to legal “treatments” whose effects are often not known for years, if ever. Despite its triumph as a metaphor, however, policy experimentalism has only popped up as a deliberate practice now and then (Green & Thorley, 2014). It is one thing to acknowledge that legal action can be a learning process, and that we can compare varieties of legal action across jurisdictions, it is quite another to develop, deploy and measure the effects of law in a systematic and collaborative fashion (Karvonen & van Heur, 2014).

The barriers to legal experimentalism are many. It is no easy matter to consistently practice a “scientific” approach to policy that embraces the messiness of politics, the diversity of stakeholders, the pluralism of knowledge, and the limits of scientific authority (Dewey, 1927; Karvonen & van Heur, 2014; K. Korfmacher, 2019; Latour, 2004). Advocates may fear that early poor, or even inconclusive results may

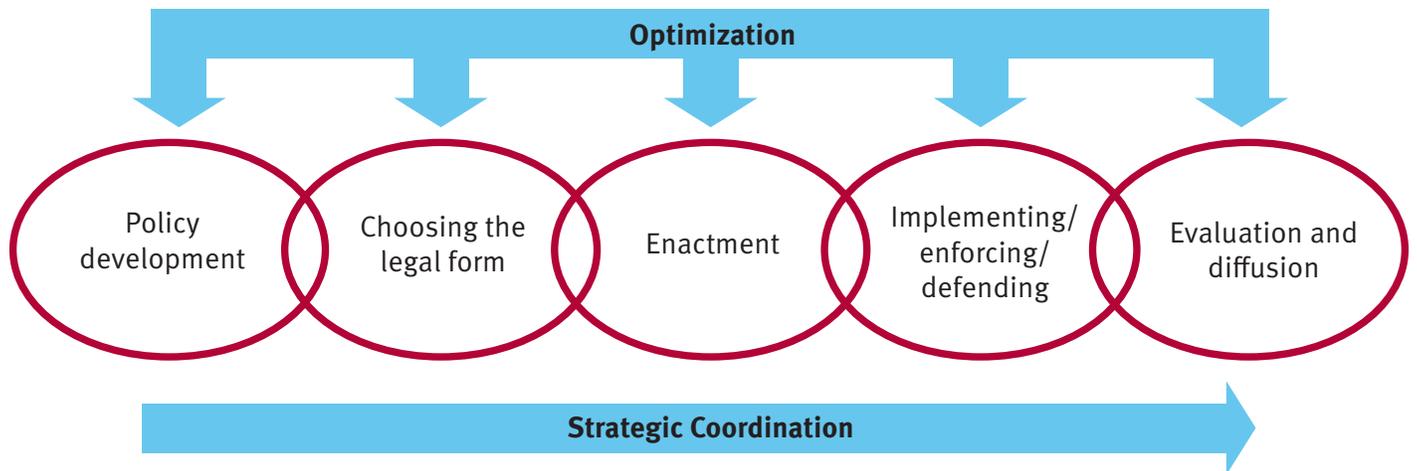


Figure 6.1: Systematic Policy Experimentalism [Based on (Burris, Ashe, et al., 2016)]

equip opponents to kill an idea before it has a chance to reach its potential. Politicians may want to pass a law, declare victory and move on without fear of being confronted later with evidence of failure. The effects of laws and legal practices can be difficult to measure, and experiments in the strict scientific sense are rarely possible.

Accepting these social and scientific challenges as given, we use the idea of experimentalism in the looser sense of those who have advocated policy experimentation in the past: as a commitment to using research, critical reflection and other modes of feedback to develop, try and revise legal levers based on the best information we can get. The “systematic” part refers to doing so consistently and consciously to **optimize** each of the familiar steps in the policy process, and **link** each of these steps strategically to increase the chances that good ideas will be identified and diffused widely into practice as quickly as possible. Figure 6.1 offers a simple depiction of the key phases of the policy process from a legal perspective. There are many such models, all of which convey with

varying emphasis and detail the same basic steps (K.S. Korfmacher, Pettibone, Gray, & Newman, 2016); ours is based on the Five Essential Public Health Law Services (Burris, Ashe, et al., 2016).

In the next section, we will illustrate and make the case for systematic policy experimentalism by looking at an example of innovative local health policymaking. A change in the law and practice of rental housing inspection in the city of Rochester, NY, has, according to the best available evidence, been strikingly successful in preventing lead poisoning in children. This was a grass-roots, community-driven effort that has had some influence around the country. On the other hand, neither the development of the legal model nor its implementation, evaluation and diffusion has been comprehensively optimized or coordinated at the state or national level. With the Rochester experience in mind, we draw lessons about how foundations and national policy organizations can promote experimentalism and make it more systematic, and then describe six important questions that could benefit from the approach.

Lead Poisoning Prevention: A Case Study in Legal Experimentalism

In the early 2000s, community leaders in Rochester, NY, realized that some neighborhoods experienced rates of childhood lead poisoning more than 20 times the national average. Nearly 1,300 children were showing up with blood lead levels greater than 10 µg/dL every year — twice as high as the 5 µg/dL that CDC (since 2012) has designated as its “level of concern” (Centers for Disease Control and Prevention, 2019). Like nearly everywhere else in the country, “prevention” was secondary, triggered by a diagnosis of a largely irreversible harm. Rochester’s Coalition to Prevent Lead Poisoning (CPLP) formed to address the problem of lead through primary prevention. Through collaborative efforts with government, academia, and community groups, Rochester developed, enacted, implemented, evaluated, and shared a model of proactive housing code enforcement for lead exposure prevention that seems to have had impressive results, reducing cases of childhood lead poisoning 2.4 times faster than in the rest of the state (Kennedy et al., 2014). No evidence was found that this effort drove up housing prices or housing instability.¹ Unfortunately, two decades after this apparently successful policy innovation, only a handful of additional cities conduct regular, proactive inspections for and remediation of lead hazards in pre-1978 private rental housing. The overwhelming majority of jurisdictions still rely on secondary prevention triggered by children found to have elevated blood lead levels.

Policy Development

The policy process starts with recognizing a problem and devising possible solutions. Typically, this seems

"They commit themselves to iterative experimentalism that says ... 'We're going to try the following 10 things in this development. We're going to have a look at what works. We're going to tweak it for the next one. We're going to be open to the possibility that what we're doing is not the best way to achieve the goal, but we're going to try lots of different things.' Having watched the [Boulder Housing Partners] ... for the better part of 10 years they were constantly tinkering, constantly saying, 'Well, we tried this. It didn't quite work out the way we wanted it to. We'll try something else.'"

—Nestor Davidson on the success of Boulder Housing Partners (BHP) in Boulder, CO

1. Our account draws from several sources: (K. Korfmacher, 2019; K. Korfmacher, Benfer, & Chachere, 2019; K. Korfmacher & Hanley, 2013; Katrina Smith Korfmacher, Ayoob, & Morley, 2012). We cite specific ones only for direct quotations.

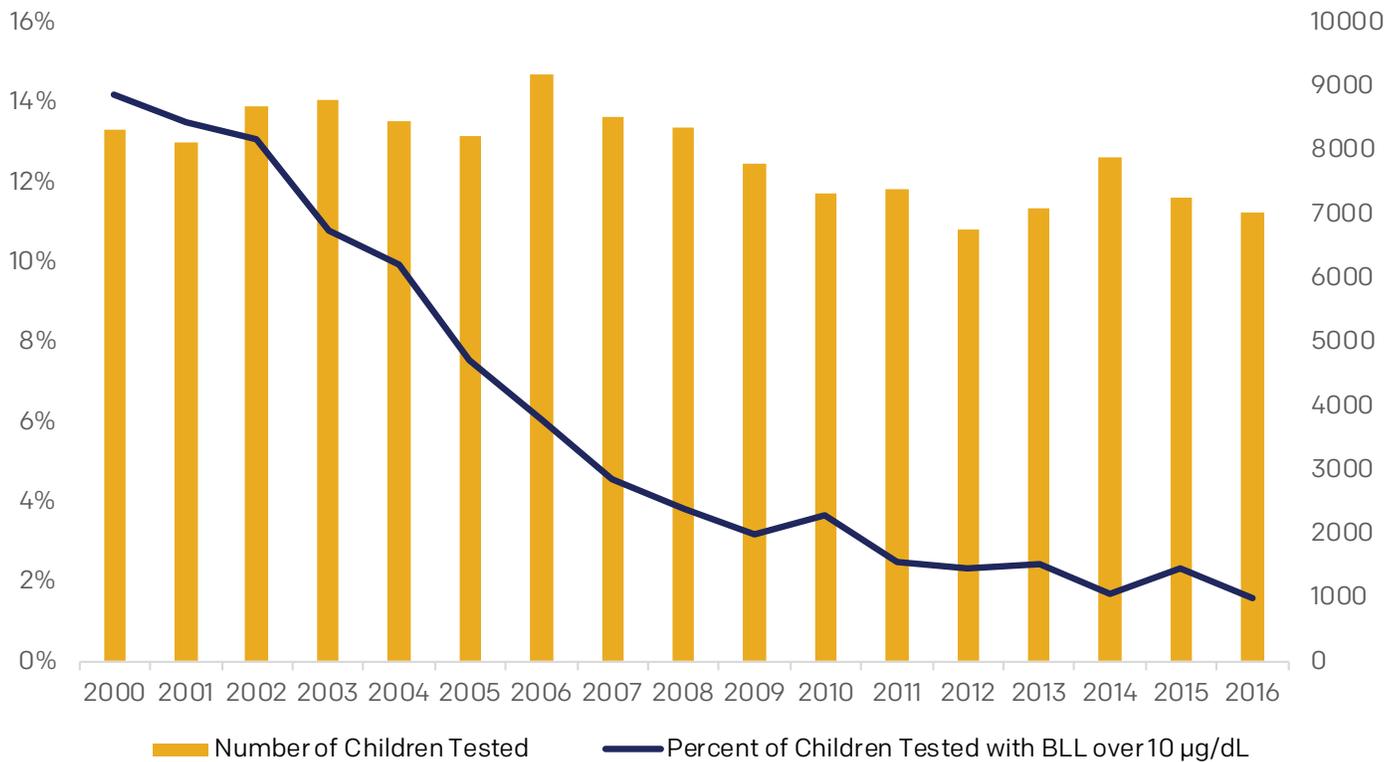


Figure 6.2: Number of tested children and percentage of tested children with elevated blood in Rochester, NY [From Korfmacher 2019, based on Monroe County Health Department data.]

to be regarded as a naturally occurring process: political or social developments in a community — or a crisis of some kind — instigates an effort to “do something” about a problem, which leads to new ideas or the discovery of ideas that have been tried elsewhere, or come out of academic research. In Rochester, the problem of lead had been recognized for a long time, but a tipping point came in 1999 when an elementary school principal became interested in the problem among his students. Working with the local health department, he did some digging, and discovered that 41 percent of the children entering his school had a history of elevated lead levels. His efforts led to a broad-based Coalition to Prevent Lead Poisoning that prioritized the leadership, participation

and expertise of members of affected community members. The group spent several years assembling local data, building an understanding of lead poisoning, working with stakeholders, and exploring other cities’ systems. This groundwork led the group to focus on changing local policy by adding lead to the city’s existing system of proactive rental inspections.

Developing the policy idea is the stage of policy experimentalism over which proponents of healthy policies have the greatest control. Once the idea is set, advocates move into stages where they have far less control over what happens: negotiating the actual text of a proposed bill, getting it passed in the political process, and enforcing and defending it against

challenges. It follows that starting with the best idea possible is the single most important component of a systematic and strategic approach. The optimal proposal addresses the perceived problem in a way that makes sense from both an intervention point of view (supported by or consistent with epidemiological and behavioral science evidence and theory), and a political one (salient and sensible to policy makers and people and communities most affected).

It is important to be intentional and collaborative in policy development. The idea that emerges from a development process depends heavily on who shows up, local context and history, and what people happen to know and believe already. In particular, housing markets, trends, and geographies shaped by more than a century of inequitable and racist policies will not be undone without intentional policy efforts informed by diverse perspectives and rigorous research. Every person and every standpoint — professional, political, community, academic — comes with self-interest, and carries cognitive and social biases that can lead to faulty understanding of a problem and its possible solutions. Enthusiasm, fashion — borrowing policy ideas from other places on the assumption that they must have been thought through — and these cognitive and ideological biases can all lead to devising a policy that ignores community priorities, can't pass, can't be enforced, doesn't work, or does more harm than good.

A systematic and self-conscious policy development process provides opportunities for taking off the blinders of bias. Sometimes a simple causal model of the proposed mechanisms of effect and desired outcomes can reveal problems that enthusiasm or optimism concealed. Tools like causal modeling or a Haddon matrix, which invites participants to consider a much fuller range of intervention options, can both spur creativity and put some obstacles in the way of

group-think and path dependence (Anderson & Burris, 2014).² By involving a diverse set of participants with legal, implementation, evaluation and community expertise, proponents can think through the entire policy process to anticipate pitfalls and flaws in the plan (de Savigny & Adam, 2009).

