

Eliminating Regulatory Barriers to Affordable Housing:

Federal, State, Local, and Tribal Opportunities

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PD&R



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FOREWORD

HUD is committed to providing opportunities to hardworking American families through lower housing costs, greater economic growth, and more opportunities for economic mobility.

Over the past year, I had the opportunity to reach out to people throughout the country, listen to their life experiences, and seek their ideas. Community residents told of their struggles to find an affordable home. Developers and builders, eager to build homes but stymied by too many requirements and delays, identified changes and models that can free the market. State, local, and tribal leaders expressed frustration: some represent communities where job growth is outpacing housing growth; others are frustrated with their inability to attract builders in an area with little growth but continuing need, particularly in rural areas and on tribal lands. State and local officials shared success stories as well, as they removed unnecessary regulatory barriers and implemented cultural changes within planning and building departments. My team and I also had the privilege to work with staff from the other agencies to learn about their activities to reduce regulatory barriers. Throughout the activities, I have seen a commitment at every level of government to reduce regulatory barriers and encourage a functioning housing market.

I am honored to issue this report, which includes the HUD activities to obtain stakeholder input; important actions the Federal Government is taking to reduce federal regulatory barriers; state, local, and tribal activities to increase housing supply and reduce costs; and ways in which the Federal government can encourage and support jurisdictions to increase housing supply across income levels.

Much work remains to be done. In many ways, this report is a starting point. It identifies actions governments can take to make their housing markets more responsive to their residents' needs. The Federal Government can play an important role in supporting these efforts, not just in its ongoing review to reduce regulation, but in disseminating models, providing education and technical assistance, and aligning resources to better meet the needs of Americans. I am confident, following our work and the shared recognition of the need to make the housing market function more effectively, we will make progress on increasing housing supply and eliminating unnecessary barriers.

Benjamin S. Carson, Sr.

A handwritten signature in black ink, appearing to read 'B. Carson', followed by a long, horizontal, slightly wavy line that extends across the width of the page.

Secretary
U.S. Department of Housing and Urban Development

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EXECUTIVE SUMMARY

Introduction

HUD has developed this report on Eliminating Regulatory Barriers to Affordable Housing in response to the high cost of housing in many highly regulated housing markets throughout the United States that share a common concern: a lack of housing supply due to burdensome regulatory regimes. Because of the market imbalance, many American households do not have the opportunity to affordably rent or sustainably purchase their homes. In 2017, 37.8 million households (over 31 percent of all households) spent more than 30 percent of their pre-tax income on housing, with more than 18 million (10.8 million of whom are renters) spending more than one-half of their income on housing.¹

A cornerstone of the Trump Administration's economic policy is the tearing down of overly burdensome and unnecessary government regulations that hinder freedom and opportunity. The Administration's economic policies, including deregulation, led to a booming economy, strong wage growth, and historically low levels of unemployment before the COVID-19 national emergency. The President's deregulatory policies helped millions of Americans move up the economic ladder, particularly minority and low- and moderate-income households. Even in the midst of the economic renaissance, however, many American households continued to spend more and more of their hard-earned income on housing costs each month, which hinders economic opportunities for low- and moderate-income Americans and dampens overall economic growth, particularly in housing markets with low inventory.

To improve housing affordability in a truly sustainable manner, we need innovative solutions. Merely increasing federal demand subsidies for housing without increasing supply would increase housing prices in areas with constrained supply.² Solutions must address the regulatory barriers inhibiting the construction and development of housing supply to meet demand. Addressing these barriers requires a concerted effort from all levels of government.

As the economy rebounds from the COVID-19 national emergency, policymakers must continue to focus attention on the issues of housing supply and housing affordability, as both are critical to sustaining long-term economic prosperity and opportunity. If the status quo remains, many Americans will continue to be unable to access affordable housing opportunities and to pursue the American dream of owning a home of their own. Increasing the supply of housing by removing overly burdensome rules and regulations will reduce housing costs, boost economic growth, and provide more Americans with opportunities for economic mobility. In the wake of the COVID-19 pandemic, many longstanding patterns may change in response to different housing preferences, greater acceptance of teleworking, and new social practices. HUD recognizes the potential disruption of long-term trends may require local governments to adjust policies and practices to respond to changes in housing demand. Local

¹ Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 2019*, p. 4. (Cambridge, MA: Joint Center for Housing Studies of Harvard University, 2019).

² Edward L. Glaeser, "The Closing of America's Urban Frontier," *Cityscape*, 22(2), 5-21 (2020).

jurisdictions may want to avoid making sweeping changes before the nature and scope of those permanent changes (if any) are better known.

This report reflects recommendations HUD has assembled from its long-term work on reducing regulatory barriers together with information obtained through coordination with the Departments of Agriculture (USDA), Energy (DOE), the Interior (DOI), Labor (DOL), and Transportation (DOT); the Treasury (Treasury); the Environmental Protection Agency (EPA); the White House Offices of Domestic Policy, Economic Policy, Management and Budget, and Intergovernmental Affairs; and the Council of Economic Advisers. The fact-finding team brought Federal, state, local, and tribal governments, private sector representatives, and many other stakeholders together to discuss housing affordability challenges and potential solutions to those challenges. With the understanding that no two places are the same, those discussions have been crucial to the development of this report.

Stakeholder Input

HUD solicited feedback from state, local, and tribal government officials, as well as relevant private-sector stakeholders, including developers, homebuilders, creditors, real estate professionals, manufacturers, academic researchers, renters, advocates, and homeowners. Feedback was obtained through a variety of mechanisms including roundtables hosted by the White House, HUD, and Treasury; a listening session with tribal leadership; and many meetings conducted by individual federal agencies with stakeholders to obtain feedback and receive input on potential actions. HUD issued a Request for Information on November 22, 2019 on actions the Federal Government could take to reduce its regulatory barriers and actions at the state and local level the Federal Government could support and encourage.³ More than 625 comments were received from individuals, firms, trade associations, service providers, researchers, and state and local government organizations covering HUD programs, the Low-Income Housing Tax Credit, labor, energy efficiency, environmental protection, infrastructure, building codes, historic preservation, land use and zoning, and other issues. Agencies analyzed input received to identify actionable recommendations for reducing regulatory barriers and increasing the supply of affordable housing.

Regulatory Barriers

Regulations and processes that guide housing development, although designed to address important goals, can negatively affect affordable housing creation. “Barriers” to housing are distinguished from their less obstructive counterparts through several criteria, including: (1) the costs of implementing or complying with the regulation or process exceed the social benefits; (2) complex, non-transparent development processes limit entry to the market; and (3) restrictive land use regulations near employment and services may limit labor mobility, harming households and the national economy. This report focuses on eliminating barriers that inhibit housing supply from keeping up with demand. The report highlights actions federal agencies have taken to reduce barriers, while recognizing that the

³ FR-6187-N-01 Request for Information, https://www.regulations.gov/document?D=HUD_FRDOC_0001-5420

greatest drivers of supply occur at the local level. State and local governments must solve the specific challenges in their housing markets. Not all parts of the United States are currently constrained by regulatory barriers; in regions where population growth is slow or supply and demand are more balanced, inadequate housing production may not be an urgent concern -- although poor housing quality and low housing affordability due to low incomes may be. Throughout the country, among various housing market types, delays and unnecessary costs, as well as restrictions on certain types of housing, such as manufactured housing, raise housing prices.

Federal Actions

As part of the Trump Administration's deregulatory efforts to allow markets to function efficiently, the Federal Government has undertaken a wide range of actions to eliminate regulations, reduce costs, and improve processes to support a greater supply of housing to meet Americans' housing needs. The report does not consider federal actions that would interfere in states' regulation of land use or their delegation of those powers to local jurisdictions. Local communities should have flexibility in designing and implementing sound policies responsive to unique local needs and preferences.

Agencies reviewed the stakeholder input and conducted internal reviews of federal regulations related to housing supply to determine whether they presented unnecessary barriers. Reviewers considered changes to statutes, regulations, and guidance, as well as improvements in processes. A broad, but not exhaustive, list of the Administration's deregulatory accomplishments to increase housing supply is contained in Table 1 (in Section 4), which identifies specific changes to federal regulations that (1) have been completed, (2) are in the process of being implemented, or (3) are under review.

State and Local Opportunities

This report discusses actions all levels of government are taking to increase housing supply. It does not identify "best practices," because the effectiveness of a specific policy depends on the local context, including the housing market. State, local and tribal governments must also make important judgements about what is best for their communities. Whether to accept a diversity of housing types, for example, to address affordability issues, may lead to some of the most challenging debates between local leaders and their constituencies. Some practices, however, are believed to improve affordability in almost all circumstances.

A variety of actions being taken by state and local governments to improve their regulatory structures and to remove impediments to greater housing supply in their communities are highlighted in this report. Two important areas of their efforts include: (1) reducing costs of development, and (2) improving the development approval and permitting process.

Among the solutions being tried are:

- Relaxing development requirements that contribute to higher construction costs such as setbacks and minimum lot sizes, reducing parking minimums, limiting local design standards, and encouraging the reuse of existing stock.
- Allowing more by-right development, a market-based solution aimed at eliminating the cost and delay of a discretionary approval process and reducing the price of land per unit.
- Educating jurisdictions about their choices on the specifics of funding infrastructure, which can make a difference in whether a project is financially feasible.
- Improving the development review and permit process, as states have done by implementing time limits for local government review. Local jurisdictions have implemented one-stop permitting shops, electronic plan review, online tracking, and assigning an individual to coordinate among agencies.
- Redesigning the community engagement process to enable current and future community members to have input in the jurisdiction's overall plan for development without having power over individual private-market projects.
- Revising state environmental protection statutes to reduce the review time and appeal opportunities.
- Coordinating among jurisdictions in application of building codes and permit approvals.
- Conducting a comprehensive review of state regulations to reduce regulations harming businesses and employees, including occupational licensing reform.

Supporting State and Local Activities

Federal agencies can support state, local, and tribal governments by sharing solutions, helping jurisdictions that want to make improvements, and supporting innovation in areas such as regulation, construction, and community engagement. While the Federal Government's primary focus at this time is supporting the economic recovery for all Americans, the report identifies ways the Federal Government can support and encourage state, local, and tribal action through education, outreach, and research, while recognizing that it is not the Federal Government's role to dictate to other units of government strategies to meet the housing needs and preferences of communities.

The Administration's actions to reduce regulatory barriers to increase housing supply have prompted state and local action. This report captures activities underway and opportunities across all levels of government that enable more jurisdictions to free the market and better respond to the housing needs of their residents.

Next Steps

The report identifies many federal regulations and practices that could be revised to eliminate unnecessary burdens to providing Americans with affordable, safe, quality places to live, including opportunities to make sustainable homeownership more achievable. Several agencies have already

taken action on a number of the recommendations received. Agencies are encouraged to continue their efforts to reduce regulatory burdens, including pursuing recommendations contained in this report.

SECTION 1. INTRODUCTION

This report was developed in response to the high cost of housing in many highly regulated housing markets throughout the United States that share a common concern: a lack of housing supply due to burdensome regulatory regimes. Because of the market imbalance, many American households do not have the opportunity to affordably rent or sustainably purchase their homes.

A cornerstone of the Trump Administration’s economic policy is the tearing down of overly burdensome and unnecessary government regulations that hinder freedom and opportunity. The Administration’s economic policies, including deregulation, led to a booming economy, strong wage growth, and historically low levels of unemployment before the COVID-19 national emergency. These deregulatory policies helped millions of Americans move up the economic ladder, particularly minority and low- and moderate-income households. Even in the midst of the economic renaissance, many American households continued to spend more and more of their hard-earned income on housing costs each month because of overregulation of housing markets, which hinders economic opportunities for low- and moderate-income Americans and dampens overall economic growth, in particular in housing markets with low inventory.

In 2017, 37.8 million households (over 31 percent of households) spent more than 30 percent of their pre-tax income on housing, with more than 18 million (10.8 million of which are renters) spending more than one-half of their income on housing.⁴ The total number of cost-burdened households in the US fell by 4.9 million from its peak in 2010.⁵ Another common measure of affordability is the ratio of median home price to median household income, which indicates how difficult it is for potential buyers to qualify for a mortgage and save for a down payment. On a nationwide basis, this ratio rose from a low of 3.3 in 2011 to 4.1 in 2018.⁶ This report uses the term “affordable” in the context of households’ ability to pay for housing and have sufficient funds remaining for other needs; it is not focused on subsidized housing nor specifically rental housing. The relationship between housing supply and demand affects renters, potential owners, and owners across the income spectrum. If supply does not sufficiently meet increased demand for new housing, continued upward pressure on housing prices will mean fewer households can sustainably purchase homes, increasing the pool of renters and driving up rents as well.⁷

In identifying solutions, it is important to understand the affordability challenges households face in certain markets. Like labor markets, housing markets operate at the metropolitan level, and housing affordability varies greatly across metropolitan regions (see Figure 1). While the price-to-income ratio was 4.1 nationally, analysis by the Joint Center for Housing Studies of the 100 largest metros found in

⁴ Joint Center for Housing Studies of Harvard University, *The State of the Nation’s Housing 2019* (Cambridge, MA: Joint Center for Housing Studies of Harvard University, 2019), 4.

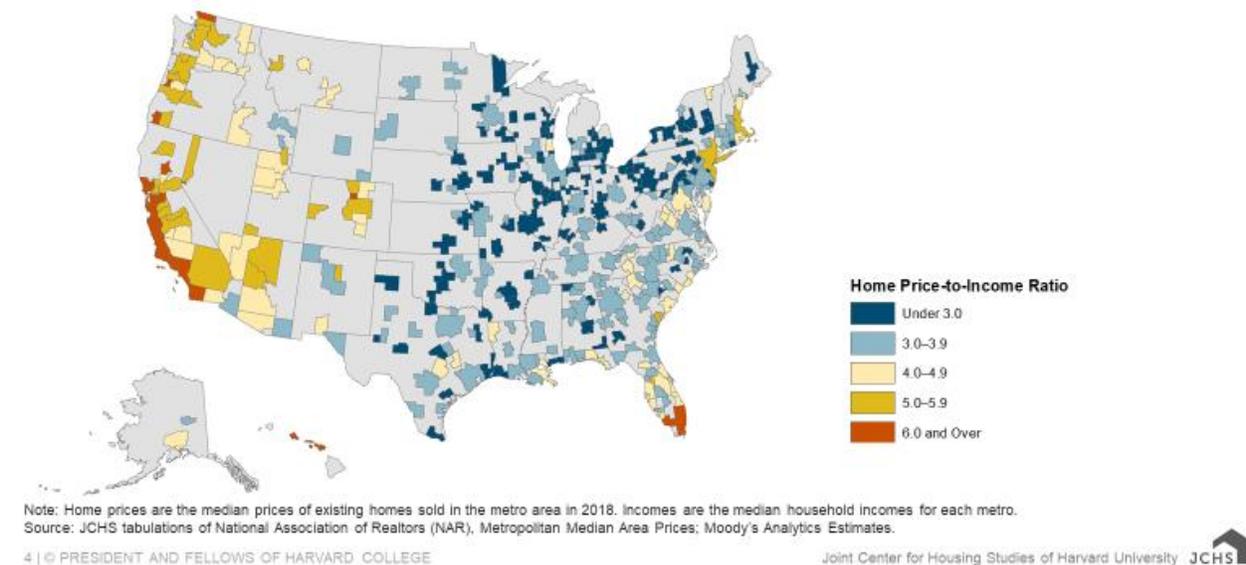
⁵ Joint Center for Housing Studies of Harvard University. *The State of the Nation’s Housing 2019*, p. 4.

⁶ Joint Center for Housing Studies of Harvard University. *The State of the Nation’s Housing 2019*, p. 2.

⁷ Joel Kotkin and Wendell Cox. *America’s Emerging Housing Crisis*. National Community Renaissance (2017). Retrieved from: https://joelkotkin.com/wp-content/uploads/2017/02/5_NAT_HousingCrisis-Report.pdf

those “with price-to-income ratios above 5.0, the median-income household could afford just 36 percent of recently sold homes on average in 2017. In metros where the ratio is under 3.0, however, the median-income household could afford 84 percent of recently sold homes.”⁸ Price-to-income ratios were high not only in the expected places, such as San Jose and Honolulu, but in many fast-growing Southern and Western markets, such as Atlanta (3.2), Dallas (3.7), Nashville (3.9), Salt Lake City (4.4), and Denver (5.6). Even in relatively affordable markets, such as Grand Rapids, Indianapolis, and Kansas City, increasing price-to-income ratios are raising concerns potential buyers are being priced out of homeownership in much of the country.⁹

Figure 1. Homebuying remains affordable in many markets as price-to-income ratios increase



Source: Joint Center for Housing Studies of Harvard University. *The State of the Nation's Housing 2019*, Figure 2, p. 3.

The Economic Report of the President, 2020, provides important context on the challenges of affordability, particularly in highly regulated metropolitan areas.¹⁰ This report focuses on actions to reduce federal barriers and support local solutions, rather than repeat the detailed analyses previously conducted by the Administration.

Rising housing costs mean Americans have fewer housing opportunities, including the opportunity to achieve sustainable homeownership, which is the number one builder of wealth for most American families. Low- and middle-income Americans are hit the hardest by high housing costs, which strain household budgets, limit educational opportunities, impair workforce mobility, slow job creation,

⁸ Joint Center for Housing Studies of Harvard University. *The State of the Nation's Housing 2019*, p. 2.

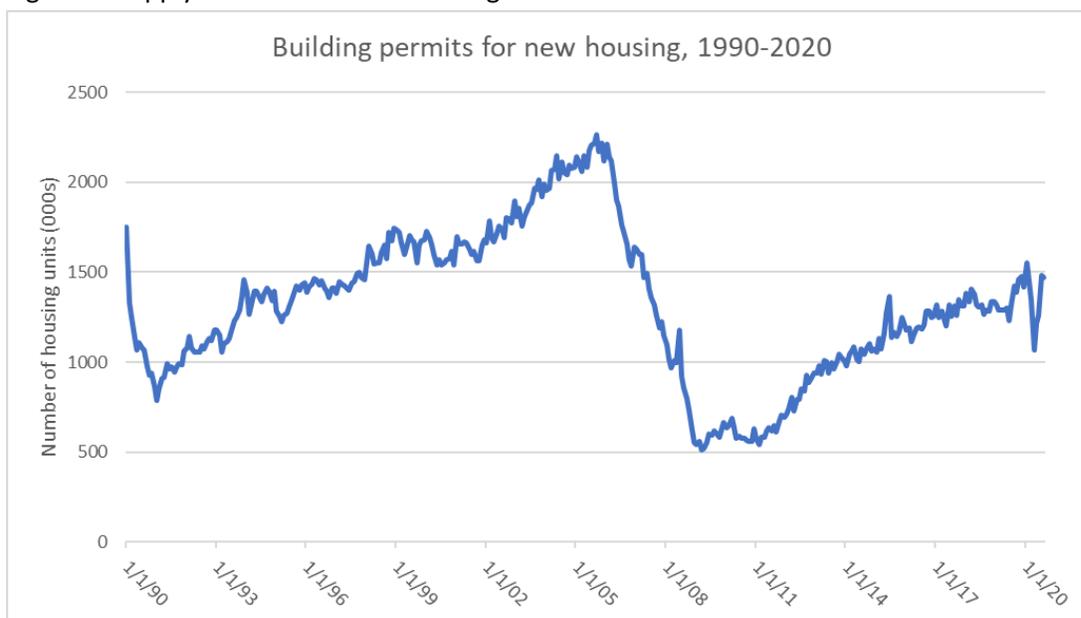
⁹ Kotkin and Cox, 12.

¹⁰ Council of Economic Advisors. *The Economic Report of the President (2020)*. Retrieved from: <https://www.whitehouse.gov/wp-content/uploads/2020/02/2020-Economic-Report-of-the-President-WHCEA.pdf>

increase financial risks, and contribute to poor health. Furthermore, research has linked more stringent housing regulations with higher homelessness rates.¹¹

A primary driver in rising housing costs is the lack of housing supply to meet demand, which has occurred in markets throughout the United States.¹² A balanced housing market generally requires construction to outpace the rate of household formation. New housing construction essentially stopped from 2009 to 2011 and has only barely kept pace with population growth since then (see Figure 2). Housing permits averaged slightly more than one million annually over the past 10 years, compared with more than 1.5 million permits per year during the previous decade. The drop-off in new housing construction has kept upward pressure on house prices and rents. One reason may be stronger demand for housing closer to employment centers, whereas production of new housing is easiest on undeveloped land farther away. One possible impact of the COVID-19 pandemic is higher levels of telework reducing the demand for housing closer to employment centers. This is reflected in recent data showing a significant increase in housing starts.¹³

Figure 2: Supply is below historical averages



Source: Based on data from U.S. Census Bureau and U.S. Department of Housing and Urban Development, “New Private Housing Units Authorized by Building Permits” (2020 [PERMIT], accessed April 16, 2020, from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/PERMIT>).

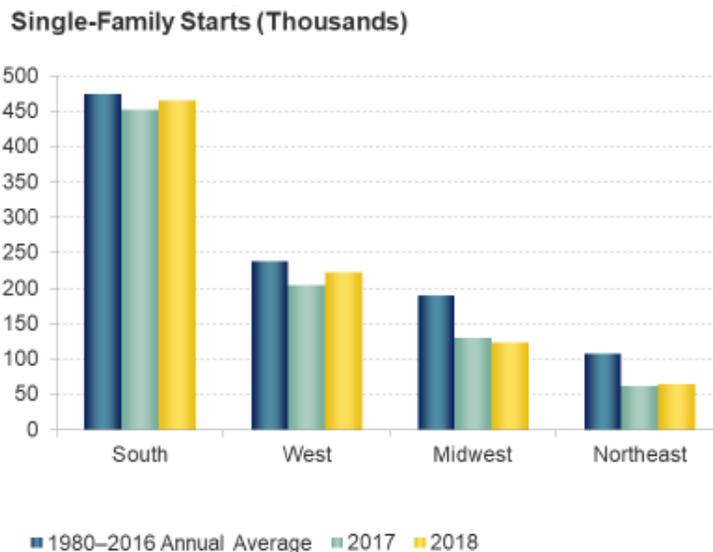
¹¹ Steven Raphael, “Housing Regulation and Homelessness,” in *Housing the Homeless*, eds. Ingrid Gould Ellen and Brendan O’Flaherty (New York: Russell Sage Foundation, 2010).

¹² McKinsey Global Institute, *A Tool Kit to Close California’s Housing Gap: 3.5 Million Homes by 2025* (New York: McKinsey & Company, 2016). [https://www.counties.org/sites/main/files/file-attachments/daniel weisfield mckinsey - csac annual meeting - tool kit to close housing gap - 120116.pdf](https://www.counties.org/sites/main/files/file-attachments/daniel_weisfield_mckinsey_-_csac_annual_meeting_-_tool_kit_to_close_housing_gap_-_120116.pdf).

¹³ <https://www.census.gov/construction/nrc/pdf/newresconst.pdf>

Between 1970 and 1979, an average of 8.2 homes were built for every 1,000 residents. The annual average fell to 3.0 homes per 1,000 residents between 2010 and 2018, with significant variation among states. From 2010 to 2018 the average number of homes constructed per 1,000 residents was 5.3 in Texas, 4.3 in Florida, 2.0 in California, and 1.7 in New York.¹⁴ The variation can be seen at the regional level as well, as shown in Figure 3.

Figure 3. Single-family construction varies by region



Source: JCHS tabulations of US Census Bureau, New Residential Construction.

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Source: Joint Center for Housing Studies of Harvard University. *The State of the Nation's Housing 2019*, Figure 7, p. 9.

While housing construction has been increasing, the construction of single-family homes under 1,800 square feet constituted 22 percent of single-family completions in 2017, down from 32 percent on average in 1999–2011. Completions of homes with more than 3,000 square feet have outnumbered those of small homes since 2013. The median sales price for small homes was \$197,000 in 2017, less than half the price for large homes.¹⁵ The relative lack of smaller, more affordable new homes likely reflects that the costs of labor, land, and materials make it unprofitable to build for the middle market.¹⁶

Housing can be difficult to build in many areas due to the multitude of regulatory barriers – laws, regulations, and administrative practices – imposed by Federal, state, and local governments. Certain regulations are necessary to enhance public health, safety, and quality of life, but others create burdens without offering commensurate public benefits. Regulatory barriers can include: overly restrictive zoning and growth management controls; rent controls; cumbersome building and rehabilitation codes; excessive energy and water efficiency mandates; unreasonable maximum-density allowances; historic

¹⁴ Council of Economic Advisors. *The Economic Report of the President* (2020), p. 270.

¹⁵ Joint Center for Housing Studies of Harvard University. *The State of the Nation's Housing 2019*, p. 8.

¹⁶ Joint Center for Housing Studies of Harvard University. *The State of the Nation's Housing 2019*, p. 8.

preservation requirements; overly burdensome wetland or environmental regulations; outdated manufactured-housing regulations and restrictions; undue parking requirements; cumbersome and time-consuming permitting and review procedures; tax policies that discourage investment or reinvestment; overly complex labor requirements; and inordinate impact or developer fees. Research has linked higher home prices and lower housing supply to many of those regulations. Many of the markets with the most severe shortages in affordable housing have the most restrictive state and local regulatory barriers to development. One study suggests that zoning, a common form of land-use regulation, accounted for more than 10 percent of housing costs in eight high-cost markets. In San Francisco, the “zoning tax” accounted for 50 percent of housing costs.¹⁷

Unnecessarily steep regulatory barriers lead to poorly functioning housing markets, where supply and demand are out of balance. When regulations distort the market, fewer American families can access housing in areas of opportunity and fewer qualified households can participate in home ownership. High housing costs have been associated with declines in employment and income and a loss of population.¹⁸ Regulations that reduce housing supply have a substantial impact on housing and labor market dynamics.¹⁹

A study that examined the link between housing costs and internal net migration and employment growth concluded with a recommendation that “increasing the supply of housing to reduce price appreciation and . . . developing affordable housing for young working families may be the best economic development strategy the state could undertake.”²⁰ A recent study suggests the constrained housing supply in high-productivity cities has prevented workers from moving to those strong labor markets, creating a geographic misallocation of labor that may have decreased the United States’ annual economic growth rate by up to 36 percent between 1964 and 2009.²¹

The academic research is consistent with the experiences of stakeholders who provided input for this report. A local official from Kansas was concerned that his jurisdiction was growing jobs but not growing houses, because “the house is where the job goes to sleep at night.” A local official in California had an ideal site available for a potential new employer but would be unable to provide sufficient housing for incoming employees. Situations such as these impede the nation’s economic growth.

¹⁷ Edward L. Glaeser, Joseph Gyourko, and Raven Saks, “Why is Manhattan So Expensive? Regulation and the Rise in House Prices,” *Journal of Law and Economics* 48, no. 2 (2005): 331–370.

¹⁸ Edward L. Glaeser, *The Economic Impact of Restricting Housing Supply* (Cambridge, MA: Harvard University, Rappaport Institute for Greater Boston, 2006)
http://www.americandreamcoalition.org/housing/housing_final.pdf.

¹⁹ Edward L. Glaeser, Joseph Gyourko, and Raven E. Saks. 2005. Why have housing prices gone up? *American Economic Review*, 95(2), 329-333.

²⁰ Barry Bluestone, *Sustaining the Mass Economy: Housing Costs, Population Dynamics, and Employment, Housing and the Economy in Greater Boston: Trends, Impacts and Potential Responses* (Boston: Boston Federal Reserve Bank, 2006): 30.

²¹ Chang-Tai Hsieh and Enrico Moretti, “Housing Constraints and Spatial Misallocation,” *American Economic Journal* 11, no. 2 (2019): 1–39. <http://eml.berkeley.edu/~moretti/growth.pdf>

Higher housing costs also affect the Federal Government’s ability to provide housing assistance to low-income households through a range of programs. In 2018, the Federal Government spent more than \$43.9 billion in rental assistance, assisting 5.2 million households.²² The Federal Government provides additional housing support through the tax code, with more than \$8.7 billion in annual tax expenditures in Low-Income Housing Tax Credits (LIHTC) to developers of low-income housing.²³ The largest share of federal tax dollars is spent in areas with high-cost and highly regulated housing markets; this reflects both the large number of Americans who live in those areas and the high per-unit cost of building and renting housing. Nearly one-fourth of the U.S. population lives in metro areas with expensive, tightly regulated housing markets. Higher government expenditures on households in high-rent areas, through higher Fair Market Rents, reduce the funds available to serve other needy families.

To improve housing affordability in a truly sustainable manner, we need innovative solutions. Merely increasing federal demand subsidies for housing in local areas where housing supply is limited by tight regulations could increase housing prices in those locations.²⁴ The Great Recession led to a nearly 10-year period of underproduction of housing, contributing to the lack of supply and overall affordability challenges.

To improve housing affordability in a truly sustainable manner, we need innovative solutions.

As the economy rebounds from the COVID-19 pandemic, policymakers must continue to focus attention on the issues of housing supply and housing affordability, as they are critical to sustaining long-term economic prosperity and opportunity. If the status quo remains, many Americans will continue to be unable to access affordable housing opportunities. Increasing the supply of housing by removing overly burdensome rules and regulations will reduce housing costs, boost economic growth, and provide more Americans with opportunities for economic mobility.

HUD brought Federal, state, local, and tribal governments, private sector representatives, and many other stakeholders together to discuss housing affordability challenges and potential solutions to those challenges. With the understanding that no two places are the same, and respecting the need for states and localities to make their own policy decisions, these discussions have been crucial to the development of this report. This report consists of seven sections, the first of which is this introduction. The second describes the activities through which HUD obtained stakeholder input. The third section

²² Center on Budget and Policy Priorities, *United States Federal Rental Assistance Fact Sheet* (December 2019). <https://www.cbpp.org/research/housing/federal-rental-assistance-fact-sheets#US>.

²³ Joint Committee on Taxation. 2019. “Estimates of Federal Tax Expenditures for Fiscal Years 2019-2023.” JCX-55-19. Washington, DC: Joint Committee on Taxation. An estimated \$27 billion in tax expenditures is provided for the deduction for mortgage interest on owner-occupied residences.

²⁴ Edward L. Glaeser, “The Closing of America’s Urban Frontier,” *Cityscape* 22, no. 2, (2020).

discusses what constitutes a regulatory barrier and the importance of local context in housing markets. The fourth section highlights important actions the Federal Government is taking to reduce federal regulatory barriers. The report then identifies state, local, and tribal activities to increase housing supply and reduce costs, some of which may be useful models for other jurisdictions. It then discusses ways in which the Federal Government can encourage and support jurisdictions to increase housing supply across income levels. The report concludes with a discussion of next steps.

SECTION 2. STAKEHOLDER INPUT

This report provides recommendations obtained through fact-finding for this report as well as HUD's ongoing efforts to reduce regulatory barriers to affordable housing. HUD and other agencies solicited feedback from state, local, and tribal government officials, as well as relevant private-sector stakeholders, including developers, homebuilders, creditors, real estate professionals, manufacturers, academic researchers, renters, advocates, and homeowners. HUD and other agencies obtained feedback through a variety of mechanisms. The White House hosted two roundtables, one with industry stakeholders and one with state and local officials. The Department of Housing and Urban Development (HUD) hosted three roundtables, focusing on construction, land use regulation, and development finance; those roundtables were attended by representatives from other agencies. The Department of the Treasury (Treasury) hosted two roundtables with a selection of local, regional, and national organizations and Community Development Financial Institutions (CDFIs) that finance and develop affordable housing. HUD held a listening session with tribal leadership attending the National Congress of American Indians' annual convention in Albuquerque, NM. HUD, Treasury, and the Department of Agriculture (USDA) representatives met with staff from State Housing Finance Agencies. Other federal agencies conducted meetings with stakeholders to obtain feedback and received input in response to specific regulatory actions.

HUD published a Request for Information on November 22, 2019, on actions the Federal Government could take to reduce its regulatory barriers, as well as actions at the state and local levels that the Federal Government could support and encourage.²⁵ More than 625 comments were received from individuals, firms, trade associations, service providers, researchers, and state and local government organizations. Although much of the input addressed HUD programs and Low-Income Housing Tax Credits, comments also covered labor, energy efficiency, environmental protection laws, infrastructure, building codes, historic preservation, land use and zoning, and other issues. Agencies analyzed input received to identify actionable recommendations for reducing regulatory barriers and increasing the supply of affordable housing.

²⁵ FR-6187-N-01 Request for Information, https://www.regulations.gov/document?D=HUD_FRDOC_0001-5420.

SECTION 3. REGULATORY BARRIERS

This report examines a wide range of regulations for potential regulatory barriers, including zoning and growth management controls, rent controls, building and rehabilitation codes, energy and water efficiency mandates, historic preservation requirements, wetland and environmental regulations, manufactured-housing regulations and restrictions, maximum-density allowances, parking requirements, permitting and review procedures, impact and developer fees, labor requirements, and tax policies that discourage investment or reinvestment.

Defining a regulatory barrier

All regulations and processes that guide housing development, while often designed to address important goals, can negatively affect housing affordability. The location and quality of new homes necessarily impact the surrounding community. Zoning ordinances and building codes, for example, have been intended to minimize negative impacts of new development, such as fire safety measures that protect a building's residents, immediate neighbors, and the wider community.

Regulations or processes that act as “barriers” to housing are distinguished from their less obstructive counterparts through several criteria, including:

- Result in net costs. The costs of implementing or complying with the regulation or process exceed the social benefits.
- Create barriers to competition. Complex, non-transparent development processes favor experienced, deep-pocketed, well-connected firms, effectively limiting entry to the market for smaller or newer companies.²⁶
- Generate significant social costs. Restrictive land use regulations may limit labor mobility, keeping workers from moving to better job opportunities because affordable housing is unavailable, and dampen the national economy.²⁷

Quantifying the cost of regulations

Ideally one could conduct a cost-benefit analysis to identify which regulations are net gains to society and which impose net costs. Unfortunately, it is technically and conceptually difficult to calculate precise costs or benefits of most regulations and processes that govern housing development given the complexity of housing markets, regulatory environments, and their interactions. Furthermore, a dearth of analysis on social costs suggests insufficient consideration is given to balancing costs and benefits as

²⁶ Jacob Cosman and Luis Quintero, *Fewer Players, Fewer Homes: Concentration and the New Dynamics of Housing Supply* (working paper, Carey Business School, Johns Hopkins University, Baltimore, MD, 2019).

²⁷ Peter Ganong and Daniel Shoag, “Why Has Regional Income Convergence in the U.S. Declined?” *Journal of Urban Economics* 102 (2017): 76–90; Edward L. Glaeser and Matthew E. Kahn, “The Greenness of Cities: Carbon Dioxide Emissions and Urban Development,” *Journal of Urban Economics* 67, no. 3 (2010): 404–418.

regulations are adopted. Reviewing the different approaches used by researchers may help in understanding the difficulty of accurately measuring the dollar-value impact of regulatory barriers. Each approach has strengths and limitations.

Glaeser, Gyourko, and Saks estimate the size of the “regulatory tax” by backing out estimated construction costs (using R.S. Means data) from the price of newly built homes.²⁸ They attribute any gap between new housing prices and estimated construction costs to the effects of regulation. Their analysis of 21 metropolitan areas found nine markets with a regulatory tax of greater than 10 percent, with the regulatory tax accounting for one-third to one-half of the median home value in several metro areas in California and one-fifth of the value in Boston and DC metro areas.²⁹ Although the regulatory tax concept is straightforward, this approach overlooks the fact that some impacts of regulations are baked into “hard” construction costs. Construction labor costs reflect local prevailing wage laws and union work requirements. Building codes and local design requirements determine the type of materials used. The regulatory tax method gives an estimate of how regulations affect prices of newly built housing, but it does not address how regulatory constraints on building new supply affect the price of existing housing, which is a much larger share of overall housing stock.

Several sets of researchers have attempted to inventory the types of land use regulations adopted by local governments and analyze the correlation between these regulations, housing prices, and quantity of construction.³⁰ Regulatory inventories provide insight into the prevalence of particular policies and allow analysis of individual components (e.g., minimum lot size, presence of growth boundary) and the collective effect of the entire bundle (usually aggregated into an index of stringency). The main drawback to creating such an inventory is that most researchers collect data through surveying local planners; planners may not know factual information being requested and are frequently asked to provide their subjective impressions (e.g., “Are regulations in your jurisdiction becoming stricter or more relaxed compared with 10 years ago?”).³¹ Statistical analysis using regulatory indices to estimate effects on prices and construction levels are usually unable to distinguish the impacts of the regulations as written from the costs of their implementation, including mitigating community opposition. Furthermore, land use regulations, as well as their implementation and enforcement, constitute one of many components of the regulatory environment that drives supply and prices.

²⁸ Glaeser, Gyourko, and Saks, “Why is Manhattan So Expensive?”

²⁹ In a more recent study, Glaeser and Gyourko compare house prices to the minimum profitable production cost (MPPC) and find that 26 percent of homes are expensive, defined as having a house price-to-MPPC ratio of greater than 1.25, with 10 percent having a ratio greater than 2. See Edward L. Glaeser and Joseph Gyourko, “The Economic Implications of Housing Supply,” *Journal of Economic Perspectives* 32, no. 1 (2018): 3–30.

³⁰ Joseph Gyourko, Jonathan Hartley, and Jacob Krimmel, “The Local Residential Land Use Regulatory Environment Across U.S. Housing Markets: Evidence from a New Wharton Index (NBER Working Paper No. 26573, Cambridge, MA: National Bureau of Economic Research, 2019); Sarah Mawhorter and Carolina Reid, *Terrier California Residential Land Use Survey* (Berkeley, CA: University of California, Berkeley, 2018).

³¹ Paul G. Lewis and Nicholas J. Marantz, “What Planners Know,” *Journal of the American Planning Association* 85, no. 4 (2019): 445–462

The National Association of Home Builders (NAHB) has used a similar approach by surveying its member developers about the costs of complying with regulations.³² In partnership with the National Multifamily Housing Council, a survey asked developers to estimate the percentage of project costs for multifamily developments attributable to various categories of regulatory costs, including: applying for zoning approval, fees charged when site work begins and when building construction is authorized, additional development requirements, land dedicated to the government or left unbuilt, complying with affordability mandates, increases from changes to building codes over the past 10 years, complying with Occupational Safety and Health Administration (OSHA) requirements, and pure cost of delay. On the basis of 40 responses, the study estimated regulation imposed by all levels of government accounts for 32.1 percent of the cost of an average multifamily development (most projects were between 50 and 500 units). Because regulations vary greatly across jurisdictions, a national average of the cost of compliance derived from a small and not necessarily representative sample of developers is limited in helping identify cost differences among places or in a specific location.

In its survey of regulatory costs for single-family homes, the NAHB found regulations imposed by government at all levels account for 24.3 percent of the final price of a new single-family home built for sale.³³ This constituted \$84,671 of the average price of a new home priced at \$348,900 in 2016 (from the Census Bureau's series on New Residential Sales). NAHB's previous study in 2011 similarly found regulations constituted about 25 percent of the cost of a home, which would be \$65,224 for the average new home priced at \$260,800.

The wide degree of local variation in regulations – both laws written on paper and the strictness of implementation – is a consistent challenge in quantifying costs of regulations. Research by Ganong and Shoag use state-level counts of court cases involving land use regulations to measure the changing stringency of regulations over time.³⁴ Although this method provides more insights into time patterns than the regulatory inventories, state-level metrics obscure the fact that regulations vary just as much across jurisdictions within a state (and even within a metropolitan area) as across states.³⁵

The different research methods are useful tools for understanding the costs of a subset of state and local regulations; however, they typically do not capture the benefits of those regulations, making it

³² Paul Emrath and Caitlin Walter, *Multifamily Cost of Regulation: 2018 Special Study* (Washington, DC: National Association of Home Builders, National Multifamily Housing Council, 2018) https://www.nahbclassic.org/fileUpload_details.aspx?contentTypeID=3&contentID=262391&subContentID=712894&channelID=311.

³³ The report cautions that these are not net costs; the potential benefits of regulation are not considered Paul Emrath, *Government Regulation in the Price of a New Home: Special Study for Housing Economics*. (Washington, DC: National Association of Home Builders, 2016) https://www.nahbclassic.org/fileUpload_details.aspx?contentTypeID=3&contentID=250611&subContentID=670247.

³⁴ Ganong and Shoag, "Why Has Regional Income Convergence in the U.S. Declined?"

³⁵ Jenny Schuetz, "No Renters in My Suburban Backyard," *Journal of Policy Analysis and Management* 28, no. 2 (Spring 2009): 296–320. Cecile Murray and Jenny Schuetz, "Is California's Apartment Market Broken? (working paper, Brookings Institution, Washington, DC, 2019).

hard to establish which regulations are excessive or unnecessary. In addition, they do not capture the full range of regulatory costs. For example, land prices also reflect rules governing wetlands, floodplains, and taxes. A methodology for quantifying the cost of regulations and an estimate of that cost is provided in the [Appendix](#).

Functioning housing markets

Because accurately capturing the full set of costs and benefits of the wide range of regulations affecting housing supply is difficult, the most effective way to evaluate whether regulations and processes collectively impede well-functioning housing markets may be by looking at market dynamics. Practical diagnostic questions include:

- Is the housing market producing enough additional housing to meet demand?
- Within a city or metropolitan area, is housing being built where people want to live?
- Does the market provide a diverse range of housing choices that match household budgets, size, and other characteristics?

Housing markets operate at the regional level, usually defined by a metropolitan area, because, at least prior to the COVID-19 pandemic and an associated increase in teleworking, the spatial range of housing markets was determined by regional labor markets and commuting patterns. Metropolitan areas consist of many local political jurisdictions – cities, towns, and counties – that are the primary entities responsible for adopting and enforcing land use regulations. The regulations adopted by one jurisdiction affect housing outcomes of its neighbors and the region overall.³⁶ Jurisdictions may be unwilling to build housing, because it generates less tax revenue than businesses and requires investment in public infrastructure and services, such as schools. That can lead to a “free rider” problem, in which each jurisdiction counts on its neighbors to develop the housing needed in the metropolitan area. If cities and towns in a metro area believe serving a diverse market is not their responsibility, the metro area can become unaffordable for a large part of its population, including workers essential to the functioning of a local economy.³⁷ While the overarching consideration is how well housing markets are functioning across an entire metropolitan area, many policy decisions are made at the local level.

As discussed below, state governments can play a more active role in policymaking. However, state legislatures consist of members representing urban, suburban, and rural areas with varying interests. In some cases, metropolitan areas straddle multiple states (for example, the Charlotte metro area includes jurisdictions in North and South Carolina; the Washington, DC metro includes jurisdictions in Maryland, Virginia, West Virginia, and the District of Columbia).³⁸ In discussions of local housing markets, cities are

³⁶ Jan Brueckner, “Testing for Strategic Interaction Among Local Governments: The Case of Growth Controls,” *Journal of Urban Economics* 44, no. 3 (1998): 438–467.

³⁷ Callum Clark. Gentrification in Dallas, *Beyond Gentrification: Towards more equitable urban growth*, 55-68 (n.d.). <https://urbanreforminstitute.org/wp-content/uploads/2019/01/Toward-More-Equitable-Urban-Growth.pdf>

³⁸ U.S. Census Bureau. “Delineation Files.” www.census.gov/geographies/reference-files/time-series/demo/metro-micro/delineation-files.html.

often distinguished from suburbs. Recent research indicates that even within urban areas, many residents live in suburban neighborhoods. Within central cities, 47 percent of households described their neighborhood as suburban compared to 64 percent of households outside of central cities.³⁹ Overall, 52 percent of households describe their neighborhood as suburban, 27 percent describe their neighborhood as urban, and 21 percent describe their neighborhood as rural.

Even in the absence of regulations, housing markets are subject to frictions and classic market failures. The development process of acquiring land, building or upgrading infrastructure, and building and selling homes takes time to complete (even without regulatory delays). This time lag means localized housing supply and demand can easily be out of balance in the short run. Because housing is durable, markets adjust differently to positive and negative demand shocks.⁴⁰ Local markets can build more housing to meet increased demand, but excess homes are not usually torn down when demand decreases. Supply and demand are highly localized: building more homes in Texas does not alleviate a shortage in California. Large-scale redevelopment in built-out urban areas requires land assembly, which is subject to hold-out problems.⁴¹ Real estate involves complex legal transactions prone to asymmetric information - between sellers and buyers, between borrowers and lenders – and often requires third-party intermediaries, creating principal-agent problems. Some regulations are intended to alleviate market frictions and failures; for example, stormwater management regulations are intended to limit hazardous substances at construction sites from washing into environmentally sensitive areas.⁴² The challenge is to preserve regulations that improve housing market functioning and create social benefits, including quality of life, while reducing regulatory barriers that impede the functioning of free markets and create net social costs.

The challenge is to preserve regulations that improve housing market functioning and create social benefits, while reducing regulatory barriers that impede markets and create net social costs.

Context matters

This report focuses on eliminating barriers that inhibit housing supply from keeping up with demand. The San Francisco Bay Area, Greater Boston, and New York City are commonly cited examples of high

³⁹ Shawn Buchholz. *Urban. Suburban. Rural. How Do Households Describe Where They Live?* (2020), <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-080320.html>.

⁴⁰ Edward Glaeser and Joseph Gyourko, “Urban Decline and Durable Housing,” *Journal of Political Economy* 113, no. 2 (2005).

⁴¹ Leah Brooks and Byron Lutz, “From Today’s City to Tomorrow’s City: An Empirical Investigation of Urban Land Assembly,” *American Economic Journal: Economic Policy* 8, no. 3 (2016): 69–105; Chris Cunningham, “Estimating the Holdout Problem in Land Assembly” (working paper, FRB Atlanta, No. 2013-19, 2013).

⁴² National Research Council of the National Academies of Science. *Urban Stormwater Management in the United States* (Washington, DC: National Academies Press, 2008) https://www3.epa.gov/npdes/pubs/nrc_stormwaterreport.pdf.

cost, highly regulated markets, but barriers are found in many other locations as well. Where land is scarce and prices are high, density restrictions may be the principal barrier; in places where land is abundant, cost-additive regulations may be the principal barrier to affordability. Both kinds of restrictions need to be reduced, with different approaches based on the type of market. It is the responsibility of states and local governments, not the Federal Government, to solve the specific challenges in their housing markets.

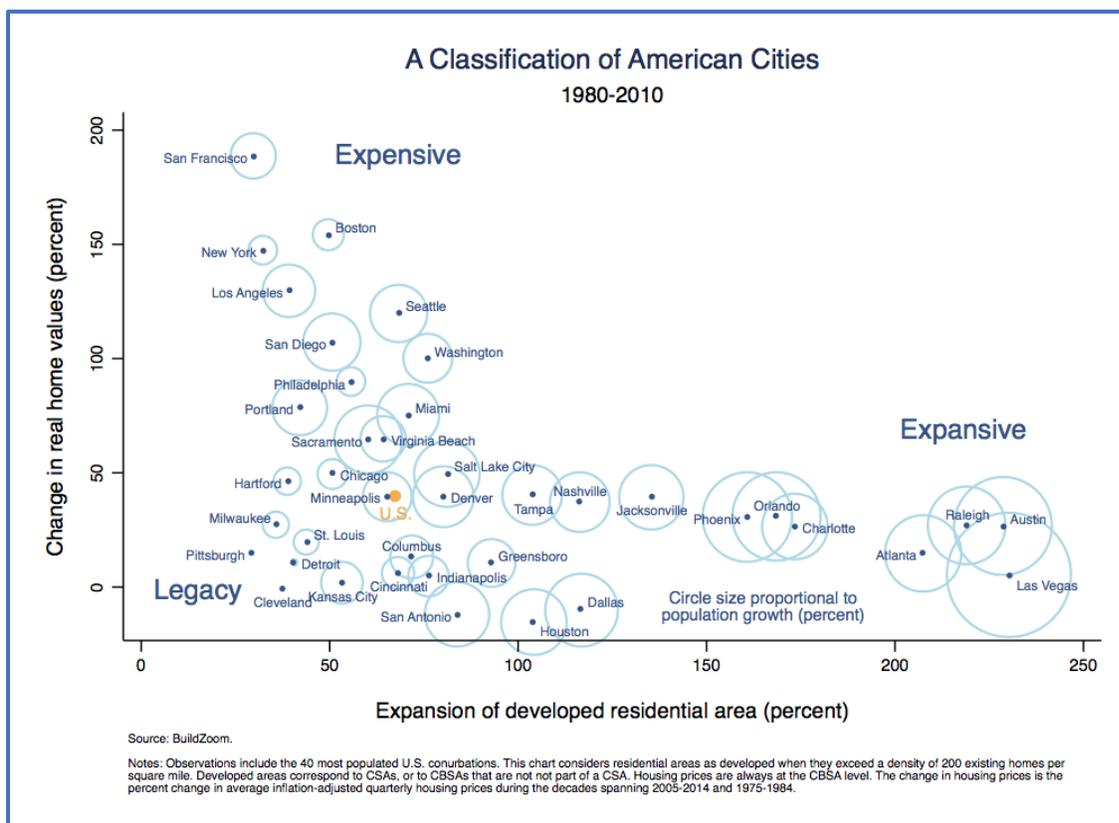
Additionally, not all parts of the U.S. are currently constrained by regulatory barriers; in regions where population growth is slow or supply and demand are more balanced, inadequate housing production may not be an urgent concern -- although housing affordability due to low incomes, as well as poor housing quality, may be. Throughout the country, among various housing market types, delays and unnecessary costs as well as land use regulations that restrict certain types of housing, such as manufactured housing, raise housing prices. High land prices contribute to the lack of middle-market housing. Land costs rise when demand is strong and land use regulations limit the number of new units that can be built or impose significant costs on development through fees and long approval processes. For example, urban containment, in which a jurisdiction imposes geographical constraints on urban growth, tends to result in higher housing costs and can reduce consumer welfare unless there are offsetting benefits.

To understand which parts of the country are affected most by regulatory barriers, it is helpful to think about three broad types of urban housing markets. Although urban economists have proposed different terms for these market types, they generally agree on which metro areas fall into each group (see Figure 4).⁴³ The first group consists of metro areas with consistently high and growing housing demand – strong growth of jobs, population, and incomes and high prices and rents (“expensive” metros), presumably from restrictive local land use regulations that limit housing supply. Most California metros, Seattle, Boston, New York City, and Washington, DC fall into this category. The second group consists of metro areas with excess housing supply and relatively low housing prices (“legacy” metros). In metro areas such as Detroit, St. Louis, Baltimore, and Cleveland, central cities experienced large-scale population losses beginning in the 1950s, and most population growth has occurred in suburban jurisdictions with relatively elastic housing supply. The third group of metros, including Atlanta, Phoenix, and Nashville, have to date maintained well-balanced housing markets (“expansive” metros). They have seen consistent population and job growth, providing demand for additional housing, and have generally built enough new housing to meet demand, without undue constraints from regulation. Several of those areas, however, are beginning to experience the negative effects of insufficient housing in high-demand locations. Metro areas’ classifications may need to be refined in the future to reflect population shifts as people react to the COVID-19 pandemic and changes in work, particularly wide-spread acceptance of teleworking. The potential disruption of long-term trends may require local governments to adjust policies and practices to respond to changes in housing demand.

⁴³ See, for example, Glaeser and Gyourko, “The Economic Implications of Housing Supply,” 3–30; Issi Romem, *Has The Expansion of American Cities Slowed Down?* (San Francisco, CA: BuildZoom, 2016) <https://www.buildzoom.com/blog/cities-expansion-slowng>

A study of 22 metropolitan areas in the Sun Belt with populations of at least 1 million found those metro areas are growing faster than their counterparts in the Rustbelt and along the coasts. They tend to be more diverse demographically and are adding more younger and older residents than the rest of the nation.⁴⁴ Although the Sun Belt has a reputation for housing affordability – a low cost of living has been a driver of its growth – homeownership rates are declining and more households are experiencing housing cost burdens.

Figure 4: Classification of cities into three market types



Source: BuildZoom, 2016, <https://www.buildzoom.com/blog/cities-expansion-slowng>

Rural areas have different housing market challenges than urban areas. These include the prevalence of substandard housing, crowding, lack of scale for efficient construction, and lack of financial products targeted for low-value homes and manufactured housing.⁴⁵ Other challenges are similar to market conditions in legacy metros: lack of investment in renovation and construction has led to a housing

⁴⁴ Kinder Institute for Urban Research. *The Urban Sun Belt: An Overview* (Houston, TX: Rice University, Kinder Institute for Urban Research, 2020). <https://kinder.rice.edu/sites/default/files/documents/KIUR%20-%20The%20Urban%20Sun%20Belt%205.pdf>

⁴⁵ Housing Assistance Council, *Taking Stock: Rural People, Poverty and Housing in the 21st Century* (Washington, DC: Housing Assistance Council, 2012) <http://www.ruralhome.org/component/content/article/587-taking-stock-2010>.

deficit;⁴⁶ low incomes result in housing cost burdens, insufficient rental housing, and infrastructure needs.

Regulatory barriers are not the only cause of housing affordability problems. Low-income households everywhere in the United States have difficulty affording market-rate housing, because their incomes are too low to pay the operating costs on minimum-quality housing.⁴⁷ A growing economy led to income gains that lessened worst case housing needs; the number of renter households with worst case needs decreased to 7.7 million in 2017 from 8.3 million in 2015.⁴⁸ Among all renter households, a 10.1-percent increase in median incomes between 2015 and 2017 was consumed, in part, by a 7.5-percent increase in median housing costs for renters.

Many legacy metros throughout the Northeast and Midwest, as well as many rural areas, have a large share of older, poor quality housing, which poses financial challenges for homeowners and landlords and can create health problems for residents. Financial products targeted for maintenance and rehabilitation of existing homes could relieve financial stress in those areas, but that is largely beyond the scope of this report. The Trump Administration is committed to the revitalization of economically distressed communities, as evidenced by the work of the White House Opportunity and Revitalization Council and implementation of the Opportunity Zones tax incentive established by the Tax Cuts and Jobs Act. That Council, chaired by Secretary Carson, works to implement the Opportunity Zones initiative, aligning federal policies and programs to support America's most vulnerable communities and sharing best practices of revitalization at all levels of government.⁴⁹ Opportunity Zones enable private capital and public investment to stimulate economic opportunity, encourage entrepreneurship, expand educational opportunities, develop and rehabilitate quality housing stock, promote workforce development, and promote safety and prevent crime in economically distressed communities. Projects include new affordable housing developments; buildings under rehabilitation after sitting vacant for decades; mixed-use construction; innovative business campuses for local entrepreneurs; and much-needed preservation of historic areas.⁵⁰

As part of the Trump Administration's deregulatory efforts to allow free markets to function efficiently, the Federal Government has undertaken a wide range of actions to eliminate regulations, reduce costs,

⁴⁶ National Rural Housing Coalition, *Housing Need in Rural America* (Washington, DC: National Rural Housing Coalition, 2020) <https://ruralhousingcoalition.org/overcoming-barriers-to-affordable-rural-housing/>.

⁴⁷ Alan Mallach, "Rents Will Only Go So Low, No Matter How Much We Build," *Shelterforce*, December 13, 2019 <https://shelterforce.org/2019/12/13/rents-will-only-go-so-low-no-matter-how-much-we-build/>.

⁴⁸ Nicole Elsasser Watson, Barry L. Steffen, Marge Martin, and David A. Vandenbroucke, *Worst Case Housing Needs: 2019 Report to Congress* (Washington, DC: U.S. Department of Housing and Urban Development, 2020). Worst case needs are defined as households earning no more than 50 percent of area median income that lack housing assistance and either spend 50 percent or more of their income on rent or live in severely inadequate housing (or both).

⁴⁹ See the Opportunity Now website: <https://opportunityzones.hud.gov/resources>.

⁵⁰ See White House Opportunity and Revitalization Council: Best Practices Report to the President, retrieved from: https://opportunityzones.hud.gov/sites/opportunityzones.hud.gov/files/documents/OZ_Best_Practices_Report.pdf

and improve processes to support a greater supply of housing to meet Americans' housing needs, as discussed in the following section.

SECTION 4. FEDERAL ACTIONS

This report identifies some of the federal, state, local, and tribal laws, regulations, and administrative practices that artificially raise the costs of housing development and contribute to shortages in housing supply. This section focuses on unnecessary barriers created by the Federal Government. Each agency worked to identify and assess actions it can take under existing authorities, and where appropriate, consider support for legislative actions, to minimize federal regulatory barriers that unnecessarily raise the costs of housing development.

Fact-finding for this report explored regulations across a number of domains. Some affect all housing, such as stormwater management and building codes. Others affect housing in certain geographical locations, such as wetlands management, flood insurance, or historic preservation. Some federal laws, such as the Davis-Bacon Act, which requires the payment of prevailing wage rates to all laborers and mechanics on federal or federally-assisted construction contracts, extend beyond housing. Much of the input focused on regulations and processes related to federally-assisted or federally-insured housing.

Changes to specific programs, such as rental assistance eligibility and verification rules, and process improvements, such as Interior's development of a portal that allows HUD to access title status reports (TSRs) when HUD's Office of Loan Guarantee is insuring tribal properties to hasten the issuance of loan guarantee certificates to lenders, will improve processing efficiency and make federal dollars go further. Other revisions, such as better matching energy efficiency standards to types of equipment to increase affordability for homeowners of older properties and providing greater clarity on wages for construction contractors, will affect a wider spectrum of units. Other federal programs could affect the larger, non-assisted market, such as tax policy and financing practices for developers, builders, and individual home buyers, but such initiatives would require significant statutory changes beyond the scope of this report.

HUD and other agencies reviewed the stakeholder input and conducted internal reviews of regulations related to housing supply to determine if they presented unnecessary barriers. The review considered changes to statutes, regulations, and guidance, as well as improvements in processes. HUD has worked with the other agencies to compile those actions. Table 1 identifies specific changes to federal regulations that (1) have been completed, (2) are in the process of being implemented, or (3) are under review. The table captures the wide range of actions the Trump Administration has undertaken to increase the housing supply and decrease housing costs but is not an exhaustive list. Below is a sampling of recommendations being implemented and considered. Comments from stakeholders are shared to reflect the range of information received and do not necessarily reflect the Federal Government's position on the issue.

Interagency

Increase interagency collaboration

Several federal agencies operate programs that support housing, with each program created by specific statutory provisions developed over time to respond to various needs. It is therefore not surprising rules for programs that were not initially designed to work together may be duplicative or in conflict and may create inefficiencies that prevent the most efficient use of federal resources. For example, in the area of rental assistance, stakeholders identified property inspections, income verification, and eligibility requirements as examples of burdensome overlap.

Federal mortgage insurance. Stakeholders recommended increased collaboration for federal insurance programs, specifically those of FHA, USDA, and the Department of Veterans Affairs (VA) to create more uniform guidelines on issues such as lender certification. The federal agencies involved in consumer mortgage lending currently participate in the Joint Federal Housing Agencies Working Group: Federal Housing Finance Agency, Consumer Financial Protection Bureau (CFPB), Government National Mortgage Association (Ginnie Mae), FHA, VA, and USDA. While this working group is not focused on reducing regulatory barriers, FHA and Ginnie Mae will use the existing framework as a starting point for discussions among the member agencies on improving alignment on servicing practices and lender certifications.

Tribal coordination. Several federal agencies have programs to support Native Americans, including Interior, HUD, the Department of Health and Human Services (HHS), and USDA. Tribal leaders expressed concerns during a listening session that “IHS [the Indian Health Service], BIA [Bureau of Indian Affairs], and HUD don’t know what each other is doing on regulatory or operational activities,” and felt greater coordination was needed. In one example, an infrastructure upgrade required working with USDA (which would not fund the upgrade because the Tribe was not the utility provider), the Department of Energy (DOE), and IHS (which would not allow intermingling of funds), creating delays and additional burdens. As another example, a development on tribal land may require five different environmental reviews, adding years of delay as well as significant costs. A first step is to continue the work of the Interagency Coordinated Environmental Review Process Workgroup, which obtained invaluable input from numerous tribal leaders and Indian communities and drafted recommendations to streamline the environmental review process, reflected in its Final Report in December 2015.⁵¹

HUD launched the Tribal Housing and Related Infrastructure Interagency Task Force (THRIITF) on June 22, 2020 to coordinate and streamline environmental reviews for tribal housing and related infrastructure. THRIITF members are: White House Council on Environmental Quality, HUD, Department of Interior, DOE, HHS, USDA, Department of Transportation, Environmental Protection Agency, and Department of Commerce. As directed by the Senate Appropriations Committee, THRIITF will address

⁵¹ HUD. 2015. Coordinated Environmental Review Process Final Report.
<https://www.hud.gov/sites/documents/COORENVIRREVIEW.PDF>

and implement the working group recommendations to continue the review of related environmental laws and authorities to identify opportunities for greater efficiencies; explore whether environmental reviews could be expedited if agencies which fund similar types of projects developed aligned categorical exclusions; and identify specific regulatory and policy improvements. THRIITF provides an opportunity to continue interagency coordination and collaboration to improve the interoperability of federal programs beyond environmental issues and better enable Tribes to meet the needs of their members.

The Tribal Housing and Related Infrastructure Interagency Task Force provides an opportunity to continue interagency coordination and collaboration to improve the interoperability of federal programs beyond environmental issues and better enable Tribes to meet the needs of their members.

Federal coordination at the regional level supports tribal activities. For example, the Makah Tribe, located at the northwestern tip of Washington State, is working to relocate critical community facilities, infrastructure, and housing out of the tsunami zone. In February 2020, the Makah Tribe invited partners from the State and Federal Government, philanthropic and private financing sectors to work with the Tribe at the intersection of community-driven investments, grant making, Opportunity Zone financing, and impact investing. Invitees included representatives of the Bureau of Indian Affairs, Economic Development Administration, Environmental Protection Agency, Federal Reserve Bank of San Francisco, HUD, Federal Emergency Management Agency, Federal Highway Administration, Federal Transit Administration, National Park Service, National Oceanic and Atmospheric Administration, Small Business Administration, U.S. Fish and Wildlife Service, U.S. Geologic Survey, Urban Waters Federal Partnership, and USDA Rural Development, along with other funding and technical assistance providers to address the components of the comprehensive relocation program. The complexities of combining federal funding for infrastructure, community facilities, and housing make coordination key to address the multiple requirements.

Opportunity Zones

Created under the 2017 Tax Cuts and Jobs Act (TCJA), Opportunity Zones (OZ) comprise 8,764 census tracts, nominated by state and territorial executives and certified by the U.S. Department of the Treasury. The Opportunity Zones tax incentive is designed to spur economic development and job creation in these communities through preferential tax treatment for those investing certain eligible capital gains into Opportunity Zones through Qualified Opportunity Funds.

The Opportunity Zones tax incentive increases economic activity by spurring private sector investment, job creation, and self-sufficiency. It gives greater scope for market forces to guide entrepreneurs and investors because it has no cap on participation and requires no government approval, which also allows communities to focus on working with partners, entrepreneurship, and investors rather than

paperwork. This combination supports revitalization of communities so upward mobility, improved housing, and home ownership is within reach for more people.

The Council of Economic Advisors (CEA) finds that the OZ tax cuts have spurred a large investment response. The CEA estimates that Qualified Opportunity Funds raised \$75 billion in private capital by the end of 2019, most of which would not have entered OZs without the incentive.⁵² The growth in investment has already made OZs more attractive to their residents, as reflected in what buyers are willing to pay for homes located in the OZs. The CEA estimates that Opportunity Zone designation has caused a 1.1 percent increase in housing values. Greater amenities and economic opportunity behind the housing value increase will be broadly enjoyed, and for the nearly half of OZ residents who own their homes, the increase provides an estimated \$11 billion in new wealth.⁵³

Department of Housing and Urban Development

Table 1 contains a range of deregulatory actions HUD has taken during the Trump Administration.⁵⁴ These include streamlining administrative regulations for Multifamily Housing Programs and implementing family income reviews under the Fixing America's Surface Transportation (FAST) Act; removal of the FHA Inspector Roster; project approval for single-family condominiums; revising rules on mandatory separation distances between HUD-assisted projects and hazardous materials to better align HUD requirements with industry standards; and updating the Manufactured Home Construction and Safety Standards on formaldehyde to align HUD's requirements with EPA's requirements to reduce regulatory obligations and eliminate a previously implemented health notice that was not required in any other housing type. HUD has also been working on improving internal processes and other actions to reduce regulatory and administrative burdens to enable its programs to more efficiently and effectively serve its stakeholders.⁵⁵

Improve environmental review process

HUD has undertaken a significant review of its environmental review regulations to better balance its mission of providing affordable housing with its statutory obligations under the National Environmental Policy Act (NEPA).⁵⁶ HUD's effort follows the Council on Environmental Quality (CEQ) update to its own overarching NEPA regulations. A primary goal of HUD's proposed regulatory reform is to make the regulations easier to follow through structural reorganization and removal of duplicative or vague

⁵² <https://www.whitehouse.gov/wp-content/uploads/2020/08/The-Impact-of-Opportunity-Zones-An-Initial-Assessment.pdf>

⁵³ *Id.*

⁵⁴ HUD's deregulatory efforts began with Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs in January 2017.

⁵⁵ HUD's deregulatory actions beginning in FY2018 have resulted in total cost savings of \$52.3 million.

⁵⁶ See 24 CFR Parts 50 and 58

provisions. To assist with a complicated area of law, the regulations add a new section providing an overview or “roadmap” to compliance.

Over time, HUD’s environmental review regulations have been construed to create requirements that delay and unnecessarily complicate compliance. The regulatory reform effort seeks to clarify the environmental review process and remove restrictions not legally required and those with little or no protective benefit to the environment or the proposed project. For example, HUD proposes to allow acquisition of property, without the use of HUD funds and without physical impact, prior to the completion of the environmental review. Currently, HUD considers acquisition to be a type of activity that triggers NEPA’s “choice limiting action” prohibitions; however, this is not consistent with applicable case law and CEQ’s updated regulations.

HUD’s environmental regulations have not been significantly revised since 1996; accordingly, activities identified as “categorically excluded” from NEPA no longer align with current agency programs and processes. The proposed regulatory revisions add or broaden Categorical Exclusion activities and downgrade evaluative requirements when an activity has proven over time not to pose an impact to the human environment. For example, activities categorically excluded from NEPA and not subject to related environmental laws and authorities (CENST Activities) would, under the proposal, include new activities, such as transfers from one form of HUD rental Assistance to another, pre-payment of loans, removal of title encumbrances such as Declarations of Trust, routine maintenance, and certain interior repair and rehabilitation activities at public housing developments. Activities categorically excluded from NEPA but subject to other related environmental laws and authorities (CEST Activities) include new activities, such as multifamily construction (including an increase of up to 60 units or 20 percent density depending on the preceding use), using another federal agency categorical exclusion.

The proposed regulations also broaden CEST Activities related to infrastructure and rehabilitation activities. The proposed revisions to HUD Categorical Exclusions will both reduce the number of regulatory restrictions applicable to HUD-assisted projects and streamline compliance, reducing delay for housing activities attributed to the environmental review process. HUD also proposes to eliminate duplicative environmental requirements by permitting HUD to adopt another federal agency’s review (if one exists) and supplement as necessary. The proposed regulations also allow the adoption of another agency’s categorical exclusion categories even when joint project funding does not exist. The proposed regulations streamline procedural requirements as well. Public participation requirements would be modernized by combining the current rule’s two waiting periods under Part 58 into one, saving each individual project approximately 15 days during HUD’s release of funds process, and allowing for online publication of notices (eliminating costs and time associated with newspaper publication). These extensive revisions are expected to reduce the burden and time associated with HUD’s environmental

review process and save approximately \$20 million annually in regulatory costs, in addition to reduced costs associated with time savings and ease of environmental review preparation.

Improve manufactured housing regulation

Manufactured housing plays a vital role in meeting the nation's affordable housing needs, providing 5.5 percent of occupied housing units and 7.2 percent of the single-family housing stock. More than 7 million families reside in manufactured housing, with a median annual household income of \$33,000. Manufactured homes are particularly important in rural communities, constituting approximately 15.4 percent of occupied housing units.⁵⁷

Of the more than 625 comments submitted in response to HUD's Request for Information, almost 300 addressed manufactured housing. Specific areas of concern were the delay in implementing new construction standards; regulatory burdens caused by recent rules that had been implemented to allow greater innovation pending the publication of updated standards, such as onsite completion; and the potential for financing programs to better support manufactured housing. Another issue is the potential barrier created by state and local zoning and land use regulations to siting manufactured housing in a community.

The National Manufactured Housing Construction and Safety Standards Act of 1974 required HUD to establish federal construction and safety standards for manufactured homes. Federal oversight was needed to impose a streamlined, uniform set of standards, which ultimately reduce regulatory burdens faced by manufacturers at a time when local regulatory systems were incapable of effectively performing consistent inspections of dwelling units that were built, in some cases, many states away. The HUD Code⁵⁸ created a single national construction code for manufactured housing, replacing a patchwork of locally modified versions of three regional building codes. It established a design standard and a nationally uniform inspection framework that have been in place for more than 40 years. The manufactured housing industry continues to innovate and over the past decade developed designs that meet a wider range of consumer demand, requiring updates to the HUD Code, waivers, and alternative construction letters.

HUD's first Code became effective June 1976. Since that time, the International Code Council (ICC) was established. The ICC develops residential building codes through a participatory process with regular updates to the codes.⁵⁹ Some stakeholders recommended Congress eliminate HUD's oversight of the subset of factory-built homes that are HUD Code manufactured homes and instead have the ICC's International Residential Code apply. They noted the wide availability of modular housing (built under the International Residential Code) as evidence of a viable alternative to a federal national code. In

⁵⁷ American Housing Survey, 2017.

⁵⁸ HUD, *Manufactured Home Construction and Safety Standards*, Electronic Code of Federal Regulations, 24 CFR 3280. www.ecfr.gov/cgi-bin/text-idx?node=pt24.5.3280.

⁵⁹ See the ICC website at www.iccsafe.org/.

addition, the ICC process would provide more timely updates to standards while ensuring participation in the code process. Jurisdictions' familiarity with the ICC family of codes could lead to greater incorporation of manufactured housing in America's communities and provide a more equal playing field among the range of factory-built housing.

Retention of the HUD Code has advantages in that it is uniformly applicable to all manufactured housing nationwide. The federal manufactured housing program provides regulatory cost savings because the homes are built to one construction and safety code that is supported through federal preemption. It imposes minimal inspection fees, including a \$100 per label fee paid to HUD, compared to the thousands of dollars paid for site built and modular permitting and inspection fees. The federal regulatory oversight scheme eliminates the need for multiple, staged inspections for different building disciplines (structural, plumbing, mechanical, electrical, etc.) more common with regulatory oversight of site-built construction. In addition, the ICC codes are subject to state and local amendments that create complexities for manufactured home manufacturers and create challenges for interstate commerce.

The Manufactured Home Construction and Safety Standards and regulations were not updated significantly between 2009 and 2019, which impeded the manufactured housing industry's ability to economize and leverage current construction techniques and materials. Under this Administration, HUD completed revision of various regulations and made several administrative decisions that reduced regulatory burdens faced by manufacturers, including eliminating red tape to producing homes that integrate the latest innovations, technologies, and features that consumers demand. HUD recently implemented improvements within the consensus process to streamline the review of proposed standards changes, such as immediately assigning recommendations to subcommittees. Those changes have enabled the Manufactured Housing Consensus Committee (MHCC) to efficiently process more than 300 deregulatory comments and scores of code change proposals in one year, providing time to thoroughly review and discuss more substantive and complex recommendations. In addition, HUD has strengthened its ability to conduct robust cost-benefit analyses which has previously hampered HUD's ability to complete a timely rulemaking process.

HUD continues to explore a range of actions under the current statutory authority to more responsibly implement changes and enable the manufactured housing industry to better meet consumers' demands. Proposed improvements, some of which were outlined in HUD's Housing Finance Reform Plan,⁶⁰ include the following:

- To encourage innovation in manufactured housing, HUD should continue to streamline its procedures to ensure HUD's facilitation of adoption of regulations that reflect new building, construction, and design developments, within the constraints of its statutory, formal framework, which includes the Manufactured Housing Consensus Committee and a regulatory development process. These actions could include streamlining the way public proposals are assigned within the MHCC process and flow through the review process. HUD should also

⁶⁰ U.S. Department of Housing and Urban Development, *Housing Finance Reform Plan* (Washington, DC: HUD, 2019) <https://www.hud.gov/sites/dfiles/Main/documents/Housing-Finance-Reform-Plan0919.pdf>

continue to improve upon its more recent actions to streamline the cost and benefit review process, such as gathering more cost and benefit information within public proposals and ensuring the MHCC addresses the required cost and benefit factors. Both actions are necessary to allow HUD to update its regulations on a regular cadence, thereby better keeping up with evolving technology.

- HUD proposed updates to Title I standards that reduce regulatory burdens of participating in the program as part of its Single Family Housing Policy Handbook 4000.1 (SF Handbook), which is intended to serve as the consolidated, consistent, and comprehensive source of FHA Single Family Housing policy.
- HUD could elevate the Office of Manufactured Housing Programs within HUD and appoint a Deputy Assistant Secretary to lead it, as was highlighted in HUD's FY2021 Budget.

In addition to conducting reforms to improve HUD's responsiveness to industry advances, stakeholders requested HUD pre-empt state and local zoning ordinances that restrict manufactured housing. HUD did not consider federal actions that interfere in states' regulation of land use or delegation of those powers to local jurisdictions. However, HUD can provide resources to state, local, and tribal governments to help them better integrate manufactured housing into their communities to house their residents, such as through technical assistance.

Preserving community and neighborhood choice

HUD issued the Preserving Community and Neighborhood Choice rule in August 2020, which reduces the burden on HUD grantees for purposes of their Affirmatively Further Fair Housing (AFFH) certification and requires a general commitment that grantees will use the funds to take active steps to promote fair housing.⁶¹ Under the rule, grantee AFFH certifications will be deemed sufficient provided the grantee took any action during the relevant period rationally related to promoting fair housing, such as helping eliminate housing discrimination. The rule repeals the 2015 Assessment of Fair Housing (AFH) and the 1994 Analysis of Impediments (AI) requirements where they appear in the regulation.

The rule reflects HUD's recognition that jurisdictions may find many ways to advance fair housing that HUD officials cannot predict. Supporting a diversity of methods to affirmatively further fair housing preserves flexibility for jurisdictions to take action based on the needs, interests, and means of the local community, and respects the proper role and expertise of state and local authorities. HUD's Preserving Community and Neighborhood Choice rule gives local communities maximum flexibility in designing and implementing sound policies responsive to unique local needs, and it eliminates overly burdensome, intrusive, and inconsistent reporting and monitoring requirements.

⁶¹ Preserving Community and Neighborhood Choice, 85 FR 47899.
<https://www.federalregister.gov/documents/2020/08/07/2020-16320/preserving-community-and-neighborhood-choice>

Fair housing guidance

HUD issued a final rule on its implementation of the Fair Housing Act's disparate impact standard in September 2020 to bring HUD's rule into closer alignment with the analysis and guidance provided by the U.S. Supreme Court's 2015 ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*⁶² The rule revises the burden-shifting test for determining whether a given practice has a discriminatory effect that violates the Fair Housing Act and adds to illustrations of discriminatory housing practices found in HUD's Fair Housing Act regulations. The rule provides greater clarity of the law for individuals, litigants, regulators, and industry professionals.

The Fair Housing Act prohibits unlawful discrimination against persons with disabilities, including through failure to design and construct certain multifamily housing in accordance with the Fair Housing Act's requirements for accessible housing. HUD currently recognizes ten safe harbors for compliance with the Fair Housing Act's accessibility requirements, including several editions of the International Building Code (IBC). HUD issued a proposed rule in January 2020 to add five additional safe harbors, including contemporary IBC editions.⁶³ By updating the codes that constitute a safe harbor, HUD enables multifamily developers to continue to provide accessibility while reducing duplicative costs and processes.

FHA insurance program improvements

Multifamily three-year rule. FHA's Office of Multifamily Programs previously had a policy that applications for refinancing or acquisition of existing properties under Section 223(f) of the National Housing Act may not be accepted unless and until 3 years had passed since completion of construction or substantial rehabilitation of the property, a policy referred to by the housing mortgage industry as the "Three-Year Rule." Policy revisions published in March 2020 permit FHA to accept applications for refinancing of newly built or substantially rehabilitated properties as soon as properties achieve the applicable programmatic Debt Service Coverage Ratio (DSCR) for not less than one full month. Before this revision, the program policy had been temporarily modified to meet program goals when economic conditions decreased the availability of credit on two prior occasions, once in the mid-1970s and again as a result of the 2008 economic recession. Historically, these waivers were extremely successful, as refinancing to a lower interest rate freed up capital for property owners and developers that could potentially be used for remodeling, maintenance, repairs, or adding units. This policy revision is designed to promote opportunities for borrowers to refinance stabilized properties, facilitating the supply of affordable housing.

⁶² HUD's Implementation of the Fair Housing Act's Disparate Impact Standard (August 19, 2019), <https://www.federalregister.gov/documents/2019/08/19/2019-17542/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard>.

⁶³ See the final rule at <https://www.federalregister.gov/documents/2020/01/15/2020-00233/fair-housing-act-design-and-construction-requirements-adoption-of-additional-safe-harbors>.

Electronic signatures. The Office of Multifamily Programs published Housing Notice 20-4, the “Electronic Signature, Transmission, and Storage – Guidance for Multifamily Assisted Housing Industry Partners” in May 2020. This notice provides guidance to multifamily housing owners and management agents on acceptable procedures for use of electronic signatures and electronic transmission and storage of documents and files pertaining to occupancy procedures and business operations of assisted multifamily housing properties. Although in development before the pandemic, the guidance offered by this notice provides much-needed flexibility for applicants and tenants as well as owners and agents of assisted multifamily housing in response to COVID-19.

Multifamily incentives for Opportunity Zone investments. To encourage public and private investments in urban and economically distressed areas, including qualified opportunity zones, HUD’s Office of Multifamily Housing implemented a set of incentives for property owners who apply for certain loans with FHA multifamily mortgage insurance for properties.⁶⁴ HUD designated specialized Senior Underwriters in each region of the country to process applications for FHA mortgage insurance for properties in qualified opportunity zones to ensure expert and expedient review of these applications. In addition, applicants for certain mortgage insurance programs are eligible for reduced application fees for transactions in a qualified opportunity zone census tract. The application fee may be reduced from the current fee of \$3.00 per \$1,000 dollars to \$1.00 per \$1,000 of the requested mortgage amount for “broadly affordable housing,” those projects in which at least 90 percent of units are covered by (1) a Section 8 Project Based Rental Assistance (PBRA) contract or (2) an affordability use restriction under the Low-Income Housing Tax Credit program. For market rate and affordable housing transactions in qualified opportunity zone census tracts, the FHA mortgage insurance application fee may be reduced from \$3.00 to \$2.00 per \$1,000 of the requested mortgage amount.

Rental Assistance Demonstration

The Rental Assistance Demonstration (RAD) was authorized by Congress in 2012 to create a tool to preserve and improve certain stocks of HUD-assisted housing that were at risk of leaving the affordable inventory. HUD has taken numerous steps to amplify the effectiveness of RAD, streamline program requirements, and further protect residents. These include:

- streamlining RAD conversion for small PHAs;
- developing a first-of-its-kind streamlined environmental review that reduced the areas requiring review from 17 to 4;
- coordinating and aligning RAD and Section 18 of the Housing Act to allow transactions that otherwise would not be feasible;
- promoting the use of RAD in conjunction with the Opportunity Zone incentive to allow for additional revitalization of properties; and
- implementing the expansions of RAD permitted by Congress.

⁶⁴ See *Incentives for FHA Mortgage Insurance for Properties Located in Opportunity Zones*, <https://www.hud.gov/sites/dfiles/OCHCO/documents/2019-07hsgn.pdf>.

Realign housing assistance programs

The Federal Housing Commissioner oversees and administers mortgage insurance on FHA's single-family forward and reverse, multifamily, and healthcare programs. Concurrently, the Commissioner also serves as the Assistant Secretary for Housing, overseeing and administering programs that provide rental assistance and subsidy to low-income, very low-income, and extremely low-income Americans including Project-Based Rental Assistance (PBRA), Section 202 Housing for the Elderly, Section 811 Housing for the Disabled, the Rental Assistance Demonstration (RAD) program, federal regulation of manufactured housing, and housing counseling.