Intentional diversity is not only an excellent antidote to cognitive and social biases, it is also a useful way to build equity into the process. Centering equity as a goal in policy development and research is essential (Carr, Adler, Winig, & Montez, 2020), but the full participation of affected people embodies equity in the policy-development process. It becomes less a matter of putting on an equity lens and more about opening one's equity ears. In Rochester, 30 percent of the Coalition's board seats were reserved for representatives of lead-affected communities, and there was an active leadership training and recruitment component. The Coalition invested heavily in communication, education, and engagement efforts to ensure that the lead threat was high on the community's list of priorities. Together, professional expertise and embodied equity are integral to the politics of enactment, which typically depends on some combination of technical credibility and vigorous community support (Haynes et al., 2011; K. Korfmacher, 2014).

“CPLP's vision was summarized in the catchphrase: 'Find the hazards, fix the hazards, and fund the fix' (Hetherington and Brantingham 2004). This vision statement was used in many CPLP materials and was elucidated in a 2004 newspaper editorial by Board Chair Bryan Hetherington and Executive Director Patricia Brantingham: 'We will find lead hazards before they poison children. We will fix the hazards using proven, cost-effective control measures. And we will fund the work through a combination of public and private financing that acknowledges that we as a society allowed this toxin to be used in homes and so we as a society

2. For an explanation and visual example of a Haddon Matrix see <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1257548/pdf/ehpo113-000561.pdf> and https://safety.fhwa.dot.gov/hship/resources/fhwasao9029/app_c.cfm. For a short video describing the use of causal diagrams to model and test theory see <http://publichealthlawresearch.org/resource/picturing-public-health-law-research-using-causal-diagrams-model-and-test-theory>.

must share in the cost of making homes lead-safe.’ Rather than focusing immediately on specific strategies for accomplishing these objectives, CPLP first set about communicating these general principles as a basis for a community-wide discussion about solutions appropriate for Rochester. This strategy refrained from pointing fingers at government, landlords, or paint companies, common tactics for organizing in other communities. Instead, they framed the issue as a community problem that everyone had responsibility to solve.”(K. Korfmacher, 2019)

While stakeholders in Rochester (city government, community groups, academics, health professionals, etc.) were well-networked with peers in other cities, national healthy housing groups, and federal and state agencies’ lead programs, they developed a policy proposal suited to the problems and politics

of Rochester. The benefits of tailoring policy for local needs are obvious, and real. But the lead problem arises in older housing stock all around the country, and all these places need solutions, too. Effective preventive legal interventions could take more than one form, and alternatives could be more rapidly identified and tested if more cities were engaged. With support and coordination, Rochester might have worked with other cities in a conscious collaboration that would have added more diversity of knowledge and experience and might have produced one or more models that could be launched and tested in parallel. National-level work to craft state and local policy proposals is, for better or for worse, a feature of American politics, taking shape in everything from uniform or model laws drafted in a reasonably



Rochester, NY, is a case study in experimentalism: Through collaborative efforts with government, academia, and community groups, Rochester developed, enacted, implemented, evaluated, and shared a model of proactive housing code enforcement for lead exposure prevention that seems to have had impressive results.

Photo credit: Patrick Ashley, Wikimedia Commons.

transparent process to the more opaque work of organizations like the American Legislative Exchange Council (ALEC), which drafts bills promoting a broadly deregulatory agenda in many topic areas.

Choosing the Legal Form

Putting the policy idea in legal form is in many respects just a continuation of policy development, requiring much of the same range of expertise and experience, and entailing many of the same strategic considerations. We break it out in our model because of the huge importance of law in U.S. health and housing policy, and the legal complexity (and opportunities) built into our federal system. A good policy idea can potentially be tested at the city, county, state or national level, and in many forms: a law or ordinance, a regulation, a court case, or an internal agency or organizational rule, even a new enforcement approach. It can aim to change the environment, or individual behavior, or even just introduce a new social norm. Options will vary from place to place based on contextual legal factors like preemption and enforcement resources. Political calculations may also dictate the forum or legal form.

New York had substantial statutory and case law regulating lead and lead abatement that the Rochester law had to complement and could not contradict. Federal law and regulations provided standards that were already in place. Public interest lawyers from the Empire Justice Center were involved early on, serving on working committees and helping to turn the emerging idea of primary lead poisoning prevention into an additional required inspection element in the city's housing ordinance. Draft legal instruments were prepared both by lawyers working with CPLP and lawyers working for the city, and the enacted legislation reflected multiple streams of technical legal input.

The Rochester strategy had several elements that were embodied in amendments to the existing housing inspection ordinance and three

accompanying resolutions. The existing inspection ordinance required that all units pass a "Certificate of Occupancy" inspection prior to rental. Under this existing inspection system, each rental unit was proactively inspected every three (multifamily) or six (one- and two-unit buildings) years. The amendments to the inspection ordinance specified a visual inspection for pre-1978 housing; if a property exhibited deteriorated paint in excess of the de minimus standard set by the U.S. Department of Housing and Urban Development, or had bare soil within three feet, the house would fail the visual inspection. For properties in areas deemed to pose a high risk for lead exposure based on past experience, a dust-wipe inspection was required, but only if the unit passed the visual inspection. If a unit failed either test, no Certificate of Occupancy would be issued until the hazard was addressed.

Several important decisions were built into the law and the accompanying resolutions to ease the burden of implementation and compliance. The mandatory dust wipe was limited to the highest risk areas, in spite of the fact that visual inspections were known to produce false negative findings. Landlords were allowed to do work themselves or hire workers with lead safe work practices training, but were not required to use more expensive EPA-certified abatement workers. Likewise, they were allowed to use "interim" methods like repainting rather than having to completely remove or encapsulate the lead. Premises that had an indoor violation were required to pass a final inspection conducted by independent EPA-certified contractors (lead sampling technicians) using a HUD clearance protocol.

The ordinance requirements were supplemented by three resolutions that called for (1) targeted enforcement in high risk areas, (2) public education and a citizen advisory group, and (3) a voluntary program of inspection for owner-occupants. Importantly, the council also required annual public reports on the results of city inspections. The drafters worked with the State Fire Prevention and Building

Code Council to forestall an anticipated preemption challenge. After passage, the city dropped a porch-dust standard that had been included, which might have given landlords an issue to take to court.

The fact that the bills were enacted, not challenged in court, and apparently effective in reducing lead exposure are achievements attributable in part to the legal drafting process. There was also a resolution passed alongside the law that required public reporting of the number of inspections conducted each year, as well as their outcomes. Once again, the Rochester Coalition did a praiseworthy job of insisting that this requirement for evaluation and public reporting be incorporated in the legal framework. But our detailed focus on the rules and enforcement choices highlights the advantages of a multi-jurisdictional experiment. It is possible that inspecting every home with a dust wipe would have also been feasible in a different city with different political or budgetary circumstances, and that it would have identified more hazards and prevented more poisoning. Introducing a mandatory program for owner-occupants might likewise have been a valuable initiative. Other places with somewhat different needs and politics or resources might have developed usefully different legal models to test, and so broadened and deepened the evidence base and hastened the identification of the most effective approaches.

Enactment

Good policy ideas, in robust legal form, can be crafted to maximize their political prospects, but they still have to be enacted. The Rochester Coalition was faced with a widespread and entrenched belief in the housing industry and the city government that “lead remediation was prohibitively expensive and that any systematic effort to address lead in Rochester would destroy the housing market” (K. Korfmacher, 2019). Among other things, the Coalition worked to find funding to help landlords pay for remediation.

Its political communications strategy included both raising awareness of the severity of the lead problem and working to show the feasibility of intervention. This message was spread over a period of years with assistance from a pro bono communications firm and hundreds of thousands of free public service spots on local media. The effort to enact the new lead law culminated in 2004 in a two-day “Community Lead Summit.” At the end of the summit, the Democratic mayor vowed to pass a comprehensive new lead law by the end of 2005, and the Republican county executive agreed to mirror the city proposal in its inspections for the subsidized housing program. The Coalition’s commitment to promoting awareness of lead hazards and supporting the law has continued to the present, though the perception of “victory” has made it harder for the organization to get funding support.

Advocates for health and housing generally do a pretty good job in political work, so a lot of the potential value of a systematic experimental approach lies in equipping advocates with the best possible legal material and supporting evidence and arguments in the first place. There are other ways that a deliberate experimentalist approach can help at the advocacy stage. Simply thinking strategically can help: One “moral hazard” in advocacy is to see passing the bill as the goal and endpoint of the process; the strategic experimentalist viewpoint embraces implementation, enforcement and evaluation, and so provides some hedge against trading away enforcement powers and resources in an effort to have the law passed. Effective communication of the problem and the solution is a universal need, and might be centrally organized for multiple jurisdictions. The fact that jurisdictions do look to their peers, and fashion does drive legislation, could in some cases add further value to multiple simultaneous efforts (Shipan & Volden, 2012), as could the idea that the local proposal is part of a national movement or experiment.

Equity is perhaps most difficult — and most crucial — to consider in this phase. People who view the

policy process as being about efficiently solving specific problems (Kania & Kramer, 2011) may make different moves than people who see the process as being about building political power for broader reform (Wolff et al., 2017), and vice versa. A strategic experimentalist approach is rooted in a technocratic, professionalized problem-solving mentality, so it actually risks neglecting or undermining the power-building and power sharing that is usually crucial to equity — and the success of the experiment. Both problem solving and empowerment are important; a great challenge of experimentalism is to manage the tension. That work is moral and ethical (Burriss, Matthews, Gunderson, & Baker, 2019; MacKay & Chakrabarti, 2018), but a systematic experimental approach can help. For one thing, policy innovators with strong community commitments, like Rochester's CPLP, promise to be around for the long haul, to keep working and learning until the effective solution is found; for another, working in multiple jurisdictions at once can create more room for each individual jurisdiction to adjust its approach to respect and support local priorities and perspectives.

Implementing, Enforcing and Defending the Policy

Implementation is little taught, rarely discussed, and too often poorly resourced. It includes enforcement of regulatory instruments and, importantly, political and legal defense against the common challenges raised by ideological opponents or affected industries or individuals. We have emphasized the importance of this stage from the start of the process because the deck of implementation is largely stacked by the time a law is passed. If the law has not conferred sufficient powers, developed community support for the policy, defined appropriate enforcement processes, and provided funding for necessary staff, the dedication and creativity of those tasked with implementation will rarely be enough to achieve the ostensibly intended impact. Implementation is, moreover, a significant

challenge and a learning process even under ideal circumstances.

Initially, the City of Rochester expanded its existing enforcement staff by adding four lead-trained inspectors who would focus on the dust wipe tests. Later, all inspection staff were trained to do lead tests as part of their regular Certificate of Occupancy inspections. The added enforcement costs overall were estimated to be \$600,000 per year in the first several years. The aim was to inspect all rental units in high risk areas within four years. Inspections could also be triggered by a resident request, and the county provided additional inspections in homes of families receiving public housing assistance in its Temporary Assistance for Needy Families (TANF) program. The city hit 85 percent of its initial goal, inspecting nearly 60,000 units (Katrina Smith Korfmacher et al., 2012). After a learning and adjustment period, the dust wipe component was shown to be feasible. The city's annual reports showed that dust wipes identified on average 500 units each year that were hazardous in spite of passing the visual inspection. Implementation costs were cut to \$400,000 per year as all inspectors took on lead inspection duties. By 2018, the city had conducted more than 166,000 inspections, maintaining a schedule in which each of the city's 60,000 units is inspected every three to six years (K. Korfmacher, 2019).

A nationally coordinated and funded effort could help cities like Rochester implement a new intervention in many ways. National funding, or even just intercity cooperation, can help with training of inspectors or the development of inspection protocols and data systems. Rochester did not face a legal challenge by landlords or others to the experiment, but other innovating cities might not be so lucky. Litigation is a powerful tool for those who lose the battle at the legislation stage (Kagan, 2001). Toledo, Ohio, for example, has faced several years of litigation and tens of thousands of dollars in legal fees in its effort to enact a law like Rochester's ("Mack v. City of Toledo,"

"I think evaluation is so important. We can't just say, 'Oh, I guess we'll never figure things out perfectly.' We need to do evaluations. Let's say City Council chooses to give everyone a lawyer. Well, then we need to evaluate what's happening. ... Pilot programs become really important to understand what the policy is like on a small scale before we expand it to a larger scale. We need to constantly be evaluating policy... I don't think there's some magic bullet. Every policy is going to have unintended consequences and some of those consequences might not be that bad, might even be good, but there's always going to be consequences. We have to be aware of what those consequences are and make tradeoffs ..."

– Megan Hatch, Cleveland State University

2019). Given that the political and legal challenges to a new legal approach are likely to be similar if not identical across jurisdictions, a loss for one can be defeat for all. Actually being sued is bad enough, entailing potentially huge legal bills along with delay in implementation. In a strategic perspective, though, the fear of a challenge may be a far more significant barrier to innovation. Although systematic evidence is lacking, by all anecdotal accounts the prospect of litigation has a profound chilling effect on local policymaking. Apart from a few large cities like New York, Philadelphia, and San Francisco, most places simply cannot afford to fight suits brought by deep-pocketed industry or ideological opponents. The need to strongly defend against an actual challenge, and the chilling effect of possible legal challenges, are both addressable through a “legal defense fund” mechanism that could be funded by coalitions of cities or foundations as part of the effort to get ideas enacted and into effect. The promise of legal support alone could reduce barriers to enactment and might even deter challenges, and support for coordinated legal defense may both reduce costs and increase quality. The same applies to a lesser but still important extent to political defense. Even where laws have avoided or beaten back a legal challenge, there may be ongoing efforts to discredit them to lay the groundwork for repeal or forestall their spread. An active communications strategy defending challenged policies can also be supported centrally.