Consolidating the PBRA, Public Housing, and Housing Choice Voucher subsidy programs (Sections 8 and 9), along with the RAD and Real Estate Assessment Center (REAC) functions into a newly created Office of Rental Subsidy and Asset Oversight within HUD and separating the dual roles of Federal Housing Commissioner and Assistant Secretary for Housing, as proposed in HUD's Housing Finance Reform Plan,⁶⁵ would achieve greater efficiencies, reduce regulatory and administrative burdens, and promote greater cost efficiency and asset management of the subsidized portfolio – all of which combine to reduce the costs of providing these resources for rental housing.

Ideally Congress would enact legislation to separate the position and responsibilities of the Federal Housing Commissioner from the position and responsibilities of the Assistant Secretary for Housing; create a new Office of Rental Subsidy and Asset Oversight overseen by a Presidentially-appointed, Senate-confirmed Assistant Secretary, which would consolidate multifamily housing subsidy programs, Public Housing programs, and Housing Choice Voucher programs, with RAD and REAC; and establish the Office of Native American Programs as a separate office, led by a President-appointed, Senate-confirmed Assistant Secretary and separate the Native American programs from the other programs within HUD's Office of Public and Indian Housing. Absent legislation, HUD could pursue a more limited reorganization that separates its mortgage insurance and rental assistance programs. The proposed new structure would help better target assistance to those seeking sustainable homeownership and those receiving rental assistance, respectively.

Supporting innovation

Stakeholders emphasized the need for programs to support innovation that could increase the housing supply. Ideas ranged from the need for financing tools for “missing middle” housing types to research and outreach activities to support innovative construction strategies and technologies.

HUD is exploring some of these options. For example, FHA is considering updates to its *Single Family Housing Policy Handbook* to clarify that a single unit property with an accessory dwelling unit (ADU)

⁶⁵ U.S. Department of Housing and Urban Development, *Housing Finance Reform Plan* (Washington, DC: HUD, 2019) <https://www.hud.gov/sites/dfiles/Main/documents/Housing-Finance-Reform-Plan0919.pdf>.

should be underwritten as One Unit. For properties with two or more units, the ADU would count as an additional unit for underwriting purposes. That would support the construction of ADUs for owners of single-family homes. Efforts are underway to identify how federal lending programs can better support unsubsidized workforce housing. As discussed in Section 6, HUD's Affordable Housing Research and Technology Division, DOE's Advanced Building Construction Initiative, and the National Institute of Building Sciences, a non-profit non-governmental organization, have programs to support improvements in construction productivity.

Applying COVID-19 lessons

As HUD has worked to implement the Coronavirus Aid, Relief, and Economic Security (CARES) Act and ensure its grantees can quickly access funds, program offices have identified waivers and other actions to simplify processes and support innovation. Some of those efforts may contribute to longer term efficiencies. HUD will review the waivers and other actions implemented during the COVID-19 response to determine if any are candidates for regulatory or legislative proposals.

- The Office of Manufactured Housing issued its first industry-wide Alternative Construction (AC) letter allowing windows used in manufactured homes produced through December 31, 2020, to comply with standards that are not the specific HUD Code standards.⁶⁶ The letter responded to an industry-wide request resulting from supply chain disruptions from COVID-19 that led to shortages of windows that comply with HUD Code requirements. The regulations would normally require a specific manufacturer to request an AC letter for each model design.⁶⁷ To address this industry-wide need, HUD obtained a regulatory waiver to provide the letter without requiring proactive requests from individual manufacturers, which would have imposed an unnecessary burden of time and money for the manufacturers.
- HUD partnered with the Consumer Financial Protection Bureau (CFPB), Federal Housing Finance Agency (FHFA), USDA, and VA to offer a new mortgage and housing assistance website to provide homeowners and renters with the most up-to-date and accurate housing assistance information during the COVID-19 national emergency.⁶⁸ The entities are offering extensive CARES Act assistance and protection for Americans having trouble paying their mortgage or rent. This joint website consolidates the CARES Act mortgage relief, protections for renters, resources for additional help, and information on how to avoid COVID-19 related scams.

⁶⁶ The letter can be found at

https://www.hud.gov/sites/dfiles/Housing/documents/OMHPIndustryWideACLetter_Window%20Standard_041620.pdf

⁶⁷ See 24 CFR 3282.14.

⁶⁸ See the website for Mortgage and Housing Assistance During the Coronavirus National Emergency:

<https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/>.

Department of the Treasury

Improve the Low-Income Housing Tax Credit Incentive

Created by the Tax Reform Act of 1986,⁶⁹ low-income housing Tax credits (LIHTCs) are the Federal Government’s principal tool for incentivizing and subsidizing the construction and rehabilitation of affordable rental housing. Since the mid-1990s, the LIHTC incentive has supported the construction or rehabilitation of an annual average of approximately 106,400 affordable housing units, and more than 3 million units since its inception.⁷⁰ Because LIHTCs are tax credits, each LIHTC dollar reduces federal income tax liability by \$1. The owners of an eligible low-income housing project may claim LIHTCs over a 10-year period, provided the buildings in the project are constructed and operated in compliance with the Internal Revenue Code (Code)⁷¹ and the Code of Federal Regulations.⁷² The tax incentive remains popular and enjoys broad bipartisan support.

Stakeholders have identified barriers to affordable housing arising from the lack of clarity around property acquisition requirements, among other terms. Treasury recommends addressing these barriers.

In response to the request for information (RFI) issued by HUD to address regulatory barriers, many stakeholders recommended increasing annual state LIHTC allocations and other expansionary measures to address the current supply shortage. Some stakeholders identified high per-unit development costs as prohibitive to producing greater supply, particularly in highly regulated jurisdictions, and supported measures to increase the economic efficiency of the incentive. High development costs have been the subject of reports on the LIHTC tax incentive,⁷³ including a 2018 GAO report that found per-unit costs ranged from as little as \$104,000 in Georgia to \$606,000 in California (without accounting for the full costs paid to syndicators).⁷⁴ Rent restrictions and other requirements may, in some cases, limit project feasibility, particularly in rural markets, where the potential rental income generated from LIHTC properties may not be sufficient to cover development and ongoing maintenance costs for the full 30-year use period. For this reason, developers often layer various additional subsidies, a practice that increases development time and overall costs. Other affordable housing subsidies, such as HUD’s

⁶⁹ Public Law No. 99–514. Low-income housing credits, so named in statute, are commonly referred to as low-income housing tax credits or “LIHTCs” and are referred to herein as such.

⁷⁰ Low-Income Housing Tax Credits, HUD USER (June 5, 2020) <https://www.huduser.gov/portal/datasets/lihtc.html>.

⁷¹ 26 USC 42. See [https://uscode.house.gov/view.xhtml?req=\(title:26%20section:42%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:26%20section:42%20edition:prelim)).

⁷² 26 CFR § 1.42–0 through 26 CFR § 1.42–18. See https://www.ecfr.gov/cgi-bin/text-idx?SID=c14e7ecc1f1337cd196655a34e497409&mc=true&node=sg26.1.1_128_61.sg4&rgn=div7.

⁷³ Carolina Reid, *The Costs of Affordable Housing Production: Insights from California’s 9% Low-Income Housing Tax Credit Program* (2020), http://turnercenter.berkeley.edu/uploads/LIHTC_Construction_Costs_March_2020.pdf

⁷⁴ U.S. Government Accountability Office, *Low-Income Housing Tax Credit: Improved Data and Oversight Would Strengthen Cost Assessment and Fraud Risk Management*. Report GAO-18-637 (September 2018), <https://www.gao.gov/assets/700/694541.pdf>.

housing voucher programs, have been found to be cheaper when comparing costs over time on a per-unit basis and the number of households served by LIHTC properties.⁷⁵

In assessing LIHTC effectiveness, stakeholders and practitioners have raised concerns that the credits subsidize properties that would have received unsubsidized funding without the incentive, certain restrictions restrain production in supply-constrained markets, and too much of the costs associated with LIHTC projects are consumed by nonproductive items—including cumbersome deal structuring, extensive Qualified Allocation Plan requirements, legal and compliance costs, and outdated housing construction practices. The lack of standardized data and reporting further limits the ability to assess the effectiveness and application of the LIHTC incentive, leading to concerns of potential fraud and high development costs.^{76,77}

A fulsome review of the statutory and administrative rules implementing the LIHTC incentive is warranted to modernize and streamline the incentive and to maximize the impact of related federal subsidies. Further, such a review is consistent with retrospective rule reviews other federal financial regulators perform and would be warranted given the age and complexity of the governing tax rules. The complex statute and regulations have seen little structural change in the past 30 years.

Consistent with the Administration’s goals of streamlining the regulatory environment, Treasury is currently considering a targeted list of actions that would particularly support affordable housing supply where the need is most acute, including in high-cost state and local markets. In addition, these actions would reduce fraud and waste and would increase the alignment of LIHTC support for affordable housing development within Opportunity Zones, one of the signature new initiatives implemented by the Tax Cuts and Jobs Act of 2017 to promote development in economically challenged areas.⁷⁸ Although most actions focus on administrative improvements to existing incentives and programs, certain actions would require Congressional action to further enhance the production and rehabilitation of affordable housing.

Solicit public input on reforming LIHTC incentive. Treasury is considering soliciting public input on the statutory and administrative rules governing the LIHTC tax incentive. Following receipt of stakeholder input, Treasury could undertake a policy process to issue additional administrative reforms and propose legislative reforms of the tax incentive. Areas of consideration may include providing incentives or instituting requirements to control costs, encouraging innovative construction practices, aligning and streamlining targeting requirements under Qualified Allocation Plans, and implementing data and

⁷⁵ Corianne Payton Scally, Amanda Gold, and Nicole DuBois, *The Low-Income Housing Tax Credit: How it Works and Who it Serves* (Washington, DC: The Urban Institute, 2018)

https://www.urban.org/sites/default/files/publication/98758/lithc_how_it_works_and_who_it_serves_final_2.pdf.

⁷⁶ See, for example, *America’s Affordable Housing Crisis: Challenges and Solutions*, 115th Cong. 45 (2017) (statement of Granger MacDonald, Chairman, Board of Directors, National Association of Home Builders), <https://www.finance.senate.gov/imo/media/doc/30902.pdf>.

⁷⁷ See GAO Report GAO-18-637 (2018).

⁷⁸ Public Law No. 115-97.

reporting requirements to improve the efficiency of the LIHTC incentive, measure effectiveness, limit costs, and prevent fraud, waste, and abuse.

Clarify the ten-year rule exception for “federally- or state-assisted” buildings. If a residential building is acquired less than 10 years since the previous owner placed it into service, it does not generally qualify for LIHTCs. An exception exists, however, for buildings that are “federally- or state-assisted.” Uncertainty about the terms “federally- or state-assisted” has deterred prospective buyers from acquiring and rehabilitating residential buildings during the initial 10-year period. Treasury recommends that the IRS issue regulatory guidance, or create a sub-regulatory safe harbor, to clarify the meaning of “federally or state assisted.”

Prevent abusive “planned foreclosures” from terminating LIHTC extended-use requirements. A LIHTC building must continue to satisfy affordability and habitability requirements during the “extended use period” (LIHTC extended-use requirements). The extended use period generally lasts at least 15 years after the end of the period during which violations of the affordability and habitability requirements would result in adverse tax consequences. The obligation to satisfy the LIHTC extended-use requirements generally ends if the building is acquired through foreclosure. To prevent the planned termination of the LIHTC extended-use requirements through a “planned foreclosure,” a statutory anti-abuse rule causes the LIHTC extended-use requirements to survive a foreclosure if the Treasury Department or the Internal Revenue Service (IRS) determines the “acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate” the requirements. The IRS, however, is not able to proactively monitor all foreclosures to make such a determination on a case-by-case basis in a timely manner. Treasury, therefore, recommends proposing anti-abuse regulations that would make that determination for specified acquisitions of LIHTC buildings in foreclosures, including acquisitions between related parties. Acquisitions related to foreclosures covered by the regulations would not terminate the LIHTC extended-use requirements. The regulations, therefore, would prevent planned foreclosures from achieving their desired effect. (The IRS would retain its existing authority to impose this result on any abusive acquisition that may not be described in the regulations.)

Increase alignment with Opportunity Zones and effectiveness in Qualified Census Tracts (QCTs). In 2016, the IRS issued Notice 2016-77,⁷⁹ which addressed a statutory preference for placing a LIHTC project in a qualified census tract (QCT) (an area of high poverty) if developing the project would contribute to a “concerted community revitalization plan.” HCAs’ uncertainty about the meaning of “concerted community revitalization plan” may be an obstacle preventing the use of this Congressionally intended preference to benefit some high-poverty census tracts. Because of the significant overlap between QCTs and designated Opportunity Zones, many Opportunity Zones are among the tracts that may fail to benefit from the QCT preference until the uncertainty is resolved. Although the 2016 Notice requested

⁷⁹ Notice 2016-77, 2016–52 IRB 914, 914, states in part that “[p]lacing LIHTC projects in qualified census tracts risks exacerbating concentrations of poverty. Therefore, § 42(m)(1)(B)(ii)(III) grants a preference to that placement only when there is an added benefit to the neighborhood in the form of the project’s contribution to a concerted community revitalization plan. The preference fails to apply unless, not later than the allocation, a plan exists that contains more components than the LIHTC project itself.” <https://www.irs.gov/pub/irs-irbs/irb16-52.pdf>.

public comment on how the QCT preference should be clarified, the Treasury and the IRS have not yet issued the necessary guidance. To make the preference applicable to all eligible census tracts—including Opportunity Zones—Treasury should consider either (i) providing a nationally applicable definition of “concerted community revitalization plan”; or (ii) authorizing each HCA to determine the meaning of that term for applying the QAP preference in making its own allocations.

Institute incentives or requirements to control costs and promote innovation for LIHTC projects. Under the current structure, an HCA may lack sufficient incentive to determine “financial feasibility” or “viability” by taking into account innovative housing construction practices that may help lower the initial construction costs or the ongoing costs of maintenance. In addition, as detailed in other sections of this report, the LIHTC statute and guidance may lack a robust incentive to constrain costs.⁸⁰ Treasury recommends exploring incentives to limit high development costs on LIHTC projects, including (i) redefining the computation of LIHTCs earned to incentivize developers to constrain costs, such as limiting credits on a per-residential unit or per square-foot basis, and (ii) causing HCA determinations of feasibility and viability to take into account innovative housing construction practices, such as manufactured and prefabricated housing, to lower upfront construction and ongoing maintenance costs. These reforms would require Congressional action. To the extent public input is solicited pursuant to this action, Treasury recommends these issues be explored more fully. Reforms should, however, avoid an outcome whereby cost limits lead to poor construction and lower quality housing.

Reduce HCAs’ burden of monitoring compliance with LIHTC requirements in smaller projects. HCAs are responsible for monitoring LIHTC projects for both habitability and affordability and for reporting any adverse determinations to the IRS. HCAs may satisfy this responsibility by performing physical inspections and file reviews on random samples of the low-income units in projects. Final regulations issued in February 2019 require all such samples to comply with minimum sample sizes developed by HUD’s Real Estate Assessment Center (REAC), replacing prior minimum samples of the lesser of the REAC number or 20 percent of low-income units. The REAC sample sizes produce consistent levels of confidence regardless of the size of the project from which a sample is drawn; in some cases, however, the REAC sample sizes exceed 20 percent. Stakeholders expressed concern about the compliance burden associated with the larger sample sizes. On July 1, 2020, Treasury publicly released proposed regulations to restore the availability of sample sizes of 20 percent when that is less than the REAC number.⁸¹

Community Development Financial Institutions Fund

The Community Development Financial Institutions (CDFI) Fund plays an important role in generating economic growth and opportunity in some of the Nation’s most distressed communities. The CDFI Fund supports mission-driven financial institutions with focus on serving low-income communities and that leverage their resources to attract private funding to create economic opportunity in low-income

⁸⁰ See GAO Report GAO-18-637 (2018).

⁸¹ 85 FR 40610 (July 7, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-07-07/pdf/2020-14555.pdf>.

communities. The programs of the CDFI Fund include: the CDFI program, which provides financial and technical assistance awards to certified CDFIs throughout the country; the Native Initiatives, which builds the capacity of CDFIs serving Native American, Alaska Native, and Native Hawaiian communities; the Capital Magnet Fund, which finances affordable housing and related economic development; the New Markets Tax Credit Program, which helps economically distressed communities attract private capital through federal tax credits; the Bank Enterprise Awards program which provides financial awards to FDIC-insured institutions for eligible investments; and the CDFI Bond Guarantee Program, which makes long-term capital available to CDFIs. More than 51,300 units of affordable housing were funded in FY2019.⁸² Among those programs, the Capital Magnet Fund is specifically focused on the development and preservation of affordable housing.

The Capital Magnet Fund (CMF) was established through the Housing and Economic Recovery Act of 2008 as a competitive grant program administered by the CDFI Fund.⁸³ Through CMF, the CDFI Fund provides grants to Certified Community Development Financial Institutions (CDFIs) and qualified nonprofit affordable housing organizations. The CMF program provides grants to CDFIs and nonprofit organizations that develop affordable housing. The purpose of the CMF Program is to attract private investment for affordable housing for low-income families in areas of economic distress. A dollar of CMF must generate, at a minimum, 10 times that amount in private financing. In practice, CMF award funds have attracted \$20 of additional investment for every dollar of award funding.⁸⁴ Priority is given to award recipients serving areas of economic distress, including designated Opportunity Zones. The unique structure of CMF allows for regional and local market penetration by offering flexibility in the strategies for deploying funding and requiring significant private market resources.

Building on comments from a variety of stakeholders who participate in the CDFI Fund's CMF program, Treasury identified two key areas that present specific challenges fostered by competing or excessive regulations in generating and rehabilitating affordable housing units – conflicting federal, state, and local requirements and the burden of compliance and associated costs created by multiple layers of financing. The CDFI Fund is currently considering (or has already implemented) the following specific actions to enhance engagement efforts to remove certain barriers to affordable housing and to streamline compliance requirements to reduce costs.

Incorporate an educational component into future CMF funding rounds. It is not generally clear how CDFIs or other organizations consider regulatory barriers in determining where to lend or invest in affordable housing. The CDFI Fund currently offers six presentation modules which provide overviews of key CMF requirements and strategic objectives to assist applicants in developing and implementing their

⁸² CDFI, *Expanding Opportunity: The CDFI Fund's 2019 Year in Review* (Washington, DC: Community Development Financial Institutions Fund, 2019),

[https://www.cdfifund.gov/Documents/CDFI Annual%20Report%202019 Final%203.30.20 508 FINAL.pdf](https://www.cdfifund.gov/Documents/CDFI%20Annual%20Report%202019%20Final%203.30.20%20508%20FINAL.pdf).

⁸³ Public Law No. 110-289 (July 30, 2008), <https://www.congress.gov/110/plaws/publ289/PLAW-110publ289.pdf>.

⁸⁴ U.S. Department of the Treasury, "Overview," in *Capital Magnet Fund*, <https://www.cdfifund.gov/programs-training/Programs/cmf/Pages/default.aspx>.

funding proposals.⁸⁵ The CDFI Fund is considering whether CMF should explore how to integrate training on successfully working with state and local jurisdictions to decrease regulatory barriers. Although inclusion of this training module would be subject to administrative funding availability, it builds upon existing educational tools, raises awareness of the issue with the broader CDFI industry, and aligns with the CDFI Fund's influential role in furthering affordable housing and community and economic development.

Lower costs by streamlining CMF reporting and compliance requirements with affordable housing funding sources. Housing developers rely on a variety of public and private funding sources to produce affordable housing projects. In addition to financing costs, which industry stakeholders note can be burdensome, high ongoing costs result from duplicative or conflicting compliance requirements and a lack of alignment among funding sources. Industry stakeholders indicate streamlining and aligning regulatory requirements around such things as income determination, lease requirements, appraisals, and so forth could effectively lower costs and reduce the timeframes for deploying funds, which additionally result in cost savings. Although alignment across all federally-sponsored affordable housing assistance programs (by HUD, Treasury, USDA, etc.) may be impractical due to the statutory requirements of each individual program, to the extent synergies exist, Treasury should explore ways to align common compliance and monitoring requirements among Treasury initiatives, to reduce the administrative cost burden to grant recipients and their partners. The CDFI Fund is considering whether and how CMF may be able to align CMF compliance and regulatory requirements common to key affordable housing financing resources, particularly LIHTC, to increase efficiency and reduce duplication. An update of the CMF regulations would be needed to implement this alignment.

Incorporate questions into CMF grant applications to partner with local governments to reduce regulatory barriers. When a CDFI applies for a CMF grant, the applicant must respond to a series of questions established by the CDFI Fund in accordance with the mission-oriented statutory requirements of CMF. The applicant must address the core CMF mission requirements and demonstrate a Concerted Strategy to implement the proposed Affordable Housing and/or Economic Development Activities. As noted in other parts of this report, local and state authorizations in some markets may pre-empt or delay the timeframe to implement affordable housing projects or activities, including those facilitated by CMF. To address this, CDFI Fund incorporated questions in the FY2020 CMF application guidelines that evaluate an applicant's prospective and past efforts to partner with local governments undertaking efforts to reduce regulatory barriers to affordable housing. The application period opened on May 28 and closed on July 27, 2020.⁸⁶

⁸⁵ U.S. Department of the Treasury, "Application Process," in *Capital Magnet Fund*, <https://www.cdfifund.gov/programs-training/Programs/cmf/Pages/apply-step.aspx>.

⁸⁶ Treasury, "Application Process."

Regulatory relief to address the impacts of COVID–19

In response to the COVID–19 pandemic, Treasury and the IRS provided several items of temporary relief in connection with affordable residential rental housing projects that earn LIHTCs.⁸⁷ The relief took three forms:

- Extensions until December 31, 2020, of certain construction, rehabilitation, and restoration benchmarks that were due to be met on or after April 1, 2020, and on or before December 30.
- Waivers until December 31, 2020, of requirements for project management recertification of tenant income and agency monitoring of projects for affordability and habitability that would require agency or project personnel to interact in person with others.
- Permission until December 31, 2020, for building owners to (1) take common spaces or amenities out of service because of the COVID-19 pandemic or (2) temporarily house medical and other essential personnel even if their incomes are greater than the maximum tenant incomes under the LIHTC rules without incurring the adverse tax consequences that might otherwise follow.

Treasury and the IRS also provided several items of temporary relief for Qualified Opportunity Funds (QOFs) and their investors in response to the COVID-19 pandemic and clarified that certain relief provisions in previously published regulations for all presidentially declared disasters apply to the COVID–19 pandemic.⁸⁸ The temporary relief:

- Extended the dates for many taxpayers to make an investment in a QOF to elect deferred taxation of a previously realized capital gain.
- Treated as due to reasonable cause certain QOF failures to satisfy the 90 percent investment standard if one or both of the QOF's semiannual testing dates fell in the period beginning on April 1, 2020, and ending on December 31, 2020.
- Gave QOFs and Qualified Opportunity Zone Businesses additional time to substantially improve certain used assets if the unextended 30-month substantial-improvement period overlapped with the period beginning on April 1, 2020, and ending on December 31, 2020.
- The clarified disaster-relief regulations had given most Qualified Opportunity Zone Businesses up to 24 additional months in which to expend working capital assets. They also had given certain QOFs an additional 12 months in which to reinvest certain amounts in Qualified Opportunity Zone Property if the original 12-month reinvestment period included January 20, 2020.

⁸⁷ Notice 2020-53, 2020–30 IRB 151 (July 20, 2020), <https://www.irs.gov/pub/irs-irbs/irb20-30.pdf>.

⁸⁸ Notice 2020–39 (June 22, 2020), <https://www.irs.gov/pub/irs-drop/n-20-39.pdf>.

Department of Agriculture

Single family loan guarantee program

The Department of Agriculture (USDA) has made a number of improvements to its Single-Family Housing Guaranteed Loan Program to reduce regulatory burdens on lenders to enable more rural residents to benefit from the program. The Rural Housing Service introduced a new single close new construction process, effective August 2019, to 1) increase liquidity for lenders by permitting them to securitize the loans up to 12 months sooner than in the past; 2) free up capital for homebuilders to invest in more new construction projects; and 3) provide low- and moderate-income households with an affordable opportunity to purchase new dwellings.⁸⁹ The regulatory changes provide increased flexibility in loan terms to facilitate and encourage single close loans, which will stimulate new construction, rehabilitation, and homeownership in rural areas.

The Rural Housing Service introduced the payment of loss claims at the time of foreclosure instead of after a 9-month marketing period to 1) improve lender liquidity because claims are paid more timely, and 2) reduce agency staffing needs in administering the payment of loss claims, effective April 2020.⁹⁰ Improving lender liquidity facilitates additional investments in rural areas with the potential of increasing loan affordability. Related changes to the appraisal are anticipated to streamline the approach to loss claim payment processing, which will enable RHS to limit the amount of additional interest included in the loss claim payment. Changes to the loss mitigation procedures continue the Agency's efforts to improve the overall effectiveness of loss mitigation by emphasizing payment reduction. The changes will continue to increase homeownership success and decrease foreclosures. A corresponding reduction in lender REO property could improve community stability and decrease expenses associated with foreclosure and property disposition.

The Single-Family Housing Guaranteed Loan Program removed a maximum interest rate cap that posed a regulatory burden on lenders trying to make small loans in rural areas.⁹¹ Lenders under certain interest rate environments had been unable to make profitable small loans. The change, effective October 2019, increased the availability of mortgage credit for affordable homes in rural areas.

⁸⁹ Rural Housing Service, "Single Family Housing Guaranteed Loan Program," *Federal Register* 84 FR 35003, <https://www.federalregister.gov/documents/2019/07/22/2019-15450/single-family-housing-guaranteed-loan-program>.

⁹⁰ Rural Housing Service, "Single Family Housing Guaranteed Loan Program," *Federal Register* 84 FR 70881, <https://www.federalregister.gov/documents/2019/12/26/2019-27504/single-family-housing-guaranteed-loan-program>.

⁹¹ Rural Housing Service, "Single Family Housing Guaranteed Loan Program," *Federal Register* 84 FR 35003, <https://www.federalregister.gov/documents/2019/07/22/2019-15450/single-family-housing-guaranteed-loan-program>.

Improve environmental review process

USDA revised its Organizational and Internal Process Structure in FY2019 to improve its environmental review and authorization process. This included 1) proactively managing projects and coordinating timelines, 2) streamlining internal review processes, responsibilities, and project documentation, 3) coordinating pre-Notice of Intent activities including project coordination plans and project proponent checklists, 4) developing Programmatic Agreements for sequencing Section 106 historical preservation reviews, 5) successfully rolling out to field – amending the agreement to include other USDA programs, 6) establishing indefinite delivery/indefinite quantity contracts for Environmental Impact Statements, 7) implementing process enhancements, such as the U.S. Forest Service Environmental Assessment and Decision Making, and 8) identifying land use planning considerations.

Support timber production

Although timber markets set the price of timber, the USDA Forest Service modernization efforts have increased efficiencies in planning, preparation and execution of timber sales. Those efforts have given the industry more flexibility to respond to market conditions by increasing the timber supply and the number of timber sales. For example, the Forest Service proposed a rule that provides categorical exclusions for restoration projects such as removing trees through commercial timber harvesting to expedite time and the amount of lumber available.⁹²

Department of Energy

Energy efficiency standards

The Department of Energy (DOE), through its Buildings Technologies Office, sets minimum energy efficiency standards for approximately 60 categories of consumer products and commercial equipment used in homes, businesses, and other applications, as required by existing law. All manufacturers and importers of covered products must use the DOE test procedures to ensure compliance with the standards, unless granted an explicit waiver to use an alternative test procedure.

DOE published a proposed rule in May 2019 to streamline its decision-making process for test procedure waivers. Under the proposal, the Department would be required to notify an applicant for an interim waiver of the disposition of the request, in writing, within 30 business days of receipt of the application.⁹³ If DOE failed to satisfy this requirement, the request for an interim waiver would be deemed granted based on the criteria in DOE's waiver regulations. An interim waiver would remain in

⁹² U.S. Forest Service, "National Environmental Policy Act (NEPA) Compliance," *Federal Register* 84, no. 114 (June 13, 2019), <https://www.fs.fed.us/emc/nepa/revisions/includes/docs/36CFR220ProposedRuleFRN.pdf>.

⁹³ U.S. Department of Energy, "Test Procedure Interim Waiver Process," Notice of proposed rulemaking; request for comment, *Federal Register* (May 1, 2019), <https://www.federalregister.gov/documents/2019/05/01/2019-08699/test-procedure-interim-waiver-process>.

effect until a waiver decision is published or until DOE publishes a new or amended test procedure that addresses the issues presented in the application, whichever occurs earlier. This proposal is intended to address delays in DOE's current process for considering requests for interim waivers and waivers from the DOE test method, which in turn can result in significant delays for manufacturers in bringing new and innovative products to market.

DOE serves an important role in determining the increased energy efficiency of consensus-based building codes for residential and commercial buildings. The Department is currently reviewing agency assessment methodologies to ensure an accurate calculation of increases in energy efficiency and life-cycle cost-effectiveness for building code updates.

Environmental Protection Agency

Stormwater management

Under the Clean Water Act, the U.S. Environmental Protection Agency (EPA) has established the National Pollutant Discharge Elimination System (NPDES), which requires permits for discharges from construction activities that disturb one or more acres and discharges from smaller sites that are part of a larger common plan of development or sale. Depending on the location of the construction site, either EPA or the state administers the permit, which governs the contractor's stormwater management activities.⁹⁴

Stormwater management has become an increasing component of construction costs, with roundtable participants noting they spend \$400,000 to \$500,000 per project on stormwater management, resulting in an increase in housing prices of 2 percent or more in the past 10 years. Given the social benefits, recommendations were received that would enable compliance while reducing costs.

The stormwater management permit process was identified by commenters as an example of "bureaucratic build": a federal agency publishes regulations, the state imposes a stricter version to ensure it is in compliance, then the local government adds another level of requirements to ensure it is in compliance. This process was identified as a common occurrence throughout the federal system and a source of frustration for firms, individuals, and organizations.

Stormwater management is an area that can benefit from technological improvements and other innovations, yet state and local jurisdictions may be unwilling to accept innovation, concerned they will be cited by EPA for a violation. For example, a builder created a method to simplify and improve site inspections for stormwater management compliance that would reduce the burdens on builders and inspectors, particularly in rural areas where building sites may be far apart. He was unable to get the local jurisdiction to accept it unless the state would accept it; the state would not accept it unless EPA

⁹⁴ United States Environmental Protection Agency, *Stormwater Discharges from Construction Activities*, <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

accepted it; and EPA said it was up to the state. Stakeholders asked that EPA support innovation by developing a mechanism for identifying acceptable practices to enable state and local jurisdictions to accept those innovations without fear of penalties or by issuing guidance that allows state and local jurisdictions to pilot new techniques or accept a technique used successfully elsewhere.

Brownfields cleanup

A brownfield is a property that has the presence or potential presence of a hazardous substance, pollutant, or contaminant, complicating efforts to redevelop or reuse the site. Brownfield sites are often in infill locations with existing transportation and utility infrastructure. Cleaning up and redeveloping those properties can remove contaminants that harm air and water quality, reduce blight, and take development pressure off green spaces and working lands. Brownfield redevelopment transforms abandoned and underused sites into community and economic assets such as parks and plazas, mixed-use developments, and homes.⁹⁵ Since its inception, the National Brownfields Program has provided funding and technical assistance to communities across the country that resulted in 32,300 brownfields properties being assessed, 2,100 brownfields properties being cleaned up, and 8,400 properties being made ready for reuse. The impacts of these accomplishments include the leveraging of 168,500 jobs and \$33.3 billion in economic development.

EPA provided funding in FY2020 to 151 communities totaling \$65.6 million through its Brownfield Assessment, Revolving Loan Fund, and Cleanup (ARC) grants. Those funds are leveraged to attract additional cleanup and redevelopment funding. Of the selected communities, 118 can potentially assess or clean up brownfield sites in census tracts designated as Opportunity Zones. The Brownfields program creates jobs in cleanup, construction, and redevelopment, generates local tax revenues, and improves property values of nearby homes.

Under the Brownfields Utilization, Investment, and Local Development Act of 2018, EPA has increased the funding cap for cleanup grants, expanded the entities that can receive grants to include nonprofits, created two new grant types, and taken other actions that support the assessment and cleanup of brownfield sites that will help communities redevelop sites, creating housing and other community and economic assets.

Water infrastructure

EPA and the Department of the Army published a final Navigable Waters Protection Rule in April 2020, clarifying application of the rule through streamlining definitions, identifying clear exclusions, and defining terms. In more clearly distinguishing between federally protected waterways and state protected waterways, the rule reduces uncertainty, which previously created barriers for property owners and others.

⁹⁵ United States Environmental Protection Agency, *Smart Growth, Brownfields, and Infill Development*, <https://www.epa.gov/smartgrowth/smart-growth-brownfields-and-infill-development>.

In August 2019, EPA issued a proposed rule to implement Section 401 of the Clean Water Act (CWA). In June 2020, EPA published the final rule. EPA's certification rules had not been updated in nearly 50 years and inconsistencies with the text of CWA Section 401 led to confusion and unnecessary delays for infrastructure projects. The rule increases the transparency and efficiency of the 401 certification process and promotes timely review of infrastructure projects, streamlining the process for constructing new energy infrastructure projects while continuing to ensure that Americans have clean water for drinking and recreation.

EPA is also supporting water infrastructure through the Drinking Water and Clean Water State Revolving Fund Programs, through which EPA partners with states to meet their highest priority water quality needs by providing low-interest loans and other subsidies. Funds are provided primarily to public entities, but can also be made available to private, and non-profit entities for eligible drinking water and wastewater treatment facilities and a variety of other water and wastewater infrastructure projects.

Since their inception, the Programs have provided nearly \$180 billion in financial assistance to fund more than 41,200 water quality infrastructure projects and 15,400 drinking water projects in communities across the country. EPA recently announced the availability of over \$2.7 billion in additional funds to assist states, tribes, and territories across the country with improving drinking water and wastewater infrastructure to advance efforts to rebuild the country's aging water infrastructure, create local jobs, and ensure all Americans have safe and clean water. In June 2019, EPA and FEMA partnered to streamline coordination between FEMA and the EPA-funded State Revolving Fund programs to restore vital water infrastructure more quickly in times of disaster. The Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) established the WIFIA program, a federal credit program administered by EPA for eligible water and wastewater infrastructure projects. In just 3 years, EPA has closed on 28 loans totaling more than \$6.1 billion to help improve water quality for more than 23 million Americans. Combined with other funding sources, these ventures will help finance more than \$13 billion for water infrastructure projects and create more than 27,000 jobs. The funds make real improvements to water quality in these communities, while supporting local jobs.

[Department of the Interior](#)

Title Status Reports online portal

The Department of Interior's Bureau of Indian Affairs (BIA) is currently working to provide an online portal that will allow HUD's Office of Native American Programs (ONAP) to access BIA's system to view the status of certified Title Status Reports (TSRs). In an effort to improve the timing and completion of private financing packages, this action will help potential American Indian homeowners receive mortgage decisions faster. By expanding ONAP access to TSR status, ONAP officials will be able to advocate for potential American Indian homeowners who are using HUD housing programs and coordinate with the BIA to prevent bureaucratic bottlenecks that hinder housing finance on tribal trust

lands. As the Federal Reserve Bank of Minneapolis' Center for Indian Country Development has pointed out, BIA often takes 6-12 months to provide a certified TSR. The delay has caused many lenders to recoil from offering or approving financing packages. With this improved coordination and elimination of bureaucratic barriers, DOI anticipates improved housing options for American Indians on trust lands.

Endangered Species Act regulatory update

In August 2019, the U.S. Fish and Wildlife Service (Service) and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) jointly announced revisions to regulations that implement portions of the Endangered Species Act (ESA). The Service revised its approach to applying protections for threatened species to more closely align its practice with NOAA Fisheries so the two agencies are consistent in their application of this provision of the ESA. The Service removed its blanket rule under section 4(d) of the ESA that automatically conveyed the same protections for threatened species as for endangered species. This change will not affect the protections for species currently listed as threatened, but will ensure that species listed as threatened in the future receive the protections specifically tailored to the species' individual conservation needs.

Federal agencies whose discretionary actions may affect endangered or threatened species, or designated critical habitat for those species, trigger the ESA's Section 7 consultation process. This requires them to consult with the Service or NOAA before the federal action begins. This process usually results in permitting delays and project reconfiguration. The update of the ESA regulations eliminates some of the uncertainties and time-consuming and permitting delays that have been associated with the Section 7 consultation process.

NOAA Fisheries and the Service also revised the regulations for implementing Section 4 of the ESA. The revisions include an analysis by both NOAA and the Service to determine whether the species is likely to become endangered within the foreseeable future. The foreseeable future only extends so far into the future as can reasonably be determined. The revised Section 4 regulations also require NOAA and the Service to evaluate occupied areas of critical habitat first, and only consider unoccupied areas as essential to the conservation of the species when there's a reasonable certainty that both the area will contribute to the conservation of the species, and the area contains one or more physical or biological features essential to the species. These revisions provide certainty and regularity, to a previously onerous process for development.

Historic preservation

Historic and existing buildings can help meet the nation's affordable housing needs and, in some cases, have been successfully adapted for use as low- and moderate-income housing. Older, modest-quality structures are a critically important subset of naturally-occurring affordable housing. Rehabilitation of

existing buildings typically is cheaper than new construction, and they frequently are located in neighborhoods with established infrastructure, including access to mass transit and job opportunities. Local historic preservation programs, however, can make building new housing more difficult for property owners and developers. A study of historic districts in New York City found a modest drop in new construction after areas were designated as historic districts. Moreover, outside Manhattan, designating areas as historic districts led to property value increases in the district, which could hurt housing affordability.⁹⁶

Reuse of historic buildings for affordable housing preserves the historic character of neighborhoods and communities, furthering the national policies established by Congress in the National Historic Preservation Act of 1966 (NHPA). In Fiscal Year 2019, the program supported 9,716 new housing units and 6,564 rehabilitated housing units, of which 6,206 served low- and moderate-income households.⁹⁷ Since 1977, more than 600,000 housing units have been created or rehabilitated. Many states have additional state historic tax credits, including some that apply to homeowners.

The Federal Historic Tax Credit is a financial incentive that supports investment in historic buildings. It encourages private property owners to rehabilitate historic properties for an income-producing use, such as rental housing, office, retail, manufacturing, and entertainment space. It can be a catalyst for neighborhood and downtown revitalization, as well as an effective tool to create affordable housing, including mixed-use developments that have commercial space on the first floor and residences on the upper floors.

To help ensure the historic character of buildings and districts is considered during project planning, affordable housing projects often are subject to historic preservation review at the federal, state, and local level. The Advisory Council on Historic Preservation (ACHP) is taking steps to build upon already existing tools and guidance to further enhance the efficiency and effectiveness of federal preservation reviews under Section 106 of the National Historic Preservation Act, which applies only when a project is assisted with federal funding or financing.⁹⁸

In 2006, the ACHP issued with HUD a joint Policy Statement on Affordable Housing and Historic Preservation, which includes several principles that address the importance of flexibility and streamlining in Section 106 review of affordable housing projects. These principles include: review of effects in historic districts generally should focus only on exterior features; the need for archaeological investigations should be avoided; and streamlining the Section 106 process to respond to local conditions should be encouraged. The ACHP currently is in the process of reviewing the policy statement for updates. Issues to be explored will examine ways to lower costs and may include the use of

⁹⁶ Vicki Been, Ingrid Ellen, Michael Gedal, Edward Glaeser, and Brian McCabe, "Preserving History or Hindering Growth? The Heterogeneous Impacts of Historic Districts on Local Housing Markets in New York City" (NBER Working Paper 20446, National Bureau of Economic Research, Cambridge, MA, 2014).

⁹⁷ National Park Service, *Federal Tax Incentives for Rehabilitating Historic Buildings: Annual Report for Fiscal Year 2019* (NPS, Washington, DC, 2020).

⁹⁸ Effect of Undertaking on Historic Property, 54 U.S.C. § 306108 (2014).

substitute materials when replacing historic features. The ACHP and its federal partners will disseminate the resulting updated policy statement to states, tribes, localities, the preservation community, and other stakeholders.

The ACHP affordable housing policy statement encourages seeking innovative and practical ways to streamline the Section 106 process to respond to unique local conditions. The ACHP works regularly with HUD and its Responsible Entities in meeting its Section 106 responsibilities, principally through the development of Programmatic Agreements (PAs). A PA allows these parties to administer a range of programs using funds from HUD, including Community Development Block Grants, Public Housing Agencies, and HOME Investment Partnerships. The PAs can be tailored to a community's needs, recognizing its resources and access to qualified staff, and in consideration of the entity's Consolidated Plan, which includes an assessment of a community's affordable housing and community development needs.

Programmatic Agreements help reduce costs by eliminating unnecessary reviews for routine activities and creating consistent standards for rehabilitation work. Executed PAs are routinely added to the HUD Exchange site as a resource for other jurisdictions. Statewide and national PAs would allow stakeholders to expand on the successful efficiencies of established local PAs. The ACHP regularly provides example stipulations to HUD or its Responsible Entities to ensure the PAs contain the necessary language for effective and efficient reviews. The ACHP will pursue additional steps to encourage more widespread use of PAs and add standard guidance to further improve the efficiencies for historic preservation reviews of affordable housing projects. A revised "Guidance on Agreement Documents" will serve as best practice for other jurisdictions in developing strong PAs or revising dated ones. In addition to PAs, ACHP, NPS, and HUD can work together to develop additional streamlining tools, including Program Comment and Exempted Categories. These potential tools, available under the Section 106 regulations, can provide broad Section 106 approval of a specified group of activities that do not cause adverse effects, with shortened review timeframes and expedited resolution when adverse effects do occur.

The National Park Service issued proposed regulations to implement the 2016 amendments to the National Historic Preservation Act and make additional revisions.⁹⁹ The proposed rule would emphasize the rights of private property owners within a proposed historic district. Currently, only if a majority of the land owners in the proposed historic district object to listing in the National Register will the proposed district not be listed. The proposed rule would extend to owners of the majority of land area in a proposed historic district the same opportunity to object.

⁹⁹ "National Register of Historic Places, A Proposed Rule by the National Park Service on 03/01/2019," *Federal Register*, <https://www.federalregister.gov/documents/2019/03/01/2019-03658/national-register-of-historic-places>.

Department of Labor

Fair Labor Standards Act

Department of Labor (DOL) has recently completed two regulatory changes to clarify who is liable for an employee's wages and calculations for determining whether employees are eligible for or exempt from overtime pay under the Fair Labor Standards Act (FLSA). Greater clarity enables contractors involved in housing development to more accurately calculate their employment costs when submitting bids and enables greater efficiencies in the construction process through improved coordination between contractors and subcontractors.

The FLSA requires covered employers to pay nonexempt employees at least the federal minimum wage for all hours worked and overtime for all hours worked over 40 hours in a work week. Although it does not use the term "joint employer," the Act contemplates situations in which additional persons are jointly and severally liable with the employer for the employee's wages due. The regulation, effective March 16, 2020, breaks down barriers that keep companies from constructively overseeing, guiding and helping their business partners. For small business owners and employees, the relationship and the guidance coming from other contractors, as is often the case in the construction industry in which prime contractors subcontract work to multiple layers of lower-tier subcontractors, can greatly improve the workplace and help create jobs.

The FLSA provides that covered employees must receive overtime pay for hours worked more than 40 in a work week of at least one and one-half times their regular rates of pay. The regulations account for updated wages when determining an increase in the salary level threshold for overtime eligibility, but do not include an automatic increase of the overtime salary threshold or change the duties test. The Department issued an Overtime Final Rule in September 2019, effective January 1, 2020, informed by public comment, listening sessions, and long-standing calculations. The rule adds clarity for employers and allows them to use bonuses and incentive payments to satisfy up to 10 percent of the standard salary level in recognition of evolving pay practices. For example, bonuses earned by construction project and site managers may now count toward reaching that salary level to attain exempt status.

Department of Transportation

Considering regulatory barriers in grant programs

The Department of Transportation (DOT) issued a Notice of Funding Opportunity in September 2019 for the Pilot Program from Transit-Oriented Development (TOD). The Pilot Program for TOD Planning provides funding to local communities to integrate land use and transportation planning in new fixed guideway and core capacity transit project corridors. Under the notice, DOT takes into account state, local, and tribal government efforts to reduce regulatory barriers that unnecessarily raise the costs of housing development or impede the development of affordable housing when making grant selections.

DOT issued a Notice of Funding Opportunity in June 2020 for the Helping Obtain Prosperity of Everyone (HOPE) Program. Under the program, applicants are required to identify proposed actions that reduce regulatory barriers that unnecessarily raise the costs of housing development or impede the development of affordable housing.

Currently, DOT encourages compatible land development near transit corridors through the issuance of guidance under the Capital Investment Grant (CIG) Program. DOT encourages transit-supportive zoning and densities along transit corridors through the published Land Use and Economic Development Guidelines and the Capital Investment Grant Program Final Interim Policy Guidance. DOT will evaluate the opportunity to add language to the land use guidance document and CIG guidance that require the applicant to remove artificial barriers to housing.

DOT will continue to evaluate future Notices of Funding Opportunity for its discretionary grant programs for opportunities to include reducing regulatory barriers to housing supply as an evaluation criterion, focusing on those programs that have a direct nexus with land use. Future notices for discretionary programs currently authorized such as Better Utilizing Investments to Leverage Development (BUILD) and Infrastructure for Rebuilding America (INFRA) will be evaluated for language on reducing regulatory barriers and removing barriers to housing supply.

Environmental streamlining

DOT has numerous efforts underway to streamline the environmental review process which could indirectly boost housing supply and speed the delivery of infrastructure that supports additional housing development. These include:

- A regulation to codify the existing DOT NEPA Order and provide additional requirements for early coordination and collaboration, process streamlining, and other efficiencies in the environmental review and permitting process. The regulation is one step in the DOT-wide efforts to comply with the One Federal Decision (OFD) Policy, which requires streamlined and accelerated processing of environmental impact statements (EISs) for "major infrastructure projects."¹⁰⁰
- The Page Limits Guidance that sets out a 150-page limit for EISs (unless the project is of unusual scope or complexity), and 75 pages for environmental assessments (EAs) to reduce the cost and time required to prepare draft and final NEPA documents, and make the documents more clear, concise, and focused. This will enable the public, stakeholders, and governmental agencies to review and understand EAs and EISs more easily.
- The Section 1309 Final Rule will allow approved states to substitute their NEPA-comparable environmental regulation (e.g., California Environmental Quality Act) for NEPA, removing the

¹⁰⁰ One Federal Decision was created by Executive Order 13807, with additional requirements established through the inter-agency OFD Memorandum of Understanding and OMB's OFD accountability system guidance memo.

requirement for DOT projects in the approved states to conduct separate, duplicative environmental reviews under both NEPA and the state law.

- The Interim Final Guidance under 23 U.S.C. 139 applies to the Federal Highway Administration, Federal Railroad Administration, and Federal Transit Administration, and provides project sponsors with direction regarding the environmental review process. The guidance updates the existing Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Act, Section 6002 guidance, and incorporates the additional environmental policies and procedures prescribed by the Moving Ahead for Progress in the 21st Century Act, the FAST Act, and OFD, many of which provide additional streamlining and efficiency.

Construction activities

Reduce construction costs

Much of the literature on regulation and high housing costs focuses on land use regulations, taking construction costs (labor and materials) as a given. For example, Glaser and colleagues calculate the “regulatory tax” by subtracting construction costs from house prices. Yet regulations also drive up the costs of materials, both by requiring specific materials (e.g., a specific thickness of insulation or type of lightbulb) and by increasing the cost of producing those materials (e.g., the production of concrete), and the cost of labor. Building material prices was one of the top three problems faced by builders in 2019 and is expected to be a problem in 2020, according to a National Association of Home Builders survey.¹⁰¹ Similarly, an analysis of LIHTC projects in California found the 40 percent increase in hard construction costs since 2012 to be a significant factor in higher development costs.¹⁰²

Several stakeholders discussed factors that influence the cost of building materials, including trade policy, and indicated that lowering the cost of materials could encourage construction activity. The enactment of the United States-Mexico-Canada Agreement in January 2020 provides certainty to the trade relationships with two of the United States’ largest trading partners, reducing price volatility and lowering the cost of materials. With the U.S. residential construction and remodeling industries relying on building materials sourced from Canada and Mexico, the agreement will help ease America's housing affordability challenges and boost U.S. economic growth. The Administration has also taken action to reduce federal regulations that could unnecessarily increase costs. As mentioned previously, the USDA Forest Service modernization efforts have increased efficiencies in planning, preparation, and execution of timber sales, giving industry more flexibility to respond to market conditions by increasing the supply and the number of timber sales.

¹⁰¹ National Association of Home Builders, *Labor Shortages Remain Top Concern for Builders* (Washington, DC: NAHB, 2020), <http://nahbnow.com/2020/02/labor-shortages-remain-top-concern-for-builders/>.

¹⁰² Carolina Reid, *The Costs of Affordable Housing Production: Insights from California’s 9% Low-Income Housing Tax Credit Program* (Berkeley, CA: Turner Center for Housing Innovation, 2020), http://turnercenter.berkeley.edu/uploads/LIHTC_Construction_Costs_March_2020.pdf.

The supply chain is also affected by more local issues. A stakeholder explained steel-framed construction in the West is more expensive because steel slab production is greater east of the Mississippi. The portion of steel imported has decreased in the past few years, suggesting supply chains are adjusting to meet demand. Another stakeholder noted California’s policies regarding electrification and embodied carbon (e.g., the greenhouse gases produced in the manufacturing of building materials) may further increase prices.¹⁰³ Although no specific recommendations address those concerns, the Federal Government was asked to consider the effects of such policies on housing production costs.

The Davis-Bacon Act, enacted in 1931, and Related Acts (DBRA) apply to contractors and subcontractors performing on federally-funded or federally-assisted contracts in excess of \$2,000. Besides applying to direct federal construction contracts, the Davis-Bacon prevailing wage principle has been written into more than 50 federal program statutes. Under DBRA, contractors and subcontractors must pay their laborers and mechanics working on construction projects receiving federal funding, grants, loans, loan guarantees, or insurance no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Department of Labor determines the locally prevailing wage rates.¹⁰⁴ The Davis-Bacon Act is supplemented by the 1934 Copeland “anti-kickback” Act (which requires weekly reporting of wages actually paid and an affirmation from employers that any deductions from employees’ wages have been proper) and by federal overtime pay and health and safety standards statutes. Some states have enacted “little Davis-Bacon” acts within their respective jurisdictions.¹⁰⁵

HUD received more than 100 comments on the Davis-Bacon Act in response to its Request for Information, making it the second most commented on topic (after manufactured housing). Many stakeholders recognized the importance of the Act in ensuring quality projects, maintaining skilled labor, and preventing unscrupulous employer behaviors, whereas others noted it increased construction prices through inappropriate determination of prevailing wages and significant administrative burden. Comments requesting revisions to the Davis-Bacon Act focused on ways to support the Act while reducing burdens.

A number of recommendations were received for regulatory changes that could enable the goals of the Act to be met while supporting housing, which include the following:

- Raise the unit minimums that trigger the Act to increase the feasibility of smaller projects and improve rural rental housing. Alternatively, consider applying Davis-Bacon only to projects for which the federal contribution is 30 percent or more of construction costs.
- Improve the procedure for determining prevailing wage rates to make them more timely and more representative of the relevant market. Currently the Department of Labor’s Wage and

¹⁰³ See, for example, Buy Clean California Act, AB-262 (2017–2018) at

https://leginfo.ca.gov/faces/billCompareClient.xhtml?bill_id=201720180AB262.

¹⁰⁴ U.S. Department of Labor, *Davis-Bacon and Related Acts*, <https://www.dol.gov/agencies/whd/government-contracts/construction>

¹⁰⁵ Congressional Research Service, *The Davis-Bacon Act: Institutional Evolution and Public Policy* (2007), https://www.everycrsreport.com/files/20071130_94-408_69fb5d40cbc4e365e521ca9867058f812216d429.pdf

Hour Division conducts surveys of projects to gather specific wage rate data.¹⁰⁶ Consider using the Bureau of Labor Statistics to improve the calculations.

- Modify the regulations at 29 CFR § 1.6(c)(3)(ii) to change the effective date for Davis-Bacon wage determinations from the date of loan closing to earlier in the loan process, specifically the date HUD accepts a complete application for firm commitment of FHA insurance. This change would provide contractors with certainty in wage determinations at the start of construction and is consistent with the determination by HUD’s General Counsel’s office that a multifamily development has been “federalized” after the filing of an application for mortgage insurance. Pending completion of the regulatory change, DOL could issue a blanket regulatory waiver to effectuate the change or streamline its hardship-based waiver process under 29 CFR § 1.8.

In addition, subregulatory policies, such as the following, were recommended to reduce the cost and administrative burden of new construction and substantial rehabilitation of affordable and workforce rental housing:

- By statute and regulation, HUD’s programs limit the percentage of space that can be dedicated to and the percentage of project income that can be derived from, commercial uses, ensuring the essential character of HUD-funded multifamily construction projects is residential. Updated policy could recognize a broadened range of project components as material components of Residential projects that contribute to the residential nature of the project, rather than as being deemed non-residential space, including amenities common in rental properties today such as fitness centers, club houses, and pools.
- Update subregulatory policy concerning the categorization of construction on new developments to recognize that advances in Residential construction building and materials allow for more routine construction of residential buildings of six stories, which is impeded by the current subregulatory policy generally limiting Residential construction to four stories.
- Additionally, providing clarity on the categorization of wages will assist developers of affordable housing in reducing excessive compliance-related costs. There has recently been confusion created by varying applications of sub-regulatory guidance and informal communications issued by the Department of Labor in lieu of previously published joint HUD and DOL guidance. As a result, there has been an increase in questioning of the wage determinations being assigned in connection with HUD-insured developments and a corresponding increase in potential compliance costs in resolving challenges to the wage determinations. Importantly, HUD’s Office of Inspector General has recently issued an audit report recommending consultation between HUD and the Department of Labor to clarify a consistent policy for the application of wage determinations.¹⁰⁷

¹⁰⁶ U.S. Department of Labor, Wage and Hour Division, “Residential Construction,” <https://www.dol.gov/agencies/whd/government-contracts/construction/surveys/residential>.

¹⁰⁷ OIG Audit Report Number: 2021-PH-0001. Wage Determinations for FHA-Insured Multifamily Construction Projects, <https://www.hudoig.gov/reports-publications/report/wage-determinations-fha-insured-multifamily-construction-projects>.

HUD's experience implementing the multiple wage determinations confirms the challenges identified by stakeholders; and in response to an Office of the Inspector General report, HUD will consult with Department of Labor to identify administrative actions that could reduce unnecessary burdens in the construction of federally-funded or federally-assisted housing while ensuring compliance with the Davis-Bacon Act.

Support construction training programs

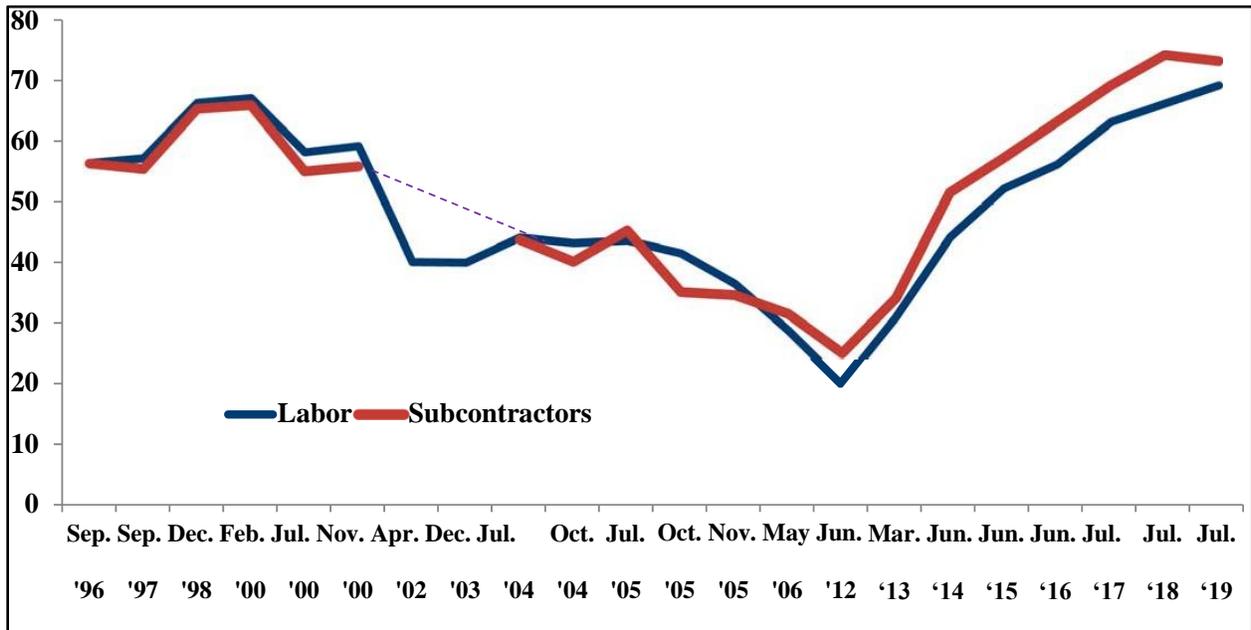
The increasing need for more construction workers was mentioned in the roundtables and comment letters. A survey conducted by the National Association of Home Builders of its members found 85 percent of responding builders expected the cost and availability of labor to be the most significant challenge in 2020.¹⁰⁸ The U.S. Bureau of Labor Statistics (BLS) reported approximately 334,000 construction industry job openings in July 2020 (preliminary data), as shown in Figure 5 **Error! Reference source not found.**, with vacancies expected to reach an annual average of 733,900 during the 10-year period ending 2029.¹⁰⁹ Labor shortages can increase costs through higher wages and subcontractor bids, longer construction times if laborers are less experienced (and even greater costs if inadequately trained laborers cause errors requiring rework), and increased on-site project management. As construction projects take longer and cost more, some builders may forgo new residential projects.¹¹⁰

¹⁰⁸ NAHB, *Labor Shortages Remain Top Concern for Builders*.

¹⁰⁹ Bureau of Labor Statistics, "Occupational separations and openings," <https://www.bls.gov/emp/tables/occupational-separations-and-openings.htm>.

¹¹⁰ National Association of Home Builders, *Labor Shortages Still Hurting Affordability* (Washington, DC: NAHB, 2019), <http://eyeonhousing.org/2019/08/labor-shortages-still-hurting-affordability/>.

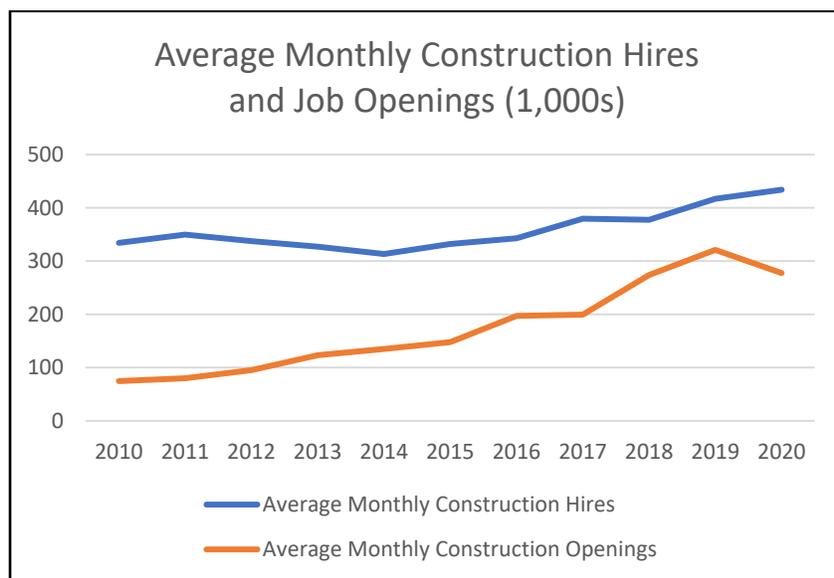
Figure 5: Labor and subcontractor shortages have increased



Note: Average percent for 9 different trades: Carpenter-Rough, Carpenter-Finished, Electricians, Excavators, Framing crews, Roofers, Plumbers, Bricklayers/Masons and Painters
 Source: National Association of Home Builders, *Labor Shortages Still Hurting Affordability* (Washington, DC: NAHB, 2019), <http://eyeonhousing.org/2019/08/lot:abor-shortages-still-hurting-affordability/>.

Construction labor markets have been tightening since 2010 and slackened only recently due to the effects of the pandemic shutdowns. Figure 6 shows the annual average monthly level of hires and unfilled job openings in construction from BLS' Job Openings and Labor Turnover Survey. Unfilled openings have grown significantly faster than hires over the period prior to 2020 (through July).

Figure 6. Construction job openings have been increasing



Source: Bureau of Labor Statistics, “Job Openings and Labor Turnover Survey,” <https://www.bls.gov/jlt/jltover.htm#purpose>.

To address the need for skilled construction workers requires more effective partnerships between employers and educators and investment in talent development and on-the-job training. Apprenticeship programs have a long history of producing skilled workers in the construction industry; increased Registered Apprenticeship opportunities will benefit both workers and employers. To support the next generation of skilled workers, the Administration has called on Congress to increase investment in Career and Technical Education to provide every high school student in America access to high-quality vocational education.

Construction training is supported by Section 3 of the Housing and Urban Development Act of 1968 as amended by the Housing and Community Development Act of 1992, which requires that employment and other economic opportunities generated by federal financial assistance for housing and community development programs be directed to the greatest extent feasible to low- and very low-income persons, particularly those who receive government assistance for housing and are proximate to the project. HUD issued a final rule in September 2020 to create more effective incentives for employers to retain and invest in their low- and very low-income workers, streamline reporting requirements by aligning them with typical business practices, provide for program-specific oversight, and clarify the obligations of entities covered by Section 3.¹¹¹ The purpose of those changes is to reduce the regulatory burden while increasing the effect of the requirements for low- and very low-income persons and increasing

¹¹¹ “Enhancing and Streamlining the Implementation of ‘Section 3’ Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses: A Proposed Rule by the Housing and Urban Development Department on 04/04/2019,” *Federal Register*, <https://www.federalregister.gov/documents/2019/04/04/2019-06495/enhancing-and-streamlining-the-implementation-of-section-3-requirements-for-creating-economic>

compliance with Section 3 requirements. For example, HUD proposed focusing on labor hours rather than new hires and allowing employers to determine an individual's qualification as a Section 3 worker at the time of hire. The changes support efforts to provide individuals with a full-time job sustained over a long period to enable a worker to gain skills and progress toward self-sufficiency.

One recommendation was for HUD to emphasize competency-based education for Section 3 workers to give them competencies that are stackable, portable and recognizable and add value to the contractor for which they work. That recommendation is consistent with the work of the Department of Labor and Education to recognize and support competency-based education.

The Advisory Council on Historic Preservation (ACHP) Traditional Trades Training Task Force was formed in May 2020 to promote the development of a robust workforce in the skilled preservation trades. This specialized field requires both an environment of lifelong learning and skills-based training outside of modern-day construction techniques and advanced degrees. Members of the Task Force include representatives of the Department of the Interior, National Park Service, Department of Education, National Trust for Historic Preservation, and other individuals with historic preservation, education, and architecture expertise. The Task Force's goal is to build a preservation ethic in construction trades and highlight the worth of the skilled craft worker. The Task Force will consider key issues regarding preservation trades credentialing, apprenticeships, and curriculum development. By exploring current opportunities and future possibilities, the group will seek to develop recommendations for federal action.

The Administration is pursuing many other regulatory reforms that will make housing more affordable and support greater supply. Table 1 contains a more complete list of the actions the Federal Government is taking to reduce regulatory burdens and support greater housing supply to meet the needs of American families across the income spectrum.

Table of federal regulatory recommendations

The agencies participating in the fact-finding for this report considered changes to statutes, regulations, and guidance, as well as improvements in processes, to reduce regulatory barriers. Table 1 identifies specific changes to federal regulations that (1) have been completed, (2) are in the process of being implemented, or (3) are under review. The table captures the wide range of actions the Administration has undertaken to increase housing supply and decrease housing costs, but it is not an exhaustive list.

Table 1: Federal Regulatory Recommendations

Agency	Topic	Recommendation	Citation	Action
ACTIONS COMPLETED				
DOI	Environmental review	Streamlined agency consultation process under Endangered Species Act to make it timely, efficient and predictable.	50 CFR Part 402	Completed
DOL	Labor	Adopted a regulation that accounts for updated wages when determining an increase in the salary level threshold for overtime eligibility, but does not include an automatic increase of the overtime salary threshold or change the duties test. The Overtime Final Rule, effective January 1, 2020, adds clarity for employers and allows them to use bonuses and incentive payments to satisfy up to 10 percent of the standard salary level in recognition of evolving pay practices. For example, bonuses earned by construction project and site managers may now count toward reaching that salary level to attain exempt status.	29 CFR 541	Completed
DOL	Labor	Adopted a regulation that clearly defines what is required to be deemed a joint employer under the Fair Labor Standards Act. The regulation should focus on whether the potential joint employer actually exercises control. The regulation, effective March 16, 2020, breaks down barriers that keep companies from constructively overseeing, guiding and helping their business partners. For small	29 CFR 791	Completed

Agency	Topic	Recommendation	Citation	Action
		business owners and employees, the relationship and the guidance coming from other contractors, as is often the case in the construction industry in which prime contractors subcontract work to multiple layers of lower-tier subcontractors, can greatly improve the workplace and help create jobs.		
DOL	Labor	Provided clarity under the Fair Labor Standards Act on when a true employment relationship is created. This will increase willingness to cooperate and form relationships and could reduce contractors' and sub-contractors' costs.		Completed
DOL	OSHA standards	Adopted changes in the use of Beryllium in construction to: (1) more appropriately tailor the requirements of the construction and shipyards standards to the particular exposures in these industries in light of partial overlap between the beryllium standards' requirements and other OSHA standards; (2) more closely align the shipyards and construction standards to the general industry standard, where appropriate; and (3) clarify certain requirements with respect to materials containing only trace amounts of beryllium.	29 CFR 1910	Completed
DOT	Pilot Program for Transit Oriented Development (TOD) Planning	Funding notification includes criteria for TOD planning and development, including actions that reduce regulatory barriers that unnecessarily raise the costs of housing development or impede the development of affordable housing.		Completed
DOT	Helping Obtain Prosperity for Everyone (HOPE)	Funding notification includes criteria to identify proposed actions that reduce regulatory barriers that unnecessarily raise the costs of housing development or impede the development of affordable housing near existing transit assets.		Completed

Agency	Topic	Recommendation	Citation	Action
EPA	Clean Water Act	Published a final rule to implement Section 401 of the Clean Water Act (CWA) in June 2020. The rule increases the transparency and efficiency of the 401 certification process and promotes timely review of infrastructure projects, streamlining the process for constructing new energy infrastructure projects.	40 CFR 121	Completed
EPA	Navigable waters	With the Department of the Army, published a final Navigable Waters Protection Rule in April 2020, clarifying application of the rule through streamlining definitions, identifying clear exclusions, and defining terms. In more clearly distinguishing between federally protected waterways and state protected waterways, the rule reduces uncertainty, which previously created barriers for property owners and others.	85 FR 22250	Completed
EPA	Stormwater management	Modified the 2017 Construction General Permit (CGP) (effective 2017-2022) on June 27, 2019, to clarify individual operator responsibilities in multiple operator scenarios, remove references to “joint and several liability,” and revise three requirements to align more closely with the Construction and Development Effluent Guideline text. Developers and builders must seek coverage under the CGP for construction that disturbs more than 1 acre, or less than 1 acre within a larger common plan of development, such as an individual builder constructing a home on a single building lot within a residential subdivision. The EPA CGP is a NPDES permit issued under the Clean Water Act for those areas where EPA is the NPDES permitting authority. It serves as a model for states when they develop their own stormwater permitting requirements under the federal Clean Water Act.		Completed
HUD	Environmental review	Delegated more environmental responsibilities to state and local governments.	24 CFR Part 58	Completed

Agency	Topic	Recommendation	Citation	Action
HUD	Environmental review	Published a notice that provides environmental review streamlining and relief of administrative burdens for small and rural public housing agencies.	FR-6115-N-02	HUD
HUD	Environmental review	Revised rules on mandatory separation distances between HUD-assisted projects and “hazardous” materials, as defined in regulations at 24 CFR 51.201, to better align HUD requirements with industry standards, effective February 2020. Specifically, HUD removed liquified petroleum gas (LPG or propane) tanks 1,000 gallons or less that are in compliance with the National Fire Protection Association Code 58, 2017, from coverage under the HUD separation distance requirements. Before this action, HUD’s separation distances for propane tanks of a size commonly used in residential applications significantly differed from industry and state standards, forcing HUD-assisted projects to implement costly mitigation not required of other housing development and not necessary for safety.	24 CFR 51.201	Completed
HUD	Fair housing	Issued the Protecting Community and Neighborhood Choice final rule in August 2020, under which grantees’ certifications that they are affirmatively furthering fair housing will be deemed sufficient provided the grantee took any action during the relevant period rationally related to promoting fair housing, such as helping eliminate housing discrimination.	85 FR 47899	Completed
HUD	Fair housing	Brought uniformity, clarity, and certainty by updating the Disparate Impact regulation in September 2020 to better reflect the Supreme Court’s 2015 ruling in Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.	24 CFR Part 100	Completed

Agency	Topic	Recommendation	Citation	Action
HUD	FHA Multifamily	Issued a Housing Notice and related Mortgagee Letter in its Multifamily Accelerated Processing (MAP) Guide in March 2020 revising the policy that had required 3 years of post-construction sustained occupancy before the date of application for FHA mortgage insurance for refinancing or acquisition of existing properties under Section 223(f) of the National Housing Act (the "Three Year Rule"). The revised policy allows for applications for refinancing of newly built or substantially rehabilitated properties as soon as these properties achieve the applicable programmatic Debt Service Coverage Ratio for at least 1 full month.	Guidance	Completed
HUD	FHA Multifamily	Issued guidance on acceptable procedures for use of electronic signatures and electronic transmission and storage of documents and files pertaining to assisted multifamily housing properties.	Guidance	Completed
HUD	FHA Multifamily	Revised requirement to allow for delayed funding of Operating Deficit escrow on 221(d)(4) transactions until construction completion. The requirement (for non-Pilot transactions) to fund the escrow at Initial Endorsement results in a funded and unused escrow held by the lender through the construction period, though the Operating Deficit escrow is not needed until after Final Endorsement. The timing of the funding creates unnecessary interest carry costs when the equity bridge loan is used to fund the escrow.	Guidance	Completed
HUD	FHA Multifamily	Reviewed potential revisions to the Subordination Agreement. The 2014 Subordination Agreement was generally accepted by state and local jurisdictions that provided subordinate financing for affordable transactions. The new form has presented challenges that are preventing these important sources of financing from being combined with HUD transactions.	Guidance	Completed

Agency	Topic	Recommendation	Citation	Action
HUD	Manufactured housing	Extended Alternative Construction Letters and significantly reduced production and inspection reporting requirements for maintaining these letters, reducing the administrative burdens of building innovative homes by more than one-half.	24 CFR 3282.14	Completed
HUD	Manufactured housing	Clarified recreational vehicles are not regulated by HUD to provide consumers and industry clarity on structures subject to HUD's rules and regulations.	24 CFR 3282.15	Completed
HUD	Manufactured housing	Updated the formaldehyde emissions requirements aligning HUD's requirements with EPA's requirements to reduce regulatory obligations and eliminate a previously implemented health notice that was not required in any other housing type.	24 CFR Part 3280 and 3282	Completed
HUD	Manufactured Housing	Published a final rule in January 2021 to reflect the third set of recommendations adopted by the Manufactured Housing Consensus Committee (MHCC) to revise the Construction and Safety Standards. The rule reduces the regulatory burden and allows more design flexibility by eliminating the need for manufacturers to obtain special approvals from HUD for certain construction features and options.	24 CFR Part 3282	Completed
HUD	Native American programs	Convened the Tribal Housing and Related Infrastructure Interagency Task Force to coordinate and streamline environmental reviews for tribal housing and related infrastructure to reduce development costs and production time.		Completed
HUD	Project based vouchers	Revisited process for Subsidy Layering Reviews (SLR) to create efficiency, consistency, and reliability. SLR conducted by both the field office and headquarters could create a backlog, with the delay worsening with HUD staffing shortages. States could take over reviews, but they also have capacity and staffing challenges.		Completed

Agency	Topic	Recommendation	Citation	Action
Treasury	Low-Income Housing Credits (LIHTC)	Issued proposed regulations to restore the availability of sample sizes that were acceptable before the current regulations, not to exceed the 20 percent minimum, to reduce housing credit agencies' burden of monitoring compliance with LIHTC requirements in smaller projects.	85 F.R. 40610	Completed
Treasury	Capital Magnet Fund (CMF program)	Incorporated questions in the Capital Magnet Fund (CMF) program application that evaluate an applicant's prospective and past efforts to partner with local governments undertaking efforts to reduce regulatory barriers to affordable housing.	Included in FY2020 CMF Application	Completed
USDA	Lending programs	Introduced new single close new construction process to 1) increase liquidity for lenders by permitting them to securitize the loans up to 12 months sooner than in the past; 2) free up capital for homebuilders to invest in more new construction projects; and 3) provide low- and moderate- income households with an affordable opportunity to purchase new dwellings.	7 CFR 3555	Completed
USDA	Lending programs	Introduced the payment of loss claims at the time of foreclosure instead of after 9-month marketing period to 1) improve lender liquidity because claims are paid more timely and 2) reduce agency staffing needs in administering the payment of loss claims. Improving lender liquidity facilitates additional investments in rural areas with the potential of increasing loan affordability.	7 CFR 3555	Completed
USDA	Lending programs	Removed a maximum interest rate cap that posed a regulatory burden on lenders trying to make small loans in rural areas. Lenders under certain interest rate environments had been unable to make profitable small loans. The change increased the availability of mortgage credit for affordable homes in rural areas.	Hand Book-1-3555	Completed

Agency	Topic	Recommendation	Citation	Action
USDA	Manufactured housing	Eased restrictions on the acquisition of existing manufactured housing units, on a pilot basis, increasing the inventory of affordable housing in rural areas.		Completed
ACTIONS IN PROCESS				
Interagency	Environmental review	Led by the Council on Environmental Quality, agencies across the Federal Government have undertaken significant reviews of their environmental review regulations to better balance their missions with their statutory obligations under the National Environmental Policy Act (NEPA).		In process
Interagency	Lessons from COVID-19 response	Agencies are tracking the success of the activities undertaken to further reduce regulatory barriers in responding to the COVID-19 challenges to see if they are effective and to determine which ones should be made permanent or may require statutory changes.		In process
DOE	Energy codes	DOE makes determinations for updates to residential (IECC) and commercial (ASHRAE 90.1) building energy codes regarding increases in energy efficiency over the previous version of each code. DOE's role in evaluating the cost-effectiveness of building codes provides key information to Federal and State governments in their adoption decisions. DOE is reviewing agency assessment methodologies to ensure an accurate calculation of increases in energy efficiency and life-cycle cost-effectiveness for building code updates.		In process
DOE	Energy efficiency standards	Proposed an interpretive rule that would determine, for residential gas furnaces, whether condensing and non-condensing are performance characteristics that cannot be eliminated by the imposition of energy efficiency standards. This would help affordability by sparing homeowners of older properties with aging gas furnaces from needing to make costly home renovations when the furnace must be replaced.		In process

Agency	Topic	Recommendation	Citation	Action
DOE	Energy efficiency standards	Engaged in a rulemaking to issue energy efficiency standards for manufactured homes, receiving input from stakeholders, and consulting with HUD. Proposed rule is expected in 2021 with final rule in 2022, in accordance with a court-approved consent decree.		In process
DOE	Energy efficiency standards	Published a proposed rule to streamline DOE's test procedure waiver decision-making process. DOE would be required to notify an applicant for an interim waiver of the disposition of the request, in writing, within 30 business days of receipt of the application. Otherwise, the request for interim waiver would be deemed granted based on the criteria in DOE's waiver regulations. This proposal would reduce delays in DOE's current process for considering requests, which can result in significant delays for manufacturers bringing new and innovative products to market.	10 CFR § 430.27	In process
DOI	Environmental review	Modernize and clarify environmental review regulations in coordination with the Council on Environmental Quality to reflect current technologies and agency practices, eliminate obsolete provisions, and improve readability of the regulations.		In process
DOI	Historic preservation	Proposed rule published March 2019 to implement the 2016 Amendments to the National Historic Preservation Act, extend the timeline for the Keeper to respond to appeals, and ensure a proposed district will not be listed if the owners of a majority of the land area in a proposed historic district object to the listing.	36 CFR part 60	In process
DOI	Native American lending	Develop portal that allows HUD access to DOI's Trust Asset and Accounting Management System (TAAMS) to access title search records and the certified title status report when the Office of Loan Guarantee is insuring tribal properties to improve processing efficiency and hasten the issuance of loan guarantee certificates to lenders to improve the home buying process and increase homeownership on Tribal Trust lands.		In process

Agency	Topic	Recommendation	Citation	Action
DOL	OSHA standards	Proposing corrections and amendments to the final standard for cranes and derricks published in August 2010. The standard contains provisions designed to improve crane safety and reduce worker injury and fatality. The proposed amendments include: 1) correct references to power line voltage for direct current (DC) voltages as well as alternating current (AC) voltages; 2) broaden the exclusion for forklifts carrying loads under the forks from "winch or hook" to "winch and boom"; 3) clarify an exclusion for work activities by articulating cranes; provide four definitions inadvertently omitted in the final standard; 4) replace "minimum approach distance" with "minimum clearance distance" throughout to remove ambiguity; 5) clarify the use of demarcated boundaries for work near power lines; 6) correct an error permitting body belts to be used as a personal fall arrest system rather than a personal fall restraint system; 7) replace the verb "must" with "may" used in error in several provisions; and 8) resolve an issue of "NRTL-approved" safety equipment (e.g., proximity alarms and insulating devices) required by the final standard, but not yet available.		In process
DOT	Environmental review	Allow approved states to substitute their NEPA-comparable state environmental regulation (e.g., California Environmental Quality Act) for NEPA, removing the requirement for DOT projects in the approved states to conduct separate, duplicative environmental reviews under both NEPA and state law.	82 FR 45220	In process
EPA	Lead remediation	Evaluate opportunities to lower consumer costs for lead remediation in residential areas while still being protective by combining remediation projects for multiple media where lead is a concern (e.g., superfund lead soil removal, lead service replacement and lead testing for paint in homes).		In process

Agency	Topic	Recommendation	Citation	Action
HUD	Administrative process improvements	Published proposed regulations in September 2019 implementing provisions of the Housing Opportunity Through Modernization Act of 2016 (HOTMA). The provisions are intended to streamline administrative processes and reduce burdens on public housing agencies and private owners. The proposed rule also aligns policies and procedures across program offices, where appropriate, to include programs that are administered by HUD's Office of Community Planning and Development, including the HOME Investment Partnerships, Housing Trust Fund, and Housing Opportunities for Persons With AIDS programs. Alignment will reduce disparities between the programs and better simplify program administration for HUD grantees that manage multiple programs.	84 FR 48820	In process
HUD	Environmental review	Review the types of activities determined by HUD to be "choice limiting." Allow entities to acquire property without HUD funds during the environmental review process without violating HUD's environmental rules related to choice limiting action.	24 CFR 58.22	In process
HUD	Environmental review	Make environmental reviews less burdensome: (1) reduce duplication, (2) reduce length of time for review, (3) reduce public comment period, (4) expand categorical exclusions for single family activities and activities during disaster, (5) streamline historic preservation requirements with DOI and ACHP using available tools under Section 106 regulations, (6) apply less restrictive environmental review requirements for existing HUD projects obtaining new assistance (new capital or rental subsidies), and (7) reduce and streamline environmental review requirements for small rural PHAs with rehabilitation and construction activities with a cost of more than \$100,000 as instructed by the Economic Growth Act.	24 CFR Parts 58/50	In process