Evaluation and Diffusion

Evaluation is how we know what works, and it plays an important role in convincing others. Thinking about evaluation from the start of the policy process provides more opportunities for learning about and improving implementation, and building in experimentalist elements, such as randomly assigning landlords to a new enforcement process, or taking advantage of natural experiments that arise when multiple jurisdictions implement new laws at different times or with different sanctions (Abramowicz, Ayres,

& Listokin, 2011; Gerber, Green, & Carnegie, 2013; Wagenaar & Komro, 2013). Planning for evaluation and integrating the strongest possible elements into policy design and roll-out is an often-missed opportunity to dramatically shorten the time it takes to figure out the best way to implement a policy and whether it is worth spreading.

The Rochester story on the evaluation front is one of determined effort, creative collaboration – and missed opportunity to more systematically and rigorously evaluate the policy’s impact. The city developed a system of evaluation and real-time coordination among agencies to monitor progress and identify unanticipated negative consequences. The health department was tracking screening and blood test results, and the city maintained basic administrative records of its inspections. Researchers from the University of Rochester, the Center for Governmental Research (a non-profit civic research consultancy founded by local industrialist George Eastman), and the National Center for Healthy Housing cobbled together internal funding and pieces of grants from the National Institutes of Health, the Greater Rochester Health Foundation and a Robert Wood Johnson Foundation research program devoted to evaluation of legal health effects to produce a formal evaluation (K.S. Korfmacher et al., 2012). It was good work, but it was a retrospective, mixed-methods case study published six years after the ordinance came into effect. The study could not make a strong case for causation, not least because there was already a significant downward trend in elevated blood level tests before the law was enacted. Two years later, and nine years after the law’s enactment, researchers from the Monroe County Health Department published a longitudinal epidemiological analysis that reinforced the findings, showing a much sharper decline in lead poisoning in Rochester than in the U.S. overall (Kennedy et al., 2014). This study, too, was not optimally designed to demonstrate that the Rochester law had caused the decline.

Diffusion was similarly slow and dependent on the commitment of the model’s proponents and advocates. Veterans of the Rochester effort have spread the word through professional networks, written about it, and served as advisors and consultants. National networks of housing groups and municipalities have shared lessons learned. Although there was no systematic network or communication system to share Rochester’s learning with peers in real time, dozens of cities have reached out individually to explore how Rochester’s system might inform their own efforts. This ‘local-local learning’ has helped many of these cities develop new lead poisoning prevention systems and strategies. Nonetheless, 20 years after the Rochester Coalition began focusing on passing a local lead law, what seems to be a powerful approach has barely spread.

We do not understate the importance of cities like Buffalo, Cleveland, Philadelphia, Syracuse, and Toledo adopting (or trying to adopt) local lead laws following the Rochester model. Cities are willing, even eager, to learn from their peers, “but their capacity to do so may be limited by the availability of information, time to do research, and skepticism that others’ experiences will translate to their community” (K.S. Korfmacher, 2019). A planned, optimized and properly supported process of evaluation and dissemination can help lower these barriers. Given good baseline data, evaluation in one or more cities would have started with implementation studies to rapidly measure inputs and outputs and begin to track results. Meanwhile, comparative longitudinal research better capable of isolating causal effects would have been in preparation. With two or three years of evidence from multiple versions of the intervention, researchers could aspire to reasonably confident causal inference and emerging evidence would be arriving in time to help power refinement and diffusion.

Like policy development and evaluation, we too often expect diffusion of policy to happen naturally. It often does, just not very quickly and definitely

not optimally (Bae, Anderson, Silver, & Macinko, 2014). Policy diffusion is an extremely well-studied process (Brownson, Colditz, & Proctor, 2012; Diller, 2013; Shipan & Volden, 2012). Policymakers learn from and compete with each other to adopt policies that solve problems their constituents care about. National organizations supporting policymakers (e.g., the National Conference of State Legislatures, the National League of Cities, and the National Governor’s Association) are resources for capturing policy developments and making information available to policymakers. National, state, and local advocacy groups spread new ideas along their networks. These organizations also sometimes package good ideas in comprehensive action guides (Pew Research Center, Green and Healthy Housing Initiative, National Center for Healthy Housing). Yet healthy policy ideas like Rochester’s, backed by evidence, frequently languish with limited uptake, while industry-funded organizations like ALEC succeed in spreading laws that block and stifle local action.

Research and deep expertise in public health policy implementation and dissemination has pointed to basic ways that the spread of healthy policies can be optimized (Brownson et al., 2012). The architecture of an optimal approach is actually quite straightforward. Active policy dissemination may be thought of like a marketing campaign. In successful marketing efforts of all kinds, three elements are present:

First, there is specialization of labor. It is not expected that the person (or organization) that developed a product will be the same one that manufactures it, distributes it [and] promotes it Second, each of these services is assigned. It is the primary responsibility of someone (or some organization) to assure that its part of the distribution chain is fulfilled Finally, all parts of the process are integrated. Even when carried out by different individuals (or organizations), these efforts are highly coordinated (Kreuter, Casey, & Bernhardt, 2012).

This sort of approach is harder to practice than to describe – but not that much harder. It’s what ALEC does, and it certainly happens sometimes in public

health. We have suggested already that diffusion should be part of the thinking and planning in the policy development phase. Experts in policy diffusion also suggest the deliberate use of “dissemination field agents” (Kreuter et al., 2012) or other kinds of knowledge brokers (Rabin & Brownson, 2012) to work directly with potential adopters in the field.

Less often talked about is the splintering and policy competition within public health. Every major driver of morbidity and mortality has its own research, policy, advocacy and practitioner base, and its own priorities. The consequence is that we do not have a strong public health policy agenda in the way that ALEC has a strong anti-regulatory agenda that cuts across topical lines. There are more laws and legal ideas than there are resources to spread, and not all of them are equally important or feasible. Some effort to prioritize and select experiments is indispensable, and the earlier the better.

The CityHealth project represents a more holistic, prioritized and optimized approach (See Box on page 20). A subset of policies that were judged important, politically feasible, and appropriate for city-level enactment was selected by a mixed panel of people with public health, legal, advocacy and communications experience. A marketing plan led to the development and testing of a core communications strategy and tool – the ranking website – and then a staff of “dissemination field agents” went to work to help people who responded to the message move the legal ball forward in their jurisdictions. CityHealth is also notable in its use of policy surveillance.

Along with the usual tools of communications, political mobilization and social marketing, policy surveillance is an emerging approach that serves both research and policy diffusion. As a research tool, policy surveillance – defined as the systematic, scientific tracking of laws of public health importance – creates data for use in more advanced, multi-jurisdictional longitudinal evaluations (Burris, Hitchcock, Ibrahim, Penn, & Ramanathan, 2016). Awareness of the current

CityHealth.org

CityHealth.org is an initiative of the de Beaumont Foundation and Kaiser Permanente. Since 2017, it has ranked the 40 largest U.S. cities on nine healthy policies. Each policy was assigned an Olympic-style medal score, and the individual policies scores were combined into an overall city medal score. The scores, supported by underlying policy data, were published on a website. CityHealth's policy roster was chosen by an expert advisory committee based on evidence of efficacy, burden of disease, and political feasibility. Policies were collected using innovative methods of scientific policy surveillance. Key attributes of the law identified by the expert advisors and evaluation research were captured as numerical data. Within-policy and combined policy rating criteria were defined and embodied in a scoring algorithm. Scores and supporting policy information and data were published to the CityHealth.org website. A small staff of communications and advocacy experts was built to disseminate the rankings and work with cities and other stakeholders to improve city medal scores. In 2018, after the first year of the project, cities earned 24 new medals for enacting one of the nine policies or improving an existing one. In 2019, cities earned 35 new medals. In each year, 10 cities improved enough to raise their overall medal score. This is an unprecedented success rate for an advocacy project working at a low cost over so many cities.

state and trends in the law can in itself help diffusion, as policymakers and change-agents look for ideas and models.

What Does It Take to Foster Systematic Policy Experimentalism

Lead was a known, serious threat to child health; numerous legal approaches were in place that were clearly not succeeding to the necessary degree, and there were in Rochester, as elsewhere, many people who were aware and concerned. Yet what tipped concern into action was a school principal's fortuitous connection of lead positioning and learning challenges among his students. Consider how suboptimal this is. Not only had the problem already been clear for decades, but even today in most places remedial action still relies on the appearance of a poisoned child. As Korfmacher suggests, one of the reasons for inaction was a widespread perception that legal action in the 70s and 80s had "solved" the problem. While the problem was largely solved in higher income neighborhoods, lead poisoning remained as a significant health and health equity problem in lower-income communities. The persistence of known problems addressed by "solutions" whose limited or inequitable effects can easily be ascertained is both the terrible mystery and the great opportunity of health policy. As we have shown in our prior reports, the agenda-blocking effect of failed legal "solutions" is a prominent feature of America's HEIH problem. A systematic approach begins with instigating and supporting action to address legal failures we have somehow learned to live with.

We regularly see foundations and other national leadership organizations helping with policy development. They may support and help spread the results of existing academic-community partnerships (LeBrón et al., 2019). They translate concerns of their constituents into work plans and priorities. They convene and support experts and advocates

Table 6.3. Experimental Inputs and Outputs

Policy Phase	Inputs	Outputs
Policy development	<ul style="list-style-type: none"> • Evidence and expertise about the problem, and past and analogous legal solutions • Deliberate diversity/embodyed equity • Legal, political, implementation and evaluation expertise • Coordination and cooperation across multiple settings 	<ul style="list-style-type: none"> • Evidence-informed and politically feasible policy ideas • Strategic plan for enactment, implementation, evaluation, and diffusion including experimental or quasi-experimental and comparative elements across multiple jurisdictions
Choosing the legal form	<ul style="list-style-type: none"> • Well-conceived policy proposal • Technical legal expertise • Political, implementation and evaluation expertise • Deliberate diversity/embodyed equity • Coordination and cooperation across multiple setting 	<ul style="list-style-type: none"> • Enforceable, legally defensible and evidence-informed laws <ul style="list-style-type: none"> • Includes mandate and/or funding for evaluation • Includes resources/authority for implementation and enforcement • Stronger, enduring relationships of trust and cooperation among proponents and stakeholders • Opportunity for experimental or quasi-experimental and comparative research across jurisdictions
Enactment	<ul style="list-style-type: none"> • Well-conceived, plausible, enforceable legal proposals • Well-packaged evidence and credible experts • Well-nurtured consensus among stakeholders • Well-prepared informational/advocacy materials • Communications support • Support for coordination across multiple jurisdictions 	<ul style="list-style-type: none"> • Enforceable, legally defensible and evidence-informed laws <ul style="list-style-type: none"> • Includes mandate and/or funding for evaluation • Includes resources/authority for implementation and enforcement • Stronger, enduring relationships of trust and cooperation among proponents and stakeholders • Opportunity for experimental or quasi-experimental and comparative research across jurisdictions
Implementation, enforcement and defense	<ul style="list-style-type: none"> • Resources and expertise for implementation/enforcement • Resources and coordination for legal and political defense 	<ul style="list-style-type: none"> • Demonstration of feasibility and possible impact • Public awareness and political support • Legal validation
Evaluation and diffusion	<ul style="list-style-type: none"> • Research plan • Resources and expertise for conducting studies • Policy surveillance • Resources and support for dissemination 	<ul style="list-style-type: none"> • Timely evidence of impact • Evidence for refining law or implementation • Accessible information tracking spread of law • Wider diffusion sooner!

"[I]f HUD were doing its job effectively, it would be enforcing these obligations more actively, and not simply waiting for complaints from those facing discrimination. And HUD has an affirmative obligation to ensure that those receiving federal funds—including states, cities and urban counties—are taking active steps to combat discrimination and segregation. HUD should be doing more testing and audits itself. Every year, it would be reviewing, doing compliance review of two or three hundred states, localities, and public housing agencies. As it is, most such compliance reviews are connected to a complaint where someone is waving her arms vigorously enough to get HUD's attention. But if you were an agency getting HUD money, and you knew that every three years, you were going to be audited, or you'd have a compliance review to make sure that you were following all the rules, you'd make sure you were following the rules."

– Michael Allen, a civil rights lawyer with Relman, Dane & Colfax

and affected communities to work together to raise the profile of a problem or support development of solutions. What we see much less frequently is sustained support for carrying the initial fruits of policy development across the steps, and years, of the process within a prioritized health policy agenda. The aspiration in systematic policy experimentalism is to select a small set of big problems amenable to legal treatment, to recruit a set of collaborating jurisdictions, to facilitate an experimentalist project in each place, and coordinate the whole enterprise for maximum effect. This includes ensuring that sufficient legal support is available, that evaluation is built in at the start and carried as policy unfolds, and that learning and evidence are spread rapidly as they emerge. For foundations like Robert Wood Johnson, which funds community collaborations, legal expertise, policy communications, systems and outcome research, all the elements are familiar. (See Table 6.3)

Taking a legal change from the invention stage through validation to widespread enactment takes sustained commitment and support over 5-10 years. Even with a systematic approach, each experiment is a significant bet. The value is clear, though, when one considers the number of important legal challenges that have gone unsolved in the realm of housing alone over the last half-century.

Six Housing Law Problems Ripe for Experimentalist Treatment

1. Strengthening Fair Housing Enforcement to Reduce Discrimination

Housing discrimination persists at a high level and in many forms, from refusal to rent and steering, to differential access to credit. Recent research has

clearly documented that the continuing legacy of discrimination in the form of housing patterns and racial wealth differences is still doing harm (George, Hendley, Macnamara, Perez, & Vaca-Loyola, 2019; Rothstein, 2017; Taylor, 2019). This is due in part to long-term, chronic under-enforcement of the Fair Housing Act. Continued unacceptable levels of discrimination show that the core federal fair housing standard — that there shall be no discrimination based on race, color, religion, sex, national origin, familial status or disability — is as necessary as it has ever been. The fact that the number of cases brought does not substantially change from year to year (Augustine et al., 2019) supports the inference that case incidence reflects enforcement resources rather than the actual number of discriminatory acts. Likewise, persistence of unfair lending practices in spite of investigations, settlements and fines suggest that fair housing sanctions may simply be an acceptable cost of doing business for lenders. Maintaining the disparate impact mechanism for proving a violation is particularly important in a systems approach, because it sets a results-based standard that is not dependent on conscious intent or motivation. People can learn to hide discriminatory motives, even from themselves, but there is no hiding distinct and enduring patterns in housing outcomes, which the law is meant to eliminate. While enforcement is only part of the project of affirmatively furthering fair housing (discussed in Appendix A), it seems in the absence of more evidence to be an important mechanism whose performance could be improved.

Empirical legal research across many domains supports the view that enforcement, properly done, can reduce undesirable behavior. Fair housing enforcement, however, takes many forms, each of which poses questions of efficiency and effectiveness on its own, and as to its place in a comprehensive program to reduce discrimination. An experimentalist project in fair housing enforcement would aim not only to get better baseline data on current enforcement, but also to test the effects of more and better-coordinated

enforcement overall, learn more about discrimination as it manifests itself today, and explore how different (and perhaps new) enforcement mechanisms can be best used alone and in combination. Important questions include:

- **Prevalence and drivers of discrimination:** Why do realtors and landlords and lenders discriminate today? To what extent are they aware of their biases, and what do they think they are doing? Why do they perceive discriminatory behavior to be in their interest? This is not at all to discount or paper over the reality of persistent racism or other forms of prejudice, but rather to use the tools of research to better understand contemporary manifestations of racism and negative attitudes to inform enforcement action. Continuing to document discrimination as a serious problem is also important politically.
- **Testing is an efficient, scalable and reliable method for uncovering discrimination.** How much testing is optimal in a given market, and how can testing be best tied to enforcement to achieve long-term behavior change? When and how can virtual testing be used most effectively? Are there alternative methods for uncovering discrimination later in the process of accessing housing (e.g., at the lease stage)? On which types of housing providers should testing efforts be focused? Investigations of corporate housing providers and lenders can result in significant settlements that include not only substantial monetary relief, but also systemic policy changes. For example, a private fair housing organization recently settled a lawsuit alleging that Liberty Bank engaged in a pattern or practice of redlining in communities of color. The settlement resulted in more than \$16 million in investments in such communities, as well as an agreement to have consultants review the bank's fair lending policies and procedures, and to open a loan office in a neighborhood within a half mile of a majority-minority census tract (Settlement Agreement, Connecticut Fair Housing Center, Inc. v. Liberty Bank, D. Conn. Case No.: 18-cv-1654). Given this type of systemic outcome, to what extent should

testing efforts focus on patterns and practices of discrimination rather than on smaller housing providers and individual cases?

- Testing may be an effective way to increase deterrence with realtors, but what is the best way to link testing work to other strategies of enforcement, publicity and public education to optimize effectiveness.
- The individual complaint process is another important site for research and innovation. Federal, state and non-government fair housing agencies processed an average of 28,721 individual complaints a year from 2009 through 2018 (Augustine et al., 2019). Distinguishing between meritorious and unfounded cases is inherently difficult and labor intensive, and the difficulty grows as the number of cases increases relative to investigatory and adjudicatory resources (K. Moss, Burris, Ullman, Johnsen, & Swanson, 2001; Kathryn Moss, Swanson, Ullman, & Burris, 2002). The HUD enforcement process is not quick. Its benchmark for resolving an investigation is 100 days, but almost 33 percent (587 of 1,784) of new complaints received by HUD during fiscal year 2018 were not fully investigated within that time. During the same year there were 1,008 ongoing cases that HUD received prior to the start of the year that surpassed the 100-day mark (Augustine et al., 2019). Unfortunately, slow and expensive case-processing systems may not be very effective in either remedying or deterring discrimination. How can enforcement mechanisms be improved to increase deterrence and provide remedies in a timely and satisfying way to those who perceive discrimination?
- There is much to be learned about the relative effectiveness of sanctions for discriminatory behavior. The effect of different sanctioning mechanisms — shaming, fines, “probation,” license suspension or revocation — should be explored, with particular attention to evidence of what drives discriminatory behavior. We should not assume that heavier punishments are more effective, but should rather test a “responsive” regulatory approach (Ayres & Braithwaite, 1992), in which we ask “What kinds

and how much more enforcement do we need?” It will also be useful to dig into the details of efficacy in different markets and modes of enforcement. It is plausible to assume that significantly higher fines and more frequent investigations will influence lenders, but that might not be the right strategy for small landlords.

- There is also a big, largely unexplored matter of how to get people who have been subjected to decades of tacitly tolerated discrimination to file complaints, let alone to rely on the promise of fair housing protection to seek housing in a wider range of neighborhoods.

As Michael Allen suggests (see quote on page 22), HUD could, with the will to act and more resources from Congress, conduct this process of enforcement learning itself. Convincing Congress to pay for, and the President to execute, an amped-up and assiduously evaluated program of fair housing enforcement has to be a plank on any fair housing platform, but meanwhile there are other options to learn how to improve enforcement. Private fair housing organizations (FHOs) process 75 percent of the fair housing complaints filed in the United States (Augustine et al., 2019), and also often manage robust testing programs; almost every state and many localities have their own fair housing laws. The experimental approach suggests a consortium approach, in which public and private resources are pooled to support more enforcement, and to develop and test new methods or strategies.

The exploration of new approaches in this experiment would, optimally, draw on the expertise of such stakeholders as state and local fair housing agencies, FHOs, tenant and community groups, landlords and realtors of good will on this issue, and researchers. The challenge to such a collaborative effort would be to document the baseline prevalence and drivers of housing discrimination in one or more places, and devise a linked set of heightened enforcement tests designed to test relative and overall impact on discrimination. It continues with the development of

one or more enforcement models, including elements of self-regulation, that can be tested, and government or foundation funding to support a substantial increase in enforcement staff and activities. Research would document implementation and impact, potentially comparing models for their impact on reported cases of experiences of discrimination, and public perceptions of housing mobility. In the long run, actual reductions in segregation would be the best sign that better enforcement was working, or at least was not making things worse. The test would entail substantial increases in funding for fair housing enforcement agencies (both public and private), with continued increases until the number of meritorious complaints consistently declines.

An effort to assess the effects of better funded and more strenuous enforcement would also provide an opportunity to investigate the costs and benefits of broadening the range of protected classes under fair housing law. Individuals experience discrimination based on sexual orientation, gender identity, source of income (Abedin et al., 2018; Abedin, Cloud, Goldberg, Rice, & Williams, 2017; Augustine et al., 2019), and arrest or criminal record. Federal protection against these kinds of discrimination is consistent with the purposes of the Fair Housing Act and the goal of HEIH. Better data on the prevalence of these types of discrimination, and the effectiveness of existing state and local laws, would strengthen the case for federal protection.

2. Reduce The Impact Of Local Zoning Law On Affordable Housing

The law most consistently cited by research and our informants as a barrier to affordable housing in the right places is zoning that prevents or burdens the development of smaller homes on smaller lots, and multifamily housing, both of which are more likely to be affordable than single-family housing on large lots. Zoning is not the only cause of the shortage of affordable housing or of segregation, nor would

reforming zoning magically solve those problems. Where it is significantly restrictive, however, zoning is now a highly plausible target for reform for HEIH.

Several kinds of legal levers have been deployed to reduce zoning barriers to affordable housing. Inclusionary zoning schemes use a variety of mandates, incentives and compliance mechanisms to get builders to build or contribute money for more affordable units. In a handful of states, including New Jersey (the *Mt. Laurel* mechanism) and Massachusetts (40B) state law provides an override mechanism for developers stymied by local decisions limiting affordable housing, and the most recent research reports that these state affordable housing appeals mechanisms are working, though the scale is modest and some legal models seem more effective than others (Marantz & Zheng, 2020). Researchers and our informants also pointed to the value of aligning land use jurisdiction with authority over schools and transportation, with Montgomery County, Maryland, serving as the prime example. Cities like Minneapolis are trying comprehensive changes to zoning that allow more duplexes and triplexes in formerly single-family neighborhoods. Similarly, Oregon enacted a law in 2019 that generally allows the development of duplexes in areas that allow for single-family housing in cities with a population greater than 1,000 if within a metropolitan service district (MSD) or greater than 10,000 if not within an MSD (Act of Aug. 8, 2019, ch. 639, § 2, 2019 Or. Laws). Some housing advocates suggest a universal mandatory set-aside, a requirement that all developers make a certain percentage of their developments affordable. California legislators have tried, so far without success, to require localities to allow affordable housing developments around transit hubs.

For all these mechanisms, the questions seem 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 standing in the way of HEIH: cities and states

can change their laws, and the federal government could use its tools under the Fair Housing Act and its funding levers — if the political support is there. An experimentalist project would generate more evidence and experience to answer a range of important questions:

- What are effective ways to overcome political barriers to ending exclusionary zoning?
- What are the most effective models of inclusionary zoning regulation, and how does that effectiveness vary in different housing markets? Inclusionary zoning as a policy idea has gained traction, but each locality or metropolitan area likely has to tune its approach to local conditions. The legal variables include the rules for on-site units versus payment or off-site units in lieu of on-site affordable homes, the nature and length of the affordability commitment, and requirements to set aside units versus encouraging voluntary set-asides through density bonuses or other incentives. The impact on development or construction and renovation are good short-term indicators. The long-term learning includes how to produce the greatest returns as measured by unit-years of affordability and reductions in socioeconomic and racial segregation.
- How can override mechanisms be strengthened? Recent evidence find these mechanisms are effective, but can be improved, with Massachusetts’s law serving as a model in matters like the calculation of a local fair share and other key dimensions (Marantz & Zheng, 2020).
- What is the effect of recent significant changes in places like Minneapolis that open up much or all of a city to affordable multi-family housing? How do residents feel about the changes after some time of seeing the new rules in operation?
- How can changes in legal authority and governance alter the incentives for affordable housing? Some states are trying to reduce or remove local zoning authority, but our expert informants also pointed to steps like consolidating school districts across

“I think that often, the right thing is not to focus on the areas that are already deeply entrenched zoning environments, high-zoning environments, but areas that are... as is much of America...relatively open right now, but are on a trajectory that could lead towards a very tough zoning environment. And a little bit of legal action now might be helpful.”

—Edward Glaeser, Harvard University

multiple small municipalities to reduce the budget impact of multi-family housing.

- How do environmental reviews interact with inclusionary zoning rules that reduce barriers to affordable housing? Are there ways to better coordinate and harmonize environmental and affordable housing planning?
- Can federal funding pressure drive change? Congress could use its purse to reduce zoning barriers, as exemplified in the American Housing and Economic Mobility Act of 2019. This bill would allocate funds to a competitive grant program, with eligibility for the grants contingent on local governments reforming zoning rules that restrict new affordable housing.

An experimentalist approach makes exclusionary zoning itself the problem to solve, and tries to learn about the politics as well as the law. The Obama administration created a “toolkit” for local housing development that could be a blueprint. It identified numerous levers to break down zoning barriers. These include:

- establishing “by right” approval mechanisms that allow developments to be approved administratively without public hearing or legislative action when the proposal meets zoning requirements;
- streamlining permit processing;
- eliminating off-street parking requirements;
- amending codes to authorize high density and multifamily housing in more places;
- allowing accessory units;
- giving density bonuses;
- implementing inclusionary zoning; and
- providing tax incentives (The White House, 2016).

The Trump administration’s White House Council on Eliminating Regulatory Barriers to Affordable Housing is tasked with evaluating the impact that federal,

state, and local regulations have on the development of affordable housing. The Council is supposed to recommend policies that would encourage governments to reduce such barriers (84 Fed. Reg. 30853). The findings of the Council could highlight additional experiments worth trying.