Agency	Topic	Recommendation	Citation	Action
HUD	Environmental review	Adopt an infrastructure categorical exclusion consistent with USDA Rural Development.	Parts 50/58	In process
HUD	Environmental review	Reduce inconsistencies in interpretations of requirements and regulations among different jurisdictions and reviews.	Parts 50/58	In process
HUD	Environmental review	Six HUD regional offices have executed regional programmatic agreements with their counterparts in EPA to facilitate faster compliance for sole source aquifer compliance and other regions are pursuing similar agreements.	50.4(d)/58.5(d)	In process
HUD	Environmental standards	HUD is comprehensively reviewing its noise policy in partnership with the Department of Transportation Volpe Center and evaluating revisions to streamline the process. These changes would impact all HUD programs.	24 CFR Part 51-B	In process
HUD	Fair housing	Housing Choice Vouchers are not accepted at many privately owned and operated apartments. A range of program requirements have been identified as barriers. HUD is in the process of reviewing and streamlining some of those requirements. Additionally, HUD has established a landlord task force to better serve and connect with landlords.		In process
HUD	FHA Single Family	Modernize FHA IT systems to reduce delays and costs, have more efficient transfer of documents, and increase the number of electronic processes.		In process
HUD	FHA Single Family	Consider accepting private flood insurance on FHA loans to increase competition for insurance and lower consumers' costs.		In process
HUD	FHA Title I	Update FHA Title I financing to make it easier for manufactured housing lenders and borrowers to access financing.		In process
HUD	HOME	A HOME proposed rule is on OMB's semi-annual agenda that will address a number of issues raised by stakeholders. Items include: 1) streamline and simplify property standard requirements for	24 CFR Part 92	In process

Agency	Topic	Recommendation	Citation	Action
		rehabilitation of rental housing, rehabilitation for homeowner housing, and homeownership housing acquired with HOME down-payment assistance (92.251); 2) expand utility allowance requirement to include the public housing authority (PHA) established utility allowance; 3) eliminate the requirement that a CHDO continue to own a rental housing project throughout the period of affordability; 4) correct drafting issues related to allowable CHDO roles; 5) minor streamlining of other CHDO requirements; and 6) make certain Opportunity Zone-related changes.		
HUD	Housing Choice Vouchers	HUD should issue clear guidance to PHAs about how to apply HCV to shared living, specifically how to assess fair market rental value (FMR).		In process
HUD	Manufactured housing	Adopt the fourth set of recommendations by the MHCC to revise the Construction and Safety Standards		In process
HUD	Manufactured housing	Undertake efforts to complete HUD Code updates more quickly to implement innovation and best practices and expedite the Manufactured Housing Consensus Committee (MHCC) process.		In process
HUD	Moving to Work	Implement the expanded Moving to Work Demonstration authorized by Congress.		In process
HUD	Residential care facilities	Revise the “Three Year Rule” by eliminating the regulatory provision mandating any non-FHA insured facility seeking Section 232 insurance be at least 3 years out from completion of construction or from initial occupancy. This deregulatory amendment is particularly important during COVID-19 recovery, when non-FHA sources of financing will be more limited than pre-COVID.	24 CFR 232.902	In process
USDA	Construction materials	Proposed rule provides categorical exclusions for restoration projects such as removing trees through commercial timber harvesting to expedite the time and amount of lumber available.	84 FR 27544	In process

Agency	Topic	Recommendation	Citation	Action
USDA	Rental assistance	Proposed regulatory change to replace Conventional Rents for Comparable Units (CRCU) used in all multifamily direct lending and asset management with the industry standard Fair Market Rents (FMRs).	7 CFR Part 3560	In process
RECOMMENDATIONS UNDER REVIEW				
DOT	Better Utilizing Investments to Leverage Development (BUILD)	Evaluate the opportunity to add language in future funding notices that requires the applicant to remove artificial barriers to housing, including, but not limited to, relaxation of density, height, and use of zoning restrictions.		Under review
DOT	Infrastructure for Rebuilding America (INFRA)	Evaluate the opportunity to add language in future funding notices that requires the applicant to remove artificial barriers to housing, including, but not limited to, relaxation of density, height, and use of zoning restrictions.		Under review
DOT	Capital Investment Grant (CIG) Program	Evaluate the opportunity to add language to the land use guidance document and CIG guidance that require the applicant to remove artificial barriers to housing, including, but not limited to, relaxation of density, height, and use of zoning restrictions.		Under review
HUD	FHA Single Family	Issue guidance that will allow servicers to use new technology to more efficiently and effectively meet the face-to-face meeting requirement.		Under review
HUD	Manufactured housing	Amend Onsite Completion of Construction rule to better enable manufactured housing to meet consumer demands		Under review
HUD	Manufactured housing	Revise the regulations pertaining to manufacturer handling of consumer complaints and associated remedies for systemic production issues (Subpart I).		Under review
HUD	Manufactured housing	Address foundation requirements for freezing climates.		Under review

Agency	Topic	Recommendation	Citation	Action
Treasury	LIHTC	Solicit public input on the statutory and administrative rules governing the LIHTC tax incentive. Following receipt of stakeholder input, Treasury could undertake a policy process to issue additional administrative reforms and propose legislative reforms of the tax incentive. Areas of consideration may include providing incentives or instituting requirements to control costs, encouraging innovative construction practices, aligning and streamlining targeting requirements under Qualified Allocation Plans, and implementing data and reporting requirements to improve the efficiency of the LIHTC incentive, limit costs, and prevent fraud.		Under review
Treasury	LIHTC	Clarify meaning of “federally- or state-assisted” for exception from “ten-year rule” to remove obstacle preventing taxpayers from acquiring and rehabilitating buildings. This clarification may take the form, for example, of a sub-regulatory safe harbor.		Under review
Treasury	LIHTC	Prevent abusive “planned foreclosures” of LIHTC buildings from terminating the requirement that these buildings continue to satisfy affordability and habitability requirements during the “extended use period” (LIHTC extended-use requirements). The extended-use period generally lasts at least 15 years after the end of the years during which violations of the affordability and habitability requirements would result in adverse tax consequences. Although the LIHTC extended-use requirements generally end if the building is acquired through foreclosure, a statutory anti-abuse rule prevents this if it is determined that the LIHTC building’s “acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate” the LIHTC extended-use requirements. The proposed anti-abuse regulations would make that determination for specified foreclosure acquisitions, including between related parties.		Under review

Agency	Topic	Recommendation	Citation	Action
Treasury	LIHTC	To increase alignment with Opportunity Zones and effectiveness in Qualified Census Tracts (QCT), either— (i) provide a nationally applicable definition of “concerted community revitalization plan”; or (ii) authorize each HCA to determine the meaning of that term for allocations that it makes.		Under review
Treasury	LIHTC	Recommend Congress explore incentives to limit high development costs on LIHTC projects, including (i) redefining the computation of LIHTCs earned to incentivize developers to constrain costs (such as limiting credits on a per-residential unit or per square-foot basis); and (ii) causing HCA determinations of feasibility and viability to consider innovative housing construction practices (such as manufactured and prefabricated housing), to lower upfront construction and ongoing maintenance costs. Reforms should, however, avoid an outcome whereby cost limits lead to poor construction and lower quality housing.		Under review
Treasury	CMF program	To lower costs, consider whether and how CMF compliance and regulatory requirements common to key affordable housing financing resources, particularly LIHTC, could be better aligned to increase efficiency and reduce duplication. An update of the CMF regulations would be needed to implement.		Under review
Treasury	CMF program	Explore how to integrate training on successful local partnering strategies for working with state and local jurisdictions to reduce regulatory barriers for CMF applicants and awardees—such as incorporating an Educational Component Module into future CMF funding rounds.		Under review

SECTION 5. STATE, LOCAL, AND TRIBAL OPPORTUNITIES

Increasingly strict local and state government regulations have driven up the cost of building new homes and prevented housing supply from keeping up with demand.¹¹² Regulatory barriers are particularly costly in large metro areas along both East and West Coasts, including some of the strongest labor markets. However, some forms of regulatory barriers, such as restrictions on apartments, manufactured housing, and other low-cost housing types, are nearly universal across the country.

Local land use regulations affect all housing development, including federally-assisted housing. The term “land use regulations” is used to refer to the wide range of ordinances and procedures local jurisdictions adopt to govern development within their boundaries, including zoning laws, subdivision rules, and adequate public facility ordinances. While one often thinks of restrictive land use regulations in the context of highly regulated markets with high priced housing, many communities throughout the country limit the production of the “missing middle” housing, that set of diverse, unsubsidized housing options that blend into single family neighborhoods, ranging from bungalow courts, townhouses, duplexes to fourplexes, and courtyard apartments, which is necessary to meet the spectrum of housing needs.

Local jurisdictions’ authority to enact land use regulations is governed by the states. Ultimately, each state determines the amount of authority it will provide local governments to govern development. States also impact housing through a range of regulations, including building codes, environmental policies, tax structure, and many others. Thus, states have an important role to play in increasing housing supply. The Federal Government can support and encourage state and local efforts to revise their land use regulations to increase housing supply, reduce price pressures, and increase affordability with strategies that meet the unique conditions of local housing markets and residents’ needs.

This is a critical time to take action to increase housing production. As the COVID-19 response has reminded communities of the importance of nurses, teachers, first responders, grocery clerks, skilled laborers, factory workers, and janitors as neighbors, housing these essential front-line workers continues to be a challenge in much of the country. Starter homes, garden apartments, and other components of the “missing middle” housing are not being produced to satisfy demand. Allowing more building opportunities can serve as a stimulus for the construction industry. It would “get workers back to work, provide safe and affordable living for those hard hit by this pandemic and get property taxes

¹¹² Joseph Gyourko and Raven Molloy, *Regulation and Housing Supply* (Philadelphia, PA: The Wharton School of the University of Pennsylvania, 2015), <https://faculty.wharton.upenn.edu/wp-content/uploads/2017/05/Regulation-and-Housing-Supply-1.pdf>; Chang-Tai Hsieh and Enrico Moretti, “Housing Constraints and Spatial Misallocation,” *American Economic Journal* 11, no. 2 (2019): 1–39, <http://eml.berkeley.edu/~moretti/growth.pdf>

and other revenue flowing.”¹¹³ A research brief notes continued supply constraints will result in low-price home and rental prices continuing to increase faster than prices for high-price homes, widening residual income inequality between low- and high-income households and hurting the ability of low-income households to build financial resources to protect them from future economic shocks.¹¹⁴ Yet, in the wake of the COVID-19 pandemic, many longstanding patterns may change in response to different housing preferences, greater acceptance of teleworking, and new social practices. Local jurisdictions may want to avoid making sweeping changes before the nature and scope of those permanent changes (if any) are better known.

This section discusses actions governments are taking to increase housing supply. The report does not identify “best practices,” because the effectiveness of a specific policy depends on the local context, including the housing market.

State actions

State governments have a wide range of legal and financial tools that can be deployed to influence local governments’ decisions on land use regulations. This section briefly outlines some of the tools states can use and gives some examples of current policies.

State and local tax policy

Tax policies can encourage or discourage the development and density of housing. For example, California’s Proposition 13, which limits property tax increases, is considered to have motivated jurisdictions to favor retail, office, and industrial properties over residential properties to compensate for a lack of property tax revenues with increased sales and business taxes, and high-end residential over other housing.¹¹⁵ States’ officials may want to consider reviewing their property tax system to ensure it does not create disincentives to behavior the state wants to encourage. Implementing a land value tax, which charges a higher tax rate on land and a lower rate on structures, could encourage owners of expensive land to build more speedily and intensively. Pennsylvania authorized its cities to implement a split rate tax in 1913, charging a higher rate for land than buildings, and more than a dozen

¹¹³ Carol Galante, “Now Is the Time to Embrace Density,” *The New York Times*, May 12, 2020
<https://www.nytimes.com/2020/05/12/opinion/sunday/urban-density-inequality-coronavirus.html>.

¹¹⁴ Jung Hyun Choi, John Walsh, and Laurie Goodman, *Why the Most Affordable Homes Increased the Most in Price between 2000 and 2019* (Washington, DC: The Urban Institute, 2020)
<https://www.urban.org/research/publication/why-most-affordable-homes-increased-most-price-between-2000-and-2019>.

¹¹⁵ Bill Fulton, “How to Fix Proposition 13,” *The Planning Report*, July 18, 2018,
<https://www.planningreport.com/2018/07/18/bill-fulton-how-fix-proposition-13>

cities have chosen to do so.¹¹⁶ Connecticut recently authorized a pilot program to explore land value taxation, but results are not yet available.¹¹⁷

Local jurisdictions also have opportunities to influence development through tax policy. For example, Akron, Ohio, implemented a tax policy designed for a city fighting decline. Its Residential Property Tax Abatement is a 15-year tax abatement on residential investments and construction. If a resident were to invest \$10,000 to replace heating and cooling systems in her home, for example, the taxable assessment would not rise to reflect the new investment for 15 years.¹¹⁸ Tax increment financing is another tool available to jurisdictions to provide an incentive for housing development.¹¹⁹

Incentives

Another financial tool available to states is using funding to encourage localities to undertake regulatory reforms.

- Utah recently updated its General Plan requirements for counties and municipalities to include a moderate-income housing plan element to meet the needs of people of various income levels living, working, or desiring to live or work in the community by, among other things, adopting at least 3 of 23 recommended strategies.¹²⁰ Each jurisdiction must submit an annual report to the state to indicate its progress, including the number of housing units affordable at various income levels. Failure to adopt or implement the plan will limit the jurisdiction's ability to access Utah's Transportation Investment Fund.
- In 2004, Massachusetts adopted a statewide Smart Growth Overlay District (also known as Chapter 40R), which offers local governments financial incentives to increase allowable density near transit stations. The assistance is intended to offset increased demand for local public services, including schools, that accompanies new housing. Cities have a further incentive, as units adopted under the Chapter 40R program satisfy certain requirements under Massachusetts' Chapter 40B, which provides for by-right housing approvals in cities that do not allow sufficient affordable housing to be constructed.¹²¹ Relatively few jurisdictions have chosen

¹¹⁶ Joshua Vincent, "Non-Glamorous Gains: The Pennsylvania Land Tax Experiment," *Strong Towns*, March 6, 2019, <https://www.strongtowns.org/journal/2019/3/6/non-glamorous-gains-the-pennsylvania-land-tax-experiment>.

¹¹⁷ State of Connecticut Office of Policy and Management, *Land Value Taxation Pilot Program* (n.d.), <https://portal.ct.gov/OPM/IGPP-MAIN/Services/Land-Value-Taxation-Pilot-Program>.

¹¹⁸ Joshua Drucker, Geon Kim, and Rachel Weber, "Did Incentives Help Municipalities Recover from the Great Recession? Evidence from Midwestern Cities," *Growth and Change* 50, no. 3 (2019): 894–925. See also City Of Akron, *Residential Tax Abatement Community Reinvestment Area*, <https://www.akronohio.gov/cms/ResidentialTaxAbatement/index.html>.

¹¹⁹ See, for example, Anita Yadavali, Brenna Rivett, James Brooks, and Christiana McFarland, 2020. (A Comprehensive Look at Housing Market Conditions Across America's Cities," *Cityscape* 22, no. 2: 111–131..

¹²⁰ Utah State Legislature, "Affordable Housing Modifications" (SB-1069) (bill text), <https://le.utah.gov/~2019/bills/static/SB0034.html>.

¹²¹ Ann Verrilli and Jennifer Raitt, *The Use of Chapter 40R in Massachusetts* (MAPC, 2009). http://www.mapc.org/wp-content/uploads/2017/09/Chapter_40R_Report.pdf

to adopt a smart growth overlay, likely because state law requires a two-thirds vote, making the effectiveness of Chapter 40R difficult to analyze.

- States allocate Low-Income Housing Tax Credits through a Qualified Allocation Plan (QAP), in which the state identifies priorities. These choices influence what gets built and where.¹²² States could adjust their QAPs to support projects in development-friendly jurisdictions. Mississippi revised its QAP to encourage development in Opportunity Zones.¹²³

State pre-emption for rent control and inclusionary zoning

Because local governments' authority to regulate land use is granted by state governments, states have the legal authority to limit local jurisdictions from adopting certain policies and practices. That is, state governments can pre-empt local regulations.¹²⁴ While pre-emption is not a new concept,¹²⁵ several states have begun using it more intentionally to limit rent control and inclusionary zoning.

- The majority of states pre-empt rent control.¹²⁶
- Several states, including Arizona, Tennessee, Texas, and Virginia, pre-empt local governments from adopting mandatory inclusionary zoning programs. Inclusionary zoning programs require developers to set aside some below-market rate units when building unsubsidized housing developments, which often increases the price of the other units.¹²⁷ Local governments in these states can create voluntary inclusionary zoning programs, offering density bonuses or other financial incentives to developers who choose to designate some units for below-market rate rents.

Housing targets

States that want to encourage or require local governments to produce more housing can set numeric targets for each local government, while allowing local jurisdictions flexibility in deciding how to reach

¹²² Ingrid Gould Ellen, Keren Horn, Yiwen Kuai, Roman Pazuniak, and Michael David Williams, *Effect of QAP Incentives on the Location of LIHTC Properties*, Multi-Disciplinary Research Team Report (Washington, DC: U.S. Department of Housing and Urban Development, Office of Policy Development and Research, 2015), https://www.novoco.com/sites/default/files/atoms/files/pdr_qap_incentive_location_lihtc_properties_050615.pdf.

¹²³ Mississippi Home Corporation, *Mississippi Home Corporation (MHC) Housing Tax Credit Program*, Program Bulletin #19-001 (Jackson, MS: MHC, January 9, 2019), https://www.novoco.com/sites/default/files/atoms/files/mississippi_memo_2019-2020_oz_allocation_010919.pdf.

¹²⁴ John Infranca, "The New State Zoning: Land Use Preemption Amid a Housing Crisis," *Boston College Law Review* (March 28, 2019), <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3756&context=bclr>.

¹²⁵ Anika S. Lemar, "The Role of States in Liberalizing Land Use Regulations," *North Carolina Law Review* 97, no. 1 (2019): rev. 293, <https://scholarship.law.unc.edu/nclr/vol97/iss2/2>.

¹²⁶ National Multifamily Housing Council, *Rent Control Laws by State* (2019), <https://www.nmhc.org/research-insight/analysis-and-guidance/rent-control-laws-by-state/>.

¹²⁷ Infranca, "The New State Zoning."

the target.¹²⁸ For instance, some communities might decide to concentrate new development along transit corridors or near job centers, while others choose to allow “gentle density” throughout all residential neighborhoods.

- Illinois, Connecticut, Rhode Island, and New Jersey, have implemented systems by which they periodically determine regional needs and then designate jurisdictional “fair shares” for developing housing at below market rents.¹²⁹ Enforcement is in part through a “builder’s remedy,” which allows developers to proceed with a project if the local government has failed to meet its target or submit a required plan to meet the need. These systems focus on providing housing for low-income households.
- California, Oregon, and Washington have adopted allocation systems that require local jurisdictions to plan for enough housing across all income levels to accommodate the projected population, submit their plans for review, and make local decisions in conformance with the plan.¹³⁰

Reduce costs

States and localities can support greater development by identifying ways in which regulations slow down development and increase costs. In places where land is expensive, allowing more housing units to be built per acre of land could be beneficial. In parts of the country where land is more affordable, reducing barriers that drive up design, materials, and soft costs could generate substantial savings.¹³¹

Zoning rules limit how much housing can be constructed on a given site in numerous ways; which specific rule is the binding constraint varies across locations. Even on land parcels zoned to allow multifamily housing, dimensional requirements such as maximum floor-to-area ratio, lot width, or setbacks may make a particular lot unusable or financially infeasible. Relaxing these requirements could allow developers to make more efficient use of vacant parcels. For instance, Philadelphia allows multifamily buildings on “skinny” lots (as narrow as 11 feet, compared with the typical 16-foot width) to support more infill development.¹³² North Carolina eliminated a minimum unit size for one- and two-unit dwellings.¹³³

¹²⁸ Roderick M. Hills, Jr., and David N. Schleicher, “Balancing the ‘Zoning Budget,’” *Case Western Reserve Law Review*, 62, no. 1 (2011): 81–133

https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5965&context=fss_papers.

¹²⁹ Christopher S. Elmendorf, “Beyond the Double Veto: Housing Plans as Preemptive Intergovernmental Compacts,” *Hastings Law Journal*, 71 (2019): 79-150.

¹³⁰ Elmendorf, “Beyond the Double Veto.”

¹³¹ Hannah Hoyt, *More for Less? An Inquiry into Design and Construction Strategies for Addressing Multifamily Housing Costs* (working paper, Harvard University Joint Center for Housing Studies, Cambridge, MA, 2020), <https://www.jchs.harvard.edu/research-areas/working-papers/more-less-inquiry-design-and-construction-strategies-addressing>

¹³² Philadelphia City Planning Commission, *Philadelphia Zoning Code Information Manual: Quick Guide* (2016), <https://www.phila.gov/media/20190305124635/Philadelphia-Zoning-Code-Quick-Reference-Manual.pdf>.

¹³³ General Assembly of North Carolina, “2019 Building Code Regulatory Reform” (HB-675) (bill text), <https://www.ncleg.gov/Sessions/2019/Bills/House/PDF/H675v4.pdf>.

In places where land is expensive, allowing more housing units to be built per acre of land is beneficial. In parts of the country where land is relatively cheap, reducing costs of design, materials, and soft costs could generate substantial savings.

Support development

Many models are available that make housing development easier or less expensive. These range from reducing discretionary processes, to supporting conversion of vacant commercial properties to residential units, to supporting community land trusts to promote long term affordability. Jurisdictions may want to review their current land use regulations and zoning ordinances to identify opportunities to better align the regulations with their housing needs.¹³⁴

Federal agencies can support local efforts through sharing strategies, engaging with jurisdictions that want to make improvements, and supporting innovation in areas such as regulation, construction, and community engagement. This report highlights an array of methods, techniques, and approaches adopted throughout the country aimed at increasing the supply of affordable housing. However, what might work in one part of the country might not work in another. Thus, states have an important role in giving localities flexibility to increase housing supply and meet their own diverse community needs.

By-right development. Allowing by-right development can decrease housing production costs because it eliminates the cost and delay of a discretionary approval process and reduces the price of land per unit. The American Enterprise Institute (AEI) considers this strategy an effective “market-based solution that would substantially ameliorate the current supply-demand imbalance.”¹³⁵ Several stakeholders emphasized the desire for market-driven solutions. Many statutes that allow up to four-unit buildings by right as a positive step, giving owners more choices for developing their land. Other strategies that support market activity should be reviewed and shared: “removing existing hurdles and preventing localities from developing new ones” was suggested as a good template.¹³⁶

Several states have taken action to increase local landowners’ ability to build “gentle density” options by-right.¹³⁷ A number of local jurisdictions have revised their zoning to increase density in strategic locations, for instance, around new transportation infrastructure or in mixed residential-commercial

¹³⁴ Community Builders developed a toolkit for Wyoming jurisdictions to help them align their zoning codes with their housing goals, available at: <https://communitybuilders.org/project/breaking-the-code-toolkit/>

¹³⁵ Edward J. Pinto and Tobias Peter, AEI comment letter, <https://www.regulations.gov/document?D=HUD-2019-0092-0305>

¹³⁶ Edward J. Pinto and Tobias Peter, AEI comment letter.

¹³⁷ Michael Andersen, “Here’s Oregon’s New Bill to Re-Legalize ‘Missing Middle’ Homes Statewide,” *Sightline*, January 10, 2019, <https://www.sightline.org/2019/01/10/oregon-missing-middle-homes-hb-2001/>.

areas.¹³⁸ Denver, CO adopted a hybrid form-based and context-based zoning code in 2010, which a roundtable participant noted has provided more options for landowners. As with most land use regulations, the appropriate strategy depends on the local context.

Form-based codes. Form-based codes reflect a particular type of “place” or built environment based on a collective or shared vision of the kind of community resident’s desire, with accepted cultural norms and social habits. The goal is to establish guidelines for the design of streets, open space, and other physical features of the built environment rather than on the separation of building types or uses typical of traditional zoning. Ideally, the form-based code reflects a mix of uses, serving as a land development plan that allows most daily needs to be located in close proximity to where people live, work, and play. Its focus should be on regulating the form of the built environment, promoting interconnected streets that center the pedestrian, and paying particular attention to neighborhood characteristics that reflect resident desires—whether those desires include increasing or reducing density.

HUD’s Regulatory Barriers Clearinghouse has compiled examples of form-based code adoptions across the country. These include:

- Addison, Texas used a form-based code to create mixed-use housing development and commercial building types in its inner-ring suburban community that incorporate multi-modal transportation options for its residents.¹³⁹
- Billings, Montana adopted a long-range development plan focused on creating opportunities for walking and biking and transit-oriented development, with a range of commercial and cultural attractions specifically requested by community residents.¹⁴⁰
- Dover, New Hampshire adopted a “Context Sensitive Zoning” plan while implementing a streamlined application and review process to reduce delays and complexity.¹⁴¹
- Cleveland, OH is currently exploring a form-based code, beginning with a few pilot neighborhoods.¹⁴²

The Richard H. Driehaus Form-Based Codes Award, sponsored by the Form-Based Code Institute (FBCI), recognizes communities that adopt exemplary form-based codes that are models for other

¹³⁸ See New York City: <https://www.politico.com/states/new-york/city-hall/story/2014/02/the-quiet-massive-rezoning-of-new-york-078398>; and Arlington, VA: <https://projects.arlingtonva.us/planning/smart-growth/rosslyn-ballston-corridor/>

¹³⁹ See a brief description of the plan at http://townscape.com/projects/addison_fbc/summary.html

¹⁴⁰ The East Billings form-based code targets designated industrial zones for revitalization efforts, creating viable spaces for commercial and residential development, mixed-use building types that incorporate spaces for retail, cultural events, and recreation. See the Billings Industrial Revitalization District (BIRD) website at <http://www.billingsbird.com/revitalizing-east-billings/>.

¹⁴¹ This website describes the CSZ: <https://www.dover.nh.gov/Assets/government/city-operations/2document/planning/outreach/FBC.pdf>.

¹⁴² The Code Studio site describes the City of Cleveland’s form-based code: <https://www.code-studio.com/cleveland-ohio/>.

jurisdictions.¹⁴³ Driehaus winners include Hartford, Connecticut (2016), which eliminated parking requirements, expanded affordable housing options for its residents, and updated recreational spaces for a bike and walking trail. Planners replaced the 50-year-old zoning code with the new form-based code that consists of three pages of tables and illustrations, with easy-to-read graphics that guide the reader through the standards that apply to their project. The Buffalo Green Code (2017) focuses on streamlining the building permitting process to reduce delays and the costs of environmental review.

Allow and encourage manufactured housing. Manufactured housing is an important source of affordable units, but it is often prohibited or restricted by local zoning ordinances. Revising zoning ordinances to enable families to acquire manufactured housing more widely in the jurisdiction can support an increased supply of affordable homes. Manufactured and other factory-built housing may also be an efficient way for homeowners to acquire accessory dwelling units.

- Oakland, CA has permitted manufactured homes on permanent foundations in all residential areas since 1980. Developers and nonprofit housing providers have turned to manufactured housing to deliver low-cost urban housing solutions. Oakland Community Housing Incorporated uses manufactured housing to provide affordable housing. In its Linden Terrace development, the non-profit placed eight two-story manufactured homes atop ground-level garages that were then sold to low- and moderate-income households.¹⁴⁴
- Washington State requires all manufactured homes on a secure foundation be considered real property for local titling and taxation purposes and requires local land-use regulations to treat HUD Code-compliant manufactured housing the same as traditional site-built housing. The state adopted a law prohibiting discrimination against manufactured housing in 2005. The law spurred local regulatory reform, a deal with a regional power company to subsidize energy efficiency upgrades in manufactured homes, and several model manufactured home communities that attracted national media attention for their innovative designs.¹⁴⁵

Support land banks and land trusts. Other structures are available for reducing housing costs for individuals, such as land banks and community land trusts (CLTs), both of which involve non-profit land ownership. Although frequently grouped together, they offer advantages in different market contexts. CLTs are a form of shared-equity homeownership, in which a non-profit organization (or potentially public agency) retains ownership of a land parcel while homes built on that parcel are purchased by income-eligible households. CLTs generally cap the amount of capital gains homeowners can realize

¹⁴³ Discussion of the Driehaus Form-Based Codes Award can be found at <https://formbasedcodes.org/driehaus-form-based-codes-award/>.

¹⁴⁴ Casey J. Dawkins, C. Theodore Koebel, Marilyn Cavell, Steve Hullibarger, David B. Hattis, and Howard Weissman, *Regulatory Barriers to Manufactured Housing Placement in Urban Communities*, report prepared for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research by the Center for Housing Research, Virginia Tech (Washington, DC: HUD, 2011), https://www.huduser.gov/portal/publications/mfghsg_HUD_2011.pdf.

¹⁴⁵ Dawkins et al., *Regulatory Barriers to Manufactured Housing Placement in Urban Communities*.

when they sell their homes (similar to inclusionary zoning homeownership programs).¹⁴⁶ These two mechanisms – separating the cost of the land from the cost of the structure and capping appreciation when the property changes hands – allow CLTs to maintain long-term affordability, even in rapidly appreciating housing markets.¹⁴⁷ Some CLTs act as developers, producing new housing on land in the trust, while others primarily acquire existing structures.

Land banks are public or non-profit entities that acquire vacant, abandoned, or financially delinquent parcels, such as properties that have undergone tax foreclosure. In the wake of the Great Recession, land banks in cities such as Cleveland and Baltimore played an important role in acquiring foreclosed homes and demolishing vacant structures to mitigate blight in hard-hit neighborhoods. A land bank is an important tool in achieving and sustaining vibrant, healthy, and secure neighborhoods, and its success requires that the land bank’s policies, priorities, and activities complement other community strategies and activities—such as strategic code enforcement, effective tax collection and enforcement, data collection and analysis, and smart planning and community development.¹⁴⁸ Whereas CLTs may act as developers and co-owners of affordable housing, land banks serve an intermediary role, generally focusing on transferring empty parcels to developers or long-term owners.¹⁴⁹ Their ability to convey properties at below market cost provides the opportunity to reduce the cost of obtaining housing.

Eliminate urban containment policies. Urban containment policies have a long history in the United States, beginning with Lexington, KY’s adoption of an urban growth boundary in 1958 to protect its bluegrass and horse farms by requiring most development to take place within the boundary and severely limiting development outside the boundary.¹⁵⁰ Urban containment broadly encompasses a range of regulations that limit or prohibit housing development beyond a specified boundary, including greenbelts, urban service areas, and urban growth boundaries. They are a subset of “growth management” tools.¹⁵¹ Urban containment planning has two basic purposes: (1) to promote compact, contiguous, and accessible development with efficient infrastructure; and (2) to preserve open space, agricultural land, and environmentally sensitive areas.¹⁵²

¹⁴⁶Miriam Axel-Lute, “New Program Aims to Help Community Land Trusts Get to Scale,” *Shelterforce*, April 27, 2018, <https://shelterforce.org/2018/04/27/new-program-aims-to-help-community-land-trusts-get-to-scale/>.

¹⁴⁷ Kenneth Temkin, Brett Theodos, and David Price, *Balancing Affordability and Opportunity: An Evaluation of Affordable Homeownership Programs with Long-Term Affordability Controls: Cross-Site Report* (Washington, DC: Urban Institute, 2010), https://groundedsolutions.org/sites/default/files/2018-11/15%202010-Balancing-Affordability-and-Opportunity_0.pdf.

¹⁴⁸ Payton A. Heins and Tarik Abdelazim, *Take It to the Bank: How Land Banks Are Strengthening America’s Neighborhoods* (Flint, MI: Center for Community Progress, 2014), 12.

¹⁴⁹ Thomas Fitzpatrick, “Ohio’s Land Bank Legislation: Modernizing an Aged Model,” *Journal of Affordable Housing* 19, no. 2 (Winter 2010), 127–146.

¹⁵⁰ <https://blockandlothomes.blog/2020/01/15/urban-service-area/>

¹⁵¹ Rolf Pendall, Jonathan Martin, and William Fulton, *Holding the Line: Urban Containment in the United States*. (Washington, DC: The Brookings Institution, 2002), <https://www.brookings.edu/wp-content/uploads/2016/06/pendallfultoncontainment.pdf>.

¹⁵² Arthur C. Nelson, “Effects of Urban Containment on Housing Prices and Landowner Behavior,” *Land Lines*, 2000, <https://www.lincolnst.edu/publications/articles/effects-urban-containment-housing-prices-landowner-behavior>

Arthur Nelson, who has researched and written extensively on smart growth, identifies the challenges of urban containment policies: “On the one hand, measures aimed at reducing traffic congestion or infrastructure costs, or improving the aesthetic quality of urban areas, are appealing. On the other hand, measures that are seen to limit land supply and potentially cause housing prices to increase are unappealing, particularly to those seeking to expand the stock of affordable housing.”¹⁵³

Reuse of existing properties

An important resource for increasing housing supply is existing properties. New construction is typically more expensive than renovation or rehabilitation. A variety of models are available by which new housing units are created, such as by converting buildings with a non-residential use to housing, rehabilitating existing housing, or enabling more units to be created from existing stock.

An important resource for increasing housing supply is existing properties. New construction is typically more expensive than renovation or rehabilitation. A variety of models are available by which new housing units are created, by converting a non-residential use to housing, rehabilitating existing housing, or enabling more units to be created from existing stock.

Conversion of commercial properties. One strategy that can increase housing supply is converting commercial properties to housing or mixed-use (residential and commercial). While this practice is becoming more common in urban centers, as technology, telecommuting, and preferences have resulted in increasing commercial vacancies, it can also be implemented for vacant suburban strip-malls.¹⁵⁴ This strategy is particularly pertinent as the commercial real estate industry adjusts to the disruption caused by the COVID-19 pandemic. Reusing buildings has been found to generate savings of 10 to 12 percent over new construction. In addition, federal, state, and local incentives, such as New Markets Tax Credits and historic tax credits can further reduce redevelopment costs.¹⁵⁵ Two of FHA’s multifamily mortgage insurance programs, Section 220 and Section 221(d)(4), have been used to insure loans for projects converting buildings, such as commercial buildings, office towers, schools, and hospitals, to residential or mixed use. Jurisdictions may want to review their land use regulations to ensure they do not impose barriers or unnecessary costs to converting commercial properties to residential and mixed uses.

¹⁵³ Nelson, “Effects of Urban Containment on Housing Prices and Landowner Behavior.”

¹⁵⁴ Stockton Williams, “Solving Two Problems: Converting Unused Office Space to Residential,” *Urban Land*, July 22, 2016, <https://urbanland.uli.org/industry-sectors/residential/solving-two-problems-converting-unused/>.

¹⁵⁵ Marianne Eppig and Lavea Brachman, *Redeveloping Commercial Vacant Properties in Legacy Cities: A Guidebook to Linking Property Reuse and Economic Revitalization* (Columbus, OH: Greater Ohio Policy Center, May 2014), https://www.mml.org/resources/sample_docs/ordinances/blight/toolkits-and-reports/redeveloping%20commercial%20vacant%20prop-may14.pdf.

- In 1999, the City of Los Angeles adopted an Adaptive Reuse Ordinance to encourage conversion of vacant commercial buildings in Downtown Los Angeles into housing.¹⁵⁶ LA's City Planning Department estimates several thousand housing units have been created since the ordinance went into effect.¹⁵⁷ The suburban Washington, DC office market has also seen a number of conversions of vacant office buildings.¹⁵⁸ Large commercial parcels such as Big Box stores, shopping centers, or even industrial parks that are not financially feasible for conversion to residential use may be suitable for reuse as community centers, schools, or other anchor institutions that are complementary to residential neighborhoods.¹⁵⁹

Adaptive reuse of historic properties. Historic buildings, such as banks, stores, and schools, offer innovative examples of adaptive reuse. If the historic building will be used for affordable housing, it may qualify for the Federal Historic Tax Credit, which allows a 20 percent tax credit for the rehabilitation of income producing historic properties and provides capital for rehabilitation of historic housing stock or the adaptation of other historic buildings for residential use. The Federal Historic Tax Credit often is combined with the Low-Income Housing Tax Credit, and 37 states have state historic tax credits that can be used with it.¹⁶⁰ Examples of historic commercial properties being preserved and transformed into housing include the following:

- The Boston Store Place, originally home to the Erie Dry Goods Store, was constructed in 1931 in Meadville, Pennsylvania. When The Boston Store closed in 1979, the building sat vacant until it was renovated in 1996 for apartments. In 2019, Housing and Neighborhood Development Service (HANDS) purchased the building, which has 92 affordable housing units, financed through \$825,000 of Low-Income Housing Tax Credits, and 33 market-rate units.¹⁶¹ A brewery and radio stations occupy the commercial space. HANDS is upgrading the property through funding from the Pennsylvania Housing Finance Agency's Revised Community Leveraging Assistance Initiative Mortgage (ReCLAIM) program, a pilot program designed to identify buildings suitable for adaptive reuse incorporating housing and commercial space that support neighborhood revitalization. The ReCLAIM program is also supporting the redevelopment of the

¹⁵⁶ Los Angeles City Planning, "Preservation Incentives," <https://planning.lacity.org/preservation-design/historic-resources/incentives-resources>.

¹⁵⁷ Jenny Schuetz, Genevieve Giuliano, and Eun Jin Shin, "Does Zoning Help or Hinder Transit-Oriented (Re)Development?" *Urban Studies* 5, no. 8 (2017): 1672–1689.

¹⁵⁸ Kathy Orton, "A Man Worked at the IRS for 10 Years. Then He Came Back To Live Where His Cubicle Was." *Washington Post*, October 16, 2019, https://www.washingtonpost.com/realestate/what-once-was-your-cubicle-can-now-be-your-home/2019/10/16/6f12cafe-f01a-11e9-8693-f487e46784aa_story.html.

¹⁵⁹ Ellen Dunham-Jones and June Williamson, *Retrofitting Suburbia: Urban Design Solutions for Redesigning Suburbs* (Hoboken, NJ: John Wiley and Sons Inc., 2011).

¹⁶⁰ National Park Service, *Federal Tax Incentives for Rehabilitating Historic Buildings: Annual Report for Fiscal Year 2019* (Washington, DC: NPS, 2020).

¹⁶¹ Ennis Davis, "Revitalization: Affordable Housing and Adaptive Reuse," *Modern Cities*, August 22, 2019, <https://www.moderncities.com/article/2019-aug-revitalization-affordable-housing-and-adaptive-reuse-page-2>.

not historic James T. Givner Building in Pittsburgh, PA, from a commercial building into a mixed-use building with six affordable rental units, a restaurant, and a bakery.¹⁶²

- The historic Lima Trust Company Building, built in 1926 in Lima, Ohio, has been converted into a mixed-income residential building.¹⁶³ It contains 37 apartments affordable for families, seniors, and individuals earning up to 60 percent of the area median income and 10 market-rate units. Seven units include ADA features for persons with disabilities, and two have features for persons with sight or hearing impairments. The \$16.8 million development was financed through Low-Income Housing Tax Credits allocated by the Ohio Housing Finance Agency, Federal Historic Tax Credits through the National Park Service, and state historic tax credits allocated by the Ohio Development Services Agency and State Historic Preservation Office. Additional funding includes HOME funds, a 12-year tax abatement from the city of Lima, a permanent bank loan, and a bridge loan.
- In North Carolina, at least 19 historic buildings have been adaptively reused for low-income senior housing since 2000, particularly schools and hospitals.¹⁶⁴ The Paul Braxton School, in Siler City, is one example. Built in 1922, the Art Deco style building was vacant for nearly 25 years until Community Housing Partners converted the 32 classrooms into income-restricted apartments in 1999, using Low-Income Housing Tax Credits and Federal Historic Tax Credits.

Encourage reuse of existing housing stock. A jurisdiction can increase its housing supply by encouraging rehabilitation or reuse of existing stock, which reduces expenses on site preparation, foundation, and building exteriors, even if the interior space requires substantial rehabilitation. This strategy has been successfully used to create affordable housing across U.S. cities.¹⁶⁵

Many stakeholders emphasized rehabilitation of existing housing is typically less expensive than new construction and, while some jurisdictions need new units, others would benefit most by improving existing stock. State and local officials attending a White House roundtable noted the need to rebuild housing stock that was more than 50 years old, including manufactured housing, stressing the need for willing builders as well as financing options.