3. Proactive Housing Code Enforcement

In many places, housing code enforcement systems are not up to the challenge of preserving safe, quality housing at the lower end of the market, contributing both to individual resident risk and community deterioration. Some commentators point to an unintended side effect of highlighting lead poisoning solely as a medical problem: many code enforcers come to think lead is a problem they are not trained to address (D. Jacobs, personal communication, June 15, 2020). Adding to the harm is the shortage of affordable housing, which in many markets allows landlords to charge high rents even as the units they offer are allowed to deteriorate (Desmond, 2016). In most places, enforcement is triggered by deterioration, or, in the case of lead or other toxins, by the exposure of a resident, most often a child. Having more than 500,000 children in the United States with lead exposure should be unacceptable to us. A code enforcement system that relies on tenant complaints not only exposes people to preventable harms but is inequitable, and possibly futile, due to the barriers lower-income tenants face in reporting code violations. The proactive inspection approach we highlighted in the Rochester story requires landlords to register their property, obtain a rental license and have their property inspected prior to renting it to tenants and/or at regular intervals. In some jurisdictions registration or licensing involves payment of a fee, which helps fund inspections. While proactive inspection has been preempted in some states, including North Carolina and Wisconsin (N.C. Gen. Stat. § 160A-424(c), Wisc. Stat. Ann. § 66.0104 (2)(e)), most cities could move to this model if they could figure out how to make it work practically and politically. Getting there depends

on answering basic questions about enforcement, enforcement costs, and impact on housing and housing costs.

While the limited available evidence indicates that proactive enforcement is feasible, cost-effective and acceptable to landlords, further experimentalist development and testing of regulatory models and enforcement strategies could help get more cities on board. Key questions in this area include:

- What more can we learn from current innovations in proactive housing code enforcement? Are there more or less efficient or effective legal and implementation models? Are there more or less efficient approaches to landlord registration? Minneapolis, for example, has a performance-based system, in which licensing fees rise as the number of code violations increases.
- We have evidence that getting lead out of housing is a clear cost-benefit win for society (Health Impact Project, 2017), but how to apportion the costs of inspection, maintenance and repairs is a difficult empirical and political question whose best answer may differ from market to market. Matthew Desmond has argued that renting deteriorating units at high rents to people with low incomes can be a lucrative business (Desmond, 2016), but other experts are not convinced and see generally well-intentioned landlords struggling to maintain housing on very thin margins. Matt Kreis from the Center for Community Progress (CCP), noted “if the law requires housing and building codes, or only gives the community the ability to fine residents in order to compel compliance, it's just simply not going to work in the low-income community. It's also going to be an economic decision; if there are fines that are being enforced, it's going to take away from the ability of these low-income property owners to actually invest in repairs that might be needed” (Kreis). Despite the considerable public financial interest in preventing lead exposures whose deleterious health effects will trigger public health care and social service spending, though, public financing runs into objections about publicly subsidizing private business. The Rochester

"There are also millions of dollars that are funneled through county social service or human service agencies that provide housing assistance to low-income individuals or families. And we hardly ever see any kind of inspection program tied to those public dollars. So, if there was one place where we think law could have an impact, it would be ensuring that the use of those public dollars are not being spent on rental properties that, you know, are substandard and don't meet basic health requirements. But the challenge, of course, is capacity, staff and resources."

– Tarik Abdelazim, Center for Community Progress

experience suggests that lower cost but nonetheless effective approaches to monitored remediation may be possible (K. Korfmacher, 2019), but a proven approach or two to managing the costs of housing maintenance could make wide adoption politically much easier.

- How can the various strands of lead and housing code enforcement be woven together for better impact? Responsibility and accountability are divided among local, state and federal agencies responsible for specific pieces of housing safety and quality. Devising proactive inspection procedures is also an opportunity to consider means of better coordination and unified enforcement.

“Addressing lead as an issue of environmental justice requires a comprehensive approach, multi-sectoral involvement, and community-government partnerships at all levels of policy action” (K. Korfmacher et al., 2019). Cities like Boston, Los Angeles, and Rochester have tried different approaches to proactive rental inspections, so there is already experience in different settings to be mined (ChangeLab Solutions, 2014a), and the CCP and ChangeLab Solutions have worked with individual cities to improve housing code enforcement. ChangeLab has a model proactive rental inspection ordinance (ChangeLab Solutions, 2014b) and a guide to help localities move to proactive enforcement practices (ChangeLab Solutions, 2015). Experimentalists could also test other mechanisms of enforcement, such as a publicly accessible registry of properties certified lead-free or lead-safe, or a requirement for lead inspection at the time of sale, or variations on Philadelphia’s Lead Court, which seems to have increased landlord compliance with lead requirements (C. Campbell et al., 2013; Carla Campbell et al., 2013). The only ingredients missing are funding and coordination among jurisdictions to systematically define and test a set of treatment rules, enforcement and financing variants.

4. Tune LIHTC To Promote Affordability In Low-Poverty Areas, And For Longer Periods Of Time

The Low Income Housing Tax Credit (LIHTC) program is the largest program for subsidizing affordable housing units. LIHTC developments are most often sited in high-poverty areas. There is some evidence suggesting that low-income housing in poor neighborhoods has positive neighborhood effects (Diamond & McQuade, 2019; Freedman & Owens, 2011), but building affordable housing in neighborhoods that are already racially or economically segregated obviously does not address the need for greater social integration. The terms of the tax credit deal can also be sub-optimal: people with extremely low incomes may not be able to afford to rent LIHTC units, and affordability requirements for LIHTC developments in some states expire within a relatively short time period. (Many of these findings apply to other subsidy mechanisms, and so while we focus on LIHTC here, local experimentalist efforts could well look more broadly.) The Qualified Allocation Plan (QAP) is the primary mechanism for aligning LIHTC credit allocation with broader housing needs and policies, and therefore continues to present opportunities for coordinated, systematic learning.

- How best can QAPs be crafted and implemented to significantly expand the construction of LIHTC-funded units in neighborhoods of opportunity to increase socioeconomic and racial integration in accordance with the Fair Housing Act’s mandate to affirmatively furthering fair housing? Are QAP changes a scalable way to change where LIHTC projects are sited?
- What changes in federal regulations would strengthen incentives to use LIHTC funds, or overcome barriers to using such funds, outside areas of concentrated poverty?
- What are the market effects of changing LIHTC rules? Is there an optimal affordability duration? How can

HUD, states and cities most effectively use their funding, the QAP and their other powers to keep LIHTC housing affordable after the affordability term expires?

There has always been variation in QAPs (Gustafson & Walker, 2002), and experiments with QAP changes are ongoing. The management of affordability expiration has also been studied, at least to a limited extent (Khadduri, Climaco, & Burnett, 2012). Building systematically on this foundation would ensure robust measurement of impact and introduce the opportunity to use local authority and funds to test new models. In addition to adjusting QAPs as discussed in Report 3 of this series, authorities could use their QAPs to test longer periods of affordability (or permanent affordability) for LIHTC developments. Many states, such as Michigan and California, either mandate longer affordability time frames, or give preference to projects with such affordability commitments (Gustafson & Walker, 2002; Khadduri et al., 2012).

Experimentalists could also integrate their LIHTC work with zoning reform, and/or entirely remove any local approval requirements for building LIHTC housing. The Internal Revenue Service neither requires nor encourages state agencies to reject development proposals that do not have local approval (Rev. Rul. 2016-29 (IRS RRU), 2016-52 I.R.B. 875). A bill was introduced in the Senate in June 2019 that would prohibit including in QAPs consideration of local support or opposition (S.1703: Affordable Housing Credit Improvement Act of 2019, introduced June 4, 2019). Deference to local opposition could be subject to scrutiny under the Affirmatively Furthering Fair Housing (AFFH) element of the Fair Housing Act, and could also be prohibited by state legislation.

5. Supporting Residential Stability

It is reasonably clear that in many places, landlord-tenant law and the municipal tax enforcement process have failed to operate fairly or in a socially positive manner. For tenants and homeowners with

lower incomes, loss of housing is all too common a problem. Eviction and foreclosure not only affect the people, including children, who lose their home, but they also can have a negative impact on the social connectedness of the community. They create costs for the public and private agencies that will be spent providing emergency services for those who have lost their home. Landlords need tenants to pay rent, and cities need owners to pay their taxes, but a business model that depends on large scale eviction and foreclosure is socially harmful and unnecessary. Given the long-term and chronic gap between what the relevant law stipulates and what actually happens, simply reallocating rights on paper seems unlikely to make a difference.

As concern about eviction has grown, there has also been renewed interest in rent regulation, including models that differ from traditional long-term rent control tied to individual leases by, for example, focusing on reducing large increases. Universal vouchers and minimum wage increases are other devices that might work by reducing the proportion of monthly income eaten up by housing costs.

There has been a burst of new thinking about eviction and its place in the eco-system of tax collection and the rental housing business. Evidence from studies focused on places like Milwaukee (Desmond, 2016) and Detroit (Eisenberg & Mehdipanah, 2018) is increasingly being supplemented with new data, but important questions of many kinds remain urgent:

- What drives city-level differences in eviction rates among residents with low incomes? How do legal elements like filing fees or varying procedural protections influence the prevalence of eviction?
- Is legal assistance for tenants facing eviction a cost-effective way to promote residential stability? What is the effect on rental businesses of various kinds?
- To what extent is heavy reliance on eviction and enforcement of lease terms now baked into the business model of landlords and large commercial

real-estate operations? Does landlord-tenant law adequately protect low and middle-income tenants from the superior legal resources of large companies?

- What are the most user-friendly and workable models for regulating property-tax obligations of homeowners with lower incomes?
- Can rent control of one kind or another reduce housing instability? What are the medium and long-term effects of new models of rent control on the housing market?
- Does raising the minimum wage reduce housing stress? What effects does it have on local rental prices?
- To what extent does the Earned Income Tax Credit (EITC) buffer against eviction or foreclosure? Can changes in the timing of payments enhance residential stability?

Housing instability has many causes. Some are rooted in the same social determinants that shape health, like low wages and lack of educational and economic opportunity. Others are more prosaically tied to the legal system. Stable residency might be significantly enhanced by coordinated deployment of legal levers that regulate landlord-tenant rights, rent increases, housing code enforcement, eviction, and foreclosure. A few jurisdictions are experimenting with some of these levers. Examples include statewide rent regulation laws in California and Oregon; right to counsel laws in New York, NY, San Francisco, CA, and Newark, NJ; and just-cause legislation in Philadelphia, PA. San Francisco (San Fran Admin Code § 37.9(j)) and Berkeley, CA (Berkeley, CA city code § 13.76.130 (g)(k)) have adopted ordinances prohibiting certain evictions during the school year if a child or educator lives in the home. State and local minimum wage and tax laws can also be included in comprehensive responses for testing. The aim of reducing housing instability requires coordination across multiple public and private agencies in a city, and can be advanced

“Current programs only support one in four low-income people who need assistance ... There's no way you can do it without money or national prioritization.”

– Priya Jayachandran, National Housing Trust

as we suggest by a fairly wide range of legal levers. Setting this problem as a multi-city collaborative learning process would allow exploration of a variety of approaches.

6. A Universal Housing Voucher

The Housing Choice Voucher (HCV) program has been shown to be effective in making housing affordable for many low-income households. The Moving to Opportunity Program shows long-term individual and social benefits. However, the program has never been funded to meet the level of need. The strong evidence that it works is, essentially, evidence from a pilot for a universal voucher system in which everyone below a certain income or income/housing cost ratio would receive a voucher. In *Evicted: Poverty and Profit in the American City*, Matthew Desmond suggested that every family below a certain income level get a voucher that they could use to live where they choose without paying more than 30 percent of their income for rent. “They could use that voucher to live anywhere they wanted, just as families can use food stamps to buy groceries virtually anywhere, as long as their housing was neither too expensive, big, and luxurious nor too shabby and run-down” (Desmond, 2016). Desmond noted that universal housing programs have been successfully implemented in other countries, including Great Britain and the Netherlands. The mass economic toll of the COVID-19 pandemic has brought new attention to universal income support as an efficient alternative to a “safety net.” We can reasonably consider housing to fall into the same category of foundational need as health insurance, retirement benefits, and food that may best be addressed through universal programs.

That said, there are many problems that might be explored and solved through an experimentalist process. The original experiments with housing vouchers in the United States produced a number of unexpected findings about user preferences and the effects of rules meant to improve the quality of

housing – and also found no significant inflationary effect on rents (Frieden, 1980). Good evidence exists that vouchers can work to make housing affordable, but questions remain regarding how to make them easier to use, especially in low-poverty areas:

- What administrative and process changes will be necessary to efficiently manage a much larger voucher program? How will the subsidy level be calculated to allow voucher holders to move to low-poverty neighborhoods? How – and to what extent – should recipients be actively incentivized to “move to opportunity” rather than remaining in their original neighborhoods?
- How will landlord participation be scaled? Are there ways to reduce the administrative burden for participating owners? Will source of income discrimination laws help? If so, how will they be enforced?
- Can technology help the program work better for all concerned?

This is a public experiment that could be run, like the original trials of housing allowances, as an experiment: plausible scale-up models could be compared across cities, and degrees of expansion. It is an experiment that requires substantial funding, from the federal government or from state, local and philanthropic funds. While the best test would ultimately aim for 100 percent of qualified households, even moving to increase supply to meet 10 percent to 20 percent of the unmet need (with incremental expansion phases built in based on early results) could allow learning and evidence to guide reform. See “Improved Administration Will Enhance the Impact of the Housing Choice Voucher Program” in Appendix A for a discussion of potential experiments related to administration of the HCV program.