¹⁶² Pennsylvania Housing Finance Agency, "PHFA Announces Funding To Redevelop Mixed-Use Building in Homewood," *PR Newswire*, July 11, 2019, <https://www.prnewswire.com/news-releases/phfa-announces-funding-to-redevelop-mixed-use-building-in-homewood-300883619.html>.

¹⁶³ Christine Serlin, "Historic Bank Transformed into Mixed-Income Housing," *Multifamily Executive*, July 12, 2019. <https://www.multifamilyexecutive.com/design-development/historic-bank-transformed-into-mixed-income-housing>.

¹⁶⁴ Community and Economic Development Program Interns and Students, *Historic Building Reuse for Affordable Senior Housing* (Chapel Hill, NC: UNC School of Government, November 21, 2013), <https://ced.sog.unc.edu/historic-building-reuse-for-affordable-senior-housing/>.

¹⁶⁵ See, for example, the following: Monica C. Joe, "Adaptive Reuse and Rehabilitation: Connecting Historic Preservation and Affordable Housing Developments in Seattle, Washington," (master's thesis, University of Washington, 2015), <https://digital.lib.washington.edu/researchworks/handle/1773/34199>; and Tris Kee, "Adaptive Reuse of Industrial Buildings for Affordable Housing in Hong Kong," *Journal of Design and Built Environment* 14, no. 1 (2014), <http://jumec.um.edu.my/index.php/jdbe/article/view/5343>

- San Antonio, TX provides incentives for landlords and homeowners for minor and substantial rehab. For example, following substantial rehabilitation of residential properties in local historic districts, city property taxes are frozen at the assessed value before rehab for up to 10 years.¹⁶⁶ San Antonio also offers a deferred, forgivable loan for qualified low- to moderate-income homeowners to rehabilitate substandard and non-code compliant single-family homes to cover the cost of the needed repairs. These repairs focus on health and safety, accessibility, and major system concerns, as well as weatherization and energy savings.¹⁶⁷
- Racine, WI offers loans for structural repairs for homeowners and landlords who lease to low-income residents in buildings with four or fewer units.¹⁶⁸
- Oregon has introduced a program to rehab manufactured housing, funding its Manufactured Home Preservation Fund with \$2.5 million to provide loans of up to \$35,000 per individual homeowner to replace older, inefficient manufactured homes with energy-efficient ones that meet state standards. A regional partnership launched a pilot program to retire aging manufactured homes and replace them with new, energy-efficient manufactured homes that exceed code requirements. Evaluation activities will help the state understand the benefits achieved from the replacement homes, needed financial resources, and challenges of replacing the homes.¹⁶⁹

Creating a housing unit within an existing home, often a form of accessory dwelling units, is another way existing housing can be reused to serve more households. Programs that support homeowners in designing, financing, and managing these units, such as the Alley Flat Initiative in Austin, TX,¹⁷⁰ provide an essential resource to enable more units to be created and more households to benefit, while protecting homeowners from potential predatory actors.¹⁷¹

Support shared housing. Shared housing, a living arrangement in which two or more unrelated people share a house or apartment, ranges from home sharing, where a homeowner rents a room in his home to a person seeking affordable housing, to co-living, in which an individual rents a private room and shares common areas with other tenants. Safe shared housing provides greater flexibility for existing

¹⁶⁶ City of San Antonio, *Local Tax Exemption for Substantial Rehabilitation*, <https://www.sanantonio.gov/historic/About-Us/WhyPreserve/incentives>.

¹⁶⁷ City of San Antonio, *Home Repair Programs—Citywide*, <https://www.sanantonio.gov/NHSD/Programs/Repair>

¹⁶⁸ City of Racine Housing Repair Program, <https://www.racinehousingloans.com/for-landlords/>

¹⁶⁹ ¹⁶⁹ Jagruti Rekhi, Michael Blanford, and Sage Computing staff. “Programs Support Energy-Efficient Modular and Manufactured Housing,” *Evidence Matters* (Winter/Spring 2020), <https://www.huduser.gov/portal/periodicals/em/WinterSpring20/highlight3.html>.

¹⁷⁰ <https://thealleyflatinitiative.org/>

¹⁷¹ The Alley Flat Initiative Proposes a New Sustainable, Green, Affordable Housing Alternative for Austin (Austin, TX: Austin Community Design & Development Center, 2020), <https://thealleyflatinitiative.org/>.

¹⁷¹ See, for example, Karen Chapple, David Garcia, Eric Valchuis, and Julian Tucker, *Reaching California’s ADU Potential: Progress to Date and the Need for ADU Finance* (Berkeley, CA: UC Berkeley, Turner Center and Center for Community Innovation Report, August 2020), http://turnercenter.berkeley.edu/uploads/Reaching_Californias_ADU_Potential_2020_1.pdf.

housing stock to meet current market demands by housing more individuals in a single housing unit. Supporting these efforts may require revising local regulations, such as occupancy limits and density requirements. Resources to help people convert underutilized spaces in their home, safely identify housemates, and learn their rights and responsibilities are needed to support these opportunities.¹⁷²

- Boston created the Intergenerational Homeshare Pilot, a collaboration between the City’s Age Strong Commission, the City’s Housing Innovation Lab, and Nesterly, a shared housing entity specializing in intergenerational housing in the Boston area.¹⁷³ The program matched elderly homeowners who had a spare bedroom with students in search of affordable housing.
- In New York City, the Department of Housing Preservation and Development (HPD) began the ShareNYC initiative in 2018, a pilot program to create or preserve 300 affordable housing units.¹⁷⁴ Co-living corporations partnered with developers and submitted proposals for co-living developments. Under the initiative, Cypress Hills Local Development Corporation and PadSplit are rehabilitating a two-story single room occupancy building to create 11 fully furnished units for low-income tenants.

Infrastructure costs

Many developers identify impact fees assessed by jurisdictions as a significant cost in providing housing. Stakeholders at the roundtables mentioned fees of \$14,000 per unit in Florida, \$50,000 in Montgomery County, MD, \$75,000 in Des Moines, IA, and \$100,000 in Oakland, CA. The fees they mention, while often quite large, may reflect a combination of costs they are asked to bear, only a portion of which is an “impact fee.”¹⁷⁵ Impact fees are common, in part because they enable local governments, which receive little financing from the federal or state government for infrastructure and face financing constraints, to provide the facilities needed for new development without raising taxes.¹⁷⁶ A guide on impact fees explains, “While in theory there are many better ways to finance infrastructure, in practice impact fees often become the path of least political and legal resistance.”¹⁷⁷

Building new housing in a community increases the demand for local public services, such as schools, roads, and parks, all of which fall under the general definition of “infrastructure.” Communities have to

¹⁷² See case study at <https://www.huduser.gov/portal/casestudies/study-09282016-1.html>

¹⁷³ City of Boston, *City Launches Intergenerational Homeshare Pilot Program*, September 2017, <https://www.boston.gov/news/city-launches-intergenerational-homeshare-pilot-program>.

¹⁷⁴ New York City Department of Housing Preservation and Development, “City Reveals Selected Shared Housing Development Proposals,” press release, October 8, 2019, <https://www1.nyc.gov/site/hpd/news/092-19/city-reveals-selected-shared-housing-development-proposals#/0>.

¹⁷⁵ Jurisdictions must comply with specific legal requirements to impose impact fees. . See, for example, *National Housing Conference, Debate and Legal Issues Surrounding Impact Fees*, <https://nhc.org/policy-guide/impact-fees-the-basics/debate-and-legal-issues-surrounding-impact-fees/>.

¹⁷⁶ Newport Partners and Virginia Polytechnic Institute, *Impact Fees and Housing Affordability: A Guide for Practitioners*, report prepared for the U.S. Department of Housing and Urban Development (Washington, DC: HUD, 2008), <https://www.huduser.gov/portal/publications/impactfees.pdf>.

¹⁷⁷ Newport Partners and Virginia Polytechnic Institute, *Impact Fees and Housing Affordability*, 1.

find ways to pay for those services – or accept declines in service quality. Broadly speaking, local governments have two decisions to make about how they pay for infrastructure: (1) whether to pay upfront or spread the costs over a longer time frame, and (2) how broadly to diffuse the costs across different segments of their tax base (businesses versus residents, new residents versus existing residents).

State fiscal environments set the stage for local decisions on infrastructure funding. Local governments have a more limited set of fiscal tools than states or the Federal Government. Localities are not permitted to run deficits.¹⁷⁸ Each state defines how its local governments may raise revenues. Most localities are not allowed to impose local income taxes, for instance, and most states have caps on property taxes, the largest single source of local revenues for most localities, through rate limits, levy limits, and/or assessment limits.¹⁷⁹ States also decide how much to share state-level resources with localities for public services, by passing through federal funds such as CDBG to smaller jurisdictions or redistributing state revenues across localities (for example, California has high levels of redistribution for school funding but has severe limits on property taxes).

Within that context, local governments generally choose to pay for infrastructure through some combination of property taxes, impact fees, special taxing districts, and municipal bonds (debt). How much new housing increases demand for public services – the true “cost” of new housing to the local government – varies considerably by project type. Greenfields development (i.e., on previously undeveloped land) imposes greater needs for roads, sidewalks, water and sewer systems than infill development that can use existing infrastructure.

Restrictions on density and mixes of uses are likely to lead to higher infrastructure costs per capita to serve more dispersed development patterns and handle additional automobile transportation needs that accrue from separated land uses. In addition, land use restrictions near mass transportation facilities make those systems less financially viable, requiring more public subsidies for their operations by lowering fare revenues and farebox recovery ratios.¹⁸⁰

Given the complexity of infrastructure funding, no set of overall “best practices” would apply across the United States. Solutions may vary based on current state policies. The key is to recognize the need to fund local infrastructure and determine an equitable way to apportion the costs.

¹⁷⁸ Jonathan Gruber, *Public Finance and Public Policy*, 5th ed. (New York: MacMillan, 2016).

¹⁷⁹ Bethany P. Paquin, “Chronicle of the 161-Year History of State-Imposed Property Tax Limitations” (working paper WP15BP1, Lincoln Institute of Land Policy, Cambridge, MA, 2015), <https://www.lincolninst.edu/sites/default/files/pubfiles/paquin-wp15bp1.pdf>.

¹⁸⁰ Erick Guerra and Robert Cervero, *Mass Transit & Mass: Densities Needed to Make Transit Investments Pay Off* (UCTC Policy Brief 2011-02, 2011), <https://todresources.org/app/uploads/sites/2/2016/06/mass-transit-and-mass.pdf>.

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A few general principles have been identified to reduce the burden of impact fees:

- *Certainty and transparency are beneficial.* Fees should be consistently assessed across similar projects, rather than negotiated on an ad hoc basis. Fee schedules should be transparent and readily observable to developers, for instance, posted on the jurisdiction's website. Fees agreed to at the beginning of the project should not be changed during the development process.¹⁸¹ Florida recently enacted a bill that requires counties and municipalities to include data on their impact fees in their annual financial reports, including the purpose and amount of each fee.¹⁸²
- *The timing of when the fee is determined and when it is collected matters.* The cost per unit for schools or transportation may increase significantly during the years the project is in the approval process, according to some developers. Whether payment is due when the permit is issued or when the certificate of occupancy is issued is significant. Developers noted that, when possible, payments for infrastructure should not be frontloaded since expenses will not be recouped until the units are sold or occupied. One recommendation was to have the jurisdiction issue infrastructure bonds that could be funded from impact fees paid over the course of development, giving the jurisdiction access to funds for necessary infrastructure immediately but delaying the imposition of the cost on the developers before they have produced units.
- *The basis on which the fee is imposed (e.g., unit size, unit type, infill/greenfield) influences development, particularly affordable units.* If a locality wishes to encourage density, one comment recommended charging impact fees on a gross land or square footage basis rather than per unit.

Other mechanisms for funding infrastructure may better encourage development. A report by the National Association of Home Builders identified several limitations of impact fees: they cannot be used to pay for maintaining existing infrastructure; they are an unreliable source of revenue, relying on the construction cycle; and they drive up housing costs, among other issues.¹⁸³ The report presents a number of alternatives as possible solutions, including: tax increment financing, community development districts, and state infrastructure banks. State and local governments may want to explore the range of options to find the best way to fund infrastructure in their communities while supporting housing development.

¹⁸¹ Turner Center, *Residential Impact Fees in California* (August 5, 2019), http://turnercenter.berkeley.edu/uploads/Residential_Impact_Fees_in_California_August_2019.pdf.

¹⁸² Florida House of Representatives, CS/CS/CS/HB 1339, Engrossed 3, bill text, <https://www.flsenate.gov/Session/Bill/2020/1339/BillText/er/PDF>.

¹⁸³ National Association of Home Builders, 2007. *Infrastructure Solutions: Best Practices from Results-Oriented States*, <https://www.nahb.org/-/media/NAHB/advocacy/docs/industry-issues/land-use-101/infrastructure/infrastructure-solutions-best-practices.pdf>.

Improve the development and permitting process

A consistent finding in the research was reinforced by stakeholders: a lengthy, unpredictable development process is one of the biggest regulatory burdens to housing development. A roundtable participant from Texas noted, “it’s not about reducing regulations but implementing them in an expeditious manner. Time costs more than the regulations.” A local official in California explained how “builders lost confidence in the town,” when the approval process added considerable uncertainty to a project. A recent article outlines how a local development process affected a development, resulting in a proposed 18-unit affordable building costing \$414,000 per unit being approved more than 10 years later as a 10-unit building, with each unit cost more than \$1 million.¹⁸⁴ States and local jurisdictions have many tools at their disposal to improve the development process. One of the first steps is understanding how many agencies are involved in the review and how many steps the approval requires (e.g., community meetings, preliminary plan, project plan, site plan, forestry plan). Mapping the process can help identify opportunities to remove inefficiencies.

Transparency and data quality

The lack of clear, consistent, transparent information about local development rules is a substantial hurdle to policymakers and developers. Developers have expressed that they cannot assess the potential costs and profits of building housing in the absence of full information on fee schedules, for instance. State policymakers who want to create financial incentives tied to reducing regulatory barriers are hampered by data gaps on what current rules are. States can use several approaches to improve transparency and data quality.

- Require local governments to post up-to-date versions of zoning laws, zoning maps, impact fee schedules, and other development-related regulations on their websites. Recent research finds that California’s cities and counties often do not publish clear, consistent schedules of impact fees, making it hard for developers to assess the financial feasibility of proposed projects.¹⁸⁵
- Post PDF versions of zoning maps or the underlying GIS shape files to enable state policymakers and researchers to accurately determine how land is zoned¹⁸⁶ Improving the data helps to set benchmarks and track changes.

¹⁸⁴ Liam Dillon, Ben Poston, and Julia Barajas, 2020. “Affordable Housing Can Cost \$1 Million per Apartment in California. Coronavirus Could Make It Worse,” *Los Angeles Times*, April 9, 2020, <https://www.latimes.com/homeless-housing/story/2020-04-09/california-low-income-housing-expensive-apartment-coronavirus>.

¹⁸⁵ Sarah Mawhorter, David Garcia, and Hayley Raetz, “It All Adds Up: The Cost of Housing Development Fees in Seven California Cities” (Berkeley, CA: UC Berkeley, Terner Center for Housing and Innovation, 2018), http://turnercenter.berkeley.edu/uploads/Development_Fees_Slide_Deck_Final_1.pdf.

¹⁸⁶ Alfred Twu, “here’s what I’m making with this: a summary zoning map of silicon valley. 6 cities down, about 24 to go,” Twitter, February 29, 2020, https://twitter.com/alfred_twu/status/1233687467691167745.

“Shot clocks” for approvals

The time needed to obtain all required approvals for development can substantially increase the cost of new housing. Some states are granting automatic approval to projects if local governments do not review and decide on applications within a set time period.

- North Carolina requires localities to make decisions on permit applications for one- and two-family structures within 15 days.¹⁸⁷
- Texas requires all cities and counties to respond to a subdivision application within 30 days and to subsequent submissions within 15 days. Otherwise, the plat or plan will be considered approved. A conditional approval or disapproval must be directly related to statutory requirements or ordinances and may not be arbitrary.¹⁸⁸ Dallas created a “gold card” plan that reduced permit approval times for smaller projects to just 45 minutes by giving by-right approvals to developers who have completed mandatory training and consistently submit quality requests.¹⁸⁹
- Florida requires municipalities complete permit reviews within 30 days of application if they have enacted inclusionary zoning programs, providing an additional incentive to developers.¹⁹⁰

Other strategies have been implemented to reduce permitting times, such as one-stop permitting and online submissions and tracking. Goodyear, AZ established a one-stop permit shop for its Planning, Building Safety, Development Services, Economic Development and Engineering departments, a permit by email system, and online permit tracking, and implemented electronic plan review in 2015.¹⁹¹ Jurisdictions have assigned “case managers” to track individual applications through the review process to ensure all local agencies meet required timelines.

Coordination among local agencies

Coordinating among the different local agencies can be a challenge for a developer. For example, the street in front of the development has to be designed to address stormwater management, emergency services, pedestrian and bike usage, among other needs. Creating a collaborative environment and

¹⁸⁷ General Assembly of North Carolina, “An Act to Make Various Changes And Clarifications to the Statutes Governing the Creation and Enforcement of Building Codes,” (bill text), Session Law 2019-174, House Bill 675, <https://www.ncleg.gov/Sessions/2019/Bills/House/PDF/H675v7.pdf>.

¹⁸⁸ Legislature of the State of Texas, “An Act Relating to County and Municipal Approval Procedure for Land Development Applications” (bill text), H.B. No. A3167, <https://capitol.texas.gov/tlodocs/86R/billtext/pdf/HB03167F.pdf#navpanes=0>.

¹⁸⁹ City of Dallas, “Gold Card Announcement 2019–2020,” <https://drive.google.com/file/d/1ZaZ-wBdZQ8iNzKxZ44hNPFgnUoKYQoR-/view>.

¹⁹⁰ Florida House of Representatives, “An Act Relating to Community Development and Housing; Amending S. 125.01055,” CS/CS/HB 7103, (bill text), <https://www.flsenate.gov/Session/Bill/2019/7103/BillText/er/PDF>

¹⁹¹ Kimberly Burnett and Tyler Morrill, *Development Process Efficiency: Cutting Through the Red Tape* (Washington, DC: National Association of Home Builders, 2015), <https://www.nahb.org/-/media/NAHB/advocacy/docs/top-priorities/housing-affordability/development-process-efficiency.pdf>.

having a system to resolve internal government conflicts can reduce costs and delays and provide a more welcoming environment for development.

- Leesburg, VA, recognized for its one-stop permitting system, has extended its integration beyond the paperwork submission phase to reduce silos. In the past, for example, an applicant could receive comment letters from the Departments of Planning, Zoning, and Development, Utilities, and Public Works at different times with conflicting requests. Now, a single project manager is assigned to the application and responsible for consolidating all town and county agency comments to provide a single letter conveying clear and consistent direction to the project engineer and owner.¹⁹²
- Sonoma County, CA created an ombudsman position within its Permit and Resource Management Department to have a single point of contact who provides customer service on individual projects and facilitates process improvements by working within and across divisions to create a more efficient and friendly process for customers and staff.¹⁹³
- The Washington State Legislature established the Governor’s Office for Regulatory Innovation and Assistance in 2007 to work with local governments and applicants to help improve development permitting processes. The Office identified a number of best practices for processing permits, such as pre-submittal discussions and consolidated comment letters, which have been implemented by local governments. In 2012, Washington State created a Local Government Performance Center, an initiative of the State Auditor’s Office, to foster more efficient and effective local government. The Center offers trainings and resources to local government entities, including a Lean Academy to increase process efficiency in local permitting departments. Participating jurisdictions’ processing times have significantly decreased and greater partnership has occurred between the permitting agencies and applicants.¹⁹⁴

As noted above, what works in one jurisdiction may not be effective in another. A roundtable participant lamented that, “We removed barriers, we have all our departments in a room conducting the review at once, yet we still can’t get developers to build mid-range housing.” Other tools may be necessary to support housing production in a specific community.

Construction

Construction costs are affected by land use regulation and associated approval processes, such as a subdivision ordinance’s design features, minimum setbacks, or on-site parking requirements. However, residential construction involves more than land use regulations; it includes environmental regulations, building codes, and a host of other rules.

¹⁹² Burnett and Morrill, *Development Process Efficiency*.

¹⁹³ Burnett and Morrill, *Development Process Efficiency*.

¹⁹⁴ Burnett and Morrill, *Development Process Efficiency*, 20-22.

By the end of 2019, housing production in the United States had increased to more than 1.25 million units from a low of 584,000 units in 2011.¹⁹⁵ COVID-19 was expected to reduce construction in 2020 as a result of government office closures, supply chain disruptions, and efforts to limit worker risks.¹⁹⁶ While many states classified residential construction as essential work, some states and cities did not, halting construction in places like New York State and Boston, MA. In many jurisdictions, local government offices closed, delaying permitting, reviews, and inspections, particularly where online systems were not in place. The National Multifamily Housing Council’s construction survey found about one-half the responding firms experienced construction delays, driven primarily by permitting delays.¹⁹⁷ These challenges may have slowed construction initially, but housing starts increased significantly in July.¹⁹⁸

Reduce construction costs

Changes to zoning and building codes, which strongly influence building size, design, materials and construction techniques, and related regulations such as utility hook-ups, could reduce the “hard” costs of construction, labor, and materials.

Limit local design standards. Local regulations may dictate that new housing meets certain design features or uses specific construction materials, especially on building exteriors. Design standards can be an important component of preserving a neighborhood’s identity and ensuring architectural integrity and diversity. Discretionary approval processes allow existing neighbors the opportunity to weigh in on design features, effectively giving them veto power based on their aesthetic preferences. This can push developers to use more costly materials or incorporate expensive design features.¹⁹⁹ Several states are considering regulatory changes that would allow greater flexibility on design standards.

- Texas has limited cities’ ability to reject building materials if they are accepted by international building codes.²⁰⁰

¹⁹⁵ United States Census Bureau, Survey of New Residential Construction, <https://www.census.gov/construction/nrc/index.html>.

¹⁹⁶ Whitney Airgood-Obrycki, *COVID-19 Will Delay Housing Construction, But For How Long?* (Cambridge, MA: Joint Center for Housing Studies, 2020), <https://www.jchs.harvard.edu/blog/covid-19-will-delay-housing-construction-but-for-how-long/>.

¹⁹⁷ National Multifamily Housing Council, 2020 NMHC Construction Survey (Round 4), July 2020, <https://www.nmhc.org/research-insight/2020-nmhc-construction-survey/2020-nmhc-construction-survey-round-4/>.

¹⁹⁸ U.S. Census Bureau, *Monthly New Residential Construction*, <https://www.census.gov/construction/nrc/pdf/newresconst.pdf>.

¹⁹⁹ Hannah Hoyt, “More for Less? An Inquiry into Design and Construction Strategies for Addressing Multifamily Housing Costs” (working paper, Harvard University Joint Center for Housing Studies, Cambridge, MA, 2020), <https://www.jchs.harvard.edu/research-areas/working-papers/more-less-inquiry-design-and-construction-strategies-addressing>.

²⁰⁰ Brandon Morris, *Cities in Texas May No Longer Restrict Building Materials Approved in International Codes* (Randle Law Office, Houston, TX, July 29, 2019), <http://www.igradyrandlepc.com/local-governmental-entities/cities-texas-building-materials-international-codes/>.

- Arkansas prohibits counties from regulating residential building design elements, which include exterior building color; type or style of exterior cladding material; style or materials of roof structures, roof pitches, or porches; the minimum square footage of a structure; and other architectural components.²⁰¹
- Indiana is considering state pre-emption of design requirements imposed by local governments.²⁰²

Reduce off-street parking requirements. Zoning laws in most jurisdictions require new housing units to include a minimum number of off-street parking spaces, with more spaces required for larger units. The construction costs associated with structured parking in two jurisdictions were typically \$50,000 per space.²⁰³ Costs increase significantly when parking is underground or multilevel because of the costs of digging deeper and the demands parking places on building structure. A requirement of two parking spaces for a two-bedroom unit therefore adds at least \$100,000 to each apartment’s cost in those jurisdictions. Developers may choose to build off-street parking in locations that lack reliable public transportation, because consumers are reluctant to buy or rent homes without dedicated parking spaces.

The challenge is to determine the “right amount” of parking: “Good parking systems are carefully balanced to be specific to their settings and are adaptable to changes over time.”²⁰⁴ This requires consideration of a jurisdiction’s transportation and land use policies. For example, minimum parking requirements in locations well-served by public transit may add costs with less value to consumers.²⁰⁵ In a survey of multifamily housing in the Boston metro area, only 74 percent of multifamily residential parking spots were used.²⁰⁶ A range of policy options are available for jurisdictions interested in reducing parking and the associated costs.²⁰⁷

²⁰¹ Arkansas State Legislature, “Concerning County and Municipal Regulation of Residential Building Design Elements,” Arkansas SB170: 2019: 92nd General Assembly, <https://legiscan.com/AR/drafts/SB170/2019>.

²⁰² General Assembly of the State of Indiana, “Regulation of Building Materials” (bill text), HB 1060—LS 6532/DI 132, <http://iga.in.gov/static-documents/d/c/9/f/dc9f4492/HB1060.02.COMH.pdf>.

²⁰³ United States Government Accountability Office, *Low-Income Housing Tax Credit: Improved Data and Oversight Would Strengthen Cost Assessment and Fraud Risk Management*, September 2018, <https://www.gao.gov/assets/700/694541.pdf>

²⁰⁴ U.S. Environmental Protection Agency, *Essential Smart Growth Fixes for Urban and Suburban Zoning Codes*, EPA 231-k-09-003 (2009), 14.

²⁰⁵ W. Bowman Cutter and Sofia F. Franco. 2010. “Do Parking Requirements Significantly Increase the Area Devoted to Parking? A Test of the Effect of Parking Requirements Values in Los Angeles County,” *Transportation Research Part A: Policy and Practice* 46, no. 6: 901–925; Donald C. Shoup, “The Trouble with Minimum Parking Requirements,” *Transportation Research Part A: Policy and Practice* 33 (1999): 549–574.

²⁰⁶ Metropolitan Area Planning Council, *Metro Boston Perfect Fit Parking Initiative: Phase 1 Report: New Metrics and Models for Parking Supply and Demand* (February 2017), 8.

²⁰⁷ SPUR, *Reducing Housing Costs by Rethinking Parking Requirements*, June 1, 2006, <https://www.spur.org/publications/spur-report/2006-06-01/reducing-housing-costs-rethinking-parking-requirements>.

- Buffalo, NY eliminated all parking minimums in 2016 when the adopted a Unified Development Ordinance.²⁰⁸
- In 2013, Portland, OR reduced minimum parking requirements in exchange for meeting other policy priorities, such as including affordable housing units, providing bicycle parking, or preserving trees.²⁰⁹
- Minneapolis, MN reduced its one-spot per unit parking requirement for new developments near high frequency transit in 2015, implementing a 50 percent reduction for buildings with more than 50 units and eliminating all requirements for smaller buildings. While developers may continue to provide parking to meet lender requirements or market preferences, the greater flexibility may reduce costs.²¹⁰
- Coral Gables, FL adopted a shared parking ordinance in 2016.²¹¹ Shared parking optimizes parking capacity by calculating how different users can share the same parking spaces. This is particularly useful with mixed-use developments, as residents and businesses often need parking at different times.
- Developers also offer innovative solutions. A roundtable participant described a project in which the developer built structured parking that could be transitioned into housing units. The design required an investment of upfront costs but provided future flexibility.

Develop local skills. The San Felipe Pueblo developed 150 homes on land donated from the Tribe after 40 years with no new housing in the community.²¹² The San Felipe Pueblo Housing Authority (SFPHA) used an innovative mix of HUD Title VI and Section 184 loan guarantees and private loans to fund the project. The first 28 units were constructed by a general contractor. The company set up a temporary modular construction unit on-location to save transportation costs and employed some members of the Pueblo. SFPHA realized having a force account crew could lower costs and create sustained employment opportunities so completed the process required under Indian Community Development Block Grant of certifying as a force account crew. The crew of about 40 members built the remaining units, including some of the site development work, enabling SFPHA to employ more Tribal members and control quality and cost. Furthermore, SFPHA has created capacity in areas including construction, management, housing counseling, housing design, and loan processing, which will benefit the Tribe long-term.

²⁰⁸ City of Buffalo, *Buffalo Green Code: Unified Development Ordinance*, <https://www.buffalony.gov/DocumentCenter/View/1785/Buffalo-Green-Code---Unified-Development-Ordinance-PDF?bidId=>.

²⁰⁹ City of Portland Bureau of Transportation, *Off-Street Parking: Management and Guiding Policies*, <https://www.portlandoregon.gov/transportation/article/547704>.

²¹⁰ Eric Roper, "Mpls. relaxes parking requirements to reduce housing costs (blog, MPLS), *Star Tribune*, July 10, 2015, <https://www.startribune.com/mpls-relaxes-parking-requirements-to-reduce-housing-costs/313286521/>.

²¹¹ City Commission of Coral Gables, Florida, "Shared Parking Reduction Standards," (bill text), 2016-23, March 29, 2016, <https://coralgables.legistar.com/LegislationDetail.aspx?ID=2601296&GUID=F9051102-263D-4F78-B144-277D07B08CA9>.

²¹² U.S. Department of Housing and Urban Development, *Office Of Native American Programs Best Practices*, Washington, DC: HUD, https://www.hud.gov/sites/dfiles/PIH/documents/San_Felipe_Pueblo_One-Page%204-25-2019.pdf.

Building codes

Building codes were created in the early 1900s to minimize risks to property and occupants, with the first code in the United States created by the National Board of Fire Underwriters, an insurance group. Building codes serve an important purpose by assuring residents of the safety of the dwelling units they want to occupy and addressing the quality of the home as collateral for financing. Different codes were developed by different organizations over time. The International Code Council (ICC), established in 1994, brought together three organizations that had developed separate sets of model codes.

The ICC published its first set of “I-codes” in 2000; these include the International Building Code, International Residential Code, International Energy Conservation Code, and mechanical, plumbing, fire and other codes. The ICC provides 15 codes, and each code is amended on a 3-year cycle.²¹³ By 2007, I-codes had been adopted in all 50 states and the District of Columbia.²¹⁴ The codes are typically adopted by jurisdictions on widely varying schedules, with adaptations or omissions by state and local governments creating inconsistencies. The different building codes among municipalities add to the complexity and cost of building homes.²¹⁵

Four areas were identified in which building codes may be barriers to housing production:

- Expanding beyond health and safety. Some were concerned the code required higher cost materials for aesthetic reasons, raising home prices. Several commenters noted the codes benefit specific manufacturers by adopting certain products in the code. Others were concerned the code was integrating aspirational goals (such as energy efficiency), rather than focusing on health and safety. One recommendation was for the ICC to distinguish between “required” and “recommended” or “smart investment” and let jurisdictions consider voluntary incentives for aspirational elements.
 - The LEED and NGBS rating systems are examples of voluntary standards, as is the DOE/EPA EnergyStar program.
 - Maine amended its Uniform Building and Energy Code in 2019 (S.P. 480) to establish an optional energy efficiency code that exceeds the state’s energy code requirements for local government adoption.²¹⁶ The state will maintain a public list of municipalities that

²¹³ International Code Council, “About the International Code Council,” <https://www.iccsafe.org/about/who-we-are/>.

²¹⁴ Federal energy legislation requires each State, within 2 years of the Secretary of DOE’s determination that the most recent energy code would improve energy efficiency, must make a determination whether it is appropriate to revise its code to meet or exceed the successor code. See 42 U.S.C. 6833(a)(5)(B).

²¹⁵ Burnett and Morrill, *Development Process Efficiency*.

²¹⁶ State of Maine, “An Act To Amend the Maine Uniform Building and Energy Code,” S.P. 480 - L.D. 1543 (bill text), 2019, <https://legislature.maine.gov/legis/bills/getPDF.asp?paper=SP0480&item=3&snum=129>.

adopt the voluntary appendix. Texas created an optional energy efficiency code for industrialized housing (HB 2456).²¹⁷

- Diminishing returns of ongoing revisions. Each time a new code is adopted, all parties involved in the building and inspection process must purchase the new code book and then learn the changes through a class or self-instruction, imposing significant costs and creating a burden for the jurisdiction's staff as well as builders and engineers. Increased costs from changes to building codes over the past 10 years was identified as the government regulation that was the highest share of multifamily development costs in a 2017 survey, with an average cost of 7 percent of total development costs.²¹⁸ Increasing technical assistance, similar to DOE's help desk for energy efficiency code questions, and transitioning to online materials could be beneficial.
- Application to existing residential buildings. Some commented the codes are designed for new suburban construction, making renovation of older buildings cost-prohibitive by requiring modern standards rather than requiring the building to be safe. Building codes can address that issue by distinguishing between new and legacy elements when existing buildings are renovated. HUD studied the use of Nationally Applicable Renovation Rehabilitation Provisions, which provide a framework to encourage this hybrid approach,²¹⁹ and has funded research on best practices for rehabilitating affordable housing.²²⁰
- Preventing innovation. Building codes have been identified as barriers to innovation that could reduce housing production costs.²²¹ This was noted, for example, in creating "tiny homes," developing housing units in small scale commercial buildings, and other strategies for crafting affordable housing options. One recommendation was to consider code categories based on building size to improve affordability. Stakeholders suggested ways to enable builders to use alternative materials, designs, or methods of construction if supported by valid and appropriately certified research as an alternative to the ICC's evaluation service process. It is not always the building code that hinders innovation; a local inspector or permit reviewer may interpret the code in a way that creates a barrier. More training and better communication may be important components to supporting innovation.

Additional stakeholder recommendations on building codes included the following:

²¹⁷ Legislature of the State of Texas, "An act relating to the energy efficiency performance standards for construction of certain industrialized housing," H.B. No. 2546 (bill text), <https://capitol.texas.gov/tlodocs/86R/billtext/html/HB02546F.htm>.

²¹⁸ Paul Emrath and Caitlin Walter, *Multifamily Cost of Regulation* (Washington, DC: National Association of Home Builders, National Multifamily Housing Council, 2018), https://www.nahbclassic.org/fileUpload_details.aspx?contentTypeID=3&contentID=262391&subContentID=712894&channelID=311.

²¹⁹ NAHB Research Center, Inc., *Nationally Applicable Renovation Rehabilitation Provisions*, report prepared for U.S. Department of Housing and Urban Development, Washington, DC, 1997, <https://www.huduser.gov/Publications/pdf/HUD-7842.pdf>.

²²⁰ David Listokin and Kristen Crossney, *Best Practices for Effecting the Rehabilitation of Affordable Housing, Volume 1: Framework and Findings* (Washington, DC: U.S. Department of Housing and Urban Development, 2006), https://www.huduser.gov/publications/pdf/BarriersVol1_part1.pdf.

²²¹ ²²¹ Gabriel Metcalf, "Sandcastles Before the Tide? Affordable Housing in Expensive Cities," *Journal of Economic Perspectives* 32, no. 1 (2018): 59–80.

- Consider regional differences when designing the building codes, as is done with energy codes, since regions have different challenges, such as hurricanes, earthquakes, cold, and heat. A related recommendation was to consider implementing an earthquake zone map so the building code’s seismic requirements are not applied when properties are not in an earthquake zone.
- Building codes could be subject to an affordability review to ensure the focus is on safety and health issues. One example cited by a commenter was how circuit breakers were replaced by GFI breakers, which have now been replaced by Arc fault protectors, increasing electrical costs significantly while providing greater safety. The affordability lens should consider lifecycle costs, not just initial construction costs.
- Recognize the value of resilience features that improve the structural safety of the home and contribute to health benefits (for example, reducing mold lowers the potential for associated respiratory ailments; greater energy efficiency can help the elderly during a summer heat wave). Resilient design and construction of buildings reduce loss of life and property during and after natural disasters and minimize demands on federal, state and local disaster resources. Resilient features may add to home values and lead to insurance savings. For example, the National Fire Protection Association developed the Firewise program to increase the “ignition resistance” of homes in wild-fire prone areas, and certain insurers are providing discounts on homeowners’ insurance for homes located in Firewise communities.²²² However, resilient elements that are cost-effective based on a life-cycle analysis could create upfront costs that affect the affordability of a home or the rent on an apartment.

Vesting

Land use regulations, including zoning ordinances, are often changing, introducing additional uncertainties into the development process. Vesting, which is the point in time when the landowner can expect to develop under a set of rules that will not change, is determined by state law, often through case law. Once vested, applicants’ rights are no longer contingent or conditional; they know they will be able to develop the property as proposed. Later vesting means a longer period of uncertainty with its associated risks. Those risks are a factor in determining the financial feasibility of the project and can affect financing.²²³

In Washington State, rights vest at the time a land use application is submitted. The state court initially implemented this vesting rule through case law, but the legislature then codified it.²²⁴ By contrast,

²²² National Fire Protection Association, “Firewise USA: Residents Reducing Wildfire Risks,” <https://www.nfpa.org/Public-Education/Fire-causes-and-risks/Wildfire/Firewise-USA>.

²²³ Pamela Blumenthal, “Local Land Use Regulatory Regimes and Residential Development Outcomes: An Analysis of Subdivision Review in Four Counties in the DC Region” (PhD diss., George Washington University, 2014).

²²⁴ “Proposed division of land—Consideration of application for preliminary plat or short plat approval—Requirements defined by local ordinance,” RCW 58.17.033, <https://app.leg.wa.gov/rcw/default.aspx?cite=58.17.033>

Maryland is a “late vesting state”; the applicant is vested once the “footers are in the ground,”²²⁵ when construction has begun. To address this difficulty, legislation was enacted permitting jurisdictions to enter into Developers Rights and Responsibilities Agreements (DRRAs), which enable owners to vest certain rights to develop property under the regulations in place at the time the DRRA is executed in return for accepting certain obligations relating to development of the property.²²⁶ The jurisdiction may then bargain for additional public benefits in exchange for the certainty.

Vesting is an example of the ways various laws and practices can impede housing production and increase costs, often without any intent to do so. Conducting regulatory reviews, working with developers, and learning from peers are among the steps state and local governments can take to reduce barriers and better meet their residents’ housing needs.

Environmental regulations

Stormwater management

Many stakeholders identified stormwater management as a regulation that is often applied by state and local governments in a way that creates unnecessary burdens. This provides opportunities for potential improvements.

- In Wichita, KS, the city revised requirements for water quality management on development sites based on input from the city’s stormwater advisory group. As an alternative to onsite water quality, developers can pay a fee into an enterprise fund used to prevent water pollution elsewhere. The fund typically makes improvements on agricultural land at a lower cost and at greater environmental benefit than water treatment specifically targeted to a development site. The alternative is particularly important for infill development, where smaller lots and high levels of impermeable surfaces make water treatment more difficult and costly. It encourages reuse of urban lots and increases density, reducing demand for greenfield development.²²⁷ This approach, amending stormwater management regulations and development codes to allow off-site stormwater management, especially for infill and redevelopment areas, has been supported by EPA.²²⁸
- A stakeholder described how a multi-agency, multi-level approval process results in numerous revisions to the water management plans. Using Wisconsin as an example, the stakeholder recommended having a single state-designated entity manage those federal water rules

²²⁵ This standard is based on Maryland case law; see J. J. Delaney, “Vesting Verities and the Development Chronology: A Gaping Disconnect?” *Washington University Journal of Law & Policy* 3 (2000): 603–617. Maryland courts have not recognized zoning estoppels, although the Maryland Court of Appeals has indicated it may consider estoppel in future cases.

²²⁶ Maryland Art. 66B §13.01 authorizes DRRAs..

²²⁷ Burnett and Morrill, *Development Process Efficiency*.

²²⁸ U.S. Environmental Protection Agency, “Essential Smart Growth Fixes for Urban and Suburban Zoning Codes,” 2009, https://www.epa.gov/sites/production/files/2014-01/documents/2009_essential_fixes_0.pdf.

administered by state and local governments. Such an approach, he estimated, could save \$3,000 per home if it were applied in Minnesota.

Environmental reviews

In the 1970s, as the Federal Government enacted the Federal Clean Water Act, Clean Air Act, and other environmental legislation, many states passed their own environmental protection laws to protect open spaces and curtail urban sprawl.²²⁹ These laws, although well-intentioned, have become a significant impediment to housing development, including the construction of infill housing in high demand urban neighborhoods, where housing would enhance environmental quality. States could reduce housing costs by amending these statutes and regulations to make them less burdensome.