Final Thoughts

We have focused tightly on legal levers for HEIH and on the opportunity to improve outcomes through a

more intentional coordinated approach to law. Of course, law is only one facet of our housing system, and housing is just one outcome of importance for this country. We offer a few more general reflections that have emerged as important for us as we studied housing law and talked to expert housing practitioners.

Address the Enduring Effects of Racism

The inequitable landscape of American housing was created by racist laws, institutional policies and practices whose effects continue to be felt — and reproduced. The children and grandchildren of people who were victims of redlining, or excluded from housing markets, or subjected to exploitative practices like contracts for sale of deed have missed decades of wealth accumulation, and live today in neighborhoods where opportunities and amenities are fewer and threats are greater. Housing is just one example of the enduring effects of slavery, Jim Crow, and the continuing story of racial injustice in the United States. We share the view that the path to racial equity in general, and HEIH in particular, runs through an explicit national recognition of the full and ongoing injustices of American racism, and reconciliation rooted in substantial steps to undo its effects. “Substantial steps” in any practical sense has to include public spending, whether or not classified as reparations, to undo publicly created racial inequalities in wealth. Investments in HEIH could be an apt, politically feasible and effective way to repay white America’s debt to Black Americans (Hannah-Jones, 2020).

Richard Rothstein argues that racist housing policies have been condemned by American law — but not remedied (Rothstein, 2017). The case for repayment has swayed some in Congress, who have introduced The American Housing and Economic Mobility Act of 2019 (S.787, introduced March 13, 2019). As a first step toward addressing the effects of housing discrimination and racial segregation, this legislation

“I think what actually is needed above all, is again, the shift towards seeing housing as a human right as a country. Until we get there, we're not getting anywhere. If nobody believes that people deserve and are required to have a roof over their head and we see that as a necessity we're talking around the actual issue.”

—Rasheedah Phillips, Community Legal Services of Philadelphia.

“At a moment when Congress in response to a national crisis can pass multiple trillion-dollar relief bills in the space of a few weeks (and may do even more), \$60 billion begins to seem modest by comparison. In truth, political will is key.”

– Nestor Davidson, Fordham University School of Law

would provide first-time homebuyer down payment assistance to residents of communities that were subject to redlining or segregation by the government. The bill has been supported by the U.S. Conference of Mayors, NAACP, National Community Reinvestment Coalition, the National Education Association, the National Low Income Housing Coalition, Poverty & Race Research Action Council, and the Credit Union National Association, among others.

That's where I think our focus should be, is spreading the understanding of this history so that people understand that our racial boundaries, our residential boundaries are as unconstitutional as having white and colored water fountains. [It was understood] that that was unconstitutional, and because they understood it, because they understood it was a civil rights violation, we were motivated to do something about it. It wasn't easy, not everybody wanted to do something about it, but enough people motivated to do something about it that we did. People today do not understand that our racial boundaries are a civil rights violation. They think they happen naturally. And until there's that understanding, I don't see that there's a possibility of making progress [that] goes beyond the few isolated cases here or there....

It's not a question of individuals having done something wrong, it's a question of the government having acted unconstitutionally, and when our government acts unconstitutionally, it's our responsibility to remedy it, whether we personally supported the policy, or didn't support the policy, or whether our ancestors benefited, or didn't benefit from it. That's irrelevant. A constitutional violation was committed, a massive constitutional violation was committed, and it's the obligation of the present generation to correct it.
(R. Rothstein, Economic Policy Institute)

Make Housing a National Priority

America will not achieve HEIH unless it becomes a high-profile, high-priority national concern. This requires a shift from thinking of housing as a commodity to viewing housing as a basic need to which we are all entitled. It will not matter that

there is no constitutional right to housing, in the broadest sense the aim of law can and should be to continuously validate the idea that housing is essential and a moral right.

Andrea Juracek, Executive Director of Housing Choice Partners, said “there needs to be a better balance. The housing market is profit-driven and driven by speculation, and you see wide value fluctuations by neighborhood, often reflecting historic redlining. There need to be stabilizing measures put in place that level the playing field and take the profit motivation out of the rental housing market” (Juracek). Roshanak Mehdipanah from the University of Michigan School of Public Health explained, “we stopped looking at housing as shelter, a human right, and we started looking at it as an investment. We started looking at it as a luxurious thing, as wealth building, and I think that’s when we started getting into a lot of trouble” (Mehdipanah).

Several people we interviewed for this project identified the need to see housing as a human right. When asked about factors that have contributed to the housing crisis, Rasheedah Phillips responded:

I would say this general attitude and approach to landlord tenant issues and housing as a contractual obligation, or something that is governed by contracts and not governed by people who are writing contracts which completely ignores the power imbalance that again, contributes to this. And this idea generally in American culture that housing is not a human right. That you earn your housing, you earn a roof over your head, as opposed to an approach that sees everyone as worthy and deserving of having a home, a roof over your head. So, it’s all of those things (Phillips).

Part of a Culture of Health in America has to be both a political and social sense that everyone is entitled to a home, that a good society ensures housing for all, that a smart society sees the value of this investment, and that we would all be better off if everyone lived in a safe, healthy, integrated community with access to opportunities.

Why is equality so assiduously avoided? Why does white America delude itself, and how does it rationalize the evil it retains? ... The practical cost of change for the nation up to this point has been cheap. The limited reforms have been obtained at bargain rates. There are no expenses, and no taxes are required, for Negroes to share lunch counters, libraries, parks, hotels and other facilities with whites. ... The real cost lies ahead. ... Jobs are harder and costlier to create than voting rolls. The eradication of slums housing millions is complex far beyond integrating buses and lunch counters.

The assistant director of the Office of Economic Opportunity, Hyman Bookbinder, in a frank statement on December 29, 1966, declared that the long-range costs of adequately implementing programs to fight poverty, ignorance and slums will reach one trillion dollars. He was not awed or dismayed by this prospect but instead pointed out that the growth of the gross national product during the same period makes this expenditure comfortably possible. It is, he said, as simple as this: “The poor can stop being poor if the rich are willing to become even richer at a slower rate.” (King, 1967)

Spend the Money to Achieve HEIH

We need an overall national housing budget that matches the importance of housing to individual and social well-being. The best laws in the world cannot substitute for well-built, well-maintained homes whose residents can afford to settle. More money is essential to build more housing, to provide people with enough income to pay their housing costs, and to make legal and regulatory systems work properly. Like all matters of the public budget, scrimping on housing is a choice.

The problem is not lack of money for housing solutions in the richest country in the world. Rather, the problem is how money in the U.S. is spent. One of the best bets for HEIH is fully funding the Housing Choice Voucher program. That would take nearly \$60 billion a year over the next 10 years (Tawil, 2015). It sounds like a lot, but that’s the amount the public devoted to the home mortgage interest deduction in 2017 (Committee for a Responsible Federal Budget,

2017) — and is significantly less than one quarter’s revenue for Apple (Apple, 2020). That same amount would pay for completely renovating all existing public housing (National Low Income Housing Coalition, 2018). Ending homelessness has been estimated to come with a bill of \$20 billion annually (Lowrey, 2012), which is less than 5 percent of what we pay every year for Medicare or national defense (Angres, 2018). And that’s just the big stuff. Doubling the \$133.3 million HUD budget for fair housing enforcement costs (U.S. Department of Housing and Urban Development, n.d.) is about 11 percent of what the federal government spends now on homeless assistance programs (\$2.5 billion) (U.S. Department of Housing and Urban Development, 2020) – or about three years of income for action movie star Dwayne “the Rock” Johnson (Clark, 2019).

said “this degree of inequality, this withdrawal of opportunity, this cold denial of basic needs, this endorsement of pointless suffering – by no American value is this situation justified” (Desmond, 2016). △

In Conclusion

Law helped create the system we have now, and law is needed to change that system. We cannot say with certainty what use of which levers is required to ensure that every person living in the United States has the chance to live in safe, affordable housing in integrated neighborhoods where there is access to opportunity. Because housing is a complex system, and the production of health equity in housing is a wicked problem, solutions will require tuning legal levers until we achieve the desired results. That tuning requires a systematic experimental approach used to rapidly test the implementation and impacts of levers and innovative ideas, and spread those that work.

Although there are many questions still to answer, we can say this with certainty: Something must be done. Leaving aside the assertion that housing is a basic need to which all are entitled, we can imagine what accomplishments we might achieve as a country if the resources we spend addressing homelessness and providing services to those who are housing cost burdened were used instead to provide stability and opportunity for everyone. As Matthew Desmond

Appendix A: “Hypotheses” for Legal Reform: Ideas Big and Small Worth Testing

The six policy experiments we propose in this report involve the legal levers that emerged through our research and our interviews with housing experts as the most promising, in our view, to support health equity in housing. However, there were many other levers that we identified as having potential. In this appendix we briefly discuss hypotheses for legal reform involving some of those levers. In Report 2 of this series we introduced our model of legal levers, which organizes the levers into five domains: increasing the supply of new, affordable housing; maintaining existing housing as affordable, stable, and safe; affirmatively furthering fair housing; enhancing economic choice for the poor; and governance of the U.S. housing system. In Report 3, we reviewed the evidence as to the implementation and effects of these levers.

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Fighting Efforts to Weaken Fair Housing Law Will Reduce Discrimination and Segregation

Continued unacceptable levels of discrimination show that one of the core federal fair housing standards – that there shall be no discrimination based on race, color, religion, sex, national origin, familial status or disability – is as necessary as it has ever been. Persistent levels of racial segregation show that the other key mandate of federal fair housing law – to affirmatively further fair housing – also remains critical. This hypothesis goes to protecting these basic mandates from legal erosion.

The primary current threat of erosion comes from administrative efforts at U.S. Department of Housing and Urban Development (HUD). The agency proposes to change the standard for proving disparate impact claims so as to make such claims extremely difficult to succeed ("HUD's Implementation of the Fair Housing Act's Disparate Impact Standard," 2019) and to substantially weaken the Affirmatively Furthering Fair Housing (AFFH) rule ("Affirmatively Furthering Fair Housing," 2020). Disparate impact is particularly important in a systems approach, because it sets a results-based standard that is not dependent on conscious intent or motivation. People can learn to hide discriminatory motives, even from themselves, but there is no hiding distinct and enduring patterns of discrimination and segregation in housing outcomes, which after all the law is meant to eliminate.

The AFFH rule supports and complements the disparate impact standard. It was designed to require and enable local knowledge generation and analysis about fair and affordable housing. AFFH follows the system-change playbook by instigating a process that draws on local knowledge, capacity, energy and creativity to create substantive plans. (We discuss cities implementing this rule on their own below.)

Broadening The Zone Of Fair Housing Protection Will Reduce Will Reduce Discrimination

Expanding the scope of fair housing protection to reach current forms of discrimination will reduce discrimination. The housing system today relies substantially on vouchers and subsidies for low-income people, veterans and others in need of housing assistance. For such a system to work fairly and efficiently, the fact that a person's rent will be covered by a voucher or subsidy should not be a basis for denying that person a home, yet fair housing organizations report hundreds of discrimination complaints each year based on source of income (SOI) to pay the rent (Abedin et al., 2018; Abedin et al., 2017; Augustine et al., 2019). Fifteen states and the District of Columbia (D.C.), and more than 80 cities or counties, have laws that prohibit SOI discrimination (Poverty & Race Research Council, 2019), but the federal Fair Housing Act (FHA) does not. (At least two states, Indiana and Texas, have preempted local SOI protections (Local Solutions Support Center, 2019)). Adding SOI protection, which includes housing vouchers as a source of income, to federal law would help protect Housing Choice Voucher (HCV) program participants, disabled veterans and others from being denied housing simply because they are paying for it with a voucher or subsidy.

Individuals also experience discrimination based on sexual orientation, gender identity (Abedin et al., 2018; Abedin et al., 2017; Augustine et al., 2019), and arrest or criminal record. Twenty-two states and D.C. have a state-level law that includes sexual orientation as a protected class (Center for Public Health Law Research, 2018); 20 states and D.C. have a law including gender identity or expression as a protected class (U.S. Department of Housing and Urban Development, 2019). Cities including Seattle, WA, San Francisco, CA, New York, NY, and Washington, DC, have passed laws prohibiting housing discrimination

against individuals based on an arrest or conviction record (National Housing Law Project, 2017). These laws generally regulate landlords' use of criminal history information in determining eligibility for housing, and aim to expand access to housing for people leaving prison or jail. Federal legislation that would prohibit housing discrimination based on sexual orientation, gender identity, SOI, veteran status, or military status is pending in Congress (Augustine et al., 2019). Federal protection against these kinds of discrimination is consistent with the purposes of the FHA and the goal of HEIH. Better data on the prevalence of these types of discrimination, and the effectiveness of existing state and local laws prohibiting such discrimination, would strengthen the case for federal protection.

Implementing HUD's 2015 Affirmatively Furthering Fair Housing Rule Will Help Promote HEIH At A Metropolitan Level

The 2015 Affirmatively Furthering Fair Housing (AFFH) rule was discussed throughout our interviews as a potentially transformative legal lever. It was seen as having the potential to advance HEIH on many fronts: holding local governments accountable for land use decisions; creating uniform planning mechanisms to improve housing governance at the metropolitan or regional level; incentivizing communities to take segregation and unequal access to opportunity seriously; and increasing integration. Despite the effective suspension of the 2015 AFFH rule by the Trump Administration, localities can at least proceed with the assessment and planning process contemplated in AFFH. New York City, for example, has continued its assessment of fair housing in a collaborative planning process called Where We Live NYC, which aims to understand the impacts of segregation and discrimination, and to create policies that promote opportunity for all (Where We Live NYC, 2018).

"The AFFH rule is one of the country's most important public health tools. By eliminating racial segregation at the root of the U.S. housing crisis, the rule creates access to opportunity, which has been historically denied. It also facilitates cross-agency and cross-sector collaboration that is necessary for community development and long-term improvement of the physical design and economic conditions of neighborhoods."

–Emily Benfer, Columbia Law School

The Chicago Area Fair Housing Alliance (CAFHA) shows how a housing organization can keep the spirit of AFFH alive. CAFHA is a non-profit “consortium of fair housing and advocacy organizations, social service providers, government agencies, and municipalities working to combat housing discrimination and promote equitable place-based opportunity through education, advocacy, and collaborative action” (The Chicago Area Fair Housing Alliance, 2018). In an interview for this project, Patricia Fron, CAFHA’s Executive Director, explained that they have created a compliance model that ranks municipalities in the county on their efforts to affirmatively further fair housing. Fron explained that CAFHA “used the fact that we are this collaborative, membership-based organization, to push the county on their duty to affirmatively further fair housing and look at the municipalities that they’re funding and how they’re funding them. And identify who are the barriers to their own duty to affirmatively further fair housing” (Fron).

Optimizing State Enabling Statutes Granting Powers To Land Banks Will Increase Their Capacity To Provide Services At The Needed Scale

Land banks, which assure that land is properly titled and organize transfer to new owners consistent with community development plans, remain a popular mechanism to acquire and promote desirable uses of vacant properties. However, there is a lack of rigorous evidence of effectiveness at scale. One barrier to scaling the program is funding. Experts we interviewed from the Center for Community Progress (CCP) highlighted land banks in Ohio as a model, as they can be funded in part through fees for delinquent taxes, pursuant to state enabling legislation. The Cuyahoga County land bank, for example, receives about \$7 million from these funds. This reliable, recurring source of funding allows the land bank to be more innovative and impactful (Abdelazim).

State legislation creating land banks can give them powers that enhance capacity to use the funding they have. Some state legislation allows a land bank to exercise what is sometimes known as a “priority bid,” which allows the land bank to go to a foreclosure auction, issue a minimum bid, and purchase any property without having to compete with other investors. This can be a mechanism for transferring foreclosed properties to land banks even if the municipality does not support the transfer. In some states, land banks have a credit bid, meaning they do not have to pay cash up front with the understanding that they will make an investment in the property that will benefit the community (Abdelazim).

Land banks’ ability to promote HEIH could also be enhanced by giving them the legal authority to transfer property based on a bidder’s planned use of the property rather than being required to sell to the highest bidder. For example, if a land bank’s policies include affordable housing as a priority, it can transfer a property to an affordable housing agency for as little as one dollar to help ensure a positive use of the property (Abdelazim). Finally, ensuring that enabling legislation specifies that banks can secure funding that traditional local governments cannot, such as philanthropic funding, private funding, or grants from public agencies, would also improve funding levels. Matt Kreis from CCP noted “[W]e really think that the best land banks, the most effective land banks have these tools and powers prescribed in state law that really give them the ability to handle all of those things” (Kreis).

Carefully Easing Regulatory Burdens Can Reduce The Ultimate Unit Cost Of Affordable Housing

Building codes such as fire codes, plumbing codes, and general safety codes are useful tools for promoting health and safety in the design and construction of new housing. Environmental protection provisions

are, likewise, essential to health and safety. Code provisions regulating factors like room dimensions or the number of bathrooms may reflect older notions of public health and be unnecessary to ensure safety. While the evidence is limited that building codes as such are a major contributor to housing costs, the overall burden of regulation on housing is increasingly being seen as a major problem for affordable housing in at least some markets. In addition to direct costs of compliance, regulations often create levers for opponents of a project to substantially delay it. An effort to achieve regulatory simplification or compliance focused holistically on the total burden of regulation offers an opportunity to reduce cost without harming public safety or the environment and provides an opportunity for developers and housing advocates to work together.

Primary Legal Prevention Of Lead Poisoning Will Significantly Reduce Childhood Exposure

Lead-based paint is a big problem in many homes in the U.S., resulting in many children with lead poisoning. Most state-level policies are based on secondary prevention, in which children with high blood lead levels are identified through blood screening programs, then attempts are made to remove the hazards that caused the exposure. However, at that point, residents have already been exposed to lead hazards. Some experts believe that treating lead poisoning solely as a clinical problem has had the unfortunate side effect of reducing pressure on building code enforcement that could prevent exposure in the first place if the housing code is changed and if code inspectors are trained in lead risk assessment (D. Jacobs, personal communication, June 15, 2020). Lead exposure is not healthy for anyone, and moving to a primary prevention model whereby policies focus on identifying and fixing dangerous properties before residents move in would further the goal of HEIH.

There are 19 cities and states that already require some type of lead inspection before occupancy of private rental housing (K. Korfmacher et al., 2019). Some of these policies, including those in Rochester, NY (The Municipal Code of the City of Rochester, pt. 2, ch. 90, §§ 90-50 to 90-65) and Maryland (Md. Code Ann., Environment §§ 6-801-6-852; Code of Maryland Regulations 26.16.02), seem promising. As we described in this Report, Rochester’s law appears to be reducing lead hazards in rental housing without having a significant impact on the rental housing market (Katrina Smith Korfmacher et al., 2012), as well as contributing to a reduction in the number of children with elevated blood lead levels (K. Korfmacher & Hanley, 2013). Federal lead laws, such as the Residential Lead-Based Paint Disclosure Rule and the Renovation, Remodeling and Painting (RRP) Rule, leave gaps in efforts to address lead hazards since they do not require inspections or remediation work prior to renting or selling a home. While the gaps could be addressed by reforming these laws, states and municipalities can adopt — and some have adopted — laws that mirror the federal rules in order to strengthen these standards in their jurisdictions (McFerren, Senger, Smith, & Wright, 2018). This is another area where deliberate testing could be beneficial.

Improvements in policies specific to federally subsidized housing may also be helpful. Homes rented as part of the Housing Choice Voucher program, and Section 8 project-based housing that receives less than \$5,000, are not inspected for lead hazards. As Emily Benfer explained,

The existence of habitability requirements in the private market and housing quality inspections in federally assisted housing often create a false sense of security that the home is safe for occupants. It’s not until the children in the home develop elevated blood lead levels and the neurological harm lead poisoning causes that any meaningful inspection is 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 for one cohort of children in the direct costs of medical bills, special education, lead-related ADHD, lost lifetime earnings, and parental work loss (Benfer).

In addition, it may be beneficial to explore a data-driven model of lead poisoning prevention. A useful local experiment would be to try implementing a national lead-safe/lead-free property registry that could be accessed by tenants, investors, and regulators, and which could measure progress towards achievement of a lead-safe housing market.

Amending Nuisance Property Ordinances Will Reduce Their Harmful Effects

As discussed in Report 3, there is some evidence that nuisance property ordinances may force domestic violence survivors to choose between calling the police, which could result in eviction, or refraining from seeking help in order to keep their home. These laws may have negative impacts on people with disabilities or others who rely on emergency services for help. Sandra Park of the ACLU, who we interviewed for this project, suggested that nuisance property ordinance provisions that tie nuisance designations to calls for emergency service, or to criminal activity regardless of whether the tenant is a victim of the crime, should be repealed. Some states have laws protecting a tenant’s right to call for emergency assistance. Evaluating the implementation and impact of these interventions would help determine the best course of action for scaling.

Improving Laws Aimed At Preventing Mortgage And Property Tax Foreclosure Will Enhance Housing Stability

Many homeowners lose their homes for failure to pay property taxes. “Circuit breakers” that forestall foreclosure are one mechanism used to decrease

“There are only 19 [sic] cities and/or states that have any kind of pre-rental lead hazard inspection requirements locally. This means that in a home built before 1978, we test children's blood lead levels to determine if there are lead hazards, instead of testing the home before a child is harmed. We know how to identify and abate lead hazards. It's a matter of committing the funding and resources to do it.”

–Emily Benfer, Columbia Law School

the burden of property taxes on households with low incomes. These policies provide property tax relief that increases as household income declines, sometimes in the form of a tax credit. We did not find any studies evaluating the impacts of circuit breaker programs, but multiple reports suggest they could be an effective approach to addressing the cost of property taxes because they target households that are being disproportionately affected by property taxes. A report by the Lincoln Institute of Land Policy provides a comprehensive analysis and recommendations to guide state and local experimentation (Bomwan, Kenyon, Langley, & Paquin, 2009).

Along with a circuit breaker, Michigan has a law that requires municipalities to make available a property tax exemption for residents living in poverty (Mich. Comp. Laws § 211.7u (2017)). A report analyzing Detroit's tax exemption program indicated that many homeowners did not take advantage of the program because they were either unaware of its existence or faced barriers in the application process (many of which have been removed) that prevented them from participating (Eisenberg & Mehdipanah, 2018). Michigan's property tax exemption law — and the local laws enacted pursuant to it — should be evaluated for effectiveness and impact.

Some experts have suggested that foreclosure mediation can be effective in avoiding formal foreclosure proceedings (Shack, 2018). Whether or not a homeowner is automatically enrolled in a mediation program has been identified as a crucial factor in participation rates (Clifford, 2011). States can experiment with mandatory mediation programs to determine their impact and scalability.

Improved Administration Will Enhance The Effects Of The Housing Choice Voucher Program

The Housing Choice Voucher (HCV) program has been shown to be effective in making housing affordable for

many low-income households. The primary problem with the program is that it has never been funded anywhere near the level of need, making it in essence a long-term and quite successful pilot program. Although fully funding vouchers for all who need them would be a wise and evidence-based policy, there are several policy repairs that could improve its functioning for those lucky enough to get a voucher.

Twenty four metropolitan areas are required to use the Small Area Fair Market Rent (SAFMR) to calculate fair market rent on a smaller scale (zip code) than that used more widely across the country (metropolitan area). As noted in Report 3 and Report 4 of this series, calculating subsidies based on zip code level FMR rather than metropolitan level FMR could not only help voucher holders rent homes in higher opportunity areas, but might also allow public housing agencies (PHAs) to spend less money for voucher holders that live in higher poverty neighborhoods (thus increasing the number of families they can assist). Researchers have found that SAFMR does enable households to move to lower poverty neighborhoods by increasing the availability of units in those neighborhoods. 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. Continued evaluation and experimentation of SAFMRs in other jurisdictions is needed to understand the full impact of this method, and whether scaling should be recommended.

Changing the administration of the HCV program from PHAs to regional authorities is another modification worth testing. Those who advocate for this type of change assert that it would allow households with vouchers to more easily move to low-poverty neighborhoods because the geographical area within which a voucher holder could move would expand (Katz & Turner, 2103). Regional administration of the voucher program would result in a more streamlined process, eliminating portability barriers that prevent

some voucher holders from moving out of their current PHA's jurisdiction. Some jurisdictions administer the HCV program regionally, and evaluation of these entities could shed light on benefits and drawbacks of scaling this type of HCV governance.

Mobility programs are another mechanism for promoting voucher use in high-opportunity areas. These programs are 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. Successful examples in Baltimore, Chicago, and Dallas resulted from litigation, but there are other tools that might be used to establish mobility programs. For example, in March 2019 the House passed the Housing Choice Voucher Mobility Demonstration Act of 2019, which establishes incentives for PHAs to help families move to high-opportunity areas by providing money for mobility services (H.R.1122, introduced Feb. 8, 2019).

Changes to PHA procedures is another suggestion to improve the HCV program. As discussed in Report 3, housing authority rules and procedures complicate the voucher process, making it difficult to navigate. For example, time limits for locating a unit and cumbersome portability procedures can prevent voucher holders from moving to a desired area, or even using their voucher at all. Almost one-third of voucher recipients do not use them. PHAs can adopt more user-friendly procedures to encourage full use of a voucher for those who have one.

Raising The Minimum Wage And Increasing Income Supports Can Help People With Lower Incomes Afford Safe And Stable Housing

There is considerable evidence that America's housing affordability problem is attributable in significant part to the inability of a large number of

“When it comes to actually having enough affordable housing for low-income people, we need a ton of money to build more. We also need to address the education, job, and family support systems so that people can have the money that they need to live in areas with different market conditions.”

—Lauren Walker Lee, Tacoma Community House

people to afford fair market rents. Along with high rents, Andrew Aurand from the National Low Income Housing Coalition explained that “there’s also a wage issue, which is wages are too low in some occupations for workers to afford housing. There’s a point at which workers’ incomes are just too low. If you’re an extremely low-income family, your income is probably below the poverty guidelines, and what you can afford to pay in rent often does not cover the costs of operating rental housing” (Aurand). Raising the minimum wage could be one way to address this issue; however, such a raise would likely need to be combined with housing assistance in order for people with low incomes to afford rent in most jurisdictions. In addition, some scholars and politicians have proposed initiatives for levers that do not yet exist, which would increase income.