One example of such laws and the burdens they impose is the California Environmental Quality Act (CEQA). CEQA is often described as a tool individuals and organizations use to delay projects, create uneconomic approval conditions, or reject multi-family infill developments. As one study explains:

Anti-housing communities can and do use CEQA to indefinitely delay, decrease, or derail new housing. Courts have uniformly declined to enforce any deadline whatsoever for completing the CEQA process, thereby empowering unelected staff as well as local elected officials to take years – sometimes many years and millions of dollars in studies – before approving General Plans and zoning that allows more housing, and as a tool to deny . . . approvals even to housing that complies with these local requirements. The CEQA process can also easily be “slow-walked” and manipulated to quite end it all for politically unpopular housing plans.²³⁰

Over the years, a number of provisions have been added to CEQA to provide exemptions from completing a full Environmental Impact Report for certain types of housing, such as infill development or affordable units, but such exemptions “are narrow and themselves riddled with exceptions. . . . [A] developer hoping to qualify for the Infill Housing in Urbanized Areas near Transit exemption must satisfy no fewer than 27 distinct conditions.”²³¹ A California State Senate report found 42 percent of development across California’s cities and counties received some form of streamlining or exemption through CEQA.²³² When an exemption is granted, it is frequently appealed in court, increasing the

²²⁹ For an example of the range of state laws, see John Randolph, Arthur C. Nelson, Joseph M. Schilling, and Jonathan Logan, *Effects of Environmental Regulatory Systems on Housing Affordability* (Washington, DC: U.S. Department of Housing and Urban Development, 2007), <https://www.huduser.gov/portal/publications/pdf/HUDEnvReptFinal.pdf>.

²³⁰ Jennifer Hernandez, *California Getting in Its Own Way: In 2018, Housing Was Targeted in 60% of Anti-Development Lawsuits* (Orange, CA: Chapman University Press, 2018), 10, <https://www.chapman.edu/communication/files/ca-getting-in-its-own-way.pdf>.

²³¹ Christopher Elmendorf. CEQA and Housing: Raising the Baseline (2020), <https://carlaef.org/2020/05/18/ceqa-and-housing/>

²³² Janet Smith-Heimer and Jessica Hitchcock, CEQA and Housing Production: 2018 Survey of California Cities and Counties,” https://senv.senate.ca.gov/sites/senv.senate.ca.gov/files/ceqa_and_housing_production_report.pdf.

development costs and resulting in higher prices and rents. Many individuals responding to HUD's request for information identified CEQA as a regulatory barrier to housing development, particularly the ability to file anonymous lawsuits to delay or stop a project. Eliminating duplicative and anonymous CEQA lawsuits is a frequent recommendation.²³³

Washington State enacted its State Environmental Policy Act (SEPA) in 1971 to require governments and companies to consider the potential negative environmental impact of their projects. A SEPA review is required when a developer proposes a new housing project of a certain size or a city government considers a land use change. If city officials decide the potential negative impacts are not significant, the project receives a Determination of Non Significance (DNS) and can proceed. Otherwise, the project must undergo a more comprehensive environmental review that results in an Environmental Impact Statement (EIS) and may require adjusting a policy or project to better mitigate its impacts. Even if a project receives a DNS, the finding can be challenged by anyone who asserts the impacts are significant and merit a full review for the cost of the filing fee. The review and ruling can take six months or more to complete. Individuals also may appeal the final EIS.

As an example, the Seattle city council introduced a proposal to permit backyard cottages in early 2016. The proposal received a determination of non-significance. Opponents filed a successful SEPA appeal, which required the city to complete a full environmental review. The opponents then filed another appeal, alleging the final impact statement failed to offer less impactful alternatives to the city's plan and did not sufficiently consider the unique character of each neighborhood. Although the city won, the lengthy appeals process delayed implementation of the policy for years. Washington has limited SEPA appeals as part of a housing density bill passed in 2019, exempting city actions to increase density from SEPA appeal. The temporary provision is a first step to removing a duplicative and time-consuming barrier.

Other policies

Rent control

Rent control, a common term used to cover a range of rent regulations, is often adopted to maintain apartments at affordable rents without an explicit government subsidy, instead shifting the burden for below-market housing onto private owners. The objective of rent regulation is to protect existing tenants from rent increases, resulting from price gouging or normal market forces, that would make their housing unaffordable. The programs vary significantly, covering issues such as: how broadly the program applies; how annual increases are determined; the circumstances under which landlords can

²³³ Hernandez, *California Getting in Its Own Way*.

increase rents; tenants' rights in regulated units; when, or whether, units can be deregulated; and how rents are tracked and enforced.²³⁴

More commonly, rent regulations have been adopted in jurisdictions with strict land use regulations and complex development processes that limit the supply of new housing, enabling existing landlords to charge higher rents. California, New York, New Jersey, Maryland, Oregon, and the District of Columbia have rent regulation programs. Thirty-six states expressly prohibit or preempt rent control. The other nine states allow it, but none of their jurisdictions have adopted rent regulations.²³⁵

Economic research, going back to Friedman and Stigler in 1946, has examined the consequences of keeping rents below market rates: a cap on rents would lead landlords to sell their rental properties to earn the market price for the property; landlords may not invest in maintenance since they cannot recoup the cost by raising rents; rent control can lead to a "mis-match" between tenants and rental units as a tenant with a rent-controlled apartment may choose not to move in the future, even if his housing needs change; and with below market rents, renters may consume excessive quantities of housing.²³⁶

A study of an expansion of rent controls in San Francisco found that tenants in rent-regulated units enjoyed lower rents and stayed in their homes longer. Rent regulation led some landlords to demolish their units for new construction or convert them to other uses; these actions lead to a reduction in rental supply, a stock serving higher income individuals, and ultimately higher rents.²³⁷ The resulting restricted supply ends up hurting some of the lower-income renters they are intended to help.²³⁸ Existing tenants benefit from the insurance provided by rent control, but the cost of such insurance is high.²³⁹ Rent control's inability to restrain housing prices is not surprising, as it does not address the problem: lack of housing supply. Instead, it further reduces the quantity of available housing by diminishing the profit incentive to build more rental housing.²⁴⁰ If a jurisdiction wants to provide social insurance against rent increases, it may be less distortionary to do so through a government subsidy or tax credit.²⁴¹

²³⁴ Vicki Been, Ingrid Gould Ellen, and Sophia House, "Laboratories of Regulation: Understanding the Diversity of Rent Regulation Laws" (working paper, Furman Center, New York, March 18, 2019), https://furmancenter.org/files/IGE_Working_Paper.pdf.

²³⁵ Been, Ellen, and House, "Laboratories of Regulation."

²³⁶ Rebecca Diamond, *What Does Economic Evidence Tell Us About the Effects of Rent Control?* (Washington, DC: The Brookings Institution, 2018), <https://www.brookings.edu/research/what-does-economic-evidence-tell-us-about-the-effects-of-rent-control/>.

²³⁷ Been, Ellen, and House, "Laboratories of Regulation."

²³⁸ "Impacts of Filtering and Rent Control on Housing Supply," *PD&R Edge* (2020), https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-061520.html?WT.mc_id=edge_June2020&WT.tsrc=Email.

²³⁹ Diamond, *What Does Economic Evidence Tell Us About the Effects of Rent Control?*

²⁴⁰ Adam Millsap, *Rent Control Policies Are Ineffective, Unjust* (Arlington, VA: Mercatus Center, 2015), https://www.mercatus.org/expert_commentary/rent-control-policies-are-ineffective-unjust.

²⁴¹ Jenny Schuetz, *Is Rent Control Making a Comeback?* (Washington, DC: The Brookings Institution, 2019), <https://www.brookings.edu/research/is-rent-control-making-a-comeback/>.

The current attention on rent regulations reflects the pressures many cities face as residents experience rising housing costs. Experience and economic theory suggest that rent regulations are not the best answer as they may reduce the quality and quantity of affordable housing. The most effective long-term solution is to reduce barriers to development and build more housing, more quickly and cheaply.

Government deregulation

Members of the Governors' Initiative on Regulatory Innovation, announced by the Administration on October 21, 2019, are working to extend the President's historic regulatory reform to state, local, and tribal governments. This initiative aims to cut regulations and costs, advance occupational licensing reform, and better align local, state and federal regulations. Focusing on "people over paperwork," government leaders are championing deregulatory and smarter regulation activity. One major area of activity involves passing occupational licensure reciprocity across states, eliminating unnecessary licensure and reducing licensure fees to lessen burdens on employers and encourage opportunities for the skilled workforce. These efforts assist military families who have been unable to work while awaiting an occupational license following a permanent change of station to a new state and low-income workers who are unable to earn a living when they cannot transfer their license to a new state or afford the renewal fees.

Along with regulations reforming occupational licensing, elected officials may want to consider amending regulations to expand home-based business opportunities. A policy brief from Mercatus on helping communities recover from the COVID-19 crisis suggests supporting home-based businesses, such as tax preparers, tailors, daycares, as a source of employment and income that can contribute to making housing more affordable for these business owners.²⁴² Models cited by Mercatus include San Diego, which revised its home-based business ordinance to eliminate burdensome rules and costly permits, instead focusing on activities that bother neighbors, and California and Colorado, which have eased rules for daycares and cottage food production.

Another focus of the initiative is removing regulations that have built up over the decades and create costs and barriers but no longer provide benefits. The Governors of Idaho, Arizona, and Ohio are a few of the champions leading their states in implementing comprehensive regulatory reviews with a directive to reduce regulation that is harming businesses and employees. Applying this approach to land use regulations and other regulations that constrain the supply of housing may further benefit states and their residents.

²⁴² Matthew (Nolan) Gray, Salim Furth, and Emily Hamilton, "Policies to Help Communities Recover: Commuting" (policy brief, Mercatus Center, Arlington, VA, 2020), <https://www.mercatus.org/publications/covid-19-economic-recovery/policies-help-communities-recover-commuting>.

SECTION 6. SUPPORTING STATE, LOCAL, AND TRIBAL ACTIVITIES

For many American families, entry-level housing options, including starter homes, condominiums, and manufactured housing, serve as important stepping stones to achieving their ultimate dream of purchasing a single-family home in which to raise their children and build wealth for the long term. The Federal Government plays a critical role in helping creditworthy first-time and low- and moderate-income borrowers achieve their goals, for example, through FHA's insurance of entry-level housing, from which borrowers can successfully graduate to non-government-supported loans for future homes, and USDA's insurance of housing in rural areas. While the Federal Government directly assists households in obtaining safe and affordable housing, it also can play an important role in supporting state, local, and tribal governments through education, outreach, and research.

Education and outreach

The Federal Government can support jurisdictions seeking to reduce local regulatory barriers and increase housing supply by sharing solutions, helping jurisdictions that want to make improvements, and supporting innovation in areas such as regulation, construction, and community engagement.

Technical assistance

Many federal agencies provide technical assistance (TA) to improve the capability of state, local, and tribal governments and other program participants to successfully use and comply with federal programs. TA provides skills and knowledge by introducing new materials and techniques, offering innovative approaches, and demonstrating ways to improve services to citizens.²⁴³ TA can take many forms, including direct TA and capacity building, development of tools and products, and in-person and online trainings. The wide range of activities include one-on-one targeted support, running a helpdesk, creating toolkits, and offering training, policy academies, and peer-to-peer assistance exchanges for customers with similar local market contexts, challenges, opportunities, and community needs. The array of activities covered under TA provides opportunities for the Federal Government to assist officials in jurisdictions working that want to reduce barriers to housing supply and better meet the need for housing across income ranges.

Housing strategies. Many local governments want to take steps to address housing affordability issues to respond to residents' needs, but struggle to understand how to best do so. Stakeholders identified key obstacles that include: (1) lack of staff capacity to comprehensively assess available policy options and determine which ones are best to pursue; (2) fragmentation within local government that inhibits collaboration across the many government agencies that affect housing affordability; (3) inadequate understanding of the need, and potential, for local action to make a substantial difference; (4) lack of

²⁴³ United States General Accounting Office, "State and Local Governments' Views on Technical Assistance," (July 12, 1978), <https://www.gao.gov/assets/80/79116.pdf>.

awareness of similar jurisdictions that are pursuing initiatives to use local policy levers to increase housing supply and improve housing affordability; (5) disagreements among local stakeholders on how best to proceed that complicate efforts to adopt new legislation; and (6) state policy barriers. Technical assistance could help fill some of this knowledge gap.

To address these challenges, a broad array of technical assistance is needed, including:

- tools and products to help local government leaders better understand their housing challenges and the options available to address them;
- direct technical assistance to local governments individually and through cohort learning to help them conduct and interpret needs assessments, develop comprehensive local housing strategies, build political support for change, and build bridges across agency silos; and
- guidance for states on how to provide maximum support for local housing strategies through supportive legislation as well as state-led technical assistance.

To avoid reinventing the wheel, it would be most effective for these efforts to supplement and extend the reach of existing TA efforts.

In addition to the standard technical assistance activities, jurisdictions may benefit from increased awareness of the importance of local governments proactively developing comprehensive local housing. The longer in the housing cycle cities and counties with growing housing costs wait, the more difficult and expensive it will be to act. Because role models are often lacking, or at least lagging, cities and counties may not fully understand their challenges and strategies to address them. Many also do not fully understand the importance of coordinating efforts across multiple local government agencies. TA may be particularly important for places with smaller populations (under 50,000), including rural counties and Tribes, that have limited capacity for planning.

HUD's ability to educate jurisdictions before their housing market becomes constrained, offer models appropriate to a jurisdiction, support peer to peer learning, and encourage local regulatory relief actions can provide a beneficial resource to places where housing supply is not responsive to demand. However, HUD recognizes the need to support jurisdictions where regulations are not the barrier to the affordable housing supply, but the local market is not attracting the development and financing needed to safely and affordably house residents. HUD will be considering how to best design a toolbox that can help with the range of challenges jurisdictions face in supplying housing to their residents across the income spectrum.

Consolidated Plans. Local communities spend a lot of time preparing their Consolidated Plans, a requirement to receive HUD funds that is designed to help states and local jurisdictions assess their affordable housing and community development needs and market conditions, and make data-driven, place-based investment decisions. In many communities, these efforts are focused on complying with HUD requirements and planning the use of CDBG, HOME, and ESG funds, rather than on the broader task of developing a comprehensive local housing strategy that uses the full array of available policy

options, including regulatory barriers relief. Local stakeholders may want to make Consolidated Planning more useful to their jurisdiction; technical assistance could help them accomplish that goal.

Discussions with stakeholders could address whether it would help to give jurisdictions greater flexibility to count locally-developed housing planning processes toward their Consolidated Planning requirements if they meet certain minimum requirements and what type of guidance or training would be useful to help support Consolidated Planning that is of maximal value to local jurisdictions and helps them develop more comprehensive local housing strategies that leverage HUD block grant funding with other local resources and barrier reduction efforts to increase the overall impact. In this connection, HUD requires the Consolidated Plan to explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by public policies, including the jurisdiction's tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment.²⁴⁴

Regulatory barriers. HUD is well-positioned to offer TA related to land use regulations, building on its previous work on eliminating regulatory barriers dating back to 1991 and continued through today's Regulatory Barriers Clearinghouse, as discussed in more detail below. Other agencies offering technical assistance could assess their programs to identify opportunities to help state, local, and tribal governments review their regulatory environments and remove unnecessary regulatory barriers.

For example, a report on rural housing identifies opportunities for the USDA to provide TA to support the preservation of rural multifamily housing, such as providing easy-to-use public data to increase transparency with improved accuracy of public data; helping stakeholders learn more about the possible preservation uses of USDA's Community Facilities programs and the Business and Industry guarantee program; supporting an exchange through which stakeholders can share information; and building on the helpful preservation technical assistance program.²⁴⁵

Lenders are another group identified by stakeholders that could benefit from technical assistance, particularly for lending on tribal trust land, lending for small balance multifamily properties, and financing innovative construction strategies and technologies. Financing continues to be a barrier to affordable housing, and while it was beyond the scope of this work, these recommendations may inform housing finance activities.

EPA provides a variety of technical assistance programs through its Office of Community Revitalization to help states and communities develop in environmentally and economically sound ways.²⁴⁶ Technical

²⁴⁴ See Housing Market Analysis, 24 CFR §91.210(e), <https://www.law.cornell.edu/cfr/text/24/91.210>.

²⁴⁵ Housing Assistance Council, "Rental Housing for a 21st Century Rural America: A Platform for Preservation" (September 2018), https://www.novoco.com/sites/default/files/atoms/files/hac_report_a_platform_for_preservation_090618.pdf.

²⁴⁶ United States Environmental Protection Agency, "Smart Growth Technical Assistance Programs," <https://www.epa.gov/smartgrowth/smart-growth-technical-assistance-programs>

assistance includes training programs, tools, resources such as case studies and community workbooks, and individualized assistance. These tools provide opportunities for jurisdictions to tackle regulatory and process barriers that, among other things, can inhibit housing supply. Programs include:

- Building Blocks for Sustainable Communities to give communities tools to implement smart growth development approaches. Eligible applicants are tribal, county, and local governments, and nonprofit organizations that have the support of the local government on whose behalf they are applying.
- Recreation Economy for Rural Communities to help communities develop strategies and an action plan to revitalize their Main Street through outdoor recreation. Eligible applicants include local governments, Indian tribes, and nonprofit institutions and organizations.
- Smart Growth Implementation Assistance to work with public-sector entities that want to incorporate smart growth techniques into their development. EPA's regional staff identifies and selects communities to assist.

Building and energy codes. Stakeholders mentioned the challenges posed by inconsistent code interpretations and inspections that do not follow standardized procedures. In the past, HUD, in partnership with the National Association of Home Builders, provided a hotline to address questions from builders and inspectors, similar to the help desk DOE administers to assist individuals with questions about energy codes. Stakeholders recommended that technical assistance, such as on-line tutorials and “quick guides,” be provided to raise awareness and educate builders and contractors on building inspection processes and the roles of state and local entities in code adoption and enforcement. One noted that efforts to speed permitting should be coupled with resources and training for building and fire officials to ensure community safety is adequately protected.²⁴⁷

DOE provides technical assistance related to building energy codes, ranging from technical analysis used in development of the standards through state implementation and builder training. It provides states with resources, including the formation of adoption and compliance plans, economic analysis, cost impacts and analysis, and field research. These activities enable states to determine the investments and benefits of adopting a code update. Through its Building Energy Codes Program, DOE also delivers training for code officials and builders to help them stay up to date on code changes. Increasing education and training would be helpful in improving compliance while reducing builders’ costs and delays as they adjust to new rules and supporting consistent code enforcement. Linking the training programs with existing state licensure requirements may increase uptake.

DOE offers a range of other TA resources. For example, it supports a Better Buildings Residential Network bringing together jurisdictions, organizations, and individuals implementing energy efficiency programs to increase the number of energy efficient homes. In addition to toolkits and publications, DOE hosts peer exchange calls for network members to discuss needs and challenges and collectively

²⁴⁷ AEC Science & Technology, LLC, and others, *Joint Comment Letter in Response to HUD Affordable Housing RFI*, <https://www.regulations.gov/document?D=HUD-2019-0092-0290>.

identify effective strategies and useful resources.²⁴⁸ Its Building America Solution Center provides expert information for building professionals on hundreds of high-performance construction topics.²⁴⁹ DOE's efforts extend beyond design and construction to address financing and homeowner acceptance.

Environmental reviews. The Department of Transportation provides a range of training resources to grantees. Some examples follow:

- The Federal Highway Administration (FHWA) provides training on the National Environmental Policy Act (NEPA) implementation, Section 4(f), Environmental Justice, Public Involvement, and other training relevant to FAST-41 projects. FHWA has also provided training on topics such as the application of the One Federal Decision process and the collaboration process between agencies during conferences, quarterly environmental webinars, and workshops.
- The Federal Railroad Administration (FRA) is developing training for environmental reviews related to California's high-speed rail project. In July 2019, FRA and California entered into a Memorandum of Understanding by which the California High-Speed Rail Authority was assigned FRA's responsibilities as lead agency under NEPA. FRA is developing training to ensure that the Authority is equipped to assume environmental review responsibilities under NEPA and other federal environmental laws.
- The Federal Transit Administration (FTA) disseminates useful resources (e.g., environmental standard operating procedures, guidance documents, Q&As, rules) and delivers its Managing the Environmental Review Process seminar, in conjunction with the National Transit Institute, for project sponsors and other stakeholders. In FY2019, FTA established a Regional Environmental Training Program for FTA staff to ensure consistent implementation of best practices.

Transit oriented development. FTA launched the Transit-Oriented Development Technical Assistance Initiative in 2015 to provide technical assistance activities leading to improved access to public transportation, new economic opportunities, pathways to employment, and support for transit-oriented development (TOD) within transportation corridors and around public transportation stations, with a focus on economic development through innovative financing.²⁵⁰ The Initiative brings together resources and provides training on public transit, TOD, land use, innovative finance strategies, urban planning, affordable housing, and economic development. The Initiative advances TOD through on-site technical assistance, a peer network to exchange best practices and communications, outreach, and research. Smart Growth America administers the initiative, providing the technical assistance to selected jurisdictions, tracking progress, and improving the components of the TA through case studies and integrating lessons learned.

²⁴⁸ Office of Energy Efficiency and Renewable Energy, *Peer Exchange Call Summaries*,

<https://www.energy.gov/eere/better-buildings-residential-network/peer-exchange-call-summaries>.

²⁴⁹ Office of Energy Efficiency and Renewable Energy, "Building America Solution Center," <https://basc.pnnl.gov/>

²⁵⁰ Federal Transit Administration, *Transit-Oriented Development Technical Assistance: Second Summary Report*, <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/117641/fta0124-research-report-summary.pdf>.

Innovation. The need for greater innovation was identified across a number of fields, including design, construction, and stormwater management. While industry may drive innovation, the Federal Government can play a role in disseminating lessons learned.

As an example, HUD formed the Joint Venture for Affordable Housing in 1982, a public-private partnership to combat the problem of high housing costs from outdated and unnecessary building and land use regulations.²⁵¹ Through conferences, workshops, demonstrations, and other activities, the organizations worked to identify ways to reduce construction costs. Builders worked with local officials to modify or interpret local building codes and development regulations to enable more cost-effective construction. Demonstrations were conducted in numerous locations throughout the country, including Tulsa, OK, Portland, OR, Phoenix, AZ, Elkhart County, IN, Everett, WA, Knox County, TN, Sioux Falls, SD, and Valdosta, GA. The findings were disseminated to encourage wider adoption of these approaches.²⁵²

Stormwater management, an expensive component of development, seems an area where innovation has been stymied but could be extremely beneficial, both by using better technology and improving processes. EPA could support innovation by developing a mechanism for identifying acceptable practices to enable state and local jurisdictions to accept those innovations without fear of penalties, encouraging pilots, and continuing its work to stand up its Clean Water Technology Center to support these efforts.

The DOE Building America Program has been a source of innovation in residential building energy performance, durability, quality, affordability, and comfort for more than 20 years. This research program partners with industry, including many of the country's top home builders, to bring cutting-edge innovations and resources to market. In January 2019, the program announced up to \$11.5 million in Building America Industry Partnerships for High Performance Housing Innovation to drive innovation and early-stage research and development that will improve the energy performance of building envelopes and heating, ventilation, and air conditioning (HVAC) systems in American homes.²⁵³ Projects will also address key challenges impacting building industry design and construction practices.

To ensure federal agencies can use their technical assistance funding to support regulatory reform, some changes to current TA programs may be needed. For example, jurisdictions that do not receive funding directly from a federal agency may need assistance, requiring clarification that such entities are authorized to receive TA. Additional funding would be required to develop and provide the necessary technical assistance to state, local, and tribal jurisdictions dedicated to regulatory reform efforts.

²⁵¹ HUD's partners were: American Planning Association, Council of State Community Affairs Agencies, International City Management Association, National Association of Counties, National Conference of State Legislatures, National Governors' Association, Urban Land Institute, and National Association of Home Builders.

²⁵² HUD User, "Affordable Housing Demonstration Briefing Book," August 1, 1984, <https://www.huduser.gov/portal/Publications/pdf/HUD%20-%203781.pdf>.

²⁵³ Office of Energy Efficiency and Renewable Energy, "Department of Energy Invests \$11.5 Million in Building America Industry Partnerships for High Performance Housing Innovation," <https://www.energy.gov/eere/buildings/articles/department-energy-invests-115-million-building-america-industry-partnerships>.

Regulatory Barriers Clearinghouse

As directed by the American Homeownership and Economic Opportunity Act of 2000, HUD established the Regulatory Barriers Clearinghouse (Clearinghouse) to collect, process, assemble, and disseminate information on state and local regulations and policies affecting the creation and maintenance of affordable housing.²⁵⁴ The Clearinghouse provides a natural home for resources for state, local, and tribal governments on strategies to reduce regulatory barriers.

Maintaining a clearinghouse poses several challenges. First, its value depends on obtaining useful materials from the parties involved in regulatory change. While access to a city's housing policy plan or a state's legislative language can be informative, information needs to be in a useful form for the party seeking it. Second, no single answer is appropriate for all jurisdictions; capturing the context is as important as describing the strategy. A successful practice in Austin, TX may not be what is needed in Norman, OK. Users need to be able to match potential strategies with the challenges they face. Third, an innovative approach is not necessarily a best practice. It takes time to see if a zoning change will be successful or whether a shot clock produces the desirable outcome. Yet, a county council can still benefit from connecting with peers who have tackled a similar regulatory barrier and learning the policies and procedures they considered and challenges they faced.

While the Clearinghouse was recently redesigned to make it easier to find materials, it could be further restructured to be more useful and reach a broader audience. The most important change is to obtain resources from the parties engaged in regulatory relief and housing production to learn more about the process and outcome than can be captured from reading a report. But finding time to report on activities in one's jurisdiction can be difficult. Several possibilities are under consideration. The Clearinghouse could be restructured to operate more like a "wiki" with a simple entry format that includes context to make it quick and easy to submit information and enable others to revise it, add lessons learned, or identify challenges. One of the benefits of a wiki-like entry process would be to enable the resources to better serve a wider range of potential users – mayors, city council and county commission members, developers, housing advocates, and others in the housing development ecosystem; any of them could create, edit, or supplement an entry.

Establishment of an awards program could encourage jurisdictions to submit information on their strategies and highlight their accomplishments by rewarding some that have moved the needle in creating additional housing supply. The Robert L. Woodson, Jr. Award was implemented as part of the America's Affordable Communities Initiative launched in 2003 to recognize local governments that worked to reduce regulatory barriers to affordable housing. The Woodson awards, although they did not provide monetary compensation, highlighted innovation around the U.S. HUD is considering how to develop regional monetary awards in partnership with corporations and local educational institutions

²⁵⁴ HUD User, Office of Policy Development and Research, "Regulatory Barriers Clearinghouse," <https://www.huduser.gov/portal/rbc/home.html>.

that would serve as a mechanism for receiving information and building regional relationships to solve supply challenges, particularly involving land use regulations and processes. The University of Utah’s Ivory Prize for Housing Affordability, initiated in 2018 to identify innovative ideas in construction and design, finance, and regulatory and policy reform, may serve as a model.²⁵⁵

In addition to capturing the activities and experiences occurring in state, local, and tribal jurisdictions, the Clearinghouse will continue to be a source of research and data. For example, many jurisdictions continue to exclude manufactured housing from single-family-zoned districts. Better knowledge of the many advances made in manufactured housing design and construction may help jurisdictions reconsider their zoning choices.²⁵⁶ To support innovative construction strategies and technologies, the Clearinghouse could feature multifamily properties that have used off-site construction and identify cost savings and efficiencies achieved, including FHA-insured properties. HUD also could publish guidance on leveraging off-site construction to boost housing affordability, encouraging the use of these approaches when suitable.

Research

Data needs

Several stakeholders expressed the need for better collection or publication of data to enable policymakers to make more informed, accurate decisions. As a roundtable participant noted, “We have a complete lack of data. To evaluate what works, we need data to see the effect of rules.” This need is particularly acute as the country responds to the economic challenges posed by the coronavirus pandemic. The following are some of the areas stakeholders identified as needing enhanced data.

Building permit data. Census Bureau publishes information on the number of new residential construction permits, along with building starts and completions. Much less information is available on permits for home improvements, demolition, conversions, etc. In some local areas, demolitions and changes to existing stock are substantial shares of the overall construction universe. HUD’s Components of Inventory Change (CINCH) report provides estimates at high geographic aggregation and with substantial time lag. HUD and Census could collaborate to provide more descriptive information on permits.

Capital expenditures on multifamily properties. Expenditures or outcomes on improvements and renovations in multifamily buildings provide useful information on how responsive local housing markets are to changes in demand. Cities that are experiencing lots of improvements or renovations in multifamily housing but building few new apartments are generally places with supply constraints. This is also a signal of how much existing “naturally occurring” affordable housing (i.e., housing that is

²⁵⁵ Ivory Innovations, “The Ivory Prize: Finding Excellence,” <https://ivory-innovations.org/theivoryprize>.

²⁵⁶ Effects of Market Forces on the Adoption of Factory-Built Housing. *Evidence Matters* (Winter/Spring 2020), <https://www.huduser.gov/portal/periodicals/em/WinterSpring20/highlight2.html#title>

affordable without a subsidy) is being lost. Expenditures are reported in the NCREIF (National Council of Real Estate Investment Fiduciaries) database, which is limited to institutional investors, but that is also very closely held data.

Construction and land development loan terms. Data on construction and land development (CLD) loans are not readily available, particularly concerning the covenants of CLD loans. For example, a construction loan disperses in tranches once specific benchmarks have been reached in the development project, i.e., a percentage of completed or pre-sold units for a development of single-family homes. Knowing how those covenants change over time will provide insights on when banks start to tighten access to credit.

Data needs should be prioritized since pursuing any of these activities will require additional funding. Better data will be important to help jurisdictions identify and implement regulatory change and support research efforts.

Research needs

Research will be needed to design TA materials and support innovation. Specific areas identified by stakeholders include:

- Case studies of local efforts to develop comprehensive housing strategies and innovative approaches in a variety of markets could contribute directly to technical assistance efforts.
- Rigorous evaluation of a range of local housing policies (including but not limited to barrier reductions efforts) to better understand their outcomes and how different decisions made during implementation can affect their final results.
- Exploration of the serious capacity issues many communities face in terms of not having enough developers capable of producing non-luxury housing at scale. This is a problem particularly in rural areas, but also in some urban and suburban areas.
- Research could help clarify opportunities for improving coordination between state and local housing and transportation agencies, including the extent to which existing coordination efforts like the provisions for rewarding jurisdictions with affordable housing strategies in the federal New Starts process are effective or could be improved.²⁵⁷
- Innovation in construction techniques has the potential to reduce costs and address labor force constraints. Better coordination and dissemination of the research conducted through DOE's Advanced Building Construction Initiative and other programs, HUD's Affordable Housing Research and Technology Division, and the National Institute of Building Sciences, a non-profit non-governmental organization, may improve construction productivity.

²⁵⁷ U.S. Department of Transportation, "Final Interim Policy Guidance: Federal Transit Administration Capital Investment Grant Program," June 2016, https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FAST_Updated_Interim_Policy_Guidance_June%202016.pdf.

- Analyses of different mechanisms for producing affordable housing, identifying a “return on investment,” could inform which federal programs enable the Federal Government to get the most out of its funds.²⁵⁸ Different programs may be more successful in certain housing ecosystems.

As agencies develop their Annual Evaluation Plans pursuant to the Evidence Act, research topics related to regulatory barriers are candidates for inclusion.

²⁵⁸ See, for example, Evan Soltas, “The Price of Inclusion: Evidence from Housing Developer Behavior” (2020), https://www.dropbox.com/s/bbjjs465mgavay5/NYC421a_CurrentVersion.pdf?dl=0.

SECTION 7. NEXT STEPS

This report identifies many federal regulations and practices that could be revised to eliminate unnecessary burdens to providing Americans with affordable, safe, quality places to live. Several agencies have already taken action on a number of the recommendations received. The work is not done. Agencies are encouraged to continue their efforts to reduce regulatory burdens, including pursuing recommendations contained in this report.

In addition, the report recognizes HUD and other federal agency commitment to working with state, local, tribal, and private sector leaders to address, reduce, and remove overly burdensome regulations and practices that contribute to the lack of housing supply to meet the demands of the free market. The report shows a range of activities federal agencies could undertake to encourage and support state, local, and tribal governments in their efforts to increase the supply of housing.

APPENDIX. QUANTIFICATION METHODOLOGY

A greater understanding of the distortions caused in the housing market from the interaction of regulations at all levels of government across all housing markets can inform efforts to tackle regulatory barriers. Measurement of the stringency of a regulation, the extent to which policies are enforced, and the extent to which regulations are motivated by local housing market conditions, all present difficulties in characterizing the regulatory environment and estimating its impact. Despite the challenges in arriving at an all-encompassing point estimate of the economic impact of housing regulations, the importance of residential real estate in the U.S. economy merits such an attempt.

Residential private investment ranges from 4 to 5 percent of gross domestic product (GDP);²⁵⁹ housing-related expenditures are one-third of consumer spending;²⁶⁰ mortgage debt is two-thirds of household liabilities;²⁶¹ and real estate is one quarter of all household assets.²⁶² Households are willing to spend, borrow, and invest so much because of the basic need for shelter but also for housing as a platform for quality of life and economic opportunity. Even slight distortions in the housing sector can have substantial impacts on residents' well-being. HUD estimates the adverse impact of regulations, in terms of higher housing costs or lost economic opportunities, ranges from \$100 billion to \$200 billion annually. This estimate does not account for benefits that regulations and other housing policies can provide to consumers and producers when efficiently designed and implemented. However, by calculating the burden on households in the highest cost areas, the methodology seeks to capture regulations that exceed the efficient level thus unnecessarily driving up costs.

Evidence of regulatory barriers

As this report discusses, a wide variety of policies directly affect production of housing, including local land use regulations, building codes, energy efficiency standards, environmental protections, policies affecting the cost of building materials, and construction labor policies. These regulations can help markets behave efficiently when they correct for negative externalities caused by residential real estate development. The standard economic model can indirectly observe an inefficient regulatory regime through its impact on a housing market. A distortionary regulation that either limits the quantity or increases the price of a good predicts the burden will be shared by producers and consumers. Another important insight is that the economic loss is reflected directly by higher prices for consumers but also indirectly through the cost of lost production and consumption opportunities (deadweight loss). Some analyses reach beyond the housing market and address the indirect burden of an inefficient regulation on economic growth and mobility, especially for the most vulnerable populations.

²⁵⁹ U.S. Bureau of Economic Analysis, "Value Added by Private Industries: Construction as a Percentage of GDP [VAPGDPC]," FRED, Federal Reserve Bank of St. Louis, June 30, 2020, <https://fred.stlouisfed.org/series/VAPGDPC>.

²⁶⁰ ²⁶⁰ U.S. Bureau of Labor Statistics, "Consumer Expenditure Surveys," <https://www.bls.gov/cex/>.

²⁶¹ Federal Reserve Bank of New York, Q1 2020 B.101.h Balance Sheet of Households, <https://fred.stlouisfed.org/release/tables?rid=52&eid=810420>.

²⁶² Federal Reserve Bank of New York, Q1 2020 B.101.h Balance Sheet of Households

Measurement at the national level

HUD's Request for Information on Eliminating Regulatory Barriers to Affordable Housing solicited ideas from stakeholders on how to measure the impact of regulations on the cost of affordable housing development and how to identify jurisdictions possessing a healthy regulatory environment where the costs of necessary regulation are balanced by their benefits. The American Enterprise Institute suggested the AEI Carpenter Index, which measures the percentage of entry-level home prices that are affordable to a carpenter (using a threshold of less than 3 times a carpenter's household income).²⁶³ The Mercatus Center at George Mason University suggested measuring the pace of housing construction per capita and proposed 5 percent as a healthy threshold of the net addition to housing stock over a five year period, a standard which is most applicable in high-demand markets.²⁶⁴

By some measures, the United States economy is effective in providing housing. The long-run responsiveness of the supply of housing to changes in price is greater for the U.S. than any other nation for which comparable data exist.²⁶⁵ Of all occupied units, 45 percent of households pay less than 20 percent of their income for housing costs.²⁶⁶ Incomes have kept pace with housing prices, adjusted for quality. The nominal sales price of a constant quality home (average sales price of a typical 2005 home) divided by median family income has varied over time but did not drift upwards between 1963 and 2018. However, the ratio of average sales prices of homes sold to median family income (average SP/MFI) and the ratio of median sales price of new homes to median family income (new SP/MFI) have risen from 1963 to 2018. (See Figure A-1) The greatest proportional increase is for the average sales price of homes sold (average SP/FMI), from a ratio of approximately 3 to 5. When normalized by per capita income, which has increased at a greater rate than median family income, the sales price to income ratio of a constant quality home has decreased from 13 to 7 over the 55 years since 1963. The average sales price of homes sold to per capita income ratio has remained relatively stable. One could interpret these trends in different ways. The upward trend of the average home price to median family income to that of the constant quality home could indicate the presence of building regulations

²⁶³ Edward J. Pinto and Tobias Peter, AEI comment letter, <https://www.regulations.gov/document?D=HUD-2019-0092-0305>

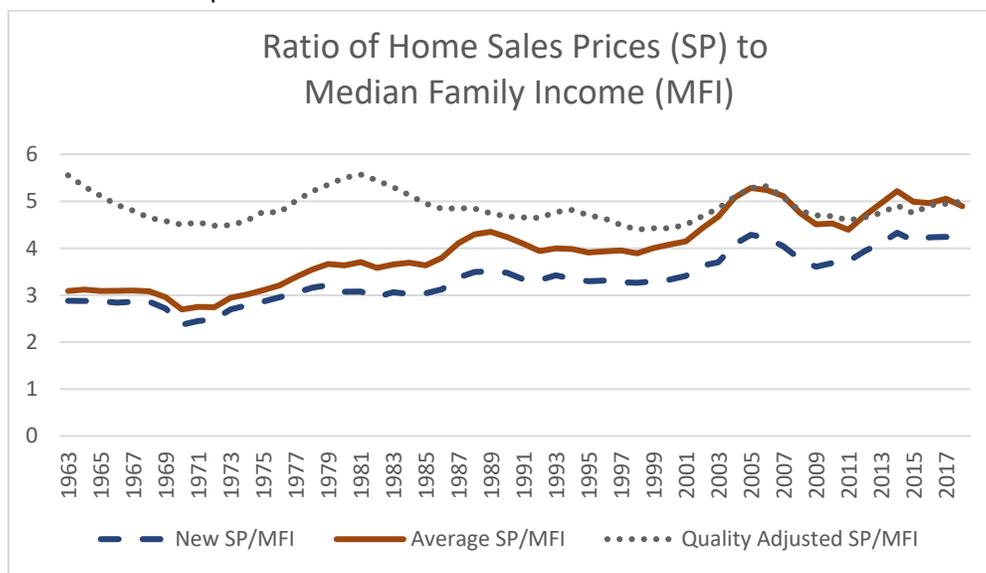
²⁶⁴ Salim Furth and Emily Hamilton, Mercatus Center comment letter, <https://www.regulations.gov/document?D=HUD-2019-0092-0070>. A standard based on a minimum rate of housing construction is inappropriate for housing markets characterized by weak or declining demand, which generates low levels of investment regardless of regulation.

²⁶⁵ Aida Caldera and Åsa Johansson, "The Price Responsiveness of Housing Supply in OECD Countries," *Journal of Housing Economics* 22, no. 3 (2013): 231–249; Maria Chiara Cavalleri, Boris Cournède, and Ezgi Özsoğüt, "How Responsive Are Housing Markets in the OECD? National Level Estimates" (working paper, no. 1589, OECD Economics Department, OECD Publishing, Paris, 2019), <https://doi.org/10.1787/4777e29a-en>

²⁶⁶ ACS, 2018 5-year estimates. The proportion paying less than 20 percent of income varies by tenure status: 25 percent of rental units, 45 percent of owned housing units with a mortgage, and 75 percent of owned units without a mortgage.

requiring the market to provide high-quality homes.²⁶⁷ However, when normalized by per capita income, there appears to be an increase in construction efficiency over time.²⁶⁸

Figure A-1: Trends in home prices to income 1963-2018



Source: Data from <https://fred.stlouisfed.org>. Computations and analysis by HUD.

Other measures show evidence of an affordability challenge when considering the cost of housing relative to income. The consumer price index for housing consumption has increased faster than the overall rate of inflation (44 percent more than general inflation from 1970 to 2019).²⁶⁹ A cost increase is also apparent when comparing sectors of the U.S. economy: growth of the producer price index for residential private fixed investment has outpaced that for nonresidential private fixed investment by a factor of three. These data are not necessarily indicative of the cost of housing regulations. Other factors can lead to inflation in housing prices such as demographic changes or financial innovation. For example, annual data from 1890 to present assembled by Robert Shiller suggest home prices were most in line with construction costs during a period of high interest rates.²⁷⁰ Regardless, the housing industry is restricted in productivity growth relative to other sectors that rely less on immobile factors of production such as land, making inefficient regulation of that factor more difficult to overcome.

Comparing changes in the price of new housing with changes in construction cost (labor and building materials) is one way to identify the cost of land. The (nominal) price of a single-family home and the

²⁶⁷ For a further discussion of this idea, see John M. Quigley and Steven Raphael, "Is Housing Unaffordable? Why Isn't It More Affordable?" *Journal of Economic Perspectives* 18, no. 1 (2004): 191–214.

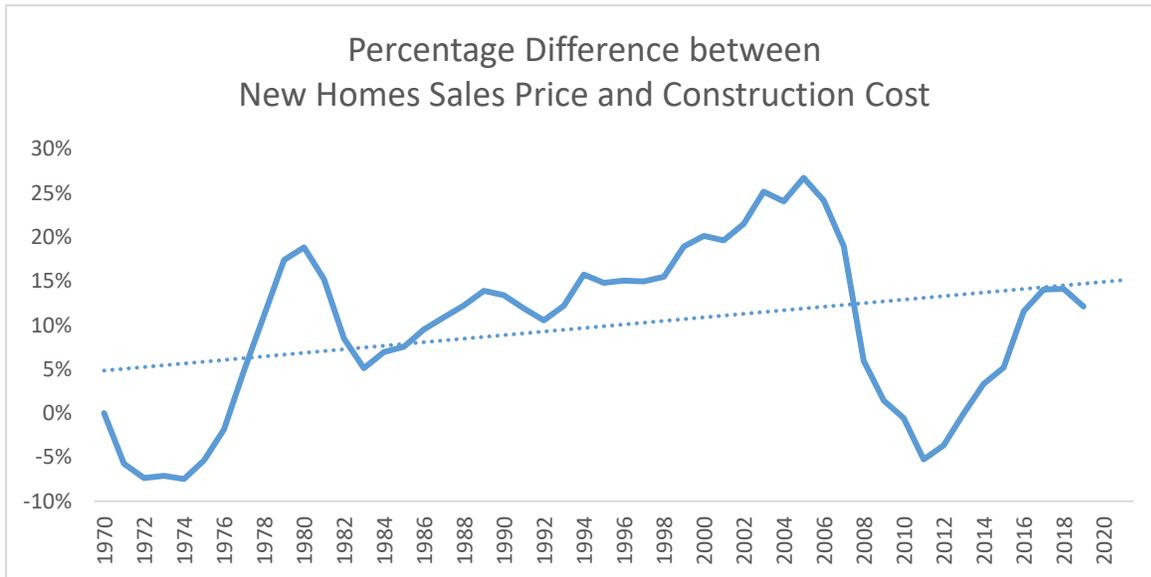
²⁶⁸ All data from <https://fred.stlouisfed.org>. Computations and analysis by HUD

²⁶⁹ U.S. Bureau of Economic Analysis, "Personal Consumption Expenditures: Chain-type Price Index" [DPCERG3A086NBEA], FRED, Federal Reserve Bank of St. Louis, July 15, 2020, <https://fred.stlouisfed.org/series/DPCERG3A086NBEA>

²⁷⁰ Online Data Robert Shiller, <http://www.econ.yale.edu/~shiller/data.htm>.

R.S. Means construction cost index have increased every year (except for 2008-2011). However, inflation of new single-family home prices has outpaced that of construction for most of the past 50 years except the early 1970s and 2010 through 2012. The difference in the inflation rate has trended upwards suggesting that land or some other input not included in the construction cost index has become more expensive. Some researchers attribute this gap between the price and cost of a new addition to the housing stock to land-use regulations.^{271,272} A trend line suggests the nation-wide increase of the price of new homes from unidentified costs has increased from 5 to 15 percentage points from 1970 to 2019 (see Figure A-2: Homes sales prices increase more than construction costs from 1970 to 2019. Figure A-2). Closing this 10-percentage point gap even slightly could lead to significant cost savings.

Figure A-2: Homes sales prices increase more than construction costs from 1970 to 2019.



Note: 1970 indices normalized to one. Graphic shows difference between indices as a percentage of construction cost index. Trend line included.

The gap between housing prices and construction costs cannot be attributed to regulations alone. A well-functioning land market could result in a wedge between the price of newly developed residential land and construction costs from opportunity costs of development such as rents from agricultural land, the value of other potential land uses, uncertainty concerning future prices, and even anticipated economic growth. A higher cost of land acquisition could also be attributed to prior building activity that already developed the most cost-effective sites. In certain circumstances, it can become more profitable to demolish or rehabilitate existing housing and rebuild it with newer, larger, or more dense housing on

²⁷¹ Quigley and Raphael, "Is Housing Unaffordable?"

²⁷² Other researchers attributed much of the divergence between prices and construction costs to a speculative demand for housing. See Karl E. Case and Robert J. Shiller, "Is There a Real Estate Bubble?" *Brookings Papers on Economic Activity* 1 (2004).

the site.²⁷³ The importance of the unique features of the natural and built environment in determining the impact of regulations makes metro-level studies more revealing than estimates derived from national data. Analysis at an aggregated level will not reflect disproportionate burdens on specific areas, income groups, or demographic groups.

The rent-to-income ratio and housing share of total expenditures are commonly used measures of the burden of housing cost.²⁷⁴ Because of the complex nature of housing as a good, housing cost ratios should be used cautiously as a measure of burden. An accurate measure of cost would control housing prices for quantity and quality of housing consumed, locational amenities, and use an estimate of a household’s permanent income as the denominator. Despite the imperfections of the measure, comparisons of unadjusted ratios across time, income classes, and even nations can reveal important trends in the housing market. In 2019, U.S. households with the lowest income (bottom fifth) devoted 40 percent of all spending to housing compared to 30 percent by the highest income quintile (see Table A-1).²⁷⁵ The difference between the expenditures of low- and high-income households is an indicator of the fixed cost of basic shelter. It also shows housing is a necessary good: the proportion of expenditures spent on the good falls with income. In 1984, the first year for which these data exist, the expenditure share of housing for the lowest income quintile was 35 percent, indicating a 5-percentage point increase in the housing share over the past two decades. For all Americans, the increase amounted to 3 percent of their expenditures. The increase in the expenditure share could arise from many sources: declining income, higher prices, or consuming more housing, and is likely a combination of factors.

Table A-1: Share of Expenditures Spent on Housing by Income Quintile, 2019

Year	All consumer units	Lowest 20 percent	Second 20 percent	Third 20 percent	Fourth 20 percent	Highest 20 percent
1984	29.8	35.1	31.4	29.9	28.6	28.7
2019	32.8	40.2	36.6	34.1	31.8	29.9

Source: Consumer Expenditure Survey, Bureau of Labor Statistics

²⁷³ Paavo Monkkonen, Ian Carlton, and Kate Macfarlane, *One to Four: The Market Potential of Fourplexes in California’s Single-Family Neighborhoods* (Los Angeles, CA: UCLA, The Ralph and Goldy Lewis Center for Regional Policy Studies, 2020), <https://escholarship.org/uc/item/8gh2x0tj>.

²⁷⁴ Both measures are used to measure the expenditures on housing relative to a household’s overall budget. There are slight differences in both the numerators and denominators of both measures. The expenditure uses total expenditures on all goods as base whereas a rent-to-income ratio uses the income earned by a household. The definition of housing expenditures by the Bureau of Labor Statistics includes contract rent, utilities, fuels, as well as household operations, housekeeping supplies, furnishings, and appliances. The U.S. Census Bureau definition of gross rent is the contract rent plus the estimated average monthly cost of utilities and fuels. For both measures, if the occupant owns the property, contract rent is replaced by mortgage interest and charges, property taxes, and home insurance. Maintenance costs are included in the expenditure share.

²⁷⁵ Bureau of Labor Statistics, “Consumer Expenditure Survey, 2018,” Table 1101. Quintiles of Income Before Taxes: Annual Expenditure Means, Shares, Standard Errors, and Coefficients of Variation.

Oft-cited numbers from a National Association of Home Builders' survey of developers estimate compliance with regulation amounts to 32 percent of the development costs of multifamily housing and 24 percent of the costs of a single-family home.²⁷⁶ These figures are consistent with other studies. Limitations of the survey, including a small number of participants and reliance on their perspectives, demonstrate the difficulty of calculating a single number to capture the impact of regulation on housing prices nationwide.

The Advisory Commission on Regulatory Barriers to Affordable Housing, in the *Not In My Backyard* report it issued in 1991, identified excessive and unnecessary government regulation at all levels of government resulting in housing costs 20 to 35 percent higher than they should be in areas most severely regulated.²⁷⁷ A member of the Commission separately opined that regulatory barriers may raise prices by 50 percent or more.²⁷⁸

Measurement at the local level

Land use regulations represent only one realm of the regulatory barrier landscape. Nevertheless, land use regulations represent an important and heavily researched component of the overall body of regulations that affect affordability in housing markets. The focus on these studies is merited by the importance of land as an essential input to housing production. Land use regulations have been measured through surveys, like the Turner Center Residential Land Use Survey²⁷⁹ and the Wharton Residential Land Use Regulatory Index (WRLURI).²⁸⁰

Efforts to understand the relationship between land use regulations and housing prices have spanned over 50 years.²⁸¹ A 2005 summary notes weak and indirect measures of regulatory variables, a focus on specific geographies, and lack of outcome measures, all of which make it difficult to determine the

²⁷⁶ Paul Emrath and Caitlin Walter, *Regulation: Over 30 Percent of the Cost of a Multifamily Development*, National Association of Home Builders, National Multifamily Housing Council, 2018, <https://www.nmhc.org/contentassets/60365effa073432a8a168619e0f30895/nmhc-nahb-cost-of-regulations.pdf>.

²⁷⁷ Advisory Commission on Regulatory Barriers to Affordable Housing, *“Not in My Backyard”: Removing Barriers to Affordable Housing*, 1991, https://www.huduser.gov/Publications/pdf/NotInMyBackyard_508.pdf.

²⁷⁸ ²⁷⁸ Anthony Downs, “The Advisory Commission on Regulatory Barriers to Affordable Housing: Its Behavior and Accomplishments,” *Housing Policy Debate* 2, no. 4 (1991): 1095–1137. A contemporaneous analysis using price changes in California between 1970 and 1980 estimated a 33-percent differential resulting from growth controls, a subset of the many regulations to which housing development is subject. See William A. Fischel, “Comment on Anthony Down’s ‘The Advisory Commission on Regulatory Barriers to Affordable Housing: Its Behavior and Accomplishments,’” *Housing Policy Debate* 2 no. 4 (1991): 1139–1160.

²⁷⁹ Sarah Mawhorter and Carolina Reid, *Turner California Residential Land Use Survey* (Berkeley, CA: University of California, Berkeley, 2018).

²⁸⁰ Joseph Gyourko, Jonathan Hartley, and Jacob Krimmel, “The Local Residential Land Use Regulatory Environment across U.S. Housing Markets: Evidence from a New Wharton Index (NBER Working Paper No. 26573, Cambridge, MA, National Bureau of Economic Research, 2019).

²⁸¹ John M. Quigley and Larry A. Rosenthal, “The Effects of Land Use Regulation on the Price of Housing: What Do We Know? What Can We Learn?” *Cityscape* 8, no. 1 (2005): 69–137, <https://www.huduser.gov/periodicals/cityscape/vol8num1/ch3.pdf>.

regulations' effects. A more recent review of the literature identifies the 1970s as the period when constraints on new housing construction began reducing supply and increasing prices.²⁸²

Most economic research attempts to calculate the “regulatory tax” of a home price by subtracting from the total price the cost of construction, the cost of land, and sometimes the value of other amenities and characteristics associated with the home’s quality and location. Glaeser and Gyourko estimate 26 percent of U.S. housing stock (in 2013) is subject to a regulatory tax of at least 20 percent.²⁸³ They find this varies by metropolitan area from a 10 to 33 percent tax (in Boston, New York City, and Washington, DC), to a 33 to 50 percent tax (in Los Angeles, Oakland, San Francisco, and San Jose) (in 2005).²⁸⁴ Studies based on similar methodologies have found that regulation accounts for between 21 to 35 percent of housing prices in Florida,²⁸⁵ to 24 to 45 percent in San Diego County.²⁸⁶

Similar studies present regulatory costs in terms of the cost per new regulation, rather than the cost of the overall regulatory scheme. Each additional regulation is associated with a 4.5 percent increase in the price of owner-occupied housing and a 2.3 percent increase in the price of rental housing in California,²⁸⁷ and a 7 percent increase in housing prices in eastern Massachusetts.²⁸⁸ These studies are limited by what they count as a regulation; most focus on land use regulation or a particular subset of land use regulations (for instance, Glaeser and Ward examine the effects of wetlands, septic system, and subdivision requirements in eastern MA).

Several housing policy calculators specific to certain cities have attempted to simulate the housing supply and rents charged if various development or policy inputs were changed. The Turner Center Housing Development Calculator models rents and production feasibilities in California based on changes in affordable housing requirements, height and parking requirements, and additional planning approvals needed, among other factors.²⁸⁹ Up for Growth has developed Housing Policy and

²⁸² Joseph Gyourko and Raven Molloy, “Regulation and Housing Supply,” *Handbook of Regional and Urban Economics* 5 (2015): 1289–1337.

²⁸³ Edward L. Glaeser and Joseph Gyourko, “The Economic Implications of Housing Supply,” *Journal of Economic Perspectives* 32, no. 1 (2018): 3–30.

²⁸⁴ Edward L. Glaeser, Joseph Gyourko, and Raven Saks, “Why is Manhattan So Expensive? Regulation and the Rise in House Prices,” *Journal of Law and Economics* 48, no. 2 (2005): 331–370.

²⁸⁵ Ron Cheung, Keith Ihlanfeldt, and Tom Mayock, “The Incidence of the Land Use Regulatory Tax,” *Real Estate Economics* 37, no. 4 (2009): 675–704.

²⁸⁶ Fermanian Business & Economic Institute at Point Loma Nazarene University, *Opening San Diego’s Door to Lower Housing Costs* (2014), <https://www.housingyoumatters.org/images/HousingYouMatters.pdf>.

²⁸⁷ John M. Quigley and Steven Raphael, “Regulation and the High Cost of Housing in California,” *American Economic Review* 95, no. 2 (2005): 323–328.

²⁸⁸ Edward Glaeser and Bryce Ward, “The Causes and Consequences of Land Use Regulation: Evidence from Greater Boston,” *Journal of Urban Economics* 65, no. 3 (2006), 265–278.

²⁸⁹ Turner Center for Housing Innovation, *Housing Development Dashboard: Development Calculator* Berkeley, CA: University of California Berkeley, 2016), <https://turnercenter2.berkeley.edu/proforma>.

Affordability Calculators for Seattle, WA²⁹⁰ and Charlotte, NC²⁹¹ that model the impacts of city-specific policies on outcomes for market-rate housing, like rents. These models rely on assumptions about developers' behavior, calculating a construction likelihood from the ratio of a parcel's residual land value to its market land value. Up for Growth's Portland, OR Calculator finds that scenarios enacting certain housing policies, such as building housing near jobs, transit, and amenities, developing missing middle and medium-density housing in underutilized sites and in transit corridors, and allowing accessory dwelling units and garden-style apartments in single-family neighborhoods, could increase supply and reduce overall rents, yet still leave a gap in the citywide market for low-income housing.²⁹²

An overly burdensome regulatory environment may reduce competition in the development industry. As regulations increase so does the time it takes to finish a project, the interest expenses on borrowed capital, and the costs of real estate options required to secure property for development. Only developers who can afford the uncertainty and added expense can survive. Studies have shown this market concentration has led to lowered overall housing production. For example, economists found development in most local markets was concentrated in the hands of a few builders and, through a counterfactual analysis, estimated recent home prices were increasing twice as fast as they would have without market consolidation.²⁹³

As mentioned in Section 3, the regulatory scheme of one jurisdiction places pressure on neighboring jurisdictions. These interjurisdictional spillover effects have been shown to compound affordability challenges presented by local regulations.²⁹⁴ Significant cost spillovers inhibit competition in the housing market among buyers, sellers, and even among local governments.²⁹⁵ For this reason, researchers use data at the metropolitan level to assess the impacts of land-use and housing policies.

²⁹⁰ Mike Kingsella, Phillip Kash, Arjun Gupta Sarma, Mary Jiang, and Daniel Warwick, *Housing Policy and Affordability Calculator: An Overview of the Calculator's Methodology, Assumptions Used, and Conclusions Reached in Our Analysis of the City of Seattle's Regulatory and Housing Market Environment* (Washington, DC: Up for Growth National Coalition and HR&A Advisors, Inc., 2019),

<https://www.upforgrowth.org/sites/default/files/2019-06/UFGNCCalculatorWhitePaper.pdf>.

²⁹¹ HR&A Advisors and Up for Growth. *Housing Policy and Impact Calculator: Charlotte, NC: Working White Paper: Methodology and Findings* (2019), <https://housingcalculator.app/housing-calc-white-paper-clt.pdf>.

²⁹² Up for Growth, *Housing Underproduction in Oregon*, <https://www.upforgrowth.org/research/housing-underproduction-oregon>.

²⁹³ Jacob Cosman and Luis Quintero, "Fewer Players, Fewer Homes: Concentration and the New Dynamics of Housing Supply" (working paper, Carey Business School, Johns Hopkins University, 2019), https://docs.wixstatic.com/ugd/5fcb6a_38293a75ef124a238571b148b9ddb69.pdf.

²⁹⁴ Henry O. Pollakowski and Susan M. Wachter, "The Effects of Land-Use Constraints on Housing Prices," *Land Economics* 66 no. 3 (1990): 315–324; Desen Lin and Susan Wachter, "The Effect of Land Use Regulation on Housing Prices: Theory and Evidence from California," (working paper 817, Samuel Zell and Robert Lurie Real Estate Center, Philadelphia, PA, 2019), http://realestate.wharton.upenn.edu/wp-content/uploads/2019/04/LinWachter19_04042019.pdf.

²⁹⁵ Competition between local governments would, in the absence of spillover effects and excessive commutes, benefit an area's residents by offering greater choice of taxes and expenditures Charles M. Tiebout, "A Pure Theory of Local Expenditures," *Journal of Political Economy* 64, no. 5 (1956): 416–424.

Estimating impact of all regulations

An estimate of the national impact of regulations at all levels of government would require an international comparison of the consequences of housing market regulations on housing markets. Most empirical studies of housing-related regulation are of local regulations within U.S. housing markets. While this literature does not help us to provide an exact estimate of the impact of federal regulations, it demonstrates the regulatory environment can have a substantial impact on the housing market. The cost of complying with federal regulations would be greatest in tight housing markets. In those naturally or artificially constrained markets, developers would not have as much flexibility to minimize the costs of national regulations. Consumers would also be limited in adjusting to cost burdens where housing markets are restricted.

This analysis uses the rent-to-income ratio for low-income households as an indicator of barriers to entry in regional housing markets. More specifically, it adopts the ranking strategy used for designating “Difficult Development Areas” for the Low-Income Housing Tax Credit.²⁹⁶ The measure, derived from a ratio of 40th percentile Fair Market Rents for two-bedroom apartments in 2019 to the income of very low-income 4-person households in 2019, indicates the cost of providing low-income housing relative to households’ ability to support these costs. Ranking metropolitan areas by cost burden and summing over households yields a distribution of the highest cost areas.²⁹⁷ The four highest cost areas are: New York, NY HUD Metro FMR Area; Santa Cruz-Watsonville, CA MSA; San Francisco, CA HUD Metro FMR Area; and San Jose-Sunnyvale-Santa Clara, CA HUD Metro FMR Area; representing 4.5 percent of all metropolitan housing.²⁹⁸

A measure of annual aggregate minimum rent is used as a base for estimating the cost of excessive regulations on metropolitan housing markets; it is equal to the number of housing units (Census, 2010) multiplied by an estimate of the 40th Percentile Fair Market Rent for 2-bedroom apartments.²⁹⁹ Fair Market Rents are used as a measure of the cost of providing housing services. Such a measure does not capture the variety of the housing stock (including owner-occupied vs. rental housing), the opportunity

²⁹⁶ See https://www.huduser.gov/portal/Datasets/qct/QCTDDA2020_Note.pdf for a description of the methodology. The analysis in this study is different than standard practice for DDA designation in two respects. The cumulative distribution of the highest burden areas is summed over metropolitan areas instead of ZCTAs to reflect the spillover of restrictive practices. The unit of summation is housing units instead of population to better align with academic studies that estimate the impact per household.

²⁹⁷ Using a rent-to-income indicator may incorrectly characterize some high-amenity areas, where residents are willing to pay more for a higher quality of life, as high-cost areas. However, we expect that even in those high-amenity areas lower-income households could have difficulty competing in the housing market and may be displaced depending on the type of amenities.

²⁹⁸ The cumulative distribution is not smooth because the most expensive metropolitan areas are typically large. For example, the most expensive metro areas containing 5 to 10 percent of all metros represents only 3.2 percent of all housing units. Los Angeles, with 3.4 million units, would have been included in this category but doing so would have extended this category beyond 10 percent of all housing units.

²⁹⁹ The measure of aggregate rent is not necessarily greater for the high burden areas because burden is measured by rent-to-income ratio. For example, cities in Puerto Rico are characterized by low rents but even lower incomes.

costs of higher versus lower rent housing, and whether units are vacant. However, this measure – aggregating below median rents across all housing units -- approximates the annual revenue from providing basic housing services. A conceptual reason for basing the estimate on the lower end of the rent distribution is to implicitly account for the benefits of a regulation. Much of the burden of an excessive regulation will be levied on the fixed cost of providing housing. Applying a measure of the average housing payment (rather than minimum rent) could exaggerate the estimate of regulatory cost by including quality effects that are the very motivation of higher-income households for certain regulations.

To quantify the impact of a regulatory tax, the cost of restrictive regulations is assumed to represent a portion of housing costs.³⁰⁰ There is a wide range of estimates of the regulatory tax, as there should be: the response of a local housing market will vary by time and place. Descriptions of these estimates are summarized in Table A-4: at the end of this appendix. Consider the Glaeser-Gyourko estimate that 26 percent of households experience at least a 20 percent tax. The analysis adapts this baseline estimate to the top quartile high-cost housing markets. The aggregate annual 40th percentile fair market rent across all housing units for these areas is approximately \$625 billion, yielding a conservative estimate of an annual regulatory cost of at least \$125 billion (20 percent of \$625 billion), as shown in Table A-2.³⁰¹

Table A-2: Regulatory tax of 20 percent on most rent burdened metro areas

Scenario 1. 25 percent most burdened metro areas bear regulatory tax of 20 percent					
Percentile Category	Average Rent Burden: 40th percentile FMR to VLIL	Regulatory Tax (%)	Rent Burden without tax	Aggregate Rent (\$billions)	Regulatory Burden (\$billions)
up to 5	0.54	20	0.43	161	32
5 to 10	0.47	20	0.38	87	17
10 to 15	0.46	20	0.37	156	31
15 to 20	0.45	20	0.36	118	24
20 to 25	0.42	20	0.34	103	21
25 +	0.33	0	0.33	1,094	0
All Units	0.36	5	0.34	1,720	125

FMR = Fair Market Rent, VLIL = Very Low-Income Limit

³⁰⁰ We assume that the estimates of the regulatory tax are a portion of current housing expenditures so that the cost of a 50 percent tax is one-half of the current price rather than one-half of the untaxed price (a 100 percent tax).

³⁰¹ Most empirical studies examine the impact of regulations on the price of single-family housing. The proportional change of rents is expected to be equivalent because monthly rent is related to the asset price of housing through the user cost of capital. However, the proportional change in rents would not be identical to the proportional change in rents, if as a result of the regulation, there were a change in user costs in addition to the supply of housing.

Research makes it clear that the cost associated with regulations varies by market. If the regulatory tax is highest for the least affordable areas, then ranking metropolitan areas by rent burden permits a sensitivity analysis of varying regulatory taxes. Consider the possibility that most metropolitan housing markets are healthy and eliminating the regulatory tax would reduce housing burden to a common national average. The median burden for metro areas is 0.31. The hypothetical regulatory tax could be such that all areas without a regulatory tax would be characterized by a housing burden of 0.31 or lower. Reducing such a regulatory tax for all metro areas would result in savings for producers and consumers of housing of \$450 billion. Alternative estimates involve different assumptions of the maximum burden imposed by a well-functioning market. The top quartile of most-burdened metro areas faces a minimum burden of 0.41: assuming that as the maximum would yield an estimate of regulatory costs of \$96 billion. An intermediate threshold of 0.35 is explored in Scenario 2, shown in Table A-3. The hypothetical taxes for each category of metro areas are well within standard estimates of regulatory taxes (20 percent to 40 percent and as high as 50 percent for highest cost areas).³⁰² The estimated regulatory burden using this approach is \$255 billion annually.

Table A-3: Regulatory tax proportional to excess rent burden

Scenario 2. Burdened metro areas bear regulatory tax proportional to excess burden beyond 0.35					
Percentile Category	Average Rent Burden: 40th percentile FMR to VLIL	Average Regulatory Tax (%)	Average Rent Burden without tax	Aggregate Rent (\$billions)	Regulatory Burden (\$billions)
up to 5	0.54	54	0.35	161	87
5 to 10	0.47	36	0.35	87	31
10 to 15	0.46	31	0.35	156	49
15 to 20	0.45	27	0.35	118	32
20 to 25	0.42	20	0.35	103	21
25 +	0.33	3*	0.32	1,094	35
All Units	0.36	15	0.31	1,720	255

Note: Tax = Rent burden/0.35 - 1. The minimum tax is zero.

*Some metro areas in this category have rent burdens greater than 0.35.

The estimates of cost are limited to the highest cost metropolitan areas because constrained markets are the most adversely affected by regulations. These estimates are suggestive of the potential magnitude of regulatory costs.³⁰³

Labor market impacts

³⁰² In this example, the hypothetical regulatory tax for a category of metro areas is equal to the rent-income ratio /0.33 - 1.

³⁰³ Greater accuracy would be accomplished by a more explicit analysis of the lost consumer and producer surplus.

A balance between jobs and housing is important for maximizing productivity and growth, at both a local and aggregate level.³⁰⁴ Several studies have attempted to estimate the cost of housing regulations on a macroeconomic scale by simulating where people would live, and the associated contribution to economic growth, if housing supply constraints were relaxed in certain high-productivity and high-cost cities. Hsieh and Moretti (2019) estimate local constraints have limited aggregate economic growth over the past 40 years and conclude that U.S. GDP (in 2009) would have been 3.7 percent higher in the absence of regulatory barriers.³⁰⁵ Glaeser and Gyourko (2018) re-estimate these effects using more conservative labor demand elasticities and arrive at an upper bound of 2 percent of GDP.³⁰⁶ These studies call attention to the extent of the potential damage to economic growth of restrictive regulatory practices.³⁰⁷

Another study finds that, in a constrained housing market (measured by a high number of land use related court cases), the net migration of workers of all skill types from poor to rich places is replaced by skill sorting.³⁰⁸ Skilled workers move to high-cost, high productivity areas, and unskilled workers move away due to rising house prices. The estimate of the impact of regulations on housing costs may not fully account for the impacts on the aggregate U.S. economy. Other costs and benefits to consider arise from families' access to high opportunity areas.³⁰⁹

Benefits of regulation

A limitation of many estimates of regulatory costs is a cursory consideration of the economic benefits imparted by regulations. At a minimum, a legal framework is necessary for the property, financial, and insurance markets on which housing relies.³¹⁰ To attract and retain residents and employment, communities must offer basic infrastructure, health, and safety through a regulatory framework. Best practices such as streamlined regulation of harmful externalities, efficient provision of public goods, and

³⁰⁴ Chang Tai Hsieh and Enrico Moretti, "Housing Constraints and Spatial Misallocation," *American Economic Journal: Macroeconomics* 11, no. 2 (2019): 1–39; Gilles Duranton and Diego Puga, "Urban Growth and Its Aggregate Implications," (NBER Working Paper No. w26591, National Bureau of Economic Research, Cambridge, MA, 2019); Kyle F. Herkenhoff, Lee E. Ohanian, and Edward C. Prescott, "Tarnishing the Golden and Empire States: Land-Use Restrictions and the U.S. Economic Slowdown," *Journal of Monetary Economics* 93 (2018): 89–109.

³⁰⁵ This estimate of lost productivity growth is substantial when compared to housing expenditures of 12 percent of GDP.

³⁰⁶ Glaeser and Gyourko, "The Economic Implications of Housing Supply."

³⁰⁷ Lost growth amounting to only 1 percent of GDP would constitute a cost of \$200 billion. U.S. GDP was \$21,429 billion in 2019 (Bureau of Economic Analysis, January 30, 2020).

³⁰⁸ Peter Ganong and Daniel Shoag, "Why Has Regional Income Convergence in the U.S. Declined?" *Journal of Urban Economics* 102 (2017): 76–90.

³⁰⁹ See, for example, Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz, "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment," *American Economic Review* 106, no. 4 (2016): 855–902.

³¹⁰ For an example of the benefits of standards, see Gay D. Libecap and Dean Lueck, "The Demarcation of Land and the Role of Coordination Property Institutions," *Journal of Political Economy* 119, no. 3 (2011): 426–467.

reducing distortionary taxation would enhance the value of a community's real estate assets. Empirically, whether there are net benefits is not observed through prices alone. A higher housing price could indicate greater costs of development or the value of living in a particular community.³¹¹

Considering only private costs would lead to an incorrect evaluation of a policy that raises the long-run cost-effectiveness of providing a built environment. For example, the National Institute of Building Sciences' multi-year study on natural hazard mitigation has found that designing buildings to meet the latest International Residential Code and International Building Code can generate as much as \$11 in national benefits for every \$1 of investment.³¹² Another example is the development impact fee charged to developers. A development fee could reduce regulatory barriers and improve infrastructure finance. A panel study in Florida found that impact fees for public infrastructure like schools, roads, and parks increased multifamily housing construction in inner suburban areas.³¹³ However, if impact fees are set beyond the marginal cost of providing infrastructure, imposing them can discourage development and reduce land values.

HUD's experience in building regulation is in the realm of manufactured housing.³¹⁴ The safety standards were amended to provide more stringent wind standards in 1994 as a response to the disproportionate damage to manufactured homes of Hurricane Andrew. An analysis of the increased cost of production and resulting deadweight loss compared to the averted public and private damages from a hurricane predicted significant net-benefits of the rule (benefit cost ratio of 8 to 5).³¹⁵ Ten years later, during another difficult hurricane season for Florida, homes built to the 1994 standard performed significantly better than pre-1994 homes.³¹⁶ Despite the success of the engineering standard, the economic benefits may not be realized by all residents of manufactured housing built to the new standard. Much of the benefit of the rule was to reduce disaster assistance for displaced residents and limit damage to neighboring properties. The rule removed an implicit social subsidy of manufactured housing in vulnerable areas. The long-term benefits are to promote a lower depreciation of the housing stock. However, this gain in efficiency cannot be easily transferred to low-income residents.

³¹¹ Some researchers stress the importance of using accurate measures of housing prices, such as repeat-sales indices, to capture the market effects of housing regulation. Repeat sales indices are more useful in controlling for characteristics of a location or structure that change over time and have the added advantage of reflecting market transactions. See John M. Quigley and Larry A. Rosenthal, "The Effects of Land Use Regulation on the Price of Housing: What Do We Know? What Can We Learn?" *Cityscape* 8, no. 1 (2005): 69–137.

³¹² National Institute of Building Sciences, *Natural Hazard Mitigation Saves: 2018 Interim Report* (Washington, DC: Multihazard Mitigation Council, 2019)..

³¹³ Gregory Burge and Keith Ihlanfeldt, "The Effects of Impact Fees on Multifamily Housing Construction," *Journal of Regional Science* 46, no. 1 (2006): 5–23.

³¹⁴ In 1974, Congress passed the National Manufactured Housing Construction and Safety Standards Act, which authorized HUD to establish and enforce construction and safety standards for factory-built manufactured housing.

³¹⁵ For a brief description, see Housing Impact Analysis, prepared for U.S. Department of Housing and Urban Development, January 2006.

³¹⁶ Institute for Building Technology and Safety, *An Assessment of Damage to Manufactured Homes Caused by Hurricane Charley*, prepared for U.S. Department of Housing and Urban Development, March 31, 2005.

The question should be: at what point do certain construction and development regulations become a barrier rather than an essential tool for supporting efficient housing markets. Whether a regulation acts as a barrier is determined, in part, through the growth and diversity of household incomes of a jurisdiction as well as neighboring jurisdictions. Government failure would be reflected by reduced market activity and lower land values. Most economic research concludes that, even accounting for the benefits of housing regulations, many regulations impose net costs to the economy.³¹⁷

Public practices affecting the housing market may have been promulgated to accomplish important goals. However, not all policies have the intended effect; some are not cost effective; some interact with different policies in unexpected ways; and still others become obsolete and no longer serve the original intention. Even if aggregate benefits are greater than all costs, the net benefits may be distributed such that some consumers are made better off at the expense of others. Understanding the burden imposed on households across the nation should make all levels of government more sensitive to implementing models that accomplish policy goals with the least costs and fewest barriers to entry.

Table A-4: Estimates of Regulatory Costs

Author	Estimate of Regulatory Cost	Limitations (including methodology and geography)
National Association of Home Builders & National Multifamily Housing Council (2018) ³¹⁸	32% of total development costs of multifamily housing	Based on subjective responses of 40 housing developers
National Association of Home Builders (2016) ³¹⁹	24% of the price of a single-family home, or ~\$84,671 on average	Based on survey of undisclosed sample of single-family developers
Glaeser, Gyourko, and Saks (2005) ³²⁰	Gap between construction costs and home prices (“regulatory tax”) is:	Limited to condo development in Manhattan and metro-level

³¹⁷ Joseph Gyourko and Raven Molloy, “Regulation and Housing Supply,” *Handbook of Regional and Urban Economics* 5 (2015): 1289–1337.

³¹⁸ Paul Emrath and Caitlin Walter, *Regulation: Over 30 Percent of the Cost of a Multifamily Development*, National Association of Home Builders, National Multifamily Housing Council, 2018, <https://www.nmhc.org/contentassets/60365effa073432a8a168619e0f30895/nmhc-nahb-cost-of-regulations.pdf>.

³¹⁹ Paul Emrath, *Government Regulation in the Price of a New Home* (Washington, DC: National Association of Home Builders, 2016), https://www.nahbclassic.org/fileUpload_details.aspx?contentTypeID=3&contentID=250611&subContentID=670247.

³²⁰ Edward Glaeser, Joseph Gyourko, and Raven Saks, “Why Is Manhattan So Expensive? Regulation and the Rise in House Prices,” *Journal of Law and Economics* 48, no. 2 (2005): 331–370.

Author	Estimate of Regulatory Cost	Limitations (including methodology and geography)
	10-33% in Boston, NYC, DC 33-50% in LA, Oakland, SF, SJ >50% in Manhattan	single-family development in 21 MSAs
Glaeser and Gyourko (2018)³²¹ Housing Impacts	Using microdata: ~26% of housing has regulatory tax of at least 20% ~10% of housing has regulatory tax of at least 50% Using MSA data: In 1985, only 6% of housing had regulatory tax of at least 20%, compared to 49% of housing in 2007 and 16% of housing in 2013	Assumes: Land values are <20% of the total cost of land and construction costs Builders have gross profit margin of 17% Uses mean construction costs for modest-quality one-story home Regulatory tax is tied to housing boom-bust cycles
Glaeser and Gyourko (2018) Labor market Impacts	2% GDP based on labor reallocation (upper bound)	General equilibrium model using city-level labor demand elasticities
Hsieh and Moretti (2019)³²²	9% of GDP (~\$1.3T, assuming perfect mobility) 4% of GDP (~\$530B, assuming imperfect mobility) [36% of aggregate growth from 1964 to 2009]	General equilibrium model using Cobb-Douglas production function (with high elasticity of labor demand) Assumes labor mobility by only relaxing housing constraints in NYC, SF, San Jose
Cheung, Ihlanfeldt, and Mayock (2009)³²³	Amenity-corrected regulatory tax for FL MSAs ranges from 21% / \$44,392 (Tallahassee) to 35% / \$134,517 (West Palm Beach) in 2005	Limited to Florida (but uses house-level data, captures housing quality data, and includes amenity adjustment via distance to CBD or coast)

³²¹ Edward L. Glaeser and Joseph Gyourko, 2018. “The Economic Implications of Housing Supply,” *Journal of Economic Perspectives* 32, no. 1 (2018): 3–30.

³²² Chang-Tai Hsieh and Enrico Moretti, “Housing Constraints and Spatial Misallocation,” *American Economic Journal: Macroeconomics* 11, no. 2 (2019): 1–39.

³²³ Ron Cheung, Keith Ihlanfeldt, and Tom Mayock, “The Incidence of the Land Use Regulatory Tax,” *Real Estate Economics* 37, no. 4 (2009): 675–704.

Author	Estimate of Regulatory Cost	Limitations (including methodology and geography)
		<p>Limited to single-family housing</p> <p>Captures housing boom to 2005 (but 70% of price appreciation comes from increase in construction costs)</p>
Quigley and Raphael (2005) ³²⁴	Each additional regulatory measure is associated with a 3% (1990) or 4.5% (2000) increase in price of owner-occupied housing, or 1% (1990) or 2.3% (2000) increase in price of rental housing	Limited to California
Glaeser and Ward (2006) ³²⁵	Each additional type of regulation (wetlands bylaws, septic rules, subdivision rules) raises housing price by 7% on average (and reduces new construction by 10%), holding other factors constant	<p>Limited to eastern Massachusetts</p> <p>Limited to specific types of regulation (wetlands, septic system, and subdivision rules)</p>
Glaeser, Schuetz, and Ward (2006) ³²⁶	If housing stock had increased at same rate from Moyock 1990-2005 as it did from 1960-1975, housing prices would be 23% to 36% lower (median house price would be \$155,800 lower)	Limited to Boston MSA
Fermanian Business & Economic Institute at	40% cost of housing (weighted average of sales and rentals) ranging from 22% (\$125K) in	Limited to San Diego County

³²⁴ John M. Quigley and Steven Raphael, "Regulation and the High Cost of Housing in California," *American Economic Review* 95, no. 2 (2005): 323–328.

³²⁵ Edward Glaeser and Bryce Ward, "The Causes and Consequences of Land Use Regulation: Evidence from Greater Boston," *Journal of Urban Economics* 65, no. 3 (2006): 265–278.

³²⁶ Edward L. Glaeser, Jenny Schuetz, and Bryce Ward, *Regulation and the Rise of Housing Prices in Greater Boston: A Study Based on New Data from 187 Communities in Eastern Massachusetts* (Boston, MA: Pioneer Institute for Public Policy Research, 2006).

Author	Estimate of Regulatory Cost	Limitations (including methodology and geography)
Point Loma Nazarene University (2014) ³²⁷	<p>Santee to 44% (\$282K) in Carlsbad to 47% in San Diego City</p> <p>Could gain \$3.1B (1.7%) in gross regional product and \$2.5B (1.5%) in total personal income by reducing regulatory costs by 3% and opening up housing to 6750 currently priced-out households</p>	<p>Limited to certain regulations (permits, sewer, water, schools, drainage, traffic)</p>

³²⁷ Fermanian Business & Economic Institute at Point Loma Nazarene University, *Opening San Diego's Door to Lower Housing Costs*, 2014, <https://www.housingyoumatters.org/images/HousingYouMatters.pdf>.