Raising the minimum wage. 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. As of 2019, a full-time minimum wage earner would need to work 127 hours a week to afford a two bedroom apartment, or 103 hours a week to afford a one-bedroom apartment, at the national average fair market rent (National Low Income Housing Coalition, 2019b). While higher income has a logical connection to reducing housing stress, we did not find evidence on the impact of an increase in the minimum wage on housing-related outcomes – prices, availability, or stability. As states and cities raise their minimum wage (Allegretto, Anna Godoey, Nadler, & Reich, 2018), there is an opportunity for research to explore both effects and possible side effects.

Universal Basic Income (UBI). 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 (Kaluzny, 1979). Other results included higher birth weights for those facing high risk pregnancies (Kehrer & Wolin, 1979), higher reading test scores for children in grades 4 through 6 (Salkind & Haskins, 1982), reduced hospitalization rates and increased secondary level education (Forget, 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, 2016; Flowers, 2016). Since then, UBI has largely been a state and city level movement in the U.S., but it has begun to make its way back into national policy discussions. Recently a multiyear pilot in Stockton, CA began, which provides low-income residents \$500 per month (All Things Considered, 2018). Does putting more money in the pockets of people with lower incomes specifically help with housing access and stability?

Tax Credits Are An Expedient Way To Support Housing-Burdened People

The Earned Income Tax Credit. The earned income tax credit (EITC) has become one of the largest federal antipoverty mechanisms in the U.S. Evidence shows that implementing an EITC can result in poverty reduction for households, but it is not designed for optimal use as a source of support for renters. Given that missing a rent payment can initiate eviction, the EITC (which is refunded as a lump sum) can come too late for some or not be flexible enough for others. The ability to use this credit for multiple months of rent depends upon the beneficiary’s ability to save the money throughout the year or upon a landlord’s agreement to take the credit to cover future months of rent.

Because of the growing need to help low-income households pay for housing, some propose that the EITC be expanded and reformed to take housing costs into account (Stegman, Davis, & Quercia, 2003).

Others have proposed a “rainy day EITC” giving taxpayers the option to receive portions of their EITC throughout the year and supplementing the EITC with a modest savings amount. This reform would have low costs and could be beneficial for increasing financial well-being (Halpern-Meekin, Greene, Levin, & Edin, 2018). Sarah Halpern-Meekin, one of the experts who put forth the rainy day EITC proposal, highlighted the importance of experimenting with different policy approaches:

What I would actually want to do is do different experiments in different places. I would offer people different sets of options, and see what appeals to them, see what they choose, and actually run it for a couple years. Because part of the issue is people are expecting to get a lump sum one time a year, and so they are making financial decisions leading up to that time, on the basis of expecting the one-time lump sum. So in our book ... we talk about people potentially receiving quarterly payments, so that would be another way of dividing up that lump sum, or we could allow people to decide how much they wanted to defer. The more options you get, the more burdensome it is, not only for the IRS, but also for tax preparers and individuals, to figure out the policy. And so, I don't know enough about how people make those kinds of decisions at the time of tax filing to know, or guess, a priori, what would appeal to people, what would make it so that there were so many choices that they don't want to engage in that decision at all. ... We'd need to do some experiments to figure that out (Halpern-Meekin).

Renter's Tax Credit. Some in the field have proposed establishing a renter's tax credit, such as the Federal Assistance in Rent (FAIR) Tax Credit. The FAIR credit is, in essence, using the tax code to create a universal housing voucher program, but it would be more flexible and help a broader range of people (Galante, Reid, & Decker, 2016; Kimberlin, Tach, & Wimer, 2018). While the specifics of a renter's tax credit vary by proposal, the idea is that the credit would be available for households earning less than 80 percent of the area median income, and would be calculated based on the amount of gross rent (rent plus utilities) that a

tenant pays. The credit would cover the gap between rent payments and 30-40 percent of household income. If this credit were administered and used on a national scale, it could help many millions become housing secure (Berger, Cancian, & Magnuson, 2018; Galante et al., 2016). The cost has been estimated to be between \$41 billion and \$76 billion, depending on the program details, which is about 50 percent (or less) of the amount of federal homeownership tax expenditures. (Galante et al., 2016). The Housing, Opportunity, Mobility, and Equity Act of 2019, which was introduced in the Senate, provides for tax credits, eligible to be received in monthly payments, in the amount of rent paid in excess of 30 percent of income (S.2684, introduced Oct. 23, 2019).

Changes To The Home Mortgage Interest Deduction Could Support HEIH

Many housing experts have suggested that making changes to the mortgage interest deduction (MID) could be a lever to increase health equity in housing. Before the changes made to the MID by the Tax Cuts and Jobs Act (TCJA) in 2017, its \$70 billion plus annual cost was more than double the combined cost of LIHTC and the HCV program (Galante et al., 2016). The National Low Income Housing Coalition has proposed reducing the mortgage amount that is eligible for the deduction, and reallocating the savings to housing assistance for households with low incomes (National Low Income Housing Coalition, 2019a). Richard Rothstein, author of *The Color of Law* and an interviewee for this project, describes a proposal made in the 1990's by Professor John Boger of the University of North Carolina Law School, which would have required that “homeowners in jurisdictions that did not make progress toward such racial and economic integration would lose 10 percent of their mortgage interest and property tax deductions. The penalty would increase in each year of a jurisdiction's noncompliance with fair share goals.” This proposal included a suggestion that the money saved in MID

lost in those municipalities should be used to create affordable housing in those communities (Rothstein, 2017).

Strengthening Laws Protecting Vulnerable Consumers From Predatory And Unfair Lending Practices Will Improve Their Economic Stability And Increase Their Agency In The Housing Market

If putting more money in the pockets of people with low incomes can increase their access to affordable and healthy housing, it follows that laws that help them hold on to the money they earn is also a plausible way to help. Predatory lending can arise in multiple types of transactions, and typically affects vulnerable people looking for access to credit.

Mortgage lending. All states have laws addressing predatory mortgage lending in some way. Most evaluations of these laws have focused on North Carolina, which was the first state to enact anti-predatory lending laws. The evidence indicates that these laws have been effective at reducing loans with abusive characteristics. The Center for Responsible Lending has concluded that states with strong anti-predatory lending laws were associated with the largest reduction in loans with abusive terms, and that access to subprime credit was not hindered by those laws (Li & Ernst, 2006).

Contracts for deed. Contracts for deed have returned to wide use in recent years, and have great potential to be utilized in unfair or abusive ways (Burriss-Lee, forthcoming). Advocates recommend using legislative reforms to minimize harm caused by contracts for deed. For example, Oklahoma has a law essentially eliminating contracts for deed by treating all such contracts as mortgages (Okla. Stat. Ann. tit. 16, § 11A (West 2013)), and Texas has also regulated

their use (Way & Wood, 2014). Contracts for deed could be regulated at the federal level. The National Consumer Law Center has outlined a regulation that the Consumer Financial Protection Bureau could promulgate to regulate these instruments (Mancini & Saunders, 2017).

Consumer lending outside of the housing context. Outside of the housing context, people with low incomes or poor credit frequently use fringe services for short-term loans, such as payday loans or bank overdrafts, which expose consumers to abusive terms. Borrowers of payday loans often end up spending more in interest and fees than they borrowed in principle. The high interest often forces borrowers to forgo a large chunk of their paycheck to repay the loan, and results in the need for another loan to pay other expenses (Pew Charitable Trusts, 2013). Overdraft fees are another mechanism that may be harmful for consumers. Overdraft credit offers services to borrowers with low incomes similar to payday loans, but the cost of overdraft credit tends to be even higher (Zernik, 2018). Some consumers use overdraft fees to repay payday loans (Pew Charitable Trusts, 2015).

Many states have laws regulating payday loans, but as discussed in Report 3, the evidence on their impact is mixed. Some suggest that policymakers might take a broad approach and regulate not only payday lending, but all small loans. This could reduce evasion of restrictions by lenders who tweak the structure of their loans to avoid being subject to payday lending regulation. Oregon has enacted this type of comprehensive policy, establishing an interest cap on most loans under \$50,000 with a term of 60 days or less (Or. Rev. Stat § 725A.010; Or. Rev. Stat § 725A.064). We suggest additional evaluation of laws restricting small loan lending to determine their impacts, including how they can effectively protect consumers without cutting off access to short-term credit.

While some states have laws regulating overdraft fees, we did not find any evaluation of those laws. There are

some efforts at the federal level to address the harms of overdraft fees. In May 2019, the Stop Overdraft Profiteering Act of 2019, a bill placing restrictions on overdraft fees, was introduced in the Senate (S.1595, introduced May 22, 2019). This is another policy area in great need of research.

Enabling banks and credit unions to offer small loans at substantially lower prices than those charged by payday lenders is another reform that could be beneficial. Results from a Pew survey indicate that this was the most popular potential reform among payday loan consumers, and Pew suggests that these entities can make lower-cost small loans while still making a profit (Pew Charitable Trusts, 2017). The Federal Deposit Insurance Corp., the Federal Reserve Board, and the Office of the Comptroller of the Currency are joining forces to explore ways to improve access to small loans (Thompson, 2019).

Addressing Court-Ordered Debt Will Improve The Economic Stability Of People With Low Incomes And Increase Their Agency In The Housing Market

Fines and fees for traffic and other minor municipal violations can have a substantial impact on the ability of those with low incomes to pay for housing expenses. While there is a relatively new trend towards adopting laws aimed at reducing the impact of these legal financial obligations, there is almost no evaluation of those laws. One exception is a study of California’s 18-month Statewide Infraction Amnesty Program, which was implemented to help those with unpaid court-ordered debt. The program was successful in helping individuals reduce their debt and qualify for reinstatement of their driver’s license, and also resulted in a collection by the state of more than \$45 million in fees and fines owed (Theodorovic, 2017).

Many countries have implemented “day fines” — a system of penalties that accounts for both the severity of the offense and the income of the offender. In such a system, fines are higher for those with larger incomes. Phoenix and Staten Island experimented with this model in the 1980s, but it was viewed by judges as too lenient at that time (Atkinson, 2016). Given current efforts to reduce incarceration rates, it is worth considering testing this approach again, with evaluation as a key component of any pilot program.

Moving Toward Regional Governance Of Housing, Education, Transportation And Economic Development Will Promote HEIH

Using a strong form of regional approach to achieving health equity in housing seems worthy of serious consideration. In our research, regionalism came up in the area of housing governance generally, and in specific instances including the Housing Choice Voucher program and school district consolidation. One of our interviewees discussed the need for a regional approach by expressing skepticism that local governments will be successful on their own in significantly improving housing issues, either because they lack the resources or the desire to do so. It has been suggested that having regional governments could make suburban counties less likely to have an isolated perspective, and more likely to care about regional housing needs (Boudreaux).

Another informant emphasized the importance of having “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” (Davidson). Such entities could be instrumental in dealing with issues such as addressing blight, and making land banks more effective.

"What is the one thing we could do, what is the one thing that a sophisticated foundation that really wanted to move the needle in the long term could do? It would actually be to fund over the space of a decade, that long-term commitment, rigorous metropolitan scale institutions that are dedicated to the intersection between community development, housing production, and fair housing, and then bring in all of those other policy goals. I think we abandoned the possibility of that way too soon."

—Nestor Davidson, Fordham University School of Law

Tim Evans of New Jersey Future suggested 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. Such an approach could diminish the incentive to discourage higher density, affordable housing 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" (Evans). See Report 3 for additional discussion of school district consolidation.

Oak Park Can Be Replicated

In Report 5 of this series we told the story of Oak Park, IL, a community that has successfully used partnerships between government agencies, community organizations, and residents to realize their goal of having an integrated community. Attempts should be made to replicate the Oak Park approach in places where it makes sense to do so. While this approach might not work in large cities as a whole, Rob Breymaier, former Executive Director of the Oak Park Regional Housing Center noted:

I think what we do is so simple and so easily transferrable to any other neighborhood ... It would be very difficult for us to have a branch in the loop in Chicago and say, 'We can help you figure out every neighborhood in Chicago.' It's hard to do that. It could be done, but it would be a much, much more intense project. But, if we were to identify, say, five neighborhoods in the city of Chicago that we wanted to have an effect on, and if they were fairly contiguous, we could easily do that. Even more importantly, in the suburbs, this is eminently doable (Breymaier).

Appendix B: Key Resources on Rochester's Lead Law

Rochester's lead law – Some key resources

Last updated May 26, 2020

In 2005, Rochester passed a code amendment adding lead inspections to the city's existing Certificate of Occupancy inspections of pre-1978 rental housing. This law, the community-based process that gave rise to it, and evaluation of its implementation have been a useful model and resource for many other communities. People often find it helpful to talk with Rochester stakeholders to clarify details. As a starting point, many summaries and analyses have been written about Rochester's law. This list is a selection of several reliable sources that offer an overview of Rochester's experience.

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For more information and updates:

These are just a few available sources and may not answer all questions. Also, laws change, data is updated, new reports are written...check for the latest updates! Here are some good starting points:

City of Rochester lead programs: www.cityofrochester.gov/lead

Coalition to Prevent Lead Poisoning: <https://theleadcoalition.org/>

Monroe County Dept. of Public Health Lead Program: www2.monroecounty.gov/eh-leadpoisoning.php

University of Rochester Environmental Health Sciences Center: <https://www.urmc.rochester.edu/environmental-health-sciences/community-engagement-core/projects-partnerships/lead.aspx>

